

**Legal Development and the Democratization of Human Rights in  
Post-modern Africa: A Case for the Legal Regulation of Cultural  
Violence against Girls**

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A thesis submitted to the University of Ottawa in partial fulfillment of the requirements of the degree  
of Doctor of Philosophy

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## **ABSTRACT**

The problem of cultural violence against girls in Nigeria has been discussed at length. A number of scholars have conducted empirical studies, others developed theories and tools to be used in measuring and monitoring improvement on eliminating specific cultural practices. This scholarship is vitally important. They launch feminist and other anthropological works into an arena of anti-violence work which without a doubt have a significant impact and far-reaching repercussions for girls who experience violence in Nigeria. Yet, despite the systemic change over the past years, the problem of violence against girls in Africa, more specifically Nigeria, is still persistent within cultural communities. Building on the important foundational works of these authors, my dissertation analyses this problem from a different perspective. This thesis identifies several governance gaps within the Nigerian legal framework that needs to be addressed before existing legal mechanisms can adequately address the problem of violence against girls. To ensure a proper examination of the different dimensions and changing patterns of cultural violence against girls, the dissertation focuses on the practice of child marriages within Muslim communities in Northern Nigeria. The complexity of the issues addressed in this dissertation required a variety of theoretical tools to unpack the different fields of inquiry. The dissertation uses a critical legal studies and feminist framework in studying the problem of cultural violence against girls in Nigeria. It also uses textuality, a method of inquiry within Dorothy Smith's feminist socio-legal methodology, to investigate the text-based organization of social policy in Nigeria to ultimately reveal a legal and political system used as an instrument for consolidating power and legitimizing anti-women principles as traditional values. Using these tools, the thesis analyzed the complexity of the problem of cultural violence through a focus on co-existing institutional frameworks, that is, formal and informal legal structures and the roles they play in shaping the experiences of girls within cultural communities.

## **RÉSUMÉ**

Le problème de la violence culturelle contre les filles au Nigéria a été longuement débattu. Un certain nombre de chercheurs ont mené des études empiriques, d'autres ont développé des théories et des outils à utiliser pour mesurer et suivre les progrès accomplis dans l'élimination de pratiques culturelles spécifiques. Cette bourse est d'une importance vitale. Ils lancent des travaux féministes

et anthropologiques dans une arène de travail antiviolence qui a sans aucun doute un impact significatif et des répercussions profondes pour les filles qui subissent la violence au Nigéria. Pourtant, malgré le changement systémique de ces dernières années, le problème de la violence contre les filles en Afrique, plus particulièrement au Nigéria, persiste au sein des communautés culturelles. S'appuyant sur les travaux fondamentaux importants de ces auteurs, ma thèse analyse ce problème sous un angle différent. Cette thèse identifie plusieurs lacunes de gouvernance dans le cadre juridique nigérian qui doivent être comblées avant que les mécanismes juridiques existants ne puissent résoudre de manière adéquate le problème de la violence contre les filles. Pour assurer un examen approprié des différentes dimensions et des modèles changeants de la violence culturelle contre les filles, la thèse se concentre sur la pratique des mariages d'enfants au sein des communautés musulmanes du nord du Nigéria. La complexité des questions abordées dans cette thèse a nécessité une variété d'outils théoriques pour décortiquer les différents domaines de recherche. La thèse utilise des études juridiques critiques et un cadre féministe pour étudier le problème de la violence culturelle contre les filles au Nigéria. Il utilise également la textualité, une méthode d'enquête au sein de la méthodologie sociojuridique féministe de Dorothy Smith, pour enquêter sur l'organisation textuelle de la politique sociale au Nigéria pour finalement révéler un système juridique et politique utilisé comme instrument de consolidation du pouvoir et de légitimation des anti-femmes principes en tant que valeurs traditionnelles. À l'aide de ces outils, la thèse a analysé la complexité du problème de la violence culturelle en se concentrant sur les cadres institutionnels coexistant, c'est-à-dire les structures juridiques formelles et informelles et les rôles qu'elles jouent dans le façonnement des expériences des filles au sein des communautés culturelles.

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## **Acknowledgements**

I wish to express my heart-felt gratitude to my supervisor Professor Mona Pare who was extremely helpful and offered invaluable support, assistance and guidance through this process.

To my thesis committee, Professor Angela Cameron and Professor Natasha Bakht. Thank you for your valuable feedback and thorough guidance throughout this project.

I would also like to convey thanks and express my love and gratitude to my family and friends for their understanding and endless love through the duration of my studies. There is no doubt in my mind that without their continuous support and counsel, I could not have completed this process.

## **Dedication**

To Emmanuel. Thank you for your unwavering support, your love and belief in me.



# CHAPTER 1

## Introduction

Gender-based violence (GBV) is a problem affecting millions of girls and women, cutting across boundaries of culture, religion, socio-economic class, education, age and other forms of diversity.<sup>1</sup> It is a human rights issue that manifests itself in physical, psychological, social, and cultural forms.<sup>2</sup> This form of violence is regarded by many as one of the most pervasive of human rights violations, denying women and girls' equality, security, self-worth, and their right to enjoy fundamental freedoms.<sup>3</sup> The form of GBV analysed in this thesis relates to "harmful traditional practices"<sup>4</sup> (HTPs) detrimental to the health and wellbeing of women<sup>5</sup> and girls in Nigeria.

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<sup>1</sup> Sushma Kapoor, "Domestic Violence against Women and Girls" (2000) 6 *Innocenti Digest* 1 at 3.

<sup>2</sup> *Ibid* at 3.

<sup>3</sup> Such as the right to dignity, the right to life, the right to health, the right to be free from torture and the right not to be subjected to harmful traditional practices. See Sushma Kapoor, "Domestic Violence against Women and Girls" (2000) 6 *Innocenti Digest* 1 at 3.

<sup>4</sup> This phrase was initially introduced to describe female genital mutilation. It is now used to refer to practices that have some cultural legitimacy but are believed to be harmful to girls and women. Article 24(3) of the Convention on the Rights of the Child, 1989 also uses the phrase 'traditional practices'. It provides that "States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children". See Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006) at 27; *Convention on the Rights of the Child*, 20 November 1989, UNTS art 24 (entered into force 2 September 1990).

<sup>5</sup> By using the terms 'women and girls', I am not asserting that there is a unitary/essential female experience in Nigeria. I acknowledge that gender identity is not confined to a binary (girl/woman, boy/man) nor is it static. There is certainly diversity in how individuals and groups in Nigeria understand, experience and express gender through the roles they take, the expectations placed on them, their relations with others and the complex ways that gender is institutionalized in Nigeria. And so, I reject essentialist categories of female/woman and between male/female as a biological or linguistic divide in determining the feminist subject.

Although I focus my dissertation on (cis gendered) women and girls (that is, individuals who have a match between the gender they were assigned at birth, their bodies, and their gender identity), I am in no way implying that there are no abuses against other gender identities along the feminine spectrum within cultural communities in Nigeria. The experiences of cis gendered women and girls do not necessarily reflect the challenges that a trans person ('trans' here inclusively describes people whose gender identity or expression differs to that associated with the sex they were assigned at birth) might experience in the same cultural community. To conflate their experiences would not only be inappropriate and perhaps discriminatory, but it could also affect the integrity of this research and further research relating to different communities. For this reason, I limit the scope of my research to cis gendered women and girls in a specific region in Nigeria. See on this point: Joan Wallach Scott, "Gender: A useful category of historical analysis" in *Feminist History Reader* (Milton Park: Oxon: Routledge, 2006) 133; Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990); Gayle Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality" in *Deviations: Gayle Rubin Reader* (Durham, NC: Duke University Press, 2011); Gayle Rubin, "Blood Under the Bridge: Reflections on 'Thinking Sex'" (2011) 17:1 *GLQ J Lesbian Gay Stud* 15.

Traditional practices are principles and beliefs held by members of a society for periods often crossing generations.<sup>6</sup> Most social groupings in the world have specific cultural practices and beliefs; some are beneficial to all members, while others could be detrimental to specific groups, such as women and children.<sup>7</sup> HTPs are sensitive cultural issues typically prevalent within the family and remain widely socially tolerated.<sup>8</sup> For example, at the very beginning of life, a girl may be the target of sex-selective abortion or female infanticide in cultures where son preference is prevalent.<sup>9</sup> During childhood it may include forced feeding, female genital mutilation, child marriage, breast ironing, various nutritional taboos, son preference and its implications for the status of the girl-child.<sup>10</sup> In their adult lives, it may include, seclusion, marital rape, intimate partner violence, forced pregnancy, dowry-related violence and killings in the name of honour.<sup>11</sup> Also, in later life, women may experience other forms of abuse, including the immolation of wives and oppressive widowhood practices.<sup>12</sup>

An overview of the international repertoire on violence against women reveals that the magnitude and universality of GBV, together with its impact on the rights of women and girls, has received worldwide attention in both advanced and developing communities.<sup>13</sup> Many studies and analysis on the incidence and prevalence of GBV have been reported, revealing that the global dimension of this form of violence is alarming.<sup>14</sup> In recent years, there has been a greater understanding of

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<sup>6</sup> The UN Fact Sheet No.23, “Harmful Traditional Practices Affecting the Health of Women and Children” (UN, 1995) at 1.

<sup>7</sup> *Ibid* at 1.

<sup>8</sup> Kapoor, *supra* note 1 at 3. Throughout this thesis, I use the phrase ‘cultural violence’ to refer these HTPs. I explain my rationale in part 2 of this chapter.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> For a discussion on widowhood in African societies see Lucky Eboh & Thomas Boye, “Widowhood in African Society and its effects on Women’s Health” (2005) 5:4 *Afr Health Sci* 348; Peter Lloyd-Sherlock, Barbara Corso & Nadia Minicuci, “Widowhood, Socio-Economic Status, Health and Wellbeing in Low and Middle-Income Countries” (2015) 51:10 *J Dev Stud.* 1374–1388.

<sup>13</sup> Krug EG et al, “The world report on violence and health” (2002) 360:9339 *The Lancet* 1083–1088; García-Moreno C et al, *WHO multi-country study on women’s health and domestic violence against women: initial results on prevalence, health outcomes and women’s responses* (Geneva: World Health Organization, 2005); Coker AL et al, “Physical health consequences of physical and psychological intimate partner violence” (2000) 9:5 *Archives of Family Medicine* 451; Peterman A, Palermo T, Bredenkamp C, “Estimates and determinants of sexual violence against women in the Democratic Republic of Congo” (2011) 101:6 *American Journal of Public Health* 1060.

<sup>14</sup> For example, Howard LM et al, “Domestic violence and severe psychiatric disorders: prevalence and interventions. *Psychological Medicine*” (2010) 40:6 *Psychol Med* 881; Ellsberg M et al, “Intimate partner violence and women’s physical and mental health in the WHO multi-country study on women’s health and domestic violence: an observational study” (2008) 371:9619 *The Lancet* 1165.

the problem of cultural violence, its causes and consequences.<sup>15</sup> Feminists and women's organizations have identified this form of violence as a priority issue.<sup>16</sup> The discussion ranges from well written academic research papers to simple calls to action to end these practices to field reports from local and international NGOs to online blogs written by individuals and groups.<sup>17</sup> It also includes autobiographical reports of people's experiences of specific practices<sup>18</sup> and works of feminist activists and journalists.<sup>19</sup> Women's advocacy groups around the world work to draw more attention to the physical, psychological and sexual nature of these forms of GBV emphasizing the need for action.<sup>20</sup> They placed women's rights firmly on the agenda of international human rights organisations through their advocacy and also suggested appropriate mechanisms to be used in tackling this issue. Major findings of studies include data on prevalence by region,<sup>21</sup> female perceptions of these practices and their effects, who conducts the practice and

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<sup>15</sup> See for example, December Green, *Gender Violence in Africa: African Women's Responses* (St Martin's Press: 1999); Sue Freeman, "Women's Moral Dilemma's: In Pursuit of Integrity" in Susan C Bourque & Donna Robinson Divine, eds, *Women Living Change* (Philadelphia: Temple University Press, 1985); Nhlapo Thandabantu, "Women's Rights and Family in Traditional and Customary Law" in Susan Bazilli, ed, *Putting Women on the Agenda* (Johannesburg: Ravan Press, 1991); Stanley G French, *Violence against Women: Philosophical Perspectives* (New York: Cornell University Press, 1998) 199.

<sup>16</sup> Jain Devaki, *Women, Development, and the UN: A Sixty Year-Quest for Equality and Justice* (Bloomington: Indiana University Press, 2005); Arat Zehra "Promoting Women's Rights against Patriarchal Cultural Claims: The Women's Convention and Reservations by Muslim States" in D Forsythe & P McMahon, eds, *Global Human Rights Norms: Area Studies Revisited* (Lincoln, NE: Nebraska University Press, 2003) 231–251.

<sup>17</sup> See for example, Girls not Brides blog, online: <https://www.girlsnotbrides.org/>; Chantalle Okondo, "Leaving No Girl Behind on Zero Tolerance Day" (5 February 2019), online: <https://www.28toomany.org/blog/2019/feb/5/leaving-no-girl-behind-on-zero-tolerance-day/> ; The Girl Generation blog, "Stories of change from the global movement to end FGM", online: <https://www.thegirlgeneration.org/blog>

<sup>18</sup> See for example, Waris Dirie & Cathleen Miller, *Desert Flower: The Extraordinary Journey of a Desert Nomad* (New York: William Morrow, 1998); UN Women, "Survivors speak: Women leading the movement to end FGM" (4 February 2019), online: <https://www.unwomen.org/en/news/stories/2019/2/compilation-women-leading-the-movement-to-end-female-genital-mutilation>.

<sup>19</sup> Maxine Molyneux, "Mobilization without Emancipation? Women's Interests, the State and Revolution in Nicaragua" (1985) 11:2 *Feminist Studies* 227; Margaret Snyder "Unlikely Godmother: The UN and the Global Women's Movement" in Myra Marx Ferree & Aili Mari Tripp, eds, *Global Feminism: Transnational Women's Activism, Organizing, and Human Rights*, New York: New York University Press, 2006) 24–50.

<sup>20</sup> Save the Children and the United Nations Population Fund (UNFPA) as well as local NGOs such as Girls Voices Initiative, Africa Health, Human & Social Development (Afri-Dev), Women Consortium of Nigeria and ECPAT International have also provided information from field studies and reports derived directly from individuals within local contexts.

<sup>21</sup> For example, a recent cross-sectional study was conducted in Tsibiri village in Kaduna state in the North-western region of Nigeria. At the time of the study, the community had a projected population of about 1800 residents and 20% (350) of the population were girls aged 10-14 years who were married. See Adenike Oluwayemisi Jimoh, Sunday Enema Adaji, Hamdalla Adelaiye et al, "A cross-sectional study of traditional practices affecting maternal and newborn health in rural Nigeria" (2018) 31:64 *Pan African Medical Journal* 1 at 2; Judith-Ann Walker, "Early Marriage in Africa – Trends, Harmful Effects and Interventions" (2012) 16:2 *African Journal of Reproductive Health* 231.

on whom it is conducted, tools used, and perceived long and short-term impacts.<sup>22</sup> Although a majority of the community level interventions are focused on the larger issue of GBV,<sup>23</sup> and not specifically HTPs, a few scholars have developed theories and tools to be used in measuring and monitoring improvement on eliminating specific cultural practices.<sup>24</sup> Petitions have been made for legal reform and the widespread attitudes and beliefs that support violent behaviour against women and girls have been challenged.<sup>25</sup> These efforts are yielding results. International institutions are speaking out. Surveys and studies are collecting more information about the prevalence and nature of this abuse.<sup>26</sup> More organizations, service providers, and policy makers are recognising that this form of violence has severe harmful consequences for women and girls.<sup>27</sup> However, despite this

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<sup>22</sup> Susheela Singh & Renee Samara, “Early marriage among women in developing countries” (1996) 22 *International Family Planning Perspectives* 148; Audrey Harwood-Lejeune, “Rising age at marriage and fertility in Southern and Eastern Africa” (2001) 17 *European Journal of Population* 261; Robert Jensen & Rebecca Thornton, “Early female marriage in the developing world” (2003) 11:2 *Gender & Development* 9; David Shapiro & Tesfayi Gebreselassie, “Marriage in sub-Saharan Africa: Trends, determinants, and consequences” (2013) 33:2 *Population Research and Policy Review* 229; United Nations Department of Economic and Social Affairs, Population Division, “World Marriage Data” (2015), online: <https://www.un.org/en/development/desa/population/theme/marriage-unions/WMD2015.asp>; Susheela Singh & Renee Samara, “Early Marriage Among Women in Developing Countries” (1996) 22:4 *International Family Planning Perspectives* 148; National Research Council, *The Changing Transitions to Adulthood in Developing Countries: Selected Studies* (Washington: The National Academies Press, 2005).

<sup>23</sup> For example, creating functional female friendly safe spaces, procurement, and distribution of dignity kits (including reusable pads, culturally acceptable clothing) to women and girls and skills building and livelihood support initiatives including start-up grants to vulnerable women and adolescent girls. See GBV Sub Sector Working Group – Nigeria, “Strategy for Gender Based Violence Prevention, Mitigation and Response in the Humanitarian Context” (17 Dec 2017), online: [https://reliefweb.int/sites/reliefweb.int/files/resources/gbv\\_strategy\\_for\\_north\\_east\\_2017.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/gbv_strategy_for_north_east_2017.pdf); Annabel S Erulkar & Eunice Muthengi, “Evaluation of Berhane Hewan: A Program to Delay Child Marriage in Rural Ethiopia” (2009) 35:1 *International Perspectives on Sexual and Reproductive Health* 6; Rigmor C Berg & Eva Denison, “Interventions to reduce the prevalence of female genital mutilation/cutting in African countries” (2012) 9 *Campbell Systematic Review* 1.

<sup>24</sup> Barbara Fawcett, Brid Featherstone, Jeff Hearn & Christine Toft, *Violence and Gender Relations Theories and Interventions* (London: Sage Publications, 1996) 1; Kolawole Azeez Oyediran & Uche C Isiugo-Abanihe, “Perceptions of Nigerian Women on Domestic Violence: Evidence from 2003 Nigeria Demographic and Health Survey” (2005) 9:2 *African Journal of Reproductive Health* 38; Christian Ndugasa Okemgbo, “Prevalence, Patterns and Correlates of Domestic Violence in Selected Igbo Communities of Imo State, Nigeria” (2002) 6:2 *African Journal of Reproductive Health* 101-114.

<sup>25</sup> Lori Heise, “Violence against Women: Global Organizing for Change” in Edleson JL & Eisikovits ZC, eds, *Future Interventions with Battered Women and their Families* (California: Sage Publications, 1996).

<sup>26</sup> See for example, Adenike Oluwayemisi Jimoh, Sunday Enema Adaji, Hamdalla Adelaiye et al, “A cross-sectional study of traditional practices affecting maternal and newborn health in rural Nigeria” (2018) 31:64 *Pan African Medical Journal* 1; Adewale O Ashimi, Taiwo G Amole, Zubairu Iliyasu, “Prevalence and predictors of female genital mutilation among infants in a semi urban community in northern Nigeria” (2015) 6 *Sexual & Reproductive Healthcare* 243; Garba ID et al, “Prevalence of female genital mutilation among female infants in Kano, Northern Nigeria” (2012) 286 *Arch Gynecol Obstet* 423.

<sup>27</sup> Kolawole Azeez Oyediran & Uche C Isiugo-Abanihe, “Perceptions of Nigerian Women on Domestic Violence: Evidence from 2003 Nigeria Demographic and Health Survey” (2005) 9:2 *African Journal of Reproductive Health* 38; Christian Ndugasa Okemgbo, “Prevalence, Patterns and Correlates of Domestic Violence in Selected Igbo Communities of Imo State, Nigeria” (2002) 6:2 *African Journal of Reproductive Health* 101.

worldwide consciousness on modes of intervention, incidences of violence continue to rise steeply in Nigeria,<sup>28</sup> an indication that the problem is nascent and requires attention.

As previously stated, while this dissertation is relevant to all forms of GBV, I pay special attention to cultural violence perpetrated against girls.<sup>29</sup> Harmful cultural practices although classified as GBV have distinctive features. Their prevalence commonly hinges on ideas surrounding ethnicity and/or religion in addition to the fact that women within these communities work directly and indirectly to sustain these practices.<sup>30</sup> Often these practices are used as a justification to the right to practice culture or religion, and they persist without efficient monitoring or penalty, despite the growing existence of legal prohibitions.<sup>31</sup> It is also important to acknowledge the “unique positioning” of girls at the “margins of age and gender”.<sup>32</sup> I consider girls in this context as marginalized within the classification of children as female and within the classification of women as children.<sup>33</sup> This “intersectional marginalization” is evident in my intermittent reference to girls as women and children. Therefore, this thesis although focusing on the girl-child, extends the gender<sup>34</sup> debate to the “figure of the girl-child/woman”,<sup>35</sup> a figure that finds increasing attention within cultural communities in Nigeria.

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<sup>28</sup> National Population Commission of Nigeria, United Nations Children’s fund, “Violence against Children in Nigeria: Findings from a National Survey 2014” (September 2015), online: <http://evaw-global-database.unwomen.org>; National Research Council, Division of Behavioral and Social Sciences and Education, Committee on Population, Panel on Transitions to Adulthood in Developing Countries, *The Changing Transitions to Adulthood in Developing Countries: Selected Studies* (Washington: National Academies, 2006).

<sup>29</sup> Within this thesis, my reference to girls as children or women is only done to highlight discourses by scholars within women and children’s studies. In my analysis, I use the term “girls”, “girlhood”, “girl-child” or “girl-children”. Chapter 2 of my thesis will engage these definitional issues and their impact on girls.

<sup>30</sup> Muna Ndulo, “African Customary Law, Customs and Women’s Rights” (2011) 18:1 *Indiana Journal of Global Legal Studies* 88; December Green, *Gender Violence in Africa: African Women’s Responses* (St Martin’s Press: 1999) 105.

<sup>31</sup> See Rashida Manjoo, “The Continuum of Violence against Women and the Challenges of Effective Redress” (2012) 1 *Int’l Hum. Rts. L. Rev.* at 9.

<sup>32</sup> Ruby Lal, “Recasting the Women’s Question” (2008) 10:3 *Interventions* 321.

<sup>33</sup> *Ibid* at 322.

<sup>34</sup> I would like to note that the term ‘sex and gender’ are not interchangeable and that although I use the term ‘sex’ to categorise female and male in this dissertation, there is variation in the biological attributes that comprise sex and how those attributes are expressed.

<sup>35</sup> Lal, *supra* note 32 at 322.

## **(1) Contributions to Scholarship**

### **1. Identifying a Governance Gap**

This dissertation makes two contributions to legal scholarship. The first contribution is identifying a governance ‘gap’ in the Nigerian legal framework. I argue that existing legal mechanisms cannot address the problem of violence against girls unless the governance ‘gap’ in Nigeria between the rights rhetoric and its effective enforcement is properly addressed. Education, provision of shelters for women and girls are current mechanisms and strategies used to address the issue of violence against women and girls and although useful, are merely temporary aids.<sup>36</sup> Even when women and girls acquire a degree of educational, economic and political awareness, they often feel powerless to bring about the change necessary to eliminate harmful traditional practices detrimental to their health and welfare.<sup>37</sup> As a starting point, I identified four (4) unusual subject areas within the ‘gap’ that should be analysed before current mechanisms can properly address the cultural environment from which these practices emerge in order to eliminate the various justifications used to perpetuate them.

#### *(i) The Role of Culture*

I argue that the way culture is defined in Nigeria governs how social change ensues and affects policies regarding women and girls. My investigation questions dominant and essentialist versions of culture offered by the state in describing violence against girls within cultural communities. As a State party to a number of international conventions,<sup>38</sup> when confronted with its failure to meet certain human rights standards, leaders and other powerful elites in Nigeria frequently make the claim that certain practices are deeply entrenched in religion and culture.<sup>39</sup> The idea that culture is a problem for rights enforcement limits women and girls’ subordination to cultural practices that

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<sup>36</sup> Barbara Fawcett, Brid Featherstone, Jeff Hearn & Christine Toft, *Violence and Gender Relations Theories and Interventions* (London: Sage Publications, 1996) 1.

<sup>37</sup> *Ibid* at 1.

<sup>38</sup> Of all these instruments, it is the UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, and the UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979 that go farthest in specifically recognizing the human rights of the girl-child. Regionally, other influential documents include the Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, 1990 and the African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 2003.

<sup>39</sup> See for example, Nigeria’s country report to Committee on the Elimination of Discrimination against Women. UN, *Convention on the Elimination of All Forms of Discrimination Against Women*, C/NGA/7-8 January 2016 at 15, 36.

suppress them rather than the economic or political problems their communities face.<sup>40</sup> This absolves the state of its responsibility for the suffering caused by its processes and instead blames local people for their suffering.<sup>41</sup>

In light of this tendency to culturalize problems, I suspected that elites and national actors in Nigeria have political and economic incentives for insisting on a cultural interpretation of women and girl's subordination. I found that essentialist notions of culture sanction the dependent status of women and girls, while increasing the political and social position of the elite and powerful within the system. My analysis also reveals how culture is selectively used to distract attention from the ways in which the social ideologies confronting women and girls are shaped by institutional structures.<sup>42</sup> The mystification of culture as unchangeable and deeply rooted is a means to cover up the true exclusionary and silencing practices of the state.<sup>43</sup> It is an opportunity to shy away from the responsibility of creating a system that works for women and girls. In this way, any campaign made by women and girls against harmful cultural practices becomes a fight against an already established, ancestral, inherited, and consequently unchangeable cultural process. Culture is increasingly used as a justification for human rights violations in Nigeria, but as discussed in subsequent chapters, these cultural practices are not necessarily ancient.<sup>44</sup>

### *(ii) The Role of Women within Culture*

Since this dissertation seeks to establish an appropriate mechanism to address the incidence of cultural violence against girls, it is essential to critically analyse women's role in the reproduction of these practices. This is necessary because, a few scholars believe that criminal justice reform is a vital component of efforts to reduce cultural violence against girls.<sup>45</sup> However, it is imperative

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<sup>40</sup> Lila Abu-Lughod, "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others" (2002) 104:3 *American Anthropologist* 783-791.

<sup>41</sup> *Ibid.*

<sup>42</sup> Edna Bay, *Women and Work in Africa* (Colorado: Westview Press, 1982) 155.

<sup>43</sup> *Ibid.*

<sup>44</sup> For example, breast ironing is a contemporary effort to protect girl-children in the face of sexually related crimes and the impunity of the government for these crimes. See Bawe Rosaline Ngunshi, "Breast Ironing: A harmful traditional practice in Cameroon" (2011) *Gender Empowerment and Development* 4.

<sup>45</sup> See for example, Karen Hughes, "The Criminalization of Female Genital Mutilation in the United States" (1995) 4:1 *Journal of Law and Policy* 321-370; Andrew Morrison, Mary Ells berg et al, "Addressing Gender-based Violence in the Latin American and Caribbean Region: A Critical overview of Interventions" (2004) 3438 *World Bank Policy Research Working Paper* 16; Nancy I Kellner, "Under the Knife: Female Genital Mutilation as Child Abuse" (1993) 14 *J. Juv. L.* 118; Els Leye & Jessika Deblonde "A Comparative Analysis of the Different Legal Approaches Towards

to note that criminalization of these practices may have a disproportionate effect on women within cultural communities. Ethnographic evidence produced by sociologists and anthropologists show that there are girls and women who genuinely believe in the value of these practices.<sup>46</sup>

This opens an uncertain space within my research, on the one hand, a space between objective signifiers evidenced by the practical realities of the lives of girls subjected to these practices, and on the other hand women's role in perpetuating this violence on girls. For example, it is women whose breasts have been ironed that participate actively in breast ironing and it is circumcised women who actively participate in genital mutilations.<sup>47</sup> They work directly and indirectly to sustain such practices.<sup>48</sup> Mothers carry out these practices with the best interest of their children at heart as a means of protecting and promoting the child within the community and following social norms.<sup>49</sup> As such, it is important to question and understand the dilemma of determining the "moral culpability" or responsibility of mothers who support and participate in violence against girls.<sup>50</sup>

### *(iii) The Role of the State*

Despite the range of factors that could play a role in sustaining HTPs, there is little reason why the prevailing ideas of culture in Nigeria remains unchanged and unchallenged. An-Na'im asserts that the state, with its "juridical sovereignty, extensive powers and relatively much larger resources", is a crucial element in the context of cultural transformation.<sup>51</sup> My position here is premised on the fact that many of the major abuses to girls and women within culture occur as a result of political and legal institutions. I show that rather than seeking an explanation that only assumes a defectiveness of culture, the conceptual practices of power as expressed within the management

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Female Genital Mutilation in the 15 EU Member States, and the Respective Judicial Outcomes in Belgium, France, Spain, Sweden and the United Kingdom" (2004) 8 ICRH Publications 10-40.

<sup>46</sup> Kolawole Azeez Oyediran & Uche C Isiugo-Abanihe, "Perceptions of Nigerian Women on Domestic Violence: Evidence from 2003 Nigeria Demographic and Health Survey" (2005) 9:2 African Journal of Reproductive Health 38; Christian Ndugasa Okemgbo, "Prevalence, Patterns and Correlates of Domestic Violence in Selected Igbo Communities of Imo State, Nigeria" (2002) 6:2 African Journal of Reproductive Health 101-114.

<sup>47</sup> Ngunshi, *supra* note 44 at 4.

<sup>48</sup> Sue Freeman, "Women's Moral Dilemma's: In Pursuit of Integrity" in Susan C Bourque et al, eds, *Women Living Change* (Philadelphia: Temple University Press, 1985).

<sup>49</sup> Ngunshi, *supra* note 44 at 4.

<sup>50</sup> Marie Ashe & Naomi Cahn, "Child Abuse: A Problem for Feminist Theory" (1993) 2 Texas J Women and the Law 108.

<sup>51</sup> Abdullahi An-Na'im & Jeffrey Hammond, "Cultural Transformation and Human Rights in African Societies" in Abdullahi An-Na'im, ed, *Cultural Transformation and Human Rights in African Societies* (London: Zed Books Ltd, 2000) 29.



and control of the political and legal system needs to become more transparent.<sup>52</sup> And so, I connect the stability of HTPs to the way legal and political institutions have consolidated power in Nigeria. From my analysis, national actors and elites are either uninterested in local cultural practices or are too busy to comprehend them in their complex contexts.<sup>53</sup> There is the impression that government actors have neither the time nor the desire to adapt international or national rights standards to the particularities of Nigeria's individual states, ethnic group, or regional situation.

By far the most significant connection I make in this dissertation is understanding Nigeria and its transformation through a historical perspective. A number of critical scholars argue that a majority of the problems faced by post-colonies, like those in Africa, Asia and Latin America, is largely due to legacies inherited from the colonial administration.<sup>54</sup> There are many features of post-colonial Africa's political and legal framework which do not correspond to pre-colonial versions of law or politics.<sup>55</sup> Most claim that the current failings of pluralistic African states, specifically in the realm of law, rights and development, is a creation of colonialism and legacies given to African states.<sup>56</sup> The systems established under colonial rule was simply sustained after independence, but "only a poor copy" because African states generally lacked the administrative and political means to sustain these structures.<sup>57</sup> As a result, for my research, it was important to determine whether the state's failure to protect girls in cultural communities is simply a "passing condition", a transition or a temporary limitation in the legal development of the state or whether it signals something more permanent.<sup>58</sup> Does the problem lie within the structures put in place with decolonization in Nigeria; that is, structures that are more idealized than representative, more aspirational than realistic?<sup>59</sup> Although such an in-depth analysis is difficult and too ambitious for this dissertation, it is an insufficient reason for avoiding a brief historical component. As such, as

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<sup>52</sup> Dorothy Smith, *The Everyday World as Problematic: A Feminist Sociology* (Toronto: University of Toronto Press, 1987) 57.

<sup>53</sup> Sally Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: The University of Chicago Press, 2006) 4.

<sup>54</sup> See for example Jean Comaroff & John Comaroff, *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press, 2006) vii.

<sup>55</sup> An-Na'im & Hammond, *supra* note 51 at 29.

<sup>56</sup> Patrick Chabal, *Political Domination in Africa: Reflections on the Limits of Power* (Cambridge: Cambridge University Press, 1986) 13.

<sup>57</sup> *Ibid.*

<sup>58</sup> Comaroff & Comaroff, *supra* note 54 at vii.

<sup>59</sup> *Ibid.*

will be evident in succeeding chapters, my focus on a specific practice within a specific region in Nigeria assists in highlighting specific factors during the pre-colonial and colonial periods that have assisted in legitimizing violence against girls within culture.

In my investigation, it also became quite clear that a strong continuity from the colonial to the postcolonial that has resulted in a limited application of human rights to girls within cultural communities is the conflict between universality and relativism. I discovered that West-centric human rights ideals present serious barriers to constructive cross-cultural dialogue in Nigeria. Much of the debate incited by present-day incidents of HTPs in Nigeria depict it as a conflict between ethno-religious tradition on the one hand and westernisation or modernisation on the other. Modernity, discussed in opposition to culture, is a concept which, in African history, is connected to the colonial experience and has developed more distinct local features that emphasise the approval or disapproval of certain cultural norms.<sup>60</sup> So, there is a genuine sense of “moral indignation” felt by most Africans over colonial rule and post-colonial Western exploitation.<sup>61</sup> Also, because the legitimacy of post-colonial Nigeria’s legal framework is largely dependent on “international agreements”, we see that this process has taken the discussion of rights and protection further away from women and girls who experience wrongs.<sup>62</sup> Therefore, even though Nigeria has ratified a number of international and regional legal instruments aimed at protecting women and children from all forms of violence progress remains slow, uneven and too fragmented to make a genuine breakthrough in the lives of girls within cultural communities. For example, the *Convention on the Rights of the Child*<sup>63</sup> and the *African Charter on the Rights and Welfare of the Child*<sup>64</sup> were domesticated in Nigeria by the promulgation of the *Child Rights Act (CRA)* pursuant to section 12(1) of the 1999 Constitution which requires all international conventions to be domesticated before they can generate domestic legal obligations.<sup>65</sup> The CRA provides a minimum age for marriage and prohibits the practice of child marriages.<sup>66</sup> However, child rights matters are

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<sup>60</sup> Editha Platte, “Towards an African Modernity: Plastic Pots and Enamel Ware in Kanuri-Women's Rooms (Northern Nigeria)” (2004) 50 *Paideuma: Mitteilungen zur Kulturkunde*, Bd. at 173.

<sup>61</sup> Daniel Norman, *The cultural Barrier: Problems in the Exchange of ideas* (Edinburgh: Edinburgh University Press, 1975) at 22-23.

<sup>62</sup> An-Na'im & Hammond, *supra* note 51 at 29.

<sup>63</sup> *Convention on the Rights of the Child*, 20 November 1989, UNTS art 24 (entered into force 2 September 1990).

<sup>64</sup> *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (entered into force 29 November 1999).

<sup>65</sup> *Constitution of the Federal Republic of Nigeria*, 1999.

<sup>66</sup> *Child Rights Act*, No. 26 of 2003.

residual matters within the exclusive legislative powers of states in accordance with section 4(7)(a)(b) & (c) of the Constitution. As a result, before the CRA becomes applicable within states, it must be adopted by them through the legislative powers provided in section 4(7) of the Constitution. States are not under an obligation to adopt the CRA, and “those that have done so, by enacting *Child Rights Law* (CRL), have done it at their discretion”.<sup>67</sup> This implies that children, more specifically girls, have limited rights and protections within states that have not ratified the CRA. In addition, as discussed in chapter 5, even though most CRL adopted the CRA in respect of the definition of a child, there are differences, especially that of Islamic Northern states where, instead of the minimum age of 18 stipulated by the CRA, ‘puberty’ is used as the threshold for ascertaining marriage capacity.<sup>68</sup> Cultural and religious norms are used to justify the change in the definition of a ‘child’ within the CRL of most Islamic Northern states. While the CRA sets a child to be a person under 18, it is believed that “in Islam, there is no age that marks childhood”.<sup>69</sup> This problem is also exacerbated by item 61, schedule II to the 1999 Constitution which effectively removes customary and Islamic marriages out of the Federal legislative competence.<sup>70</sup> Therefore, laws enacted by the National Assembly will have no effect on the “formation, amendment and dissolution of marriages under Islamic or customary law”.<sup>71</sup> Herein lies the regulatory dilemma in child protection strategies in Nigeria; I provide a detailed analysis in chapter 5.

Finally, I argue that one existing dilemma in the enforcement of human rights norms and child protection strategies is also centred on the pluralistic nature of the state and the government’s inability to ensure a consistent application of norms and strategies. The conflict between the need to preserve minority culture and the protection of rights forms the basis for how legal reforms of child welfare legislation have failed to reach the real issues affecting girls within cultural communities. Research suggests that there is a tendency for children’s legislation to be

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<sup>67</sup> Enyinna Nwauche, “Child Marriage in Nigeria: (Il)Legal and (Un)Constitutional” (2015) 15 Afr. Hum. Rts. L.J. 421 at 423.

<sup>68</sup> *Ibid.*

<sup>69</sup> Tim Braimah, “Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage” (2014) 14 African Human Rights Law Journal at 481.

<sup>70</sup> Second Schedule Part 1 item 61 of the 1999 Constitution. This section states that ‘the formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto’.

<sup>71</sup> Kayode Olatunbosunx Fayokun, “Legality of Child Marriage in Nigeria and Inhibitions against Realisation of Education Rights” (2015) 12 US-China Law Review 812.

implemented in “a piece-meal fashion, or in large towns or capital cities only”.<sup>72</sup> Even when discussions deal with local situations, there is an unavoidable conflict between general principles and specific situations within the 36 states in Nigeria. In chapter 6, I show that the situation in Nigeria could be analysed less on the perceived unchanging nature of culture or tradition than on the tensions between a federal government that envisions unified modernity and local actors for whom specific histories and contexts are significant. Therefore, it was necessary to examine the extent to which legal reform deals with girls within cultural communities, more specifically, customary, and religious law and issues related to tradition to understand the ethno-religious factors inhibiting the effectiveness of human rights protection in modern Nigeria.

*(iv) Male Violence and Sexual Violence as a Particular form of Oppression*

Social structures and individuals within them construct and reproduce inequalities related to class, ethnicity, religion, and other differences.<sup>73</sup> In Nigeria, I observe a social and cultural environment that is male-dominated, male-centered and male-identified. In succeeding chapters, we will see how the Nigerian society is organized around male needs, reality is seen from male perspectives, male attributes are considered more valuable, and they dominate in culture and politics. I argue that one of the main roots of child marriage in Nigeria is male (sexual) violence and male abuse of power. In chapter 3, we see that child marriage limits girls to fixed gender roles defined by patriarchal and male dominant power structures controlling sexuality and reproduction. Girls are celebrated as young wives and mothers, not as children. This appropriation is a vital aspect of patriarchal power and girls’ disempowerment. We also see that these gender roles have historically contributed to and sustained men’s structural dominance within the community. As such, to create a legal system that is responsive to women and girls’ experiences, we must also focus on male power and locating that power within a patriarchal order that is deeply misogynistic and valorizes masculinity.

The sexual violence experienced in early marriage is arguably the most severe level of violation experienced by girls. This is the most horrific aspect of this practice. A girl’s body is not suited

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<sup>72</sup> Julia Sloth-Nielsen & Benyam Mezmur, “Surveying the Research Landscape to Promote Children’s Legal Rights in an African Context” (2007) 7 Afr. Hum. Rts. L.J. at 335.

<sup>73</sup> Mary Becker, “Patriarchy and Inequality: Towards a Substantive Feminism” (1999) 1:3 University of Chicago Legal Forum 21 at 23.

for giving birth. As a gender-sensitive inquiry, I explore ways by which child marriage sanctions the beginning of sexual life and abruptly leads girls, as they enter puberty and adolescence, to marital and maternal roles. I argue that subjecting girls to increased levels of vulnerability, through physical and sexual violence, in turn limiting their prospects for personal development are mechanisms by which women and girls remain confined to a patriarchal social order.<sup>74</sup> More importantly, I maintain that, at ages of 10 or 14 years, when girls are not physically or emotionally developed for childbearing, no man whomsoever is suitable. Male violence plays a significant role in preventing a real solution to child marriage. Highlighting and emphasizing male dominance in this dissertation can help us understand how the legal system should respond.

## **2. Using Critical Legal Studies and a Feminist Framework to Discover Dilemmas in the Nigerian System**

The second contribution to scholarship relates to the way this dissertation uses a critical legal studies and feminist framework in studying the problem of cultural violence against girls in Nigeria. These theoretical and methodological tools point me toward a different area not explored by the current literature. Chapter two highlights the details and application of my research methodology. However, my dissertation's contribution to scholarship is in the way it adopts a variety of tools to unpack the different fields of inquiry.

First, the feminist framework adopted has important consequences for my research. Postmodern feminism offers a means of testing the validity of accepted legal principles, especially within the human rights framework, through the lens of the personal experience of those directly affected by them.<sup>75</sup> This means examining and exposing certain features of the legal system, political and social structures coupled with institutional arrangements that might disadvantage girls, and suggest how they may be reformed.<sup>76</sup> Secondly, using a postcolonial feminist approach, my dissertation highlights the “significance of the colonial encounter” for the situation of girls in postcolonial Nigeria, and also how their “struggles for protection” are tied to the legacy of this encounter in modern-day Nigeria.<sup>77</sup> In this way, I am able to properly interrogate the ways in which the colonial

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<sup>74</sup> *Ibid.*

<sup>75</sup> Katharine Bartlett, “Feminist Legal Methods” (1990) 103 *Harvard Law Review* 837.

<sup>76</sup> *Ibid* at 848.

<sup>77</sup> Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (London: The Glass House Press, 2005) 14.

past continues to influence postcolonial Nigeria's response to cultural violence against girls. By using a postcolonial feminist theory, my research avoids problems that could possibly emerge from neglecting a historicized critique of gender and colonization in developing a contextual understanding of relations of culture and power.<sup>78</sup> Also, adopting a feminist framework encouraged me to look at first-hand accounts from women and girls in empirical studies. I read stories of women and girls to truly discover and understand their experience of violence and culture.

During my research, I realised that asking questions about violence experienced by girls from a feminist perspective complemented a critical legal studies (CLS) approach which offered a unique analysis of law and legal frameworks in Nigeria. For my research, it was important to view law as a primary tool of development, especially (but not only) in post-conflict and postcolonial societies like Nigeria. By using CLS, I move beyond what is written in cultural studies, anthropology, and sociology. The contribution of CLS to my research is in its analysis of "legitimizing structures" within the society, more specifically, the unravelling of the ideology of legal institutions within Nigeria as applicable to girls within cultural communities.<sup>79</sup> In this way, I was able to properly analyze the complexity of this problem of violence through a focus on co-existing institutional frameworks, that is, the formal and informal legal structures and the roles they play in shaping the experiences of girls within cultural communities.

Lastly, another unique aspect of my research is in the way I pair Dorothy Smith's tool of 'textuality' with a legal and cultural analysis. Using textuality, I am able to investigate the text-based organization of social policy in Nigeria to ultimately reveal a legal and political system used as a tool for consolidating power and legitimizing anti-women principles as traditional values.<sup>80</sup> My description in chapter 5 reveals how various organizational and political processes are structured to create a world of activity negatively impacting the lives of women and girls within

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<sup>78</sup> Oonam Pillai, "Postmodern Feminism and Postcolonial criticism: A Paradigm for Transnational Feminist Media Studies" (1996) 3:1 *The Journal of International Communication* 47.

<sup>79</sup> Frank Munger & Carroll Seron, "Critical Legal Studies versus Critical Legal Theory: A Comment on Method" (1984) 6 *Law & Pol'y* at 258.

<sup>80</sup> *Ibid.*

cultural communities.<sup>81</sup> I show how the ruling relations in Nigeria as a whole, and more specifically the Northern region, both rely on and determine the girl-child's everyday experience.

I believe the questions posed in this dissertation are distinctive, in that they are not posed elsewhere in this manner. A protracted work of theoretical analysis and of assessing the social realities of children, more specifically girls, still needs to be done in Nigeria. Very few studies and theoretical models have conceptualised this problem of violence in Nigeria at a level of analysis that takes account of the distinctive position of girls within margins of age, gender, and culture. Additionally, the relevance of this study is not limited to the Nigerian context, in that the current situation in Nigeria is similar to ongoing efforts to address this form of violence in other developing countries in West and Central Africa, like Cameroon. The outcomes adduced from this study will be of relevance to these countries.

## **(2) Limitations, Omissions and Clarifications**

I acknowledge that as a doctoral research, this dissertation cannot address every theoretical or practical research question pertaining to HTPs in Nigeria. In scoping this dissertation, I decided to focus on one form of HTP in a single region in Nigeria. I focus on the practice of child marriages<sup>82</sup> within Muslim communities in the Northern region of Nigeria.<sup>83</sup> Beyond the fact that Nigeria has the largest number of child brides in Africa,<sup>84</sup> exploring the problem of violence against girls through child marriage is significant because I believe this practice fits rightly within the intersections of age, gender, culture, religion, law, and pluralism. Also, unlike other cultural

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<sup>81</sup> Smith, *supra* note 52 at 36.

<sup>82</sup> Child marriage, also referred to as early marriage, is generally defined as a formal or informal union between two people in which one or both parties are younger than 18 years old. It should also be noted that this definition applies to both boys and girls, even though in reality this issue disproportionately affects girls. See UNICEF, "Child Protection from Violence, Exploitation and Abuse" (2016), online: [https://www.unicef.org/protection/57929\\_58008.html](https://www.unicef.org/protection/57929_58008.html).

<sup>83</sup> Many female Muslims reside in the twelve Sharia States of Northern Nigeria- nineteen or twenty million of them altogether. Of these, about 44%, between eight and nine million, are girls under 15 years old. However, there are non-Muslims in Northern Nigeria. Most are Christians, but some are practitioners of African traditional religions or other faiths. The Muslim-Hausa majority culture may undoubtedly have some impact on these women; however, this research does not consider the effects on non-Muslim girls. See Koski, Alissa, Shelley Clark, and Arijit Nandi, "Has Child Marriage Declined in sub-Saharan Africa? An Analysis of Trends in 31 Countries" (2017) 43:1 Population and Development Review at 9; Jamila M Nasir, "Sharia Implementation and Female Muslims in Nigeria's Sharia States" in Philip Ostien, eds, *Sharia Implementation in Northern Nigeria 1996-2006: A Sourcebook* (Ibadan: Spectrum Books Ltd, 2007) at 76.

<sup>84</sup> Also, Northern Nigeria has the highest rate of Vesico-Vaginal Fistula and mother to child mortality. See UNICEF, *supra* note 82; Daru PH et al, "The Burden of Vesico-Vaginal Fistula in North Central Nigeria" (2011) 1:2 The Journal of West African College of Surgeons 50.

practices, like breast ironing and female genital mutilation that are widespread but dispersed among numerous cultures, child marriage although widespread in Nigeria is region specific.<sup>85</sup> In addition, within the Nigerian state and more specifically within the constraints of culture and religion in Northern Nigeria, child and marriage laws are often used as a testing ground to determine the degree of autonomy of women and girls.<sup>86</sup> Nigerian law makers have debated and grappled with marriage customs for decades because religious and cultural groups consistently resist efforts to proscribe child marriage.<sup>87</sup> This dilemma is discussed in succeeding chapters.

Whitaker describes Northern Nigeria as a “paradigm of confrontation”.<sup>88</sup> This is because this region has functioned for decades under “contradictory institutions” without yielding to the modernizing ambitions of the Nigerian state.<sup>89</sup> This could be due to the fact this region far exceeds that of any other political unit on the continent of Africa and its population and size makes it the dominant political influence in Nigeria.<sup>90</sup> Since this region is generally regarded as the “political and geographic heartland of Africa”,<sup>91</sup> focusing on the North for this research produces an analysis against the backdrop of a detailed account of legal and political structures that assist in the production and reproduction of violence against girls. However, my emphasis on child marriage in Northern Nigeria is simply to zone in on a single site of GBV against girls. The issues highlighted in this research are applicable to the Nigerian state as a whole.

Likewise, I do not give substantial attention to certain socio-economic and developmental factors that impede cultural transformation in Northern Nigeria. However, I acknowledge that girls’ experiences of violence in this region is further exacerbated by factors such as limited access to

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<sup>85</sup> Tim Braimah, “Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage” (2014) 14 African Human Rights Law Journal 474-488.

<sup>86</sup> Baba (of Karo) & Marry Fellice Smith, *Baba of Karo, a Woman of the Muslim Hausa* (New York: Yale University Press, 1954) 99.

<sup>87</sup> This is largely because the Nigerian Constitution mandates that the legislative jurisdiction on matters affecting children belong exclusively to states. As such, the federal legislation was unable to offer protection to all Nigerian children; to be effective, the legislation needs to be adopted by states. See discussion in chapter 6.

<sup>88</sup> Sylvester Whitaker, *The Politics of Tradition: Continuity and Change in Northern Nigeria, 1946-1966* (New Jersey: Princeton University Press, 1970) 14.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> Currently, the 36 states in Nigeria are divided into 4 regions, comprising of the Northern region, the South-south, the South-west and South-east region. 19 states make up the North, and the remaining 17 is shared between the 3 other regions. See Whitaker, *supra* note 76 at 14; Philip Ostien, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Ibadan: Spectrum Books Limited, 2007).



education, high poverty levels, limited access to medical facilities and so on. Developing Northern Nigeria as a whole in terms of capacity building through education and employment, reducing the poverty levels, establishing more hospitals to reduce the high maternal mortality rate of girls/VVF treatments are issues that are well explored in the literature.<sup>92</sup> Also, I insist that low levels of socio-economic development neither require nor produce HTPs. As such, the focus of this dissertation is on legitimating systems and the incoherence uncovered in legal and political institutions in Nigeria. I am concerned with how legal rules and political discourse promote a systematic domination of women and girls and the reproduction of violence within the home. The form of cultural transformation I advocate for requires a clear analysis of culture, the nature of legal pluralism, the role of law and political institutions and the continuation of specific colonial attitudes in Nigeria.

In writing this dissertation, I also made the decision not to pursue certain lines of inquiry. As previously stated, a feminist framework enabled me to listen critically to the interviews and stories in order to value women and girls' experiences and the choices they make with respect to culture. In these stories and interviews, I saw that there are girls and women who genuinely believe in the value of cultural practices. Nonetheless, I began my analysis of child marriage with the assumption that girls in these cultural communities, if given the option, would make genuine choices not to be married at such early ages. I took this position to compare the legal and political environment women and girls lived with their individual experiences of violence. For that reason, I did not actively engage with the agency aspect of Benhabib's version of postmodern feminism.<sup>93</sup> I did not question in depth whether the choices made by girls should be categorised as free independent self-determination, or as choices profoundly controlled by internalised oppression and patriarchal power dynamics.<sup>94</sup> Nonetheless, throughout my thesis, I adapt elements of Benhabib's feminist

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<sup>92</sup> See for example, Claudia García-Moreno & Marleen Temmerman, "Commentary: Actions to end violence against women: A multi-sector approach" (2015) 10:2 *Global Public Health* 186; Ellsberg M et al, "Prevention of violence against women and girls: what does the evidence say?" (21 November 2014), online: [http://dx.doi.org/10.1016/S0140-6736\(14\)61703-7](http://dx.doi.org/10.1016/S0140-6736(14)61703-7); Garca-Moreno C et al, "The Health-systems Response to Violence against Women" (21 November 2014), online: [http://dx.doi.org/10.1016/S0140-6736\(14\)61837-7](http://dx.doi.org/10.1016/S0140-6736(14)61837-7).

<sup>93</sup> Seyla Benhabib, *Feminist Contentions: A Philosophical Exchange* (New York: Routledge, 1970).

<sup>94</sup> There is a growing interdisciplinary literature on feminist agency in religious contexts. See for example, Susan Moller Okin, "'Mistresses of their own Destiny': Group Rights, Gender, and Realistic Rights of Exit" (2002) 112:2 *Ethics* 205; Martha C Nussbaum, *Women and Human Development: The Capabilities Approach* (Boston: Cambridge University Press, 2001); Eléonore Lépinard, "Autonomy and the Crisis of the Feminist Subject: Revisiting Okin's Dilemma" (2011) 18:2 *Constellations* 205.

agency to refute any suggestion that women and girls, if given the option, may not abandon the cohesion of their culture for greater dignity and autonomy. This analysis informs my conclusion about how the law should respond to some girls who choose to exercise their personal autonomy to comply with cultural prescriptions that others may find demeaning.

There are also conceptual limitations that require brief explanation. In discussing the practice of child marriage, reference is usually made to cultural and religious beliefs. This is because in Nigeria, religious and ethnic identities are expressed as “Siamese twins, always moving in tandem, having the capacity to re-echo other”.<sup>95</sup> As will become evident in succeeding chapters, narratives from Islam and Hausa cultural tradition in Northern Nigeria are interwoven to reinforce marriage practices. Therefore, attempting to distinguish between a religious identity and an ethnic one is extremely challenging, unfeasible, and misleading because religious identity initiates ethnic identity.<sup>96</sup> This mixture makes it hard to determine what aspect of culture originates from Islam and what pre-Islamic influences persist. And so, in this dissertation I did not actively engage with definitional issues. I simply take the position that a combination of religion and local custom structures women and girls’ lives in Northern Nigeria; consequently, child marriage as practiced in Northern Nigeria cannot simply be attributed to religion.<sup>97</sup> Also, the more I learned about religious experiences in Northern Nigeria, as discussed in chapter 6, the less satisfied I became with the standard organizational and institutional understanding of Islam in Nigeria. Given the complexities of individual’s religious experiences in Northern Nigeria, I was drawn to the idea of religion as lived rather than as imagined in abstract constructions of the established practices or requirements of Islam.<sup>98</sup> To underscore the interconnectedness of ethnic and religious identities and the fact that they are equally reinforcing, in this dissertation, I refer to child marriage as a

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<sup>95</sup> Barbara Callaway & Lucy Creevey, *The Heritage of Islam: Women, Religion, and Politics in West Africa Women* (Boulder and London: Lynne Rienner Publishers, 1994) at 195.

<sup>96</sup> Toyin Falola, *Violence in Nigeria: The Crisis of Religious Politics and Secular Ideologies* (Rochester: University of Rochester Press, 1998) at 13.

<sup>97</sup> For example, the seventeenth and eighteenth centuries witnessed an expansion of Islam from the North into central and South-western Nigeria, predominantly occupied by the Yoruba ethnic group. South-western Nigeria along with the North became modern Nigeria’s Islamic zone. However, despite this expansion and the increased Muslim influence in South-western Nigeria, this region was unaffected by the practice of child marriage. See *Ibid* at 25.

<sup>98</sup> I am grateful to Prof. Bakht for pointing this out to me. Also see Meredith McGuire, *Lived Religion: Faith and Practice in Everyday Life* (New York: Oxford University Press, 2008) at 6.

‘cultural practice’ because culture can be broadly defined to incorporate religious beliefs.<sup>99</sup> Using the phrase ‘cultural practice’ in this dissertation allows the possibility of not over emphasising the role of religion but also highlighting the role of ethnicity and other regional factors.

In my analysis, I frequently use the terms customary law, Islamic law, and customs; these terms are not interchangeable. The legal system of a typical African state is pluralistic and comprised of African customary law, religious law (especially where there is a significant Muslim population) and received law (common law or civil law depending on the colonial history).<sup>100</sup> Customary law is the body of law derived from local customs and usages of various ethnic groups.<sup>101</sup> Pre-colonial law in most African states was customary in character, having its sources in the practices and customs or traditions of the people.<sup>102</sup> Customary law is ethnic in origin, and it usually operates in the area occupied by the ethnic group and only covers disputes in which at least one of the parties to the dispute is a member of the ethnic group.<sup>103</sup> Islam was common in Nigeria by the end of the eighteenth century and later emerged as state law in the Kanem-Bornu and Sokoto Caliphates, which now constitute Northern Nigeria.<sup>104</sup> There is no definition of Islamic law in Nigeria; however, the Islamic law applicable in Northern Nigeria is the Maliki school.<sup>105</sup> Islamic law is sometimes categorised as a distinct legal tradition separate from customary law; however, there are statutory definitions in Nigeria that state that customary includes Islamic law.<sup>106</sup> The implication of this distinction on the practice of child marriage is discussed in chapter 6.

Lastly, although half-Nigerian, I acknowledge that I am an ‘outsider’, in terms of religious faith and ethnic background, to the religious community I study and to the experiences of women and

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<sup>99</sup> For an exploration on the meaning of culture, see Roger Keesing, “Theories of Culture” (1974) 3 Annual Review of Anthropology 73; Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973); Robert Wier, *Understanding Culture: Theory, Research and Application* (New York: Psychology Press, 2009).

<sup>100</sup> Ndulo, *supra* note 30 at 88.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid* at 88. It should be noted that the use of the term ‘African customary law’ does not indicate that there is a single uniform set of customs prevailing in any given country.

<sup>103</sup> Abdulmumini Oba, “Religious and Customary Laws in Nigeria” (2011) 25 Emory International Law Review at 885-886.

<sup>104</sup> Abdurrahman Doi, *Islam in Nigeria* (Zaria: Gaskiya Corporation, 1984) at 57-60.

<sup>105</sup> Oba, *supra* note 103 at 886. The Maliki school has been the dominant school in the North since around the thirteenth century. See also Ahmed Yusuf, *Nigerian Legal System: Pluralism and Conflict of Laws in the Northern States* (New Delhi: National Publ. House, 1982) at 26-28.

<sup>106</sup> Oba, *supra* note 103 at 887.

girls living in these communities. As much as possible, I try to analyze and evaluate their experiences in Northern Nigeria with respect and appropriate objectivity, while honestly advocating for the protection of women and girls in this context. In some chapters, this involves acknowledging that I have limited understanding of Islamic tradition and that I lack the language skills required to explore certain sources written in Arabic. As such, I limit my research to sources available in English and I centre sources written by Islamic scholars. Also, while I may refer to the way Islam is practised by the majority in Northern Nigeria, I recognize that Islam has multiple permutations and is interpreted differently by different Muslims who form a vastly diverse global and local community.<sup>107</sup>

### **(3) Mapping out the Thesis**

In designing this dissertation, I wanted to ensure that I clearly address the subject areas within the governance ‘gap’. I also wanted to give the clearest demonstration of the interlocking nature of the issues highlighted in this research. The theoretical framework used in my dissertation will be evident within the different chapters. To this end, I have organized my dissertation in a way that allows a gradual exposition of the social, legal, and political context of the experiences of girls within cultural communities.

#### **Chapter 1: Introduction**

Chapter 1 outlined my principal argument which is that existing legal mechanisms cannot address the problem of violence against girls unless the governance gap within the Nigerian system between rights rhetoric and effective enforcement is properly addressed. It also highlighted my contribution to scholarship, including certain limitations and exclusions of my research.

#### **Chapter 2: Theoretical & Research Method Framework**

This chapter discusses the variety of theories and research method used in this dissertation. These include postmodern feminism, postcolonial feminism, critical legal studies, and the feminist method of textuality. I describe each concept and highlight the numerous ways each framework benefits my research. I specifically argue for my choice of theory and method and justify its usefulness for my dissertation.

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<sup>107</sup> Insightful comments from Prof. Bakht.

**Chapter 3:** Contextualizing the Problem: Situating current tensions around child marriage regulation in Northern Nigeria.

This chapter is an examination into the practice of child marriages in Northern Nigeria. I provide contextual information on the cultural and political framework in Northern Nigeria. The chapter discusses the physical and sexualized nature of this practice, the impact on the health and physical development of girls and explains the rationale for its continuous perpetration. In this chapter, I adopt a thematic approach that allows for a grouping of these justifications according to whether they are associated with long-standing customs or social relations of dominations, including economic and state relations. Approaching child marriage from this multilevel approach stresses the interlocking nature of the various justifications.

**Chapter 4:** The Social Construction of Childhood and Girlhood in Nigeria

This chapter addresses a few definitional issues. What does childhood mean? Since childhood is a cultural construct, it is important that we understand what this means in the Nigerian framework, and more specifically in Northern Nigeria. This chapter also assesses the intersecting nature of a girl's identity at the margins of age and gender. It explores how and why girls in Northern Nigeria are gendered and sexual beings. My analysis here is derived from the accounts of sociologists who have done field work in Nigeria, more specifically Northern Nigeria. Historical analysis also sheds light on the historical role of girls within the Nigerian system. What role did girls occupy in colonial Nigeria's past, and how have their roles changed? Understanding girls encounter with colonialism and modernity is vital to understand the roots and rationale for the persistence of these practices in Northern Nigeria.

**Chapter 5:** A Violence Continuum: Internalization of Oppression

Based on the contextual information provided in chapter 3 and the understanding of childhood discussed in chapter 4, this chapter assesses specific frameworks that affect the everyday experiences of girls subjected to child marriages in Northern Nigeria. The chapter assumes that cultural violence is a continuum of acts and attitudes embedded within individual, social and institutional practices. This continuum does not imply a hierarchy but instead suggests the interlocking nature of a girl's experience. At the individual level, I place emphasis on the role of women, more specifically, the dilemma of determining the moral culpability or responsibility of

mothers who support and participate in violence against girls. It seems particularly important to consider prevailing constructions of childhood and motherhood, and more specifically, the interconnectedness of women and girls subject to abuse. At the social level, I analyze the role of culture and religion in shaping girls' experiences. I examine specific salient institutional mechanisms by which culture exerts its influence on the perpetration of child marriage in Northern Nigeria. At the institutional level, I realised that the dominant ideology within legal institutions has had a great impact on the dominated classes, particularly on women and girls. And so, I focus on how the law is used as a tool to bring into being specific ideologies that assist in the production and reproduction of violent and discriminatory practices within homes. Deconstructing the legal system entails a general analysis of key laws, policies and institutions addressing GBV in Nigeria and its relation to those enacted within Northern Nigeria.

#### **Chapter 6:** Legal Pluralism and the framing of human rights

The previous chapters introduced us to the pluralistic nature of the Nigerian state. This chapter is an examination of the pluralistic context in which human rights laws operate in Nigeria. The conflict between the need to preserve minority culture and the protection of rights forms the basis for how legal reforms of child welfare legislation has failed to reach the real issues affecting girls within cultural communities. I show that the new constitutional order in post-colonial Nigeria presents great challenges as the legal system has failed to find an appropriate and efficient way of implementing the co-existence of multiple normative orders. This chapter also assesses the human rights struggle in Northern Nigeria considering its historical context explored in chapters 3 and 4. I show how the identity markers of 'religion' and 'ethnicity' support differing interpretation and application of human rights with the same facts. In this way, the impact of human rights on ethno-religious issues stays ambiguous. My analysis here also reveals an image of culture and nation that emphasises imagined continuities over variation and transformation, suggesting that certain traditions and institutions are valuable simply because they are long-standing. To confront this depiction of 'unchanging traditions', I point to the selective, careful, fractured and shifting usage of the label 'westernisation' as a device used to critique and reject only those changes, those disruptions with culture, that those with the power to define 'culture' deplore.

## **Chapter 7: Conclusion**

This chapter summarises findings and provides conclusions and recommendations to the problem of cultural violence against girls in Nigeria.

## CHAPTER 2

### Legal Theory & Research Method

Building on the overall vision for this research, which is to engage in a protracted analysis of the problem of HTPs against girls, this chapter focuses on the various theoretical and methodological approaches I use to identify, choose, and analyse source materials. The idea here is to introduce the reader to the different tools used in unpacking the diverse fields of inquiry within this dissertation. The complexity of the issues addressed in my research requires a combination of lenses to engage in a proper analysis. As highlighted in the previous chapter, I use postmodern feminism, postcolonial feminism, critical legal studies, and textuality. Although these approaches differ in substance, they generate a dialogue that fosters the need to ask fundamental questions about the nature of law and its application in Nigeria.

Each framework has certain defining characteristics but there is a common ground that allows for the possibility of building a bridge between the different critical problems addressed in each framework. These include a focus on asking further questions about where the law fits within the social realities of girls in Nigeria, what is the role of law and other institutions in preserving these practices and how can law be used as an effective mechanism of change.<sup>108</sup> In this chapter, I do not focus on the possible limitations and contradictions between the theories and methods; instead, I emphasise their potential for addressing specific issues in my research. My aim is to briefly highlight the significance of these approaches and combine their insights to engage in a constructive critique of my research problem. Section one of this chapter introduces the feminist framework and its relevance to my research agenda. Postmodern feminism and postcolonial feminism are summarized separately. Section two provides a brief overview of CLS and the various aspects that advance the means to realize the objectives of my research. Lastly, section three discusses the method of textuality and highlights how I use this approach to support the arguments advanced in my dissertation.

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<sup>108</sup> Gayle Binion, “Human Rights: A Feminist Perspective” (1995) 17 Human Rights Quarterly at 512.



## **(1) Feminist Framework**

Although this dissertation is primarily focused on children, there is a propensity of childhood studies to play down specific variables, such as gender, that separates children from one another.<sup>109</sup> Since this dissertation centres on the positioning of girls and their relationship with culture and the legal system, careful attention is paid not only to the articulation of age but also of gender within childhood. Due to the overlapping nature of these issues, a feminist framework encourages a broader “engagement between feminism and child research”.<sup>110</sup> The perspective of most feminist writers originates from a need to pay attention to the experiences of women and other “traditionally excluded or relatively powerless groups”.<sup>111</sup> In essence, this approach encourages a close examination of questions related to the life of a child, as well as the different realities for girls.<sup>112</sup>

Commencing from the premise that “childhood like womanhood is a cultural invention”, using feminism, I engage in an analysis of specific aspects of girlhood shaped by gendered legal, social and political relations.<sup>113</sup> This exploration highlights the various ways in which gender relations are built into diverse institutions and social circumstances.<sup>114</sup> For example, a feminist framework encourages an analysis that reveals the differential positioning of girls and boys with regards to early marriage. As reflected in the previous chapter, a study of Northern Nigeria reveals that even though child marriages affect boys and girls, prevalence is extremely high among girls.<sup>115</sup> This in turn encourages a gendered analysis of cultural constructions of childhood, specifically why girls reach “social adulthood” (marriageability) before boys.<sup>116</sup> It also uncovers the reasons why “age hierarchies” tends to only be valid for specific gender roles.<sup>117</sup>

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<sup>109</sup> Allison James, Chris Jenks & Alan Prout, *Theorizing Childhood* (New York: Teacher's College Press, 1998) at 186.

<sup>110</sup> Jane Helleiner, “Toward a Feminist Anthropology of Childhood” (1999) 24:1 *Atlantis* at 35.

<sup>111</sup> Martha Minow, “Beyond Universality” (1989) 7:1 *University of Chicago Legal Forum* at 120.

<sup>112</sup> See for example, Hilary Lim & Jeremy Roche, “Feminism and children's rights” in Jo Bridgeman & Daniel Monk, eds, *Feminist Perspectives on Child Law* (London: Routledge-Cavendish, 2000); Katrien De Graeve, “Children’s rights from a gender studies perspective: Gender, intersectionality and ethics of care” in Wouter Vandenhoe et al, eds, *Routledge International Handbook of Children's Rights Studies* (Abingdon: Routledge, 2015) 163-179.

<sup>113</sup> Helleiner, *supra* note 110 at 29.

<sup>114</sup> Thome Barrie, “Re-visioning Women and Social Change: Where are the Children?” (1987) 1:1 *Gender and Society* at 99.

<sup>115</sup> Population Council, “Child marriage Briefing- Nigeria” (2004), online (pdf): <https://www.popcouncil.org/uploads/pdfs/briefingsheets/NIGERIA.pdf>

<sup>116</sup> Olga Nieuwenhuys, *Children's Lifeworlds* (London: Routledge, 1994) at 2.

<sup>117</sup> *Ibid.*

In the social, legal and political context, feminist thinking necessitates a clear understanding that being a girl has political consequences in Nigeria and that there can be unfair and prejudicial effects on girls depending on their economic and social realities.<sup>118</sup> It also requires acknowledging that in Nigeria, sexism and misogyny produce and promote social and political institutions of rule, leading to a supposedly justified violence against women and girls.<sup>119</sup> As such, a feminist framework supports a strong analysis and evaluation of “attitudes, institutions, and relational politics that these interwoven systems entail”.<sup>120</sup> An awareness of these ideologies, in addition to the politics of culture in Northern Nigeria propels my research towards my overall vision for cultural transformation and creating effective strategies to achieve a complete eradication of child marriage in Nigeria. I am also able to go beyond simply relating legal debates on child marriages to girl’s experiences within culture to expressly challenging central issues, concepts, and processes in law.<sup>121</sup> To effectively offer new insight into the problem of child marriages and challenge particular historic assumptions, I adopt a postmodern and postcolonial feminist approach.

However, the most challenging aspect of using the words ‘feminism’ and ‘woman’ within this research is the fear of conflating girlhood and womanhood. There is a tendency to essentialize the roles of girls as that of a woman; the girl is simply the “shadow of a woman”.<sup>122</sup> This dissertation shows how certain structural factors transform the meaning of childhood by placing a new sense of responsibility and maturity on girls. Therefore, in using a feminist framework, my thesis ensures that there is no collapsing of the adult and the child, ensuring a separation of a detached stage called girlhood.<sup>123</sup> The feminist idea that an analysis of gender should not occur outside of but within the “context of multiple identities”<sup>124</sup> is useful in this regard. Thus, in using a feminist label to address the concerns of girls, I maintain the category of childhood and girlhood but using the feminist lens to uncover disadvantages faced by girls based on gender.

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<sup>118</sup> Chandra Talpade Mohanty, *Feminism without Borders: Decolonizing Theory, Practicing Solidarity* (Durham: Duke University Press Books, 2003) at 3.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> Minow, *supra* note 111 at 120.

<sup>122</sup> Lal, *supra* note 32 at 322.

<sup>123</sup> *Ibid.*

<sup>124</sup> Katharine Bartlett, “Feminist Legal Methods” (1990) 103 Harvard Law Review at 848.

## 1. Postmodern Feminism

It may seem unclear how a discourse originating from a concern with the condition of women in the most developed societies will address the female collective in Northern Nigeria. I must acknowledge that aligning the experience of African women and girls with the analytical dictates of feminist theoretical frameworks is a challenging experience. Even though recent scholarship has tried to address specific “exclusions and tokenisms” within many feminist projects on African women, more subtle forms of exclusion still plague the feminist knowledge base on African women.<sup>125</sup> As such, adapting feminist theories to the complex nature of social relations in postcolonial Nigeria is difficult. However, postmodern theory provided an opportunity for the voices of excluded groups and the diversity of women and girls’ lived experiences to be heard within feminist fora.<sup>126</sup>

While there is no clear agreement on the definition of postmodernism,<sup>127</sup> the principles connected to this theory has strongly influenced and changed the way many scholars in different specialties approach their subject of study.<sup>128</sup> Despite the different explanations and understandings of postmodernism, these interpretations jointly criticize certain dominant and “totalizing assumptions of the modern age”.<sup>129</sup> The critiques emphasise the deconstruction of knowledge production base, grand narratives of enlightenment and a critique of the “universal subject of reason” unfettered by gender or race.<sup>130</sup> By seeking to destabilize all that we have come to regard as objective, reliable and universal, postmodernism alerts us to the interconnections between particular knowledge claims and power.<sup>131</sup> Feminist legal scholars tried to integrate postmodern knowledge base into feminist legal projects.<sup>132</sup> Postmodernisms’ preoccupation with “difference and pluralism of discourse” was appealing to feminist scholars grappling with “analytical and political frameworks

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<sup>125</sup> Philomina Okeke, “Postmodern Feminism and Knowledge Production: The African Context” (1996) 43:3 *Africa Today* at 227.

<sup>126</sup> *Ibid* at 224.

<sup>127</sup> Judith Butler, “Contingent Foundations” in Seyla Benhabib et al, eds, *Feminist Contentions: A Philosophical Exchange* (New York: Routledge, 1995) at 35.

<sup>128</sup> Maxine Eichne, “On Postmodern Feminist Legal Theory” (2001) 36 *Harvard Civil Rights-Civil Liberties Law Review* at 1.

<sup>129</sup> Jane Parpart, “Who is the ‘Other’? A Postmodern Feminist Critique of Women and Development Theory and Practice” (1993) 24:3 *Development and Change* at 439.

<sup>130</sup> *Ibid*.

<sup>131</sup> Okeke, *supra* note 125 at 224.

<sup>132</sup> Eichne, *supra* note 128 at 5.

that refuse to shed their essentialist legacies”.<sup>133</sup> As such, postmodern feminists emphasize “theory, analysis and action” that is grounded in the specificities of plural and localized knowledge bases.<sup>134</sup> More specifically, in the sense that it denies universality, I use the postmodern feminist position because it is historically attuned to the cultural specificity of different groups and individuals within societies.<sup>135</sup> This perspective offers valuable insight and strategies for effective resistance to women and girls’ oppression in Nigeria.

However, a full postmodern feminist analysis also denies the category ‘woman’ by rejecting conceptions that try to define the female gender.<sup>136</sup> It recognises that gender is “socially constructed, fluid and conceptualized within a specific historical, political and cultural context”.<sup>137</sup> This extreme version does not work for my research because I focus my dissertation on cis gendered women and girls.<sup>138</sup> As such, I use the version of postmodern feminism adopted by Benhabib which substitutes universal notions of women with plural constructions that treat gender as only one relevant factor amongst others, paying attention to class, race, ethnicity and age.<sup>139</sup> This position is crucial for my dissertation. The problem with universal notions and generalizations of girlhood is that it inhibits a full understanding of the voices of girls within specific political sites.<sup>140</sup> I cannot begin to talk about solutions to the problem of violence when the diversity of voices and the lived experience of women and girls in Northern Nigeria have not been fully explored. A failure to do this, especially on culturally sensitive issues, can hinder a criticism of cultural practices from the point of view of women and girls within the cultural and social space. Therefore, rather than accepting a totalizing model or explanation for the subordination of girls, Benhabib’s approach assists in depicting the problem of GBV against girls in a way that is contextually specific to girls within cultural communities in Northern Nigeria.

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<sup>133</sup> Okeke, *supra* note 125 at 224.

<sup>134</sup> *Ibid.*

<sup>135</sup> Narnia Bohler-Muller, “Other Possibilities-Postmodern Feminist Legal Theory in South Africa” (2002) 18 South African Journal on Human Rights at 624.

<sup>136</sup> Judith Butler, “Contingent Foundations: Feminism and the Question of Postmodernism” in Judith Butler & Joan W Scott, eds, *Feminists Theorize the Political* (New York: Routledge, 1992).

<sup>137</sup> Kristina Wolff, “Postmodern Feminism” (2007) The Blackwell Encyclopedia of Sociology at 2.

<sup>138</sup> See *supra* note 5 for explanation. I also acknowledge that there is no way I can be certain that the women and girls referred to in my dissertation are gender nonconforming.

<sup>139</sup> Seyla Benhabib, *Feminist Contentions: A Philosophical Exchange* (New York: Routledge, 1970).

<sup>140</sup> Dennis Patterson, “Postmodernism/Feminism/Law” (1991-1992) 77 Cornell L. Rev. at 303.

By placing emphasis on difference and particularity, Benhabib advances a model of subjectivity that is sensitive to context and envisions a subject that is embedded within history and culture.<sup>141</sup> This approach requires a deep structural analysis that properly understands the subject within a cultural and historical frame.<sup>142</sup> She rejects the idea of a generalized, isolated and abstract subject for a “unique individual with particular needs and history”.<sup>143</sup> As seen in chapter 3, this implies positioning women and girls in the context of various historical, societal, discursive practices and other symbolic structures within culture.<sup>144</sup> Even though Benhabib recognizes the embeddedness of all subjects in culture and history, she also adopts a version of agency that highlights the subject’s capacity to create meaning.<sup>145</sup> She shows that a postmodern feminist stance that pays attention to particularities within cultures need not forsake the role and value of agency for women in identity formation.<sup>146</sup> For my research, this entails several things. To begin with, a straightforward historical and culturally specific inquiry can lead to the privileging of specific accounts of collective agency that could inhibit women and girls’ ability to make free choices and act independently.<sup>147</sup> This undermines a girls’ capacity to make “some kind of sense of her life”, even under the most intimidating conditions.<sup>148</sup> Therefore, recognizing the embeddedness of women and girls within culture and history does not entail or require an “abandonment of self”, rather it encourages it.<sup>149</sup> So, I acknowledge the role of culture, structural constraints like poverty and other power relationships on identity formation but I also recognize that women and girls within this context are not completely incapable of striving for autonomy.<sup>150</sup> In relation to identity formation, they can distance themselves from social roles, traditions, history, and even deepest commitments.<sup>151</sup> This is possible even if girls in this context are unable to select the culture and narratives they are born into. In this respect, Benhabib strongly insists on the autonomy of women

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<sup>141</sup> Margot Canaday, “Promising alliances: the critical feminist theory of Nancy Fraser and Seyla Benhabib” (2003) 74 *Feminist Review* at 66.

<sup>142</sup> *Ibid.*

<sup>143</sup> Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (New York: Routledge, 1992) at 159.

<sup>144</sup> *Ibid* at 20.

<sup>145</sup> Sarah Drews Lucas, “The primacy of narrative agency: Re-reading Seyla Benhabib on narrativity” (2018) 19:2 *Feminist Theory* at 124.

<sup>146</sup> Canaday, *supra* note 141 at 58.

<sup>147</sup> Lucas, *supra* note 145 at 124.

<sup>148</sup> *Ibid.*

<sup>149</sup> Canaday, *supra* note 141 at 58.

<sup>150</sup> Benhabib, *supra* note 143 at 21.

<sup>151</sup> Seyla Benhabib, “Sexual Difference and Collective Identities: The New Global Constellation” (1999) 24:2 *Signs* at 353.

and girls, without denying their fundamental dependence on culture.<sup>152</sup>

As previously highlighted, employing a feminist theory for my analysis means looking below the “surface of the law” to ascertain gendered inferences of rules and the assumptions underlying them and the effects this has on girls.<sup>153</sup> Doing these assists in exposing the different kinds of bias in substantive rules. However, beyond substantive rules, a postmodern feminist approach helps with analysing power outside of law.<sup>154</sup> That is, a critique of power dynamics within cultures that have excluded women and girls. Employing this approach affects the type of answers and conclusions I reach. I recognise that for HTPs, simply focusing on the Nigerian legal system is not enough. Although law plays a significant role in the production and reproduction of HTPs, by overstating the law, I could miss crucial opportunities for effective reform. And so, I look at power, as not only contained in legal texts or a rule but as expressed through cultural norms and their capacity to mould behaviour to meet certain standards.<sup>155</sup>

Another reason why postmodern feminist scholarship is truly relevant to the work carried out in this dissertation is the fact that a complex engagement with children and childhood happens within the context of motherhood.<sup>156</sup> Benhabib’s approach creates a space where the “narratives of children as well as those of women can intersect”.<sup>157</sup> Her approach is particularly useful in dissecting and understanding the lived experiences of women, especially mothers. An analysis of childhood and motherhood is extremely layered and complicated. It remains a challenge for anthropologists of childhood, including feminists, to generate analyses that focus on both the gendered social relations of adulthood that surround children, specifically mothering, and the gendered lives of girls themselves.<sup>158</sup> Nonetheless, with the exception of women who participate in GBV, I argue that generally, women, because of their experience of violence and/or discrimination are often more likely to be girls’ main supporters in contesting present day

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<sup>152</sup> *Ibid* at 354.

<sup>153</sup> Katherine Bartlett, “Feminist Legal Methods” (1990) 130:4 Harvard Law Review 837.

<sup>154</sup> Benhabib, *supra* note 143 at 27.

<sup>155</sup> Ben Golder, “Rethinking the Subject of Postmodern Feminist Legal Theory: Towards a Feminist Foucauldian Jurisprudence” (2004) 8 Southern Cross University Law Review at 89.

<sup>156</sup> Jane Helleiner, “Toward a Feminist Anthropology of Childhood” (1999) 24:1 at 32.

<sup>157</sup> Benhabib, *supra* note 143 at 27. Also note that there is a theoretical relationship between “intersectionality” and “postmodernism”. However, for this thesis, I will limit myself to Benhabib’s approach.

<sup>158</sup> Helleiner, *supra* note 156 at 33.

childhood experience of violence within culture. Incorporating Benhabib's approach to postmodern feminism also leaves room for analyzing a difficult part of my research, which is, understanding the point of view of mothers actively participating in carrying out these violent practices.<sup>159</sup> This means questioning the "common perceptions" of motherhood while creating a space within which "new kinds of inquiry" into the experiences and motivations of women who practice GBV on girls can occur.<sup>160</sup> The specificities and particularities required within this theory support the possibility of recognizing the difficulties experienced by these women. Benhabib's approach addresses reproduced "naturalized constructions"<sup>161</sup> of parenting, especially mothering.

## 2. Postcolonial Feminism

The relationship between colonialism and modernity in Nigeria is a recurring theme in my dissertation for many reasons. Like many scholars, I have always wondered why the numerous institutions and legal structures inherited from the colonial past did not work in most African states. Taiwo highlights that many problems currently experienced by African countries, with differing degrees of intensity, can be traced to the enduring effects of colonization.<sup>162</sup> Insofar, as this dissertation emphasizes specific aspects of Nigeria's colonial legacy and many of the institutions left behind by colonialism, it is important to use a theory that addresses these complexities. However, a full analysis of the complex colonial institutions, ideas and practices introduced to Nigeria falls outside the scope of this dissertation. For my research, I focus on analysing what aspects of the Nigerian state's legal responses to HTPs are steeped in colonialism. To do this, I use a post-colonial feminist theory.

Postcolonial feminism is a critical approach focusing on colonial legacies and their enduring effects on women and girls.<sup>163</sup> It encourages the view that the problem of GBV against girls in Nigeria should not only be seen as a problem of inequality or human rights protection but as a problem that goes much deeper historically and politically. This theory explains women's

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<sup>159</sup> Benhabib, *supra* note 93 at 16.

<sup>160</sup> Marie Ashe & Naomi Cahn, "Child Abuse: A Problem for Feminist Theory" (1993) 2 Texas J Women and the Law 108.

<sup>161</sup> Helleiner, *supra* note 156 at 32.

<sup>162</sup> Olúfémi Táíwò, *How Colonialism Preempted Modernity in Africa* (Indiana: Indiana University Press, 2010) at 3.

<sup>163</sup> Lena Zuckerwise, "Postcolonial Feminism" in Michael T Gibbons, ed, *The Encyclopedia of Political Thought* (New Jersey: John Wiley & Sons, 2015) 1.

conditions of subordination within the conditions of postcolonialism.<sup>164</sup> Postcolonial feminist theory has employed a two-fold project: racializing mainstream feminist theory and introducing feminist interests into conceptualisations of colonialism and postcolonialism.<sup>165</sup> My use of this methodology focuses on the latter. I do this for several reasons.

First, I find it important to keep in mind postcolonial critiques that recognize the need to not only look “backwards to the past”, but also pay attention to the seemingly harmless components of colonial discourse and structures that have survived the formal end of colonial rule and persistently exert strong influence today in culture, politics and law.<sup>166</sup> Like Kapur, I am of the view that “the search for universal solutions” to harmful traditional practices “continues to ignore both the significance of the colonial encounter” for the situation of girls in the postcolonial world, and also how their “struggles for protection” are tied to the legacy of this encounter in modern-day Nigeria.<sup>167</sup> Postmodern feminism does not adequately interrogate the “colonial trappings” on which law is based, which continue to exploit women and girls.<sup>168</sup> Also, it does not sufficiently address the ways in which the colonial past continues to influence the postcolonial present, modern relations of dominance and subordination, and understandings of culture and nation.<sup>169</sup> For my research, it is precisely here that the emancipating potential of a post-colonial feminist theory lies.

Second, to the extent that law produces identities, remnants of colonial laws have preserved the existence of colonial identities in postcolonial Nigeria.<sup>170</sup> Using postcolonial feminism, I identify the numerous ways in which current orderings in postcolonial Nigeria continue to reflect its colonial origins.<sup>171</sup> I uncover how the state remains implicated and provides the institutional and legal infrastructures through which cultural violence in its numerous forms remain embedded in

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<sup>164</sup> Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (London: The Glass House Press, 2005) 3.

<sup>165</sup> Reina Lewis & Sara Mills, *Feminist Postcolonial Theory: A Reader* (Routledge, New York: 2003) at 3.

<sup>166</sup> Philipp Dann & Felix Hanschmann, “Post-colonial Theories and Law” (2012) 45:2 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 123-127.

<sup>167</sup> Kapur, *supra* note 164 at 14.

<sup>168</sup> Inderpal Grewal & Caren Kaplan, “Introduction” in Inderpal Grewal & Caren Kaplan, eds, *Scattered Hegemonies: Postmodernity and Transnational Feminist Practices* (Minneapolis: University of Minnesota Press, 1994).

<sup>169</sup> Kapur, *supra* note 164 at 5.

<sup>170</sup> Stacy-Ann Elvy, “A Postcolonial Theory of Spousal Rape: The Caribbean and Beyond” (2015) 22 *Mich. J. Gender & L.* 89 at 98.

<sup>171</sup> *Ibid.*



culture. As highlighted in the previous chapter, even though modifying existing institutions falls outside the scope of this thesis,<sup>172</sup> understanding whether the problem of cultural violence against girls lies within the structures put in place with decolonization in Nigeria, is an essential aspect of this dissertation. This way of viewing demands that we properly analyse the legitimacy and relevancy of specific colonial legal structures and institutions on which the Nigerian state has built most of its legal codes, specifically those pertaining to culture, religion, gender, and family. This includes interrogating universal claims and deconstructing essentialist notions of culture used by the state. That is, aspects of the state's arguments that "speak from an authentic" Nigerian cultural position, or a "culturally distinctive position".<sup>173</sup>

Third, postcolonial locations are characterised by specific forms of inequalities, and although not unique to them, these inequalities are managed and negotiated by external and internal structures in ways that further specific agendas.<sup>174</sup> This is the postcolonial world's most contentious problem.<sup>175</sup> In such circumstances, feminist practice in postcolonial locations hardly fits within the ways in which gender identity is constructed, specifically when considering factors like community, ethnicity and class.<sup>176</sup> The implications of these factors, in addition to the legal structures and political interests, pervade the everyday lives of women and girls, affecting their social reality.<sup>177</sup> The political and developmental instability, the large gap between the upper class and the deprived lower class, in addition to "pressure from the developed world" affects the everyday experiences of women and girls within cultural communities.<sup>178</sup> In chapter 3, we see that the former divisive strategies of the colonial state with regards to ethnicity and tribe in Nigeria, which was a way of organizing economic hierarchy and inequality, is now sustained through cultural and religious justification. Given the effect on women and girls within cultural communities, a postcolonial feminist lens provides an adequate framework to carefully interrogate the implications of this on gender organization in Northern Nigeria.

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<sup>172</sup> Modifying existing institutions is a big project to undertake for a PhD, given the space limitations.

<sup>173</sup> Kapur, *supra* note 164 at 6.

<sup>174</sup> Ipshita Chanda, "Feminist Theory in Perspective" in Henry Schwarz & Sangeeta Ray, eds, *A Companion to Postcolonial Studies* (Oxford: Blackwell Publishing, 2005) at 486.

<sup>175</sup> *Ibid.*

<sup>176</sup> Chanda, *supra* note 174 at 487.

<sup>177</sup> Chanda, *supra* note 174 at 486.

<sup>178</sup> Chanda, *supra* note 174 at 487.

Fourth, while postmodern feminism emphasises a contextual analysis, a postcolonial feminist analysis extends and concretizes the nature of the inquiries within my dissertation. Postcolonial feminism creates a framework to be used in deemphasising two major ways in which women and girl specific demands were diminished and disconnected from the larger issues of “decolonization and postcolonial reconstruction” in Nigeria.<sup>179</sup> These include: the emphasis on nationalist anticolonial struggles to the detriment of women’s issues and the allegations that feminism and the idea of human rights is a foreign construct inapplicable to African societies.<sup>180</sup> This way, I analyse the gendered aspects of nationalist ideas that occurred in postcolonial Nigeria. The main goal is to use this theory to prioritize and place women and girls’ issues ahead of local, political, and nationalist struggles against imperialism. Cultural violence against girls must take its own space within the current economic, political, and social struggles taking place in Nigeria.

On a personal level, the fact that this theory is expressed within the “politics of positionality”,<sup>181</sup> that is, the location of the inquirer and the audience, is essential. In a discussion of who has the right to represent the interests of girls within culture, the challenges of location of the place from which one speaks is critical.<sup>182</sup> An understanding of “who speaks, for whom, how and where, as well as who is listening and to what end” informs the politics of postcolonial feminism.<sup>183</sup> My position in this dissertation is articulated from the location of the West but it speaks to the politics and relations of domination that inform HTPs in Nigeria. Researching from the West does not imply a desire to transpose knowledge acquired from the West to Africa. Instead, my location provides me with the opportunity to be aware of the “partiality of” certain universal truths and cultural assumptions of those who speak from the West with universalizing objectives.<sup>184</sup> I believe I am well situated as a researcher to be fully aware of the dominance and hegemonic origins of some concepts and knowledge used in this dissertation. I am an African feminist and children’s rights advocate; most of my formal education took place in different African countries and so my

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<sup>179</sup> Chanda, *supra* note 174 at 491.

<sup>180</sup> *Ibid.*

<sup>181</sup> Sunder Rajan, “The Third World Academic in Other Places; Or the Postcolonial Intellectual Revisited” (1997) 23 *Critical Inquiry* 598; L Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Berkeley & Los Angeles: California UP, 1998).

<sup>182</sup> G Spivak, “Can the Subaltern Speak?” in R Williams & L Chrisman, eds, *Colonial Discourse and Post-Colonial Theory* (Hemel Hempstead: Harvester Wheatsheaf, 1993a).

<sup>183</sup> Rajan, *supra* note 181 at 598.

<sup>184</sup> Kapur, *supra* note 164 at 5.

beliefs, opinions and social background accompany me through my research process, influencing each methodological and analytical decision that I make. Even though I am not part of the ethnic and religious community studied, I believe it is possible to write about women and girls in Northern Nigeria if I am aware of my influence and continuously reflect upon the impact of my positionality and research on women and girls in Nigeria.

Finally, although colonialism marked a crucial moment in the history of human rights in Africa,<sup>185</sup> in using a postcolonial feminist theory, this research does not seek to make Nigeria's colonial history the core of my analysis. Instead, the colonial narrative is only one aspect among many features of the Nigerian legal structure. I am also not asserting that all issues currently faced by girls in postcolonial Nigeria are because of colonization. My use of this theory is not simply a counter to Western ideas, but instead to confront "systems of knowledge that continue to inform"<sup>186</sup> the current understanding of violence against girls in Nigeria. Therefore, using a postcolonial feminist theory assists in creating a project of inquiry and interrogation that better informs my use of postmodern feminist analysis.

## **(2) Critical Legal Studies**

The ability of the law to advance development in children's rights is a key theme in my research. I believe the current approach to the problem of violence in Nigeria has surrendered to the limitations narrowing our vision as to what law is and what it can become, undermining our abilities to make use of laws' potential in addressing this issue.<sup>187</sup> As such, I use Critical Legal Studies (CLS) to challenge specific aspects of the Nigerian legal framework. CLS is a theory that puts in place a different conception of law, a conception that suggests a different view of society and informs a practice of politics.<sup>188</sup> A fundamental concern in CLS movement is the need to unravel the ideologies of legal institutions.<sup>189</sup> If there is a single premise within this approach, it is that law is an apparatus of social, economic and political domination, both in the sense of

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<sup>185</sup> Bonny Ibhawo, *Human Rights in Africa: New Approaches to African History* (Cambridge: Cambridge University Press, 2018).

<sup>186</sup> Oonam Pillai, "Postmodern Feminism and Postcolonial criticism: A Paradigm for Transnational Feminist Media Studies" (1996) 3:1 *The Journal of International Communication* at 47.

<sup>187</sup> Frank Munger & Carroll Seron, "Critical Legal Studies versus Critical Legal Theory: A Comment on Method" (1984) 6 *Law & Pol'y* at 257-258.

<sup>188</sup> Roberto Unger, "The Critical Legal Studies Movement" (1983) 96:3 *Harvard Law Review* at 563.

<sup>189</sup> Munger & Seron, *supra* note 187 at 257.

advancing specific “interests of the dominators and in that of legitimating the existing order”.<sup>190</sup> This approach is very pertinent for my research because, “things have changed and things have not changed”<sup>191</sup> in Nigeria. Taking account of the context of cultural practices and the fact that the application of law in a pluralistic society like Nigeria poses additional problems, far reaching political measures and a creative application of the law are required to properly address the normative foundations fuelling these practices. Beyond the ideological nature of law, CLS also targets conventional scholarship and teaching of law.<sup>192</sup> However, for my dissertation, I focus only on the ideological aspect of CLS.

*(i) Social Transformation*

While resting upon ideas regarding law and society, CLS prompts a critique of law and legal ideology that proposes possibilities for transforming society.<sup>193</sup> My vision in this dissertation is to go beyond incremental legal reform to identifying legal mechanisms that can be used to ensure a gradual transformation of society, especially in Northern Nigeria. To do this, I need to properly understand and assess the various ways in which law contributes to the legitimation of oppression in Nigeria. As such, my role as a CLS scholar is a critical one.

CLS scholars acknowledge a link between legal ideology and class relations.<sup>194</sup> They demonstrate that legal doctrine does not always signify progress, or an equal allocation of the benefits and burdens of social life, or reasonable solutions to conflict.<sup>195</sup> Instead, law legitimizes the existing social structure and class relationships within these structures by representing and protecting particular interests.<sup>196</sup> Therefore, while today it seems that the massive calls for reform of the Nigerian legal system to ensure adequate protection of girls within cultural communities has led to a development in law, a critical lens is used to analyse the nature of these developments, the effects of these developments and its prioritization of a specific framing of the problem of violence against girls.

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<sup>190</sup> Mark Kelman, *A Guide to Critical Legal Studies* (Cambridge: Harvard University Press, 1987) at 297.

<sup>191</sup> Adrienne Van Blerk, “Critical Legal Studies in South Africa” (1996)113 South African LJ 87.

<sup>192</sup> *Ibid* at 86.

<sup>193</sup> Munger & Seron, *supra* note 187 at 257.

<sup>194</sup> Munger & Seron, *supra* note 187 at 267.

<sup>195</sup> *Ibid*.

<sup>196</sup> *Ibid*.

In addition, CLS explains the connection between legal ideology and the protection of specific constructs existing outside of law; more specifically, aspects of the legal system that protect culture. In this way, I ascertain what is meant by culture, the times at which it is invoked by the legal system and the uses to which this invocation is put.<sup>197</sup> In Chapter 6, I show that legal dialogues in which culture is invoked as an argument now largely belong to rulers and political elites not to those in need of protection. The gap between those who speak for culture and those who live culture is growing, and within this system, we see that even though cultures are complex, in the representation of culture, the voices of the elites overwhelm others.<sup>198</sup> Because of this growing “centrality of culture as an explanatory tool” for the way power is distributed in Nigeria, adopting a critical lens is significant.<sup>199</sup>

This critical method adopted by CLS scholars plays a significant part in my critique of the legal culture within the Nigerian system. The strand of CLS that sees law as serving the interests of the wealthy and the powerful by protecting them against the demands of the poor and minority groups is also apparent in the way law is used in Nigeria. As such, the question of whether CLS can assist in enabling such a radical change to take place within the field of children and women’s rights is a vital aspect of my dissertation.

(ii) *False Consciousness*

Consciousness represents an important aspect of the CLS tradition. Scholars in this area believe that the “consciousness” of any society depends on specific notions and views of what is “natural, necessary, just and desirable”.<sup>200</sup> These views justify “unequal power, social hierarchies and differences in opportunity”.<sup>201</sup> They offer a justification for what would otherwise be considered perplexing or intolerable.<sup>202</sup> It gives society what is most basic and necessary: meaning.<sup>203</sup> In this way, social relations and these distorted views become inseparable.

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<sup>197</sup> Martin Chanock, “Human Rights and Cultural Branding: Who Speaks and How” in Abdullahi An-Na’im, ed, *Cultural Transformation and Human Rights in African Societies* (London: Zed Books Ltd, 2000) 41.

<sup>198</sup> *Ibid* at 38-39.

<sup>199</sup> *Ibid*.

<sup>200</sup> David Trubek, “Where the Action Is: Critical Legal Studies and Empiricism” (1984) 36 *Stan L Rev* at 592.

<sup>201</sup> *Ibid*.

<sup>202</sup> *Ibid*.

<sup>203</sup> *Ibid*.

The illusion that these existing social arrangements are necessary is part of this consciousness and it is what CLS scholars seek to dispute.<sup>204</sup> A single most useful way of applying CLS to my dissertation is to concentrate on the essential critique that: things could be otherwise for girls in Nigeria.<sup>205</sup> The argument in CLS that social arrangements are basically provisional cultural constructions rather than innate or inescapable conditions is vital as this facilitates the view that despite the seemingly deeply rooted nature of norms, different and fairer social arrangements can be established.<sup>206</sup> I use this approach to analyze the capacity of law, both formal and informal, to validate dominant social and power relations in ways that come to be seen as normal and unchanging.<sup>207</sup> CLS explains how “relations of subordination, differences in opportunity”, social, religious and cultural hierarchies have become acceptable to those who are persistently disadvantaged.<sup>208</sup> This approach also helps to explain the internalization and reproduction of cultural practices by mothers who had the same experience of violence. Gordon asserts that “one of the ironies of effective domination is revealed when it successfully convinces both the dominant and the dominated class that the order is a given and the best that either can expect”.<sup>209</sup>

The revelation that belief structures which govern our lives are not embedded in nature but are historically contingent is extremely liberating.<sup>210</sup> This approach assists in aspects of my dissertation that highlight and expose the distorted nature of specific notions encoded within formal and informal legal structures in Nigeria. Analyzing law in this way reveals how certain legal concepts reproduce ideologies that sustain specific “patterns of thought and behavior”.<sup>211</sup> We also see how belief structures in society presenting certain arrangements as inevitable or necessary are sustained and reinforced within the legal system.<sup>212</sup> Even though this task is not an easy one, ultimately my overall belief is that using CLS, there is no facet of social life beyond the reach of

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<sup>204</sup> Allan Hutchinson & Patrick Monahan, “Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought” (1984) 36 *Stanford LR* 199 at 216.

<sup>205</sup> See James Boyle, “Introduction” in James Boyle, ed, *Critical Legal Studies* (New York: New York University Press, 1992) xxiii.

<sup>206</sup> Van Blerk, *supra* note 191 at 94.

<sup>207</sup> Van Blerk, *supra* note 191 at 95.

<sup>208</sup> *Ibid.*

<sup>209</sup> See Robert Gordon, “New Developments in Legal Theory” in David Kairys, ed, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982) at 418.

<sup>210</sup> *Ibid.*

<sup>211</sup> Fran Olsen, “The Politics of Family Law” (1984) 2 *Law & Ineq.* 1 at 3.

<sup>212</sup> Gordon, *supra* note 209 at 418.

social transformation and there is no legal question which cannot be properly assessed to advance the interests of the disadvantaged.<sup>213</sup> If the belief in the certainty of a status quo favoring certain groups and specific visions over others can be changed, then society itself can be changed.<sup>214</sup>

*(iii) Role of Law*

As previously stated, CLS is pertinent to my research because my dissertation seeks to examine how the law is applied to a specific group, under specific circumstances and it presents a framework for questioning legal ideologies.<sup>215</sup> A central claim made within CLS is that the capacity for law and legal thought to guide the reconstruction of society under “democracy remains untapped”.<sup>216</sup> As such, it calls attention to inconsistencies within the law and ways in which legal doctrines help to produce and preserve a particular status quo.<sup>217</sup> My use of CLS is focused on deciphering the current legal doctrine in Nigeria to expose both its internal and external inconsistencies and ultimately reveal the ways it facilitated the creation, sustenance and legitimation of the different forms of violence experienced by women and girls in cultural communities. Adopting this approach means viewing law as a source of “alienation and oppression”.<sup>218</sup> Therefore, any transformative political objective needs to include a discovery of how law can be used to reconstruct social relations in ways that are not oppressive or alienating to minority groups.<sup>219</sup>

In this dissertation, questioning the role of law in Nigeria is largely aimed at determining the extent to which law is “invariably functional or dysfunctional, relatively autonomous”, or a servant of unified social needs or of more specific interests.<sup>220</sup> As previously stated, the main claim of CLS is that law is used as an instrument to sustain the status quo of society’s power structures and the seemingly neutral language and institutions of the law conceal relations of power and control.<sup>221</sup> This favors an analysis of law that speaks to the specificity of individuals and groups within

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<sup>213</sup> Van Blerk, *supra* note 191 at 95.

<sup>214</sup> *Ibid.*

<sup>215</sup> Munger & Seron, *supra* note 187 at 257.

<sup>216</sup> Roberto Mangabeira Unger, *The Critical Legal Studies Movement: Another Time, A Greater Task* (New York: Harvard University Press, 1983) 3.

<sup>217</sup> Munger & Seron, *supra* note 187 at 257-258.

<sup>218</sup> *Ibid.*

<sup>219</sup> Munger & Seron, *supra* note 187 at 257.

<sup>220</sup> Mark Kelman, *A Guide to Critical Legal Studies* (Cambridge: Harvard University Press, 1987) at 242.

<sup>221</sup> Unger, *supra* note 188 at 563.

specific cultural contexts.<sup>222</sup> Through this analysis, it becomes clear that laws are framed with a specific social end in sight, that their stipulations are by no means arrived through an unbiased and fair process but by those with the power to enforce their idea of a just and well-organized society.<sup>223</sup>

CLS also reinforces aspects of my dissertation that argue that the stability of HTPs can be explained with reference to how legal and political institutions have consolidated power in Nigeria. I challenge specific discourses of power currently present within the Nigerian legal system and guaranteed within Constitutional and other legal instruments. Using this theory, first, I critically analyse and show how these discourses help structure everyday perceptions of reality so as to methodically exclude or suppress alternate ideas of social life, both as it is and as it could be for girls within cultural communities.<sup>224</sup> The enactment of legal rules in Nigeria determines a multitude of “implementation-related, governance and procedural issues”<sup>225</sup> affecting the experiences of girls within cultural communities. Although there is no specific formula to be used in assessing the state’s choice in deciding whether to support or enact specific legal reforms, in chapter 5 I show how the choice to support or not to support any particular reform is a political decision.<sup>226</sup> By using CLS, I reveal how legal reasoning within federal and state laws regulating violence against girls is bound up with specific interests, priorities, beliefs and visions of the social good.<sup>227</sup>

To conclude this section, I note that the project of the CLS scholar is more than just a study of ideology within legal systems. While CLS scholars focus on showing the relationship between “world views embedded in modern legal consciousness and domination”, their primary goal is to change that consciousness and those relationships.<sup>228</sup> This is the ‘critical’ dimension of Critical Legal Scholarship. As such, in line with this tradition, my analysis of legal ideology in Nigeria seeks to transform practices within the legal system, to make it more equitable and less intensely

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<sup>222</sup> Gloria Ladson-Billings, “Just what is Critical Race Theory and What is it Doing in a Nice Field like Education?” (1988) 11:1 *International Journal of Qualitative Studies in Education* at 10.

<sup>223</sup> Christopher Norris, “Law, Deconstruction, and the Resistance to Theory” (1998) 15:2 *Journal of Law and Society* at 174.

<sup>224</sup> Robert Gordon, “Unfreezing Legal Reality: Critical Approaches to Law” (1987) 15:2 *Florida State University Law Review* at 200.

<sup>225</sup> Sloth-Nielsen & Mezmur, *supra* note 72 at 339.

<sup>226</sup> Olsen, *supra* note 211 at 4.

<sup>227</sup> Norris, *supra* note 223 at 182.

<sup>228</sup> Trubek, *supra* note 200 at 591.



organised by hierarchies of class, status, ethnicity and gender.<sup>229</sup>

### **(3) Textuality**

Since CLS holds that law is inherently contradictory and is largely a product of dominant social groups, I believe the expressions of law can best be analysed through texts, legal and non-legal.<sup>230</sup> Generally, the domains of “texts/images on the one hand, and the material and political world on the other” are usually seen to be different and divided.<sup>231</sup> In this view, “texts are just texts”, while issues of violence, poverty, rape and laws are “hardcore reality”.<sup>232</sup> However, the method described in this section reveals that issues of cultural violence against girls are subsequently “acted-out realities inscribed within cultural attitudes that are textually transmitted”.<sup>233</sup> These texts could be in the form of literature, the news, political debates, films and adverts. For example, laws are texts; they can be regarded as exceptionally powerful texts, “applied over and over again, repeated by judges, referred to by lawyers and producing our sense of the just and right”.<sup>234</sup>

In this dissertation, I think of texts as discourse. That is, texts as part of a combination of separate texts which echo each other and in which certain cultural attitudes, gendered identities, fixed ways of knowing, seeing, and thinking are recreated and continuously constructed.<sup>235</sup> The textual structure of violence against girls within cultural communities in Nigeria has been largely ignored through the extensive focus on causes and effects. As such, it is essential to properly analyse and expose the indirect forms of representations constructing the identities of girls in Northern Nigeria. I believe the essential tool to be used in properly engaging in this textual analysis needs to be feminist. And so, I use Dorothy Smith’s feminist socio-legal methodology, more specifically, textuality as a method.<sup>236</sup> I share Smith’s understanding that the technology of textuality is significant to the mechanisms by which women’s views are omitted from law’s institutional concern. For this dissertation, Smith’s key contribution, is the idea that texts are the means through

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<sup>229</sup> Gordon, *supra* note 224 at 197.

<sup>230</sup> Munger & Seron, *supra* note 187 at 258.

<sup>231</sup> Maaike Meijer, “Countering Textual Violence on the Critique of Representation and the Importance of Teaching Its Methods” (1993) 16:4 *Women’s Studies Int. Forum* at 367.

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

<sup>234</sup> *Ibid.*

<sup>235</sup> Meijer, *supra* note 231 at 368.

<sup>236</sup> Dorothy Smith, *The Everyday World as Problematic: A Feminist Sociology* (Toronto: University of Toronto Press, 1987) 57.

which an individual activity is connected to and assists in shaping wider institutional practices.<sup>237</sup>

Smith explains that:

It is the materiality of the text itself that connects the local setting at the moment of reading into the non-local relations that it bears. Its technology, its system of distribution, and its economy are foundational to the peculiar property of abstraction that provides for forms of social relations that have no particular place or time in which they happen... [t]he text creates something like an escape hatch out of the actual and is foundational to any possibility of social forms of abstraction of whatever kind, including this one written here.<sup>238</sup>

Text as advanced by Smith goes beyond the written form. It includes print, film, radio, television and the like.<sup>239</sup> In my context, I hang on to the association of words and images in a fixed material form that is capable of being replicated.<sup>240</sup> Texts, particularly written texts in law, are used within institutional organizations to govern almost every aspect of life, as such they are undoubtedly of major importance in constructing certain “generalization and standardization of people’s doing”.<sup>241</sup> In using this method, my aim is to make these texts visible, and show how they represent certain kinds of human acts capable of coordinating people’s doing.<sup>242</sup>

It is important to note the various ways in which my work is merely a partial representation of Dorothy Smith’s methodology. Smith’s methodology is institutional ethnography which although focusing on institutions and not individuals is designed in such a way that conducting empirical research is a vital element.<sup>243</sup> As such, the task I am engaged with in this dissertation is not a full institutional ethnographic research. I also acknowledge that there are limitations to solely focusing on texts as a means of understanding this issue of cultural violence against girls. By relying solely on texts, it becomes possible for my understanding of the issue of cultural violence to become one-dimensional. Therefore, to avoid this, I constantly need to note that girls in this system have lives that go beyond the institutional texts analyzed.<sup>244</sup> However, despite these limitations, my use of textuality investigates the text-based organization of social policy in Nigeria to ultimately reveal

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<sup>237</sup> Dorothy Smith, *Institutional Ethnography: A Sociology for People* (New York: Altamira Press, 2005) at chapter 8.

<sup>238</sup> Dorothy Smith, *Writing the Social: Critique. Theory and Investigations* (Toronto: University of Toronto Press, 1999) at 39.

<sup>239</sup> Smith, *supra* note 237 at 165.

<sup>240</sup> *Ibid* at 166.

<sup>241</sup> Smith, *supra* note 237 at 167.

<sup>242</sup> Smith, *supra* note 237 at 169.

<sup>243</sup> *Ibid*.

<sup>244</sup> *Ibid*.

a legal and political system used as a tool for consolidating power and legitimizing anti-women principles as traditional values.<sup>245</sup>

To fully understand the use of textuality as a method of inquiry, it is essential to understand what Smith refers to as relations of ruling.<sup>246</sup> This concept of ruling relations does not necessarily refer to “modes of domination”, instead it looks at a new and distinct mode of organizing society.<sup>247</sup> Within the Nigerian framework, law is part of this “ruling apparatus”.<sup>248</sup> Its organization of thinking, applicability, substructures, knowledge and the like pioneer methods of thinking while creating systematic ways of conveying specific principles to a general conceptual order that serves it.<sup>249</sup> To investigate the textuality of violence against girls in Northern Nigeria is to explore a fragment of the relations of ruling.<sup>250</sup> Examining the regulation of these cultural practices will require an analysis of social policy and the language and place of girls in other related legal documents, such as the Constitution<sup>251</sup> and the *Criminal Code*.<sup>252</sup> This is because, the law as text cannot be detached from the law as a “power-institution”.<sup>253</sup> This aspect of power that the text of law exhibits is essential in my analysis of the discourse of power.

As previously highlighted, I consider cultural violence against girls as “acted-out realities” that have become profoundly embedded in culture and are reproduced through textual transmission.<sup>254</sup> However, if the experience of girls is to be properly understood through texts, it is important to also look at text that is situated outside of law. I look more closely into how texts work in non-legal fields. How do these texts produce a specific construction of girls while promoting and reproducing harmful cultural practices? I propose this can be accurately assessed through other non-legal materials such as political content in newspapers, television and newspaper adverts, imagery by local and international organizations in national campaigns and commentaries relied

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<sup>245</sup> *Ibid.*

<sup>246</sup> *Ibid.*

<sup>247</sup> Marjorie Devault, “Introduction: What is Institutional Ethnography?” (2006) 53:3 *Social Problems* 294.

<sup>248</sup> *Ibid.*

<sup>249</sup> Dorothy Smith, *The Everyday World as Problematic: A Feminist Sociology* (Toronto: University of Toronto Press, 1987) at 57.

<sup>250</sup> *Ibid.*

<sup>251</sup> *Constitution of the Federal Republic of Nigeria*, 1999.

<sup>252</sup> *Criminal Code Act*, Chapter 77, Laws of the Federation of Nigeria, 1990.

<sup>253</sup> Meijer, *supra* note 231 at 368.

<sup>254</sup> Meijer, *supra* note 231 at 367.

on in interpreting certain provisions of the Quran.

The interconnectedness of women and girls is a significant aspect of my research. As such, my use of imagery shows how conversations on culture are structured around women. Imagery shows that within this system, the ideal woman is a mother, housekeeper, and protector of morals. In an attempt to regulate these traditional practices, imagery is used to put women on the frontline of dealing with these practices as guardians of customs.<sup>255</sup> However, this mounting of responsibility on them as the moral helm of the home is not matched by any increase in their entitlements within the system.<sup>256</sup> This gendered division of labour and the strain on holding the family together as a work site has had a negative effect on girls, in the sense that these practices are used to create a girl-child subject that is marriageable, securing a place within society and acquiring a level of economic stability that her mother cannot offer her.<sup>257</sup> It also reveals how texts and images naturalize the role of a woman which manipulates the narratives around girlhood and puberty. I believe that the texts I have chosen to show how the current system in Northern Nigeria, despite its claims, merely reinforce established ideologies that encourage the further perpetuation of violence.

Textuality as a tool is also used in my analysis of the girl-child and women's encounter with colonialism. I discuss the 'girl-saving' campaign referred to as "the girl hawker project" which unfolded during the time of British rule, from the late 1920s through to the 1940s and the text of various colonial ordinances like the *Native Authority Child Betrothal Order*,<sup>258</sup> *Alien Children Registration Ordinance*<sup>259</sup> and the *Children and Young Persons Ordinance*,<sup>260</sup> to understand the various manifestations of how the girl-child comes to be represented in and as a woman which in turn emphasizes the absence of childhood.<sup>261</sup> My use of texts is very evident within chapters on 'conceptions of childhood in Nigeria' and 'a violence continuum'. For example, to understand

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<sup>255</sup> Freeman Sue, "Women's Moral Dilemma's: In Pursuit of Integrity" in Susan Bourque et al, eds, *Women Living Change* (Philadelphia: Temple University Press, 1985) 217-254.

<sup>256</sup> *Ibid.*

<sup>257</sup> An analysis from Prof. Cameron's initial comments on my proposal. I am grateful to Prof. Cameron for pointing this out to me.

<sup>258</sup> *Native Authority Child Betrothal Order* (NACBO), 1943.

<sup>259</sup> *Lagos Alien Children Registration Ordinance*, No. 18, 1877.

<sup>260</sup> *Children and Young Persons Ordinance*, 1943.

<sup>261</sup> Lal, *supra* note 32 at 321-339.

gender and childhood through a historical analysis, I refer to photographs and oral history in the form of poems. I consider how women and girls are presented in colonial writings in Nigeria. The content of these documents, the manner in which they are written, and the fact they have “appeared when and where they have tells us something about”<sup>262</sup> the Nigerian legal system’s ways of dealing with gender and childhood as it applies to girls individually and within cultures. I will make links between these historical texts and present-day issues affecting women and girls in Nigeria.

To effectively use textuality as a method of inquiry, a “problematic” needs to be identified. The institutional ethnographers problematic is a “territory to be discovered, not a question that is concluded in its answer”.<sup>263</sup> Adopting this approach to the problem of cultural violence against girls in Nigeria implies that the problematic is not constructed from what is particular to a given girl’s experience; instead, it explores the numerous social relations in which her experience is embedded.<sup>264</sup> This brings under scrutiny various relations that are not specific to the girl-child’s individual experience of cultural violence.<sup>265</sup> The relations under scrutiny here form part of an extensive complex of interactions that go far beyond and coordinate what she is experiencing and what others are doing in relationship to her that does not start or finish with her particular experience.<sup>266</sup> It is important to note that despite this shift of focus from the girl, this approach does not dispense with her experience nor adopt an alternative version of the happenings within the local.<sup>267</sup> Instead, my investigation is focused on the actions of those acting within the institutional process, and the regulatory dimensions of these institutions.<sup>268</sup> It shows how the ruling relations in Nigeria as a whole determine the girl-child’s everyday experience.

In locating ideological structures within this system, I am also not looking at the perspectives of men as individuals, but as individuals playing specific roles within the social relations of this form of society.<sup>269</sup> They occupy determinate class positions in it and participate in networks of relations

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<sup>262</sup> Robin Lakoff Tolmach, *Language and Woman's Place: Text and Commentaries* (Oxford: Oxford University Press, 2004) 21.

<sup>263</sup> Smith, *supra* note 237 at 105.

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*

<sup>266</sup> Marie Campbell & Frances Gregor, *Mapping Social Relations: A Primer in Doing Institutional Ethnography* (Toronto: AltaMira Press, 2004) chapter 3.

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

linking their work indirectly to that of other professionals, in for example the health and educational institutions of society, and more directly to other fields like business, the police force, government etc.<sup>270</sup> The activities performed in these institutional settings, predominantly occupied by men, bring into being gendered practices with severe consequences for women and girls. Understanding the “textual architecture of the organizational action”<sup>271</sup> behind cultural violence in Northern Nigeria is very crucial. The texts I refer to show how the particular use of words, language and image create “organizational versions of what people say, do or know”.<sup>272</sup> In the Nigerian example, they are translated into official documents that become foundational work for various forms of administrative and professional action.<sup>273</sup> Once I begin to analyse texts, it becomes possible to discern and see how the legal and political arena is organized in terms of gendered meanings within which cultural institutions and meanings are constructed.<sup>274</sup>

*(i) Data Collection*

Many studies in institutional ethnography commence with fieldwork and rely on participant observation, interviews, focus groups and documents to help establish a problematic for study.<sup>275</sup> Data is collected using the same range of methods. Because the topics that interest institutional ethnographers are as diverse as the “activities of everyday life itself, the data-collection methods are basically whatever makes those topics available for analysis”.<sup>276</sup> While a few institutional ethnographers may use the entire range of data types and data-collection techniques available, others may use the institutional ethnographic approach to concentrate on quite limited data sources, such as textual data.<sup>277</sup> More frequently in institutional ethnography, “rather than being used as sources of factual information, texts are relied on as crystallized social relations”.<sup>278</sup> For my dissertation, I focused on textual data.

Important concerns in textual analysis include selecting the types of texts to be studied, acquiring

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<sup>270</sup> Smith, *supra* note 249 at 56.

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> Campbell & Gregor, *supra* note 266 at 25.

<sup>274</sup> *Ibid.*

<sup>275</sup> *Ibid* at 61.

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*

<sup>278</sup> *Ibid* at 79.

appropriate texts, and determining which particular approach to employ in analyzing them. In locating ideological structures at work in Nigeria, investigative work had to be done to discover textual details outside the local settings of women and girls in northern Nigeria. The texts used in this dissertation produce specific ideologies and constructions of women and girls that assist in the reproduction of violence within the home. There could have been a potentially unlimited number of texts to be used in explaining cultural violence against girls in northern Nigeria; however, the texts I referred to helped me to understand my “problematic” as described in the previous section. Constantly reminding myself of the problematic with which I began helped me to identify texts that advanced my interpretation of the problematic. I found texts useful when they illuminate and show an ideological continuity in the way women and girls are perceived in the private and public domain and the indirect forms of representations constructing the identities of women and girls in Northern Nigeria. I chose texts that could speak to how women and girls’ lives are coordinated outside of their own knowledge and control. I also relied on documents that demonstrated how ruling relations exist in and across many local settings in Nigeria, organizing the experiences of women and girls.

The feminist socio-legal framework for institutional ethnography was an essential background component of data collection for this dissertation. My interest, as I began researching and collecting texts, was already directed by this theoretical framework. As I collected data, I already knew that I was looking to see how social relations work in Nigeria and how the everyday lived experiences of women and girls are shaped by institutional relations. And so, in selecting the types of texts to include and exclude, I was guided by a feminist data collection framework. This framework directed my attention to the kind of textual data needed for my specific inquiry. I researched and sort through the data analytically and determined what texts to use. To incorporate texts as evidence into my thesis, I explained what I noticed about the texts that is relevant to the issue of cultural violence and how it supports my arguments. The goal was to use each text persuasively and not simply inserting a “blob of data” into my dissertation. I explained the meaning I discovered in each text. My data collection process consisted of “tracking back” historically, as evidenced in chapter 4, and also “following clues forward” from the concerns I identified as I analysed women and girls’ experiences in northern Nigeria. In terms of acquiring the texts used in this dissertation, since I did not engage in ethnographic research, I was limited to texts that were

available online. And so, I was not confronted with mounds of textual data to use in my dissertation. Relying on online sources limited the quantity and type of texts I included in my analysis.<sup>279</sup>

## **Conclusion**

This chapter discussed the significance of the various theories and research methodology used in the diverse fields of inquiry in this dissertation. My choice of theories and research methodology is intended to highlight the different dimensions of this dissertation and although conceptually different, they complement each other in numerous ways. I have presented an overview of the implications of using a feminist framework for this dissertation. The two feminist theories used place emphasis on contextual understanding of the inferior status of women and girls in culture. Using this framework, I can maximize the constructive critical potential of a feminist critique of violence against girls. This means engaging in a gendered analysis of legal, social, and political relations of power and its influence on girls within cultural communities. A postcolonial framework emphasised how a huge part of the Nigerian legal experience includes recurring use of colonial legal structures. By using a postcolonial frame of analysis, I account for this experience in the development of mechanisms to address HTPs. A postmodern feminist approach offers a useful means of testing the validity of accepted legal principles and exposes certain institutional arrangements that might disadvantage girls in Nigeria. From a CLS perspective, an analysis of legal institutions is important, since the focus is on the ideological foundations that influence the perpetration of this form of violence. CLS is a powerful tool to be used in exposing current doctrines based on hierarchy and influenced by societal power dynamics. The importance of using ‘textuality’ as a method was also discussed. It asserts that we can use legal and non-legal texts and images as evidence of the social realities of girls in Northern Nigeria. As already highlighted, even though these frameworks differ in substance, they share much of the same concern in their critique of law and social experience of women and girls. We also find that the ambiguity associated with each is properly supplemented through a combination of theories and research method.

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<sup>279</sup> In the future directions section in chapter 7, I highlight how empirical research would be helpful in acquiring a large sample of texts.



## CHAPTER 3

### Contextualizing the Problem:

#### Situating Current Tensions around Child Marriage Regulation in Northern Nigeria

Local people want their daughter to be moral, want their daughter to be mature. The price for morality is so high, families and parents are willing to gamble. With Islamic awareness, the price is higher.<sup>280</sup>  
—Nigerian doctor, Kano, 2003

#### Introduction

The complicated questions raised in this dissertation necessitate a discussion of the context in which child marriage is practiced in Nigeria. This chapter situates the dilemma around child marriage regulation within the social, cultural, and political. As highlighted in the introductory chapter, marriage, possibly “more than any other social institution” in Nigeria, underscores the complexity of gender-based violence against girls.<sup>281</sup> It raises key questions about gender, culture, “status and social vulnerability”.<sup>282</sup>

Rabi Monde,<sup>283</sup> married at the age of eight, was not told about her marriage until the day of her wedding. She commenced sexual relations with her husband before her period. She did not feel ready for sex; she tried running away to her parents, but they took her back to her husband’s house. Five years into the marriage, she got pregnant; she stayed four days in labour at home before taken to the hospital. Due to complications, she remained in the hospital for one year, going into her second year. She started leaking urine immediately after her delivery. She says once she is able to leave the hospital, she will not return to her husband’s home because he abandoned her.<sup>284</sup>

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<sup>280</sup> Excerpt from interview of Dr Mandara by Annie Bunting, March 2003. See Annie Bunting, “Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue” (2005) 14:1 *Social & Legal Studies* at 26.

<sup>281</sup> Annie Bunting, Benjamin Lawrance & Richard Roberts, *Marriage by Force? Contestation over Consent and Coercion in Africa* (Ohio: Ohio University Press, 2016) 3.

<sup>282</sup> *Ibid.*

<sup>283</sup> A Hausa girl from Bingi, Sokoto state in Northern Nigeria.

<sup>284</sup> Excerpt of an interview with Rabi Monde from Annie Bunting, *Particularity of Rights, Diversity of Contexts: Women, International Human Rights and the Case of Early Marriage* (SJD Dissertation, University of Toronto, 1999) [unpublished] at 272.

The story highlighted above is disturbing to anyone who cares or advocates for women or children's rights; at the same time, there are powerful arguments and justifications for the continuity of child marriage. In Northern Nigeria, religious group leaders tell their populace that it is an Islamic obligation to wed their daughters before puberty so that they can avoid the social shame associated with child pregnancy.<sup>285</sup> As such, girls are frequently married at the age of thirteen, some as young as eight or nine, with significant effects including vulnerability to rape, an end to education and vesico-vaginal fistula (VVF).<sup>286</sup> Much of this chapter's focus is on providing information that guides my analysis in subsequent chapters. I rely on evidence derived from interviews and direct accounts produced by sociologists, anthropologists, and local NGOs in Nigeria.

In Nigeria, the problem of child marriage is positioned within a disputed legal terrain since the age of marriage and the age of consent for sex have strong ties to the ethno-religious nature of the state.<sup>287</sup> Consequently, the challenging questions raised by this practice can only be answered through a proper analysis of the social, cultural, and political relations of power that structure the ways in which this practice is preserved. However, the link between these institutions and child marriage can be quite difficult to see. As such, this chapter formulates the legality of child marriage as an ethno-religious political question. I argue that we can only speak of child marriage as a practice after identifying and defining certain divisions and boundaries influenced by ethno-religious politics in Nigeria. The unending ethno-religious conflict in Nigeria has affected development in matters that affect the interests of women and girls in Northern Nigeria. These issues are exclusively within the jurisdiction of religious and cultural communities rather than the state.<sup>288</sup> In these matters, ethno-religious groups are permitted to manage their internal belief structures, and as shown in chapter 5, this delineated legal space is protected through the

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<sup>285</sup> *Ibid* at 103.

<sup>286</sup> Obstetric fistula, which includes both vesicovaginal (VVF) and recto-vaginal fistula (RVF) is caused by obstructed labour. During this time, the baby's head remains pressed against vaginal and bladder wall tissue for a prolonged period, causing necrosis and, ultimately, a fistula to develop. Obstetric fistula results when a young mother's vagina, bladder and/or rectum tear during childbirth, a condition that causes urine and feces leakage. See UNFPA & EngenderHealth, "Obstetric Fistula: A Needs Assessment Report: Findings from Nine African Countries" (2003) at 7, online (pdf): <https://www.unfpa.org/sites/default/files/pub-pdf/fistula-needs-assessment.pdf>; Ine Nnadi, "Early Marriage: A Gender-Based Violence and a Violation of Women's Human Rights in Nigeria" (2014) 7:3 *Journal of Politics and Law* 35; Bunting, *supra* note 284 at 103.

<sup>287</sup> Bunting, *supra* note 284 at 103.

<sup>288</sup> Callaway & Creevey, *supra* note 92 at 192.

Constitution and other legal instruments. However, the historical and political influences highlighted in this chapter are only discussed as far as they affect the experience of girls within local and cultural contexts. I do not intend to engage in an in-depth analysis of the historical origins of ethno-religious tensions in Nigeria.

A close analysis of the experience of child brides in this chapter reveals how the female body has become a place of production and reproduction of a specific form of cultural, social, and political order. Using a postmodern feminist lens, I contextualise the problem of child marriages to reveal how the relationship between structures, specifically those believed to be “foundational and essential”<sup>289</sup> to culture, arrange and fuel the violence experienced by girls in Northern Nigeria. The pattern and consistency in the treatment of gender in this region reveals that ethnicity and other essential identity symbols are used by men to gain and sustain advantage over the social lives of women and girls.

To reach my objective, I divide this chapter into two (2) different sections. As stated by Diamond, nothing can be understood about Nigeria until its model of ethnic diversity is outlined.<sup>290</sup> As such, the chapter briefly highlights how Nigeria’s ethno-religious structure has been at the centre of the country’s history. It locates the practice of child marriage within contentious social and political frameworks and shows how the expectations placed on girls and women in Northern Nigeria are determined by the entwined framework of Hausa ethnic identity, Muslim religion, class politics, modernization, development, and governance.<sup>291</sup>

The chapter also identifies the effects, rationale, and justifications for the subsistence of child marriage. It examines the socio-economic conditions in which girls in Northern Nigeria live and marry. Bearing in mind the need to avoid generalizing the experiences of girl brides, I explore how this marriage practice is understood in Northern Nigeria, and the different conflicts over its meaning. I do this from the perspectives of Hausa folklore and Islam as practiced in Northern Nigeria in addition to women and girls’ testimonies. This aspect is essential because child marriage

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<sup>289</sup> Bunting et al, *supra* note 281 at 3.

<sup>290</sup> Larry Diamond, *Class, Ethnicity, and Democracy in Nigeria: The Failure of the First Republic* (New York: Syracuse University Press, 1988) at 21.

<sup>291</sup> Bunting, *supra* note 284 at 160.

has distinctive meanings and is caused by different factors depending on the region explored. I acknowledge that the social position of women and girls could vary between towns and villages in Northern Nigeria and as between their socio-economic levels. Nonetheless, there are certain overriding elements affecting the position of women and girls in all sectors of this society.



Fig. 1: The Map of Nigeria.<sup>292</sup>

### (1) Context

Formed by the British, Nigeria is a multiethnic and multireligious country with more than 350 ethnic groups and a population of over 190 million.<sup>293</sup> It is a federation of 36 states with 19 states in the North and 17 Southern states (comprising of the East and West).<sup>294</sup> Many of its ethnic groups are small and politically inconsequential as its population is primarily divided among three major groups: Hausa-Fulani of the North, Yoruba in the West, and Igbo in the East.<sup>295</sup> These groups primarily identify and express themselves for the most part along non-negotiable religious and

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<sup>292</sup> Austin Emielu, "Ethnic and Regional Identities in Nigerian Popular Music: A Special Focus on the Edo" (2013) 9:3 African Music at 96.

<sup>293</sup> See The World Bank, "Data Bank" (2018), online: <https://data.worldbank.org/indicator/SP.POP.TOTL>

<sup>294</sup> The 19 Northern states are Adamawa, Bauchi, Benue, Boru, Gornbe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara. The 17 Southern states (comprising of the East and West) are Abia, Akwa Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo, and Rivers.

<sup>295</sup> Diamond, *supra* note 290 at 21.

ethnic lines emanating from group history and existence.<sup>296</sup> As shown in fig. 1 above, Northern Nigeria's population and size makes it the prevailing influence in Nigeria.<sup>297</sup> This region comprises of more than seventy-five per cent of the total land area of Nigeria, and claims nearly sixty per cent of its people.<sup>298</sup> Due to the size and dominance of this region, the British colonist system of indirect rule<sup>299</sup> was structured around the dominant Hausa-Fulani emirate system, which strengthened the influence and power base of the Hausa-Fulani Muslim rulers.<sup>300</sup> This consolidation unavoidably deepened the structural imbalance between the Hausa-Fulani group and the non-Muslim communities in Nigeria, creating frictions and fissures that endured long beyond colonial rule.<sup>301</sup>

Nigeria was not colonised as a single territory but as three distinct units, each governed separately.<sup>302</sup> From its establishment as a colonial state, Nigeria has faced a recurrent crisis of state legitimacy confronting its efforts at democratisation, national cohesion, stability and legal development.<sup>303</sup> Like many other states in sub-Saharan Africa, Nigeria has struggled to accommodate ethnic and religious differences among its people.<sup>304</sup> The state is described by some as one of the most deeply divided states in Africa.<sup>305</sup> Political and legal issues are typically

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<sup>296</sup> Mike Odey, "The Tyranny of the Ethno-Religious Identities and Expressions and the Survival of the Nigerian State in the Twenty-First Century" in Toyin Falola & Wanjala Nasong'o, eds, *Contentious Politics in Africa: Identity, Conflict and Social Change* (Durham: Carolina Academic Press, 2016) at 206.

<sup>297</sup> Sylvester Whitaker, *The Politics of Tradition: Continuity and Change in Northern Nigeria, 1946-1966* (New Jersey: Princeton University Press, 1970) 16.

<sup>298</sup> See James Smoot Coleman, *Nigeria: Background to Nationalism* (Berkeley: University of California Press, 1960) at 21.

<sup>299</sup> The system of indirect rule instituted in the North by Lord Lugard was in part based on the condition of non-interference with Muslim religion in areas where it was dominant, through the exclusion of missionaries and mission schools. See Renée Pittin, "Issues of Gender, Class and Ideology in Northern Nigeria" (1990) 48 *Review of African Political Economy* 7 at 11.

<sup>300</sup> Olufemi Vaughan, *Religion and the Making of Nigeria* (Durham: Duke University Press, 2016) at 5.

<sup>301</sup> *Ibid.*

<sup>302</sup> These were the colony of Lagos and the two Protectorates of Northern and Southern Nigeria. In 1914, the colony of Nigeria was formed by the amalgamation of the three units, although the North and South continued to be administered separately. The South was further divided into two regions, the West and East, in 1938. The principle underlying this arrangement was that each region would consist of a majority ethnic group that would play the role of the leading actor. See discussion in Charmaine Pereira, "Domesticating Women? Gender, Religion and the State in Nigeria Under Colonial and Military Rule" (2005) 3:1 *African Identities* at 71; Jibrin Ibrahim, "Expanding Nigerian Democratic Space" in Jibrin Ibrahim, ed, *Expanding Democratic Space in Nigeria* (Dakar: CODESRIA, 1997).

<sup>303</sup> Maier Karl, *This House Has Fallen: Nigeria in Crisis* (Oxford: Westview Press, 2000).

<sup>304</sup> Vaughan, *supra* note 300 at 1.

<sup>305</sup> See for example, E Osaghae & T Suberu, *A History of Identities, Violence, and Stability in Nigeria* (Oxford: Centre for Research on Inequality, Human Security and Ethnicity, 2005); Toyin Falola, *Violence in Nigeria: The Crisis of Religious Politics and Secular Ideologies* (Rochester: University of Rochester Press, 1998).

challenged along the lines of complicated religious, ethnic and regional divisions in the country.<sup>306</sup> The main issues generating intense contestation are those believed to be fundamental to the existence and legitimacy of ethno-religious groups, over which conflicting groups tend to adopt “exclusionary, winner-take-all strategies”.<sup>307</sup> The contention over regulating the practice of child marriage is a leading example.

Child marriage is a practice common in many parts of the world.<sup>308</sup> In Nigeria, this practice is highly prevalent in the Northern region, with marriage to female children rather than males occupying center stage in debates around its legal regulation.<sup>309</sup> In the North, child marriage is largely prevalent amongst the Hausa-Fulani group, a predominantly Muslim population and a political majority in Nigeria.<sup>310</sup> Although the two groups are distinguishable, they are often grouped together because the Fulani, after conquering the Hausa, adopted the Hausa language and culture and intermarried with them to such an extent that the two groups have become difficult to distinguish.<sup>311</sup> While there are still some cultural differences between them,<sup>312</sup> these differences are not significant enough to affect the generalizations made below about child marriage, its causes and consequences.

## **(2) The Practice of Child Marriage**

Girls in Northern Nigeria always married young; however, now, in response to heightened civil disorder, political and religious uncertainty, girls face marriage at even younger ages and at higher

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<sup>306</sup> M Smyth & G Robinson, *Researching Violently Divided Societies: Ethical and Methodological Issues*. (Tokyo: United Nations University Press, 2001).

<sup>307</sup> Osaghae & Suberu, *supra* note 305 at 4.

<sup>308</sup> Child marriage is also referred to as early marriage, but this term is not optimal for my dissertation. Early marriage does not imply that children are involved, and the term is vague because an early marriage for one society may be considered late by another. So, for this dissertation I use the term ‘child marriage’. See discussion in Nawal M Nour, “Child Marriage: A Silent Health and Human Rights Issue” (2009) 2:1 *Rev Obstet Gynecol* 51–56.

<sup>309</sup> See Bunting, *supra* note 284 at 103.

<sup>310</sup> See Eghosa Osaghae, “Managing Multiple Minority Problems in a Divided Society: The Nigerian Experience” (1998) 36:1 *The Journal of Modern African Studies* 1 at 4.

<sup>311</sup> For the purposes of this research, Hausa culture applies to the 99.9 percent of Hausa people who are Muslim and live in Northern Nigeria. In this dissertation, I am careful not to generalize because in Nigeria, there is a small group of Hausa land, the Maguzawa, who were outside the Hausa state structure and did not convert to Islam. Women in this society are not secluded, work in the fields, have a significantly higher literacy rate than their neighboring Muslim women, and are not disadvantaged in law compared to men. See Callaway & Creevey, *supra* note 97 at 32; Diamond, *supra* note 290 at 21; Also see James Smoot Coleman, *Nigeria: Background to Nationalism* (Berkeley: University of California Press, 1960) at 21.

<sup>312</sup> For example, details of the marriage ceremony may differ.

rates.<sup>313</sup> Also, due to the increasingly unstable economic environment, they face even greater limitations than those experienced by women and girls in the past.<sup>314</sup> Marriage is perceived as an indispensable social state, a necessary prerequisite for women and girls to be respectable within the community.<sup>315</sup> Historically and in present-day Northern Nigeria, communal practice and tradition favour marrying girls before they see their menstrual cycle.<sup>316</sup> As such, in Northern Nigeria, almost every girl marries young, even if it is just a brief short-term compulsory union organized to give her a valid status in the society.<sup>317</sup> On the other hand, boys are not usually required to get married until they are economically independent, usually in their late twenties or early thirties.<sup>318</sup>

Using the narratives of young girls; academics, sociologists, international and national organisations have empirically documented the practice of child marriage in Northern Nigeria. An overview of the narratives documented by Bunting in 1999<sup>319</sup> and those documented by Women's Rights Advancement and Protection Alternatives (WRAPA)<sup>320</sup> in 2016 reveals that the experiences of girls in Northern Nigeria remains unchanged.<sup>321</sup> Specific persistent themes appear in many of the stories documented. These accounts detail how girls are primed for marriage, how families arrange these marriages, with several girls contesting the arrangement and others

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<sup>313</sup> See discussion in Tim Braimah, "Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage" (2014) 14 AHRLJ at 484; Annie Bunting & Sally Engle Merry, "Global Regulation and Local Political Struggles: Early Marriage in Northern Nigeria" in Sudhir Venkatesh & Ron Kassimir, eds, *Youth, Globalization, and the Law* (Stanford: Stanford University Press, 2007) at 322; Population Council, "Child marriage Briefing- Nigeria" (2004), online (pdf): <https://www.popcouncil.org/uploads/pdfs/briefingsheets/NIGERIA.pdf>

<sup>314</sup> Bunting & Merry, *supra* note 313 at 322; BA Abdallah, "Girl Child Marriage and Women Development in Nigeria: Contemporary Issues" (2011) 14:9 Journal of Development and Psychology 248.

<sup>315</sup> Barbara Callaway, "Ambiguous Consequences of the Socialization and Seclusion of Hausa Women" (1984) 22:3 The Journal of Modern African Studies 439.

<sup>316</sup> Bunting & Merry, *supra* note 313 at 188.

<sup>317</sup> I use the word 'brief' because in this region there is a high rate of divorce, separation, and multiple marriages. See Callaway, *supra* note 315 at 439.

<sup>318</sup> It is believed to be a requirement of Islam that men should be able to provide shelter, clothing, and food for their wives. See Callaway, *supra* note 315 at 439.

<sup>319</sup> Bunting & Merry, *supra* note 313 at 162.

<sup>320</sup> Women's Rights Advancement and Protection Alternatives (WRAPA), "Girls in their Own Voices, Child marriage in Nigeria- ISA WALI Empowerment Initiative" (2016), online: <https://youtu.be/m32PIHGe9UM>

<sup>321</sup> A large part of the empirical material used in this section of my chapter is derived from the following three sources: Annabel Erulkar & Mairo Bello, *The Experience Of Married Adolescent Girls In Northern Nigeria* (Abuja: The Population Council, 2007); Annie Bunting, *Particularity of Rights, Diversity of Contexts: Women, International Human Rights and the Case of Early Marriage* (SJD Dissertation, University of Toronto, 1999) [unpublished] & Women's Rights Advancement and Protection Alternatives (WRAPA), "Girls in their Own Voices, Child marriage in Nigeria- ISA WALI Empowerment Initiative" (2016), online: <https://youtu.be/m32PIHGe9UM>

conceding, often with reference to culture or religion.<sup>322</sup> The reasons people give for engaging in child marriage are numerous, complex and varies depending on context. No uniform reductive justification can be distilled. However, a few generalizations can be made about the reasons and consequences of child marriage and the experiences of child brides and mothers in Northern Nigeria. Their stories highlight specific themes grouped under conceptions of gender inequality, social norms, cultural dynamics, and a discriminatory emphasis of girls' virginity. These factors are examined in the succeeding section.

### **1. Rationalising Child Marriages in Northern Nigeria**

In this section, I go beyond simply discussing the numerous factors that justify the practice of child marriage. I place child marriage within a historicised context and expand the discussion to include decisive religious, social, and political developments in the course of state formation in Nigeria. Factors contributing to these justifications include the colonial legacy, differential Christianization and education by region, Islamist movement, the hostility between the West and Islam, regional politics in Nigeria, the relative poverty of the North and its loss of political power with the termination of military dictatorship in Nigeria.<sup>323</sup> Given the transformative impact of these movements on the structure of society in Northern Nigeria, the overall aim is to show that political and religious movements in Nigeria do not simply serve as precursor to the functioning of governmental structures, but also provide important structural and conceptual frameworks for the rationalization of HTPs. This perspective alters the way this problem is usually defined and examined. It reveals how the tension between national and local forces produce competing and opposing doctrines, practices, and ideologies that transform and complicate the lives of women and girls within culture.

#### *(i) The 'Us vs. Them' Syndrome*

We will be betraying the cause of Islam and the integrity of the Muslim umma if we fail to discharge our obligations as Muslims. These obligations entail, among other things, the establishment of Islam as a complete polity and the dismantling of all Western influences as they affect us [emphasis added].<sup>324</sup>

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<sup>322</sup> Erulkar & Bello, *supra* note 321 at vii.

<sup>323</sup> Bunting & Merry, *supra* note 313 at 344.

<sup>324</sup> I Sulaiman, "A Fresh Constitution Required" in I Sulaiman & S Abdulkadir, eds, *On the Political Future of Nigeria* (Zaria: Hudahuda, 1988).



Under colonialism, regional, ethnic and religious differences were given prominence in formulating and effecting education, economic and social development strategies and projects under the indirect system of colonial governance established by the British.<sup>325</sup> Colonial rule nurtured and exacerbated an us versus them approach: Northerner versus Southerner, Muslim versus Christian, Hausa-Fulani versus Yoruba versus Igbo, and so on.<sup>326</sup> The differential effect of colonialism in different regions in Nigeria set the context of the economic, political and regional imbalances, which later became significant in the British government's manipulation of ethnic and religious consciousness in order to efficiently "divide and rule".<sup>327</sup> For example, as discussed below, inadequate education and low socio-economic development are assumed to be both a driving force and a consequence of child marriage. A closer look at the history and politics around education reveals that the differential impact of colonial education strategies resulted in Northern Nigeria being educationally deprived compared to the Southern region.<sup>328</sup> Likewise, the differential impact of colonial economic policies ensured that the Southern region was more economically developed than the Northern region.<sup>329</sup> Politically, the differential impact came about because of the colonial political policy which used population as a criteria for representation to give the Northern region a larger chance of controlling political power nationally to offset the Southern region's economic and educational dominance.<sup>330</sup>

After political independence was attained, Northern Muslims became conscious of what the colonist "interlude had cost them".<sup>331</sup> Particularly, the interruption of customary institutions during the colonial period and the insertion into their "intellectual horizons of larger or smaller doses of Western secular thought and methodological atheism", the political re-alignment of Muslim societies in a way that their futures became intricately connected with non-Muslims, and an "economic reorientation towards Europe that entailed in West Africa a reorientation towards the non-Muslim (and eventually extensively Christianised) coastal lands".<sup>332</sup> Consequently, after

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<sup>325</sup> Attahiru Jega, *Identity Transformation and Identity Politics under Structural Adjustment in Nigeria* (Sweden: Nordic Africa Institute, 2000) at 16.

<sup>326</sup> *Ibid* at 15.

<sup>327</sup> Jega, *supra* note 325 at 16.

<sup>328</sup> *Ibid.*

<sup>329</sup> *Ibid.*

<sup>330</sup> *Ibid.*

<sup>331</sup> John Hunwick, "Sub-Saharan Africa and the Wider World of Islam: Historical and Contemporary Perspectives" (1996) 26:3 *Journal of Religion in Africa* at 231.

<sup>332</sup> *Ibid.*

reconciling with the inevitability of living in a modern colonial state imposed by British colonial rule in Nigeria, Muslims responded in a number of ways. They prohibited many Western values believed to be synonymous with Christianity.<sup>333</sup> Colonial laws in this instance were perceived as Christian laws. Therefore, for Muslims in Northern Nigeria, a rejection of Western values involved a rejection of the colonial state.<sup>334</sup> In view of their regions economic and educational deprivations, the final result was that the political elite in the North capitalised on fears of domination by the Southerners to generate a Northern identity that guaranteed control of political power.<sup>335</sup> This is now used to resist specific national reform agendas they conceive as threatening this identity. For example, as discussed in chapter 5, despite the existence of federal legislation prohibiting child marriages, regional government has exclusive legislative authority to prohibit or not prohibit child marriage. The application of rights to women and girls remains highly contingent on the character and role of national politics as “nurtured and conditioned by its colonial origin”.<sup>336</sup>

The processes used to structure and negotiate Nigeria’s plural identity is essential in understanding the rationale behind the practice of child marriage. The conflicts and confrontations exemplified in Nigeria’s historical trajectory plays a role and guides current efforts at child marriage regulation. Ethnicity, religion, and intergroup relations are complex in Nigeria.<sup>337</sup> Nigeria’s history is characterized by political disagreements reinforced by autonomous regions constructed around cultural institutions and religion.<sup>338</sup> And so, we will see in succeeding chapters that where two or more religions are dominant and assertive, they may collide and generate political problems<sup>339</sup> that jeopardize the legal protection of women and girls within local communities. However, even though the unfolding of specific events in Nigeria’s history serves as justification to both construct and validate certain HTPs, this section’s focus is not on engaging in a detailed historical discussion of the complex nature of the ethno-religious politics in Northern Nigeria. What I do here is to draw attention to specific trends and important aspects of this tension because ethno-religious conflict

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<sup>333</sup> Falola, *supra* note 96 at 74.

<sup>334</sup> *Ibid.*

<sup>335</sup> Jega, *supra* note 325 at 16.

<sup>336</sup> *Ibid.*

<sup>337</sup> Falola, *supra* note 96 at 18.

<sup>338</sup> *Ibid.*

<sup>339</sup> *Ibid.*

persists, and it rationalizes the practice of child marriage. As seen below, it is integrated into narratives and discussions around religious identity and education in Northern Nigeria.

(ii) *Religious Identity: A Heritage Crusade?*

In many Muslim societies, the “cultural articulation of patriarchy” through laws, political power, structures, and social mores is validated by reference to Islamic doctrines.<sup>340</sup> In Northern Nigeria, early marriage is entwined with religion and governing what is perceived to be appropriate behaviour of women and girls.<sup>341</sup> Therefore, in understanding the practice of child marriage, the relevance and significance of religion cannot be underemphasized. Religious community leaders and parents tell women and girls that the Quran instructs them to be married and according to Islam it is at twelve years old.<sup>342</sup> In this region, girls believe that marriage at an early age is the will of Allah and a dictate of Islam.<sup>343</sup> Also, because child marriage frequently causes Vesico Vaginal Fistula (VVF), the problem of VVF is now entrenched in religious politics.<sup>344</sup> As such, whether the issue of VVF should be dealt with as a health priority is now controversial.<sup>345</sup> To problematize VVF and condemn child marriage is to criticize Islam because a clear commitment to eradicating VVF necessitates specifying an age of marriage that is consistent with the public health agenda to prevent VVF.<sup>346</sup> Although women of all ages may be affected by VVF, an underdeveloped pelvis, which is the case when girls are young, is a key “biological predisposing factor” to VVF.<sup>347</sup> And so, VVF is more than a health problem; it is also a social problem associated with women and girl’s oppression.<sup>348</sup> Therefore, addressing VVF also requires a determination on how the vulnerability of women and girls are constructed in the interlocking political and cultural practices

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<sup>340</sup> Farida Shaheed, “Controlled or Autonomous: Identity and the Experience of the Network, Women Living under Muslim Laws” (1994) 19:4 *Signs: Journal of Women in Culture and Society* at 999.

<sup>341</sup> Bunting & Merry, *supra* note 313 at 332.

<sup>342</sup> See interview, Larni Umam, VVF Home, Zaria, October 30, 1994. See Bunting, *supra* note 284 at 180.

<sup>343</sup> *Ibid.*

<sup>344</sup> Bunting, *supra* note 284 at 180.

<sup>345</sup> At an interview in Kano, October 26, 1994, Arnino Sarnbo, Chair of the National Task Force on VVF, stated “people think you are treading on toes and [query] why capitalizing on early marriage?”. See Bunting, *supra* note 281 at 181.

<sup>346</sup> Oluwakemi Amodu, Bukola Salami & Magdalena Richter, “Obstetric Fistula Policy in Nigeria: A Critical Discourse Analysis (2018) 18:269 *BMC Pregnancy and Childbirth* at 5.

<sup>347</sup> See discussion in I Sunday-Adeoye, P Okonta, OL Ulu, “Prevalence, Profile and Obstetric Experience of Fistula Patients in Abakaliki” (2011) 25:1 *Southeast Nigeria Urogynaecologia* 6; L Wall, S Arrowsmith, N Briggs, A Browning, A Lassey, “The Obstetric Vesicovaginal Fistula in the Developing World” (2005) 60 *Obstet Gynecol Surv* S0–S51.

<sup>348</sup> Amodu et al, *supra* note 346 at 4.

in Nigeria.<sup>349</sup> But instead of focusing on prevention by addressing the determinants that influence prevalence rates of VVF in Northern Nigeria, emphasis is now placed only on treating existing cases through surgical management.<sup>350</sup>

Islam has a lengthier history in Nigeria than Christianity.<sup>351</sup> In Islam, religion cannot be detached from politics; hence, the phrase “Islam is a total way of life”.<sup>352</sup> Since the early nineteenth century when an Islamic state was established in Nigeria, there is a deep interdependence between religion and political power.<sup>353</sup> Accordingly, when the British meddled in the politics of the emirates of Northern Nigeria in the later nineteenth century, Islam provided the emirs and the community with a sense of unity, which was used to resist the British.<sup>354</sup> During this period, Islam and Christianity spread rapidly but Christianity was specifically favoured by the British and it was used to produce a new elite that regulated the postcolonial economy and government.<sup>355</sup> The growth and collapse of British rule provided the backdrop for twentieth-century variations in the role of Nigerian Islam.<sup>356</sup> The end of colonial rule in 1960 fortified the Muslim elite’s resolve in forming an Islamic identity for modern Nigeria.<sup>357</sup>

British colonists regarded Northern Nigeria as distinct and unconventional in several ways.<sup>358</sup> There was a sense of dismay and frustration felt by colonists in their policies towards Sharia in Northern Nigeria.<sup>359</sup> The British had to contend with two realities. First, nowhere in the non-Arabic world was Sharia more expansively applied than in Northern Nigeria; second, even with over sixty years of colonial rule and in contrast to the overall belief that modernization would undeniably and decisively seal the fate of Sharia, forcing it to weaken and decline, there prevailed everywhere in

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<sup>349</sup> *Ibid.*

<sup>350</sup> *Ibid.*

<sup>351</sup> Falola, *supra* note 96 at 24.

<sup>352</sup> See HO Danmole, “Religion and Politics in Colonial Northern Nigeria: The Case of Ilorin Emirate” (1990) 16:2 *The Journal of Religious History* at 140; Callaway & Creevey, *supra* note 83 at 192.

<sup>353</sup> John Hunwick, “An African Case Study of Political Islam: Nigeria” (1992) 524 *The Annals of the American Academy of Political and Social Science* at 143.

<sup>354</sup> Danmole, *supra* note 347 at 140.

<sup>355</sup> Falola, *supra* note 96 at 27.

<sup>356</sup> *Ibid.*

<sup>357</sup> *Ibid.*

<sup>358</sup> I Sulaiman, “A Fresh Constitution Required” in I Sulaiman & S Abdulkadir, eds, *On the Political Future of Nigeria* (Zaria: Hudahuda, 1988); Tahir Haliru Gwarzo, “Activities of Islamic Civic Associations in the Northwest of Nigeria: With Particular Reference to Kano State” (2003) 38:3 *Africa Spectrum* 289 at 290.

<sup>359</sup> Gwarzo, *supra* note 358 at 290.

Northern Nigeria, throughout the colonial and postcolonial period, an enthusiasm for the rebuilding of Sharia to its full extent.<sup>360</sup> The viewpoint of many Islamic groups, leaders and scholars is that Nigeria ought to be an Islamic state.<sup>361</sup> However, the goal was not to attain a religious conversion of all Nigerians to Islam, instead, the overall aim was to establish “moral and political control through religious law”.<sup>362</sup> This is because, Christianity and Western values are criticized for creating a Nigeria that is overly “materialist, undignified and morally decadent”.<sup>363</sup>

The political symbolism of religion in Northern Nigeria is emphasized now, more than ever. A perceivable loss of faith in secular authorities has gone hand in hand with the escalation of religious fundamentalism.<sup>364</sup> The political manoeuvring of religious and ethnic issues, particularly at the federal level, is greater than ever before.<sup>365</sup> The fight for political control in Nigeria now entails the manipulation of religious principles and symbols.<sup>366</sup> This has delayed child marriage reform agendas. I argue that the historical push to protect Islam from Western influence shapes and defines the current need to protect Muslim identity in Nigeria through the non-regulation of child marriages. The ‘push’ reflects a need not to compromise their religion by cooperating with Western ideals of rights. Non-regulation of child marriage in this instance is synonymous to a rejection of efforts to use the West as a point of reference in addressing Nigeria’s problem of child marriage. This point is reiterated through a quote by an influential Northern religious leader Gumi, Abubakar, Mahmud:

Many of our problems frequently arise because our vision has been fixed to a horizon well beyond our cultural borders. We are always looking for solutions to problems that bother other nations and working to achieve approval from others according to their standards, which often conflict with our own needs and values. This to me is worse than any material theft.<sup>367</sup>

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<sup>360</sup> *Ibid.*

<sup>361</sup> Falola, *supra* note 96 at 27.

<sup>362</sup> Falola, *supra* note 96 at 69.

<sup>363</sup> See IK Sanni & DA Amoo, *Why You Should Never Be a Christian* (Ibadan: Tawhid Publications, 1983); Ta’lim Ali, *Islam Resurgent: The Islamic World Today* (Lagos: Islamic Publications Bureau, 1979).

<sup>364</sup> Abdullah Hussaina, “Religious Revivalism, Human Rights Activism and the Struggle for Women’s Rights in Nigeria” in Abdullahi An-Na’im, ed, *Cultural Transformation and Human Rights in Africa* (London: Zed Books, 2002) at 152.

<sup>365</sup> Falola, *supra* note 96 at 2.

<sup>366</sup> *Ibid.*

<sup>367</sup> Gumi Abubakar Mahmud, *Where I Stand* (Ibadan: Spectrum Books, 1992) at 28.

(iii) *Education*

Low levels of education generally correlate with high rates of early marriage.<sup>368</sup> There is evidence suggesting that marriage is a significant factor impeding the education of girls and proper education defers marriage, early pregnancy, and childbearing.<sup>369</sup> Education provides children with important life skills- numeracy, literacy and critical thinking.<sup>370</sup> Advanced education also increases the likelihood of women seeking employment and becoming economically independent.<sup>371</sup> A close analysis of statistics and evidence suggests that there are conflicting accounts on the role and impact of education on child brides. On the one hand, there is a belief that girls are not educated because they are removed from school to marry.<sup>372</sup> On the other hand, other studies show that girls who have not achieved any form of education marry early, but there is a delay for girls who are enrolled in school.<sup>373</sup> It is commonly argued that a strategy to challenge the negative effects of early marriage for girls should commence with advocating that girls stay through secondary education since overwhelming evidence suggests that girls are removed from school to be married in places where marriage of girls is a major trend, like Northern Nigeria.<sup>374</sup> However, the impact of child marriage on child education is not so easy to determine.<sup>375</sup> If the factors leading to child marriage are also comparable to those that lead to lower education enrollment, then the choice to marry girls early may not be the principal factor leading to school dropout.<sup>376</sup> I argue that in Northern Nigeria, girl-child education is a catch-all phrase that encompasses a multifaceted set of issues and debates that animates many of the ethno-religious divisions in Nigeria. This is exemplified in this quote:

Traditional rulers and the current Sultan in Nigeria sabotage efforts to educate the poor people; the easiest way to get it through is to use Islam ... [saying it is] 'unislamic to have grown girls in the family' ... 'unislamic to go through [state] primary education.'<sup>377</sup>

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<sup>368</sup> Erulkar & Bello, *supra* note 321 at vii.

<sup>369</sup> See Nour, *supra* note 308 at 51-56.

<sup>370</sup> Eno-Obong Akpan, "Early Marriage in Eastern Nigeria and the Health Consequences of Vesico-Vaginal Fistulae (VVF) among Young Mothers" (2003) 11:2 *Gender and Development* at 74.

<sup>371</sup> *Ibid.*

<sup>372</sup> Bunting, *supra* note 284 at 197.

<sup>373</sup> Erulkar & Bello, *supra* note 321 at 1.

<sup>374</sup> Annie Bunting, "Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue" (2005) 14:1 *Social & Legal Studies* at 30.

<sup>375</sup> Sarah Gammage, Naila Kabeer, & Yana van der Meulen Rodgers, "Voice and Agency: Where Are We Now?" (2016) 22:1 *Feminist Economics* at 8.

<sup>376</sup> Examples of factors include cultural/religious norms, patriarchy, low socio-economic development, fear of pregnancy, etc. *Ibid* at 8.

<sup>377</sup> Interview, Dr. Shehu Lawat, past national President Nigerian Medical Association, Sokoto, November 6, 1994. See Bunting, *supra* note 284 at 198.

Underscoring the relationship between education and social reproduction is essential to developing an understanding of certain ambiguities embedded in the foundation, the structure and substance<sup>378</sup> of women and girl's educational experience in Northern Nigeria. In this way, we can fully understand how their experiences are constructed around structural and ideological conditions. For example, in Northern Nigeria's response to educational development, we find hints of both "accommodation and resistance".<sup>379</sup> A consideration of the conflicts inferred here, between forms of gendered domination and forms of resistance to Western imposed ideas is the main theme in this section.

a) Accommodation and Resistance

As previously highlighted, the insistence that Islam is a complete way of life has resulted in the Nigerian government being sensitive not to offend the most influential leaders in Northern Nigeria, specifically on issues affecting women and girls.<sup>380</sup> Religious leaders and politicians in Northern Nigeria assert that Islam integrates and organizes all aspects of life at both individual and national levels, and so, the spiritual cannot be separated from any social issues.<sup>381</sup> As a result, opposing views and ways of life are the focal point for controversial gender related divisive debates on social issues like education.<sup>382</sup> Despite attempts by postcolonial Nigeria to construct an integrated and inclusive system of education that is essentially Nigerian, religion still plays a central role in the education of girls.<sup>383</sup> Northern Nigeria takes the Islamic stance regarding women and social life, and applies the same attitude in its educational strategies. Beyond having the legal authority to do this, as discussed in chapter 5<sup>384</sup>, it is still expected because in most contexts, educational

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<sup>378</sup> Stephen Walker & Len Barton, *Gender, Class and Education* (New York: Routledge, 2013) at x.

<sup>379</sup> *Ibid.* Also see generally LO Sanneh, "The Islamic Education of an African Child: Stresses and Tensions" in Godfrey Brown & Mervyn Hiskett, *Conflict and Harmony in Education in Tropical Africa* (London: Allen and Unwin, 1975); JN Paden, *Religion and Political Culture in Kano* (Berkeley: University of California Press, 1973) at 56-60, 94-104 and 124-30; Babs Fafunwa, *History of Education in Nigeria* (London: Routledge, 2018).

<sup>380</sup> Callaway & Creevey, *supra* note 92 at 192.

<sup>381</sup> *Ibid.*

<sup>382</sup> Callaway & Creevey, *supra* note 92 at 192.

<sup>383</sup> Sushila Niles, "Parental Attitudes toward Female Education in Northern Nigeria" (1989) 129:1 *The Journal of Social Psychology* 13 at 14.

<sup>384</sup> See the section titled "Federalism in Nigeria: A Story of Self-Interest" at page 175.

development is strongly influenced by socio-cultural factors.<sup>385</sup> However, there appears to be other significant explanations unique to Northern Nigeria.

In Nigeria, levels of education of girls vary by region. In the Southern region, girls are mostly educated and marry quite late, “with a median age being over twenty-four”.<sup>386</sup> In contrast, Northern girls have very low levels of education and marry very early.<sup>387</sup> Early marriage makes it difficult for a girl to complete even six or seven years of schooling.<sup>388</sup> Statistically, the lowest levels of educational realization and highest rates of illiteracy are in the North-east and North-west regions.<sup>389</sup> Erulkar & Bello estimate that 75 percent of young women living in rural areas of North-east or North-west have never been to school.<sup>390</sup> Also, although males tend to be more educated than females in this region, generally, educational development in this region is extremely low.<sup>391</sup>

Social development by the federal government in Nigeria has emphasised educational reform in Northern Nigeria. Using education as an apparatus to realize federal objectives, the National Policy on Education enacted in 1977 expressed the need to overcome prevailing inconsistencies and ambiguities in educational practices.<sup>392</sup> Prior to that, in September 1976, the Universal Primary Education (UPE) was launched to eliminate the political and social problems resulting from the unbalanced educational development between the Southern and Northern regions.<sup>393</sup> The

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<sup>385</sup> Roel van Steensel, “Relations between socio-cultural factors, the home literacy environment and children's literacy development in the first years of primary education” (2006) 29:4 *Journal of Research in Reading* 367.

<sup>386</sup> Erulkar & Bello, *supra* note 321 at vii.

<sup>387</sup> Fifty-four percent of North-west girls aged 15-24 years were married by age 15 years and eighty-one percent were married by age 18 years. Early marriage is particularly prevalent in rural areas; two thirds of rural North-west girls married by age 15 years. Most girls in the North experience first sex in the context of marriage, with only five percent of girls in North-west and eleven percent of girls in North-east reporting sex before marriage. See Erulkar & Bello, *supra* note 318 at vii.

<sup>388</sup> Niles, *supra* note 383 at 14.

<sup>389</sup> Erulkar & Bello, *supra* note 321 at 4.

<sup>390</sup> *Ibid.*

<sup>391</sup> Niles, *supra* note 383 at 14; BA Abdallah, “Girl Child Marriage and Women Development in Nigeria: Contemporary Issues” (2011) 14:9 *Journal of Development and Psychology* 248.

<sup>392</sup> Before 1977, Nigeria operated an educational policy inherited from Britain at independence. The policy's inability to satisfy the country's national aspirations made it unpopular. In 1969 a National Curriculum Conference was organised which reviewed the inherited curriculum and identified new national goals for Nigeria's education. This gave rise to the National Policy on Education in 1977. See discussion in NS Okoroma, “Educational policies and problems of implementation in Nigeria” (2006) 46:2 *Australian Journal of Adult Learning* at 245; M Csapo, “Religious, social and economic factors hindering the education of girls in Northern Nigeria” (1981) 17:3 *Comparative Education* at 311.

<sup>393</sup> T Bray & G Cooper, “Education and Nation Building in Nigeria Since the Civil War” (1979) 15 *Comparative Education* 33.



implementation of the UPE program in 1976 was the vehicle through which Western education became widely accessible in Northern Nigeria for the first time.<sup>394</sup> Preceding the UPE scheme, in some regions in Nigeria, enrolment of children in primary school was approximately 100% while in the Northern region, it was as low as 5%.<sup>395</sup> Nonetheless, as we will see below, the progress achieved through introducing the UPE scheme, specifically with regards to regulating the gender imbalance in educational development, was very limited.

A major factor in the application of the UPE for girls in Northern Nigeria is the influence of ideological formations working outside and above education to crucially impact the process of educational development<sup>396</sup> and the experiences of girls within this system. These ideological formations in Northern Nigeria encompass a variety of features. Parental attitudes towards education, in addition to religion, are significant factors limiting the application of the UPE scheme to the education of girls.<sup>397</sup> For example, the Islamic restriction preventing socialization of women and men is a strong justification for parents, particularly mothers, for not sending their daughters to school.<sup>398</sup> This is in addition to the belief that Western-style education is contrary to the Muslim faith and way of life.<sup>399</sup> Also, since women and girls are believed to be the embodiment of Islamic values and guardians of Islamic morality, they are to be protected “against the corruption of unsuitable schooling”.<sup>400</sup>

The antagonism to Western education began when missionaries arrived in Nigeria in the 1840s with the primary purpose of “converting pagans and Muslims to Christianity”.<sup>401</sup> As a result, schools and Western education in general were equated with Christianity and treated with

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<sup>394</sup> Susan O’Brien, “Spirit Discipline: Gender, Islam, and Hierarchies of Treatment in Postcolonial Northern Nigeria” (2001) 3:2 *Interventions* 222.

<sup>395</sup> Csapo, *supra* note 392 at 311; Obinna Osita-Oleribe, “Neglect of Girl Child Education: Bridging the Gap- A Case Study of a Nigerian Agrarian Northern Community” (2007) 2:2 *International NGO Journal* 030.

<sup>396</sup> Stephen Walker & Len Barton, *Gender, Class and Education* (New York: Routledge, 2013) at 3.

<sup>397</sup> For example, school fees are a deterrent (despite the free nature of the UPE in some areas local fees had been instituted). Rural parents who cannot afford to pay school fees withdraw their daughters and marry them to use the bride price to pay for the education of their boys. See P Ahura, *Factors Hindering the Education of Girls in Panyam-Voudi District of Benue Plateau State* (Thesis, Ahmadu Bello University, 1971) [unpublished]; Csapo, *supra* note 387 at 315.

<sup>398</sup> Niles, *supra* note 383 at 14.

<sup>399</sup> *Ibid.*

<sup>400</sup> Parents did not support co-educational institutions and did not want their girls to be educated by male teachers. See Niles, *supra* note 383 at 14.

<sup>401</sup> D Dubey, D Edem & A Thakur, *The Sociology of Nigerian Education* (London: Macmillan, 1979).

suspicion as something foreign and threatening to religious and cultural beliefs.<sup>402</sup> The belief was that Western education instituted by Europeans with dissimilar cultural and historical backgrounds and language could only undermine Islamic traditions.<sup>403</sup> Girl-education was also a troubling aspect of modernization because there was an increasing number of Western educated girls who remained unmarried.<sup>404</sup> Muslims knew that if they sent their children to Christian schools, they could come back as Christians.<sup>405</sup> And so, Quranic schools for girls were created between 1930-36.<sup>406</sup> Quranic education seemed more appropriate for girls because it made women better “Muslims and even better wives and mothers”.<sup>407</sup> The existence of Quranic schools for girls gradually amplified the relevance and appeal of education in Northern Nigeria but this was not sustained.<sup>408</sup> The education of girls was still not prioritized. A study conducted in the 1960s showed that most parents were still opposed to education for their daughters because “education interfered with the practice of early marriage in Hausa society”.<sup>409</sup> According to the study, many parents believed that attending school led to various types of female misconduct; that girls would become lazy, disrespectful and lose interest in assuming the role of a housewife.<sup>410</sup> Also, since girls were married as early as 11 and 12 years of age, education seemed to be of little importance to the roles ascribed to women.<sup>411</sup> Parents did not consider post-primary education of girls to be necessary, and so, girls were no longer allowed to continue with their Quranic education.<sup>412</sup> In one of his Ramadan sermons of 1989, Shaikh Isa Waziri, a prominent ulama of Kano, drew attention to this development and called on wealthy men to take extra wives as a partial solution to this “calamity”.<sup>413</sup>

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<sup>402</sup> Niles, *supra* note 383 at 13.

<sup>403</sup> Csapo, *supra* note 392 at 312.

<sup>404</sup> Bawuro Barkindo, “Growing Islamism in Kano City since 1970: Causes, Forms, and Implications” in Louis Brenner, ed, *Muslim Identity and Social Change in Sub-Saharan Africa* (Bloomington: Indiana University Press, 1993) at 96.

<sup>405</sup> Babs Fafunwa, *History of Education in Nigeria* (London: Routledge, 2018).

<sup>406</sup> *Ibid.*

<sup>407</sup> Niles, *supra* note 383 at 19; J Bayisenge, “Early Marriage as a Barrier to Girl’s Education: A Developmental Challenge in Africa” (2012) 12:6 *Journal of Social Psychology* 23.

<sup>408</sup> Csapo, *supra* note 392 at 312.

<sup>409</sup> James Hake, *Child-rearing practices in Northern Nigeria* (Ibadan, Nigeria: Ibadan University Press, 1972).

<sup>410</sup> *Ibid.*

<sup>411</sup> Niles, *supra* note 383 at 14.

<sup>412</sup> Titi Ufomata, “Linguistic Images, Socialisation and Gender in Education” (1998) xxiii:3 *Africa Development* at 64.

<sup>413</sup> Barkindo, *supra* note 404 at 96.

The anxiety over Western education continues in present-day Northern Nigeria. Parents still express strong fears that a girl may refuse marriage because of her education.<sup>414</sup> These fears are validated through male dominant ideologies that normalize cultural norms of appropriate gender behaviours regarding work, social roles, and marriage.<sup>415</sup> As we will see in chapter 4, girls are frequently withdrawn from school to hawk goods for their mothers. Callaway asserts that, despite the changing patterns of female education in Nigeria as a whole, in Northern Nigeria “a girl is expected to marry young, to marry a husband chosen for her; to be submissive to him; and to have co-wives whether or not that is her wish...she will have between five and fifteen children and probably will be divorced more than once”.<sup>416</sup> As marriage rates are high for girls in Northern Nigeria, so are the divorce rates; girls are frequently divorced by ages 15 and 17 years.<sup>417</sup> Child divorcees suffer additional discrimination. After divorce, they are often abandoned, disowned by their families and unable to support themselves.<sup>418</sup>

The power to define the social roles of women and girls is either in the “hands of men”<sup>419</sup> or justified with reference to the needs of men. Parents argue that girls who stop at the primary level or did not go to school are more submissive and respectful to their husbands than girls whose education continued beyond the primary level.<sup>420</sup> In their view, an outcome of educating girls should be obedience to their fathers and husbands.<sup>421</sup> A very real fear is that educating girls would lead to “moral laxity in behaviour” which would impede early marriage for girls.<sup>422</sup> Also, men in this region do not wish to marry educated girls because of a fear that they would demand more freedom and be opposed to certain cultural practices like polygamy.<sup>423</sup> This does not imply that uneducated girls are also not opposed to polygamous unions. However, statistics show that girls with no education or primary level education are more likely to be in polygamous unions compared

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<sup>414</sup> See Akpan, *supra* note 370 at 74.

<sup>415</sup> Walker & Barton, *supra* note 396 at 1.

<sup>416</sup> Callaway & Creevey, *supra* note 92 at 64.

<sup>417</sup> Erulkar & Bello, *supra* note 321 at 9.

<sup>418</sup> *Ibid.*

<sup>419</sup> Walker & Barton, *supra* note 396 at 3.

<sup>420</sup> Niles, *supra* note 383 at 14; J Bayisenge, “Early Marriage as a Barrier to Girl’s Education: A Developmental Challenge in Africa” (2012) 12:6 Journal of Social Psychology 23.

<sup>421</sup> Akpan, *supra* note 370 at 74; Csapo, *supra* note 392 at 313.

<sup>422</sup> Niles, *supra* note 383 at 14; CB Lloyd & BS Mensch, “Marriage and Childbirth as factors in School Exit: An Analysis of DHS Data from sub-Saharan Africa” (2006) Population Council 219.

<sup>423</sup> See J Bayisenge, “Early Marriage as a Barrier to Girl’s Education: A Developmental Challenge in Africa” (2012) 12:6 Journal of Social Psychology 23; Niles, *supra* note 383 at 14.

to those with secondary level education.<sup>424</sup> Even within extremely educated Hausa families, the father still decides whether a girl goes to primary school.<sup>425</sup> Men's interests in preserving privilege and dominance are clearly protected by the persistence of child marriage. This protected interest ensures that "female in childhood, in youth, and in old age" is eternally dependent and provides service.<sup>426</sup> The dependence moves from girls depending on their fathers, to girls depending on their husbands. In this way, the girl-child must always think of the time that will follow her marriage as her girlhood is only a preparative image of the married woman.<sup>427</sup>

In his study, Gaya wondered whether the education of girls would be different if mothers made marriage decisions; whether a profound change might ensue, since women previously subjected to the same practice would want to choose a better educational outcome for their daughters.<sup>428</sup> For mothers who encourage child marriage, limiting access to education for girls also operates to legitimize the male dominance ideology. In this region, mothers consider the education of girls to be a luxury.<sup>429</sup> Investing in girls education is believed to be an "economic waste".<sup>430</sup> This is because, once a girl marries, she is no longer a member of her birth family and does not carry on her father's name and legacy.<sup>431</sup> Girls are like "contraband goods; they might become pregnant thus useless and all your money is lost", stated one parent in Ndugbueze's study.<sup>432</sup> Generally, mothers in this context encourage child marriage practice, not because they desire to do harm, but because they love their girls and wish the best for them.<sup>433</sup> For many mothers, marriage is also an

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<sup>424</sup> Erulkar & Bello, *supra* note 321 at 4.

<sup>425</sup> Niles, *supra* note 383 at 14; Obinna Osita-Oleribe, "Neglect of Girl Child Education: Bridging the Gap- A Case Study of a Nigerian Agrarian Northern Community" (2007) 2:2 International NGO Journal 030.

<sup>426</sup> Lal, *supra* note 32 at 325.

<sup>427</sup> Lal, *supra* note 32 at 329.

<sup>428</sup> Csapo, *supra* note 392 at 315.

<sup>429</sup> FO Aladekomo, "Nigeria Education Policy and Entrepreneurship" (2004) 9:2 Journal of Social Science 75; G Atolaybe, *The Problem of Retention in Girl's Post-Primary Institution in Maiduguri* (Thesis, Ahmadu Bello University, 1971) [unpublished].

<sup>430</sup> Atolaybe, *supra* note 429; Felix Umeana, "Female education: Gender discrimination in Northern Nigerian Secondary Schools" (January 2017), online at: [https://www.researchgate.net/publication/322030925\\_Female\\_education\\_Gender\\_discrimination\\_in\\_Northern\\_Nigerian\\_secondary\\_schools](https://www.researchgate.net/publication/322030925_Female_education_Gender_discrimination_in_Northern_Nigerian_secondary_schools).

<sup>431</sup> Atolaybe, *supra* note 429.

<sup>432</sup> P Ndugbueze, *Need for Achievement for Girls in Benue Plateau State* (Thesis, Ahmadu Bello University, 1973) [unpublished]; UNICEF, "Early Marriage: Child Spouses" (March 2001), online (pdf): <https://www.unicef-irc.org/publications/pdf/digest7e.pdf>.

<sup>433</sup> Janice Boddy, "Violence Embodied? Circumcision, Gender Politics, and Cultural Aesthetics" in Rebecca Emerson Dobash, Russell Dobash, eds, *Rethinking Violence against Women* (California: Sage Publications, 1998) at 95.

avenue to protect their daughters.<sup>434</sup> They fear their daughters could become victims of violence or rape because at times girls must walk long distances to get to school.<sup>435</sup> As such, it has been argued that critiquing cultural practices strongly motivated by socio-cultural factors is an unpromising approach as women who allow or encourage these practices believe they are making intelligent and contextually correct decisions about the future of their girls.<sup>436</sup>

The fear of pregnancy and the belief that the rate of pregnancy among unmarried high school girls is higher than among uneducated girls is another factor used by women to reject the possibility of post-primary education.<sup>437</sup> It should however be noted that ‘pregnancy’, although a serious social problem, is not the primary issue when discussing child marriage. Teenage pregnancy is not a problem that is limited to the Northern Nigerian context. Teen pregnancy has serious consequences for young women in Europe and North America as it does elsewhere in Africa. Therefore, whereas early marriage may not be statistically important for girls in Europe or North America, “early sex and childbearing are significant issues”.<sup>438</sup> However, in Northern Nigeria, I maintain that the anxiety over the possibility of pregnancy serves an additional purpose. The fear of shame and the need to protect family honor are important factors. It is better to be uneducated, married and abused than educated, single and pregnant.<sup>439</sup>

#### (iv) *Gender Politics*

As already emphasised, in Northern Nigeria, there is a strong correlation between child marriage and gender; even education has implications for the roles ascribed to girls. The practice of child marriage provides extensive insight into conflicting facets of the social integration of women and girls. At the most general level, women are commonly perceived to be guardians of consensually

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<sup>434</sup> *Ibid.*

<sup>435</sup> Cherreka Montgomery, “Too Young to Wed: Education and Action Toward Ending Child Marriage” (2005), online (pdf): <https://www.icrw.org/wp-content/uploads/2016/10/Too-Young-to-Wed-Education-and-Action-Toward-Ending-Child-Marriage.pdf>

<sup>436</sup> In the context of FGM, see Boddy, *supra* note 433 at 95; K Boulware-Miller, “Female Circumcision: Challenges to the Practice as a Human Rights Violation” (1985) 8 Harvard Women’s Law Journal 155; NI Kellner, “Under the Knife: Female Genital Mutilation as Child Abuse” (1993) 14 Journal of Juvenile Law 118.

<sup>437</sup> Atolaybe, *supra* note 429; Csapo, *supra* note 392 at 315.

<sup>438</sup> HA Giyan, *Women and Education: Equity and Equality* (Berkeley: McButcheon, 2009); Bunting, *supra* note 284 at 125-126.

<sup>439</sup> Bunting, *supra* note 284 at 122-123; CB Lloyd & BS Mensch, “Marriage and Childbirth as Factors in School Exit: An Analysis of DHS Data from sub-Saharan Africa” (2006) Population Council 219.

agreed upon morals for their children.<sup>440</sup> The ideal woman is seen as a mother, housekeeper and a protector of morals.<sup>441</sup> Women are viewed as peculiar beings, intimately connected with the welfare of society through their “life-giving attributes”.<sup>442</sup> This ideology stresses the “domestic orientation of women’s lives” affirming their duty as principal officiants in holding the family together.<sup>443</sup> The roles ascribed to women dramatically impact the nature and form of a girl’s social life.

Given the weaknesses of the state in Nigeria, kinship and family remains the most relevant form of social organization and an important force in Northern Nigeria’s culture.<sup>444</sup> It plays a fundamental role in delineating aspects of a girl’s social life and the extent of her participation.<sup>445</sup> The girl-child is conceived of in a specific way, often adopting a specific form of identity. Hierarchies and gendered roles in the family radiate more clearly through cultural practices and gender is a significant aspect of social membership and divisions of labour.<sup>446</sup> For example, through marriages, alliances are founded, therefore, marriage becomes an extremely valued resource.<sup>447</sup> As previously highlighted, culturally, girls marry earlier than their male counterparts. Numerous studies document that in this region, there is usually an average of ten years disparity between husbands and wives and sometimes up to twenty-five for girls married within polygamous unions.<sup>448</sup> The age difference at marriage between men and women is imbedded in gender roles holding women as mothers and wives and men as providers for the family unit.<sup>449</sup> Unlike men who are required to finish professional training in order to be financially secure, women are expected to be ready for marriage at an earlier age.<sup>450</sup> Marrying girls early is also preferred because it is

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<sup>440</sup> Sue Freeman, “Women’s Moral Dilemma’s: In Pursuit of Integrity” in Susan C Bourque et al, eds, *Women Living Change* (Philadelphia: Temple University Press, 1985) 217-254.

<sup>441</sup> *Ibid.*

<sup>442</sup> Marion Kilson, “Women in African Traditional Religions” (1976) 8:2 *Journal of Religion in Africa* 133-143.

<sup>443</sup> Kilson, *supra* note 442 at 138.

<sup>444</sup> Boddy, *supra* note 433 at 94.

<sup>445</sup> *Ibid.*

<sup>446</sup> Holly Johnson, “Rethinking Survey Research on Violence against Women” in Rebecca Emerson Dobash, Russell Dobash, eds, *Rethinking Violence against Women* (California: Sage Publications, 1998) at 23.

<sup>447</sup> Boddy, *supra* note 433 at 94.

<sup>448</sup> Bunting, *supra* note 284 at 116; Erulkar & Bello, *supra* note 321.

<sup>449</sup> Bunting, *supra* note 284 at 116.

<sup>450</sup> *Ibid.*

easier to teach them to be submissive, socially, economically and sexually, to their husbands, to stay focused on bearing children and take up other domestic roles.<sup>451</sup>

Sexual restraint in Northern Nigeria is an issue of family honour, and honour is invested mainly in the conduct of women, specifically, daughters and sisters rather than wives “whose premarital chastity is assumed”.<sup>452</sup> These limit girls’ sexuality in several ways. It emphasizes sexual purity to maintain family and community honour, assigning this burden directly on the “shoulders of girls”.<sup>453</sup> The emphasis on virgin brides propels the practice of child marriage.<sup>454</sup> This patriarchal culture in Northern Nigeria is encoded with violence. Celebrating selfless ideals for girls, while subjecting them to a life of physical and sexual servitude in marriage to men three or four times their age, is male control of female selfhood at an intensified level. More frequently, girls are trapped, experiencing early and frequent childbirth, and susceptible to domestic violence, including rape.<sup>455</sup> This has lifelong consequences on girls. When these girls become mothers, it may be much more difficult for them to instill a sense of self-identity within their children because they have never been encouraged to develop their own.

Senior members of communities emphasise the shame that would be brought onto a family should a girl become pregnant outside of marriage.<sup>456</sup> Also, in the absence of a powerful superintending institution, a family’s “fund of honor” measures its capacity to acquire and control resources and to be esteemed and respected within the community.<sup>457</sup> This burdens the most economically disadvantaged families to consider marrying their daughters early as the most feasible option.<sup>458</sup> A family that loses honour could find its daughters unmarriageable, its continuity threatened and its economic opportunities limited.<sup>459</sup> Thus, by continuing the practice of child marriage, women

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<sup>451</sup> A Mohl, “Monotheism: Its Influence on Patriarchy and Misogyny” (2015) 43:1 *The Journal of Psychohistory* 2; R Franiuk & A Shain, “Beyond Christianity: The Status of Women and Rape Myths” (2011) 65 *Sex Roles* 783; Margaret Greene et al, *The Centrality of Sexuality for Understanding Child, Early and Forced Marriage* (New York: Greene Works and American Jewish World Service, 2018) at 8.

<sup>452</sup> Boddy, *supra* note 433 at 94.

<sup>453</sup> Greene et al, *supra* note 451 at 8.

<sup>454</sup> Bunting, *supra* note 280 at 28.

<sup>455</sup> Susanne Mikhail, “Child Marriage and Child Prostitution: Two Forms of Sexual Exploitation” (2002) 10:1 *Gender and Development* 43 at 47.

<sup>456</sup> Bunting, *supra* note 284 at 123.

<sup>457</sup> Boddy, *supra* note 433 at 94.

<sup>458</sup> Greene et al, *supra* note 451 at 8.

<sup>459</sup> Boddy, *supra* note 433 at 94.

and girls guard themselves from the effects of possible deviance on their family unit.<sup>460</sup> Honour preservation and sexuality in this region implies that, on the one hand, girls are marriageable because they are perceived to be sexual beings as their bodies develop or for the fear of pre-mature sexual activity; on the other hand, prepubescent girls with no awareness and understanding of sex are married to eager husbands and are then susceptible to non-consensual sex and possible violence in marriage.<sup>461</sup>

The sexual violence experienced in early marriage is the most horrific aspect of this practice. Girls become pregnant even before they complete their own “physical and sexual growth and achieve psychological maturity necessary to carry a pregnancy” and raise a child.<sup>462</sup> Men’s physical power over girls is reflected in the fact that adult men feel entitled to rape their wives, even though they are children who are physically and psychologically unready for sex. It is one thing to be forced to do domestic work in your husband’s home- that is one form of violence and causes one kind of harm- but sexual assault is an extreme form of violence and creates serious forms of lasting physical harm and trauma.<sup>463</sup> As discussed in chapter 4, certain cultural practices, like hawking, are risky for girls, but many 10-year-old girls in this cultural milieu may be ready for it. Heavy domestic labour is difficult but many 10-year-old girls in this cultural milieu may be ready for this and capable of it. However, I argue that there is no 10-year-old girl who is ready, culturally, or otherwise, for violent sex anywhere in the world. Being married to a man who will rape you so that you are protected from men outside the home who could rape you is a very desperate patriarchal trap.<sup>464</sup>

(v) *The Economics of Parenting*<sup>465</sup>

Countries with the lowest average age of marriage for adolescents tend to have very low levels of socio-economic development.<sup>466</sup> In these countries, social markers like maternal and infant

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<sup>460</sup> In the context of FGM see Boddy, *supra* note 433 at 95.

<sup>461</sup> Bunting, *supra* note 280 at 28.

<sup>462</sup> ECPAT International, “Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage” (2015) at 47, online (pdf): [https://www.ecpat.org/wp-content/uploads/2016/04/Child%20Marriage\\_ENG.pdf](https://www.ecpat.org/wp-content/uploads/2016/04/Child%20Marriage_ENG.pdf)

<sup>463</sup> I am grateful to Prof. Cameron for pointing this out to me.

<sup>464</sup> *Ibid.*

<sup>465</sup> Bunting, *supra* note 284 at 130.

<sup>466</sup> Bunting, *supra* note 280 at 25.



mortality, literacy, life expectancy for women, and average income are remarkably low.<sup>467</sup> Numerous studies reflect that a combination of education, literacy, and poor community development, are related to marriageable age.<sup>468</sup> Nigeria is an example. In Northern Nigeria, the poverty level is 77.7 per cent in the North-west and 76.3 per cent in the North-east.<sup>469</sup> A few scholars contend that in these poor settings, child marriage is used as a strategy to alleviate parents of the expenses and obligations of raising a girl.<sup>470</sup> This decreases their economic vulnerability by transferring the economic burden associated with a daughter's care to the husband's family.<sup>471</sup>

The “economics of parenting” in Nigeria encourages elevated rates of early marriage.<sup>472</sup> The position that girls are simply “mouths to feed” is exacerbated by practices of bride price, lobola or dowry payments.<sup>473</sup> Girls, like their mothers, are perceived to be the property of male members of the family.<sup>474</sup> They have an exchange value, framed as bride price, set on each girl by her family.<sup>475</sup> It is not unusual for girls to be given in marriage to a family that is known to own more land or livestock.<sup>476</sup> Some parents perceive bride price as a source of wealth to the family, making the idea of child marriage appealing.<sup>477</sup> As such, poor families rely on and sometimes “borrow against the \$200 to \$900 bride price that a father can expect for a daughter”.<sup>478</sup>

Generally, I would agree with scholars who focus on the economic aspects of dowry payments; however, as an age-old tradition predating Islam and Christianity, it should also be noted that this

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<sup>467</sup> United Nations Development Program, “National Human Development Report: Achieving Development for North East Nigeria” (2018), online (pdf): [http://hdr.undp.org/sites/default/files/hdr\\_2018\\_nigeria\\_finalfinalx3.pdf](http://hdr.undp.org/sites/default/files/hdr_2018_nigeria_finalfinalx3.pdf)

<sup>468</sup> Mathur Sanyukta, Margaret Green & Anju Malhotra, “Too Young to Wed: The Lives, Rights, and Health of Young Married Girls” (2003), online (pdf): <https://www.issuelab.org/resources/11421/11421.pdf>.

<sup>469</sup> BBC, “Nigerians living in poverty rise to nearly 61%” (13 February 2012), online: <http://www.bbc.com/news/world-africa-17015873>.

<sup>470</sup> See N Otoo-Oyortey & S Pobi, “Early Marriage and Poverty: Exploring Links for Policy and Programme Development” (2003) 11 *Gender & Development* 42; Annabel Erulkar & Eunice Muthengi, “Evaluation of Berhane Hewan: A Program to Delay Child Marriage in Rural Ethiopia” (2009) 35:1 *International Perspectives on Sexual and Reproductive Health* 6.

<sup>471</sup> Otoo-Oyortey & Pobi, *supra* note 470 at 11.

<sup>472</sup> Bunting, *supra* note 284 at 130.

<sup>473</sup> *Ibid.*

<sup>474</sup> Akpan, *supra* note 370 at 74.

<sup>475</sup> *Ibid.*

<sup>476</sup> Cherreka Montgomery, “Too Young to Wed: Education and Action Toward Ending Child Marriage” (2005), online (pdf): <https://www.icrw.org/wp-content/uploads/2016/10/Too-Young-to-Wed-Education-and-Action-Toward-Ending-Child-Marriage.pdf>

<sup>477</sup> Akpan, *supra* note 370 at 74.

<sup>478</sup> Bunting, *supra* note 284 at 131.

practice has positive cultural meanings shaping marriage processes in Nigeria.<sup>479</sup> In addition, its use and interpretation can differ greatly, not only across societies but also across individual families.<sup>480</sup> Therefore, answers to questions on the role of marriage payments in child marriage cannot be properly analysed without understanding the meaning of “these transactions for the participants”.<sup>481</sup> Also, in analysing the relationship between dowry payments and child marriage in Northern Nigeria, there are a few inconsistencies. Research reveals that in most African societies, the more educated a girl is, the higher her bride price, implying that parents are more motivated to educate their daughters.<sup>482</sup> As such, it can be reasoned that the tradition of bride price should encourage and promote the education of girls beyond the primary level. However, in Northern Nigeria, the situation is different. Parents withdraw girls from school for marriage, causing them to accept lower amounts for their young uneducated daughters.<sup>483</sup> They use the income derived from the dowry payment to pay for the education of their boys.<sup>484</sup> Also, in Northern Nigeria, it is not clear that the transfer of money alone makes these transactions economic in nature.<sup>485</sup> Most women in this region explain that the dowry payment was used to purchase utensils and other household necessities for their child’s new home.<sup>486</sup> In other cases, the dowry payment bequeaths the bride with her portion of property, guaranteeing a redistribution at marriage.<sup>487</sup> Therefore, in order to complete our knowledge of the situation in Northern Nigeria, any explanation of bride price must carefully highlight and assess the different series of expectations related to dowry payments.

In discussing child marriage and the poverty level of the Nigerian economy, caution needs to be exercised. Extremely high poverty levels alone do not explain why the situation is different for

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<sup>479</sup> It was initially established to reward a bride’s parents for losing a productive daughter and the lineage of future children, as well as having somebody to take care of them in their old age. See Marcia Kaye, “Surprising Benefits of Bride Price for Women” (17 November 2016), online: <https://cifar.ca/cifarnews/2016/11/17/the-surprising-benefits-of-bride-price-for-women/>.

<sup>480</sup> Bhavani Sitaraman, “Dowry and Bride Price: The Meaning of Marriage in Two Societies” (1995) 24 *Reviews in Anthropology* at 124.

<sup>481</sup> *Ibid.*

<sup>482</sup> Marcia Kaye, “Surprising Benefits of Bride Price for Women” (17 November 2016), online: <https://cifar.ca/cifarnews/2016/11/17/the-surprising-benefits-of-bride-price-for-women/>

<sup>483</sup> Nnadi, *supra* note 259 at 36.

<sup>484</sup> See P Ahura, *Factors Hindering the Education of Girls in Panyam-Voudi District of Benue Plateau State* (Thesis, Ahmadu Bello University, 1971) [unpublished].

<sup>485</sup> Sitaraman, *supra* note 480 at 124.

<sup>486</sup> Bunting, *supra* note 284 at 131.

<sup>487</sup> Sitaraman, *supra* note 480 at 124.

girls in other regions exposed to the same or similar economic instability. Historically, in the 1940s, it was among the rich, upper class and the affluent that early marriage of girls was very prominent in Northern Nigeria.<sup>488</sup> In the 1940s, it was also among aristocrats and the merchant class that other cultural institutions like the seclusion of women, also associated with the protection of sexual morality, was frequently practiced in Northern Nigeria.<sup>489</sup> In addition, since urban areas can provide greater economic opportunities than rural village economies, one could assume that as families have increased financial security, the phenomenon of child marriage will be less prevalent in urban areas.<sup>490</sup> This is not always the case. There are documented cases of child marriage among wealthier and middle-class families.<sup>491</sup> Factors such as the social shame associated with child pregnancy, religion, in addition to the status and roles of girls and women in society intersect with poverty and economic class concerns to support the marriage of girls.

## **2. Child Marriage and its Consequences**

There are many consequences of child marriage for girls. Upon marriage, children face several limitations in their family, social relationships, health, and education. As already highlighted, marriage practically implies the end of formal education.<sup>492</sup> Girls become burdened with family responsibilities, having no time to engage in social activities as children.<sup>493</sup> Marriage in this context is also characterised by pervasive experience of sexual abuse, rape, and a life of servility.<sup>494</sup> In one tragic example in Nigeria, a twelve-year-old girl unhappy with her new husband ran away so often that he cut off her legs to stop her escaping. She subsequently died.<sup>495</sup> This section highlights a few consequences for girls in Northern Nigeria.

### *(i) Health*

There has recently been significant public health awareness in Northern Nigeria, mainly because of its high rates of maternal mortality and other pregnancy related problems. The consequences of

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<sup>488</sup> Peter Kazenga Tibenderana, "The Beginnings of Girls' Education in the Native Administration Schools in Northern Nigeria, 1930-1945" (1985) 26 *Journal of African History* 93 at 94.

<sup>489</sup> *Ibid.*

<sup>490</sup> Bunting, *supra* note 284 at 132.

<sup>491</sup> *Ibid.*

<sup>492</sup> Bunting, *supra* note 280 at 30.

<sup>493</sup> Mariam Ouattara, Purna Sen & Marilyn Thomson, "Forced Marriage, Forced Sex: The Perils of Childhood for Girls" (1998) 6:3 *Gender and Development* 27 at 30.

<sup>494</sup> *Ibid.*

<sup>495</sup> See UNICEF, "Early Marriage: Child Spouses" (2001) at 9, online (pdf): <https://www.unicef-irc.org/publications/pdf/digest7e.pdf>.

early pregnancy and childbearing is documented in epidemiological surveys and by anthropologists doing field work in this area. These studies emphasise that this region has among the highest rates of maternal death worldwide as well as high rates of obstetric fistula and other complications from obstructive labour.<sup>496</sup> The possibility of reproductive ill health and death increases considerably for the girl and her child when a girl is under the age of sixteen.<sup>497</sup>

In analysing health implications for pregnant girls, we are not dealing with a unitary group of subjects. The bodies of girls subjected to this practice have distinct capacities and properties depending on age. Pregnancy-related deaths are known to be a principal cause of mortality for girls between 15 and 19.<sup>498</sup> In Nigeria, Cameroon, and Ethiopia, maternal mortality among girls under 16 was six times higher than among those aged 16 and above.<sup>499</sup> Maternal morbidity levels increase as the age of the mother decreases because physiologically, the bodies of young girls are not completely developed and ready for childbirth.<sup>500</sup> Their immature bodies lead to difficulties during childbirth which can result in the death of the child.<sup>501</sup> Beyond evidence suggesting that children born to adolescent mothers are mostly of lower birth weight, there is also evidence signifying that these babies have an increased risk of dying in early childhood; a risk which can be twice as high as that for children of older mothers.<sup>502</sup> Also, girls who are pregnant or lactating need more calories and nutrients compared to those who are not, and when this additional nutrition is unavailable, their “nutritional status is compromised”.<sup>503</sup>

Girls who are married before or soon after puberty are also vulnerable to vesico-vaginal fistulae (VVF) which is basically a “miscommunication between the bladder and the vagina resulting in

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<sup>496</sup> YM Adamu et al, “Maternal Mortality in Northern Nigeria: A Population-Based Study” (2003) 109:2 *European Journal of Obstetrics, Gynecology and Reproductive Biology* 153; Akpan, *supra* note 370 at 70-76.

<sup>497</sup> Adamu et al, *supra* note 496.

<sup>498</sup> Otoo-Oyorley & Pobi, *supra* note 465 at 46.

<sup>499</sup> For every woman who dies in childbirth, 30 more suffer injuries, infections and disabilities which usually go untreated and some of which are lifelong. See Otoo-Oyorley & Pobi, *supra* note 464 at 11.

<sup>500</sup> Otoo-Oyorley & Pobi, *supra* note 470 at 46; UNICEF, *supra* note 490.

<sup>501</sup> Cherreka Montgomery, “Too Young to Wed: Education and Action Toward Ending Child Marriage” (2005), online (pdf): <https://www.icrw.org/wp-content/uploads/2016/10/Too-Young-to-Wed-Education-and-Action-Toward-Ending-Child-Marriage.pdf>

<sup>502</sup> Population Action International, “Fact Sheet: How Family Planning Protects the Health of Women and Children” (2001), online: [www.populationaction.org/programs/healthfs.htm](http://www.populationaction.org/programs/healthfs.htm)

<sup>503</sup> Montgomery, *supra* note 501.

continuous, involuntary leakage of urine through the vagina”.<sup>504</sup> VVF occurs due to lengthy, obstructed labor where the baby’s head is unable to pass through “the pelvic bones of the birth canal”.<sup>505</sup> This primarily causes damage to the bladder in addition to other consequences.<sup>506</sup> While not exclusively caused by early child bearing, VVF is related to the immaturity of a young woman’s pelvic bones.<sup>507</sup> In Nigeria, a majority of women appear to have VVF at a young age.<sup>508</sup> There is a high incidence of VVF in Northern Nigeria, specifically among women of the Hausa-Fulani ethnolinguistic group.<sup>509</sup> Many developed VVF during their first pregnancies which resulted in stillbirths.<sup>510</sup> VVF, if not addressed, has profound effects on a woman’s life: she may be unable to have children, incapable of having sexual intercourse and becomes extremely consumed with “keeping herself clean and washing her urine-soaked clothes”.<sup>511</sup> Girls and women suffering from VVF face not only chronic health problems, but social isolation, divorce or abandonment from husbands and the community.<sup>512</sup> Eighty (80) to ninety (90) per cent of wives with VVF are divorced by their husbands.<sup>513</sup> Since alternatives to marriage are limited in traditional Hausa culture, girls who find themselves divorced, unable to remarry and incapable of having children are visibly stigmatized in society.<sup>514</sup>

There is emerging evidence that child marriage, in addition to other socio-cultural factors, may increase risk of HIV infection.<sup>515</sup> Girls are disposed to contracting HIV because their “vaginas are not well lined with protective cells, and the cervix may be more easily eroded, thus increasing their vulnerability to infection”.<sup>516</sup> Studies reflect that married girls in Northern Nigeria lacked

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<sup>504</sup> Bunting, *supra* note 280 at 31; Tim Braimah, “Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage” (2014) 14 AHRLJ at 484.

<sup>505</sup> Bunting, *supra* note 280 at 31.

<sup>506</sup> *Ibid.*

<sup>507</sup> *Ibid.*

<sup>508</sup> UNFPA & EngenderHealth, “Obstetric Fistula: A Needs Assessment Report: Findings from Nine African Countries” (2003) at 7, online (pdf): <https://www.unfpa.org/sites/default/files/pub-pdf/fistula-needs-assessment.pdf>

<sup>509</sup> Durrenda Ojanuga, “Preventing Birth Injury Among Women in Africa: Case Studies in Northern Nigeria” (1991) 61:4 American Journal of Orthopsychiatry at 533.

<sup>510</sup> Braimah, *supra* note 504 at 484.

<sup>511</sup> KA Harrison, “Children Crippled by Childbirth” (1987) 14:3 People 12; Ojanuga, *supra* note 463 at 536; Bunting, *supra* note 280 at 31.

<sup>512</sup> Otoo-Oyorley & Pobi, *supra* note 470 at 47.

<sup>513</sup> UNICEF, “Early Marriage: Child Spouses” (2001) at 11, online (pdf): <https://www.unicef-irc.org/publications/pdf/digest7e.pdf>.

<sup>514</sup> Ojanuga, *supra* note 509 at 536.

<sup>515</sup> Andrew Karlyn et al, “Adolescent Early Marriage in Northern Nigeria: Evidence to Effective Programmatic Intervention” paper presented at the Union for African Population Studies, Tanzania, 2007.

<sup>516</sup> Otoo-Oyorley & Pobi, *supra* note 470 at 46.

information on reproductive health, including HIV/AIDS and pregnancy.<sup>517</sup> In addition, because girls are typically married to much older, polygamous and sexually experienced men, they are more likely to be exposed to HIV and other sexually transmitted diseases.<sup>518</sup> The imbalanced power relationship between a girl and her older husband also implies that men often have complete control over “how, when, and where sexual intercourse takes place”.<sup>519</sup> If the young wife expresses her disapproval about sexual activities, she could be exposed to further violence.<sup>520</sup> Abstinence is generally not an option for these brides and those who try to “negotiate condom use face violence or rejection”.<sup>521</sup> As such, in about 80 per cent of such cases, sexual violence persists.<sup>522</sup> Studies also indicate that girls are more likely to believe that physical or psychological violence within marriage is appropriate, and so are more likely to be victims of domestic violence.<sup>523</sup>

(ii) *Voice, Agency and Experience*

In India, one activist describes the stage in a girl’s life between the start of puberty, her marriage and subsequent transfer to the marital home as a period of “mournful silence” in which her agency and movement are strictly limited.<sup>524</sup> After watching videos and reading empirical reports in girls’ voices, I believe the same can be said of the experiences of girls in Northern Nigeria. Marriage confers upon girls new and diverse sets of expectations, pressures and risks.<sup>525</sup> It is a “rite of passage” from childhood to adulthood; adolescence as a phase in this life cycle is virtually non-existent.<sup>526</sup> Owing to the nature of this practice, the girl-child loses all her childlike innocence, emulating the habits and behaviours of older women in the family.<sup>527</sup> After marriage, the life of the girl can be compared to that of owning a property, with excessive limitations placed upon

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<sup>517</sup> See S Clark, “Early Marriage and HIV Risks in Sub-Saharan Africa” (2004) 35:3 *Studies in Family Planning* 149; Erulkar & Bello, *supra* note 318 at vii.

<sup>518</sup> Otoo-Oyorotey & Pobi, *supra* note 470 at 47.

<sup>519</sup> *Ibid.*

<sup>520</sup> Forum on Marriage and the Rights of Women and Girls, “Sexual Exploitation and the Human Rights of Girls” (2001), online: <http://www.womankind.org.uk/Main/earlymar.htm>

<sup>521</sup> V Tallis, *Gender and HIV/AIDS: Overview Report* (BRIDGE Development, Brighton: Institute of Development Studies, University of Sussex, 2002) at 6.

<sup>522</sup> Forum on Marriage and the Rights of Women and Girls, “Sexual Exploitation and the Human Rights of Girls” (2001), online: <http://www.womankind.org.uk/Main/earlymar.htm>

<sup>523</sup> Susheela Singh & Renee Samara, “Early marriage among women in developing countries” (1996) 22 *International Family Planning Perspectives* 148.

<sup>524</sup> Greene et al, *supra* note 451 at 7.

<sup>525</sup> Erulkar & Bello, *supra* note 321 at 1.

<sup>526</sup> Neera Kuckreja Sohoni, “The Status of Female Children and Adolescents in Development and Corrective Strategies” (1992) 3 *Feminist Issues* at 9; Bunting, *supra* note 284 at 134-135.

<sup>527</sup> Eleanor Rathbone, *Child Marriage: The Indian Minotaur* (London: UNWIN Brothers Ltd, 1934) at 35-36.

her.<sup>528</sup> She is denied the very essence of her childhood and from the period of infancy itself, she is compelled into the stage of producing infants.<sup>529</sup> In her matrimonial home, a young wife predictably has limited bargaining power and capacity to make choices about her life.<sup>530</sup> Husbands and in-laws define her role in the family, monitoring her access to and involvement in the outside world.<sup>531</sup> This is often the case throughout her marriage, translating to limited control over resources in her household, severe restraints on her time and controlled access to information.<sup>532</sup> In addition, seclusion from school and friends impedes her access to the social support significant for her emotional well-being.<sup>533</sup>

The absence of power, voice and decision-making autonomy has a significant impact on the lives of women and girls. A mother of a twelve-year-old girl on her wedding day said: “may the day be cursed when she was born a woman”.<sup>534</sup> By referencing the experience of girls, we can move current understanding of child marriage, beyond accounts of collectivity embedded in religion or culture, into the next stage of reaction drawing upon the individual experiences of girls. And so, in this section, I contend that girls who experience marriage at an early age speak with a distinct voice to which we should pay attention.<sup>535</sup> The ability to imagine the experiences of girls within these communities is less effective than using their voices to highlight their lived experience of violence. In this way, when ideals of right or wrong are examined not from a theoretical perspective but from the position of girls who have suffered through history, moral relativism declines and certain “normative priorities” develop.<sup>536</sup> The voice and experience of girls suggest a specific way of thinking about the problem of child marriage; a way that is not over-idealized, over-culturized or over-religious. Confusion about their own body, experience of trauma, childbirth, sex, neglect, and abuse are a few of the issues highlighted in this section. More importantly, it highlights the

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<sup>528</sup> *Ibid.*

<sup>529</sup> *Ibid.*

<sup>530</sup> Jennifer Parsons et al, “Economic Impacts of Child Marriage: A Review of the Literature” (2015) 13:3 *The Review of Faith & International Affairs* 12 at 14.

<sup>531</sup> *Ibid.*

<sup>532</sup> *Ibid.*

<sup>533</sup> E Duflo, *Women’s Empowerment and Economic Development* (Cambridge: National Bureau of Economic Research, 2011).

<sup>534</sup> Barbara Callaway, *Muslim Hausa Women in Nigeria: Tradition and Change* (Syracuse University Press: New York, 1987) at 35.

<sup>535</sup> Used in a different context, this phrase is adopted from Mari Matsuda, “Looking to the Bottom: Critical Legal Studies and Reparations” (1987) 22 *Harv. C.R.-C.L. L. Rev.* 323 at 324.

<sup>536</sup> *Ibid.*

nature of the relationship between the girl and her mother (including other female relatives), the roles women play and conflicting narratives from the perspectives of women and girls around the correctness of this practice. Each story is instructive. It reveals the different traditions and norms women, and girls must negotiate in their everyday efforts to survive.<sup>537</sup>

My name is Rabi Hamisu Karaye and this is my story:

I was married at approximately eleven years of age. I learned I was getting married from my father who had been approached by my husband. Before this man there was another who had asked to marry me but the family said I was too young. My husband is a Local Government employee with the Education Department, Maiyama. He may be five years older than my senior brother, maybe twenty-five. Dower was paid to my family but I don't know how much. My family bought clothes and plates for me to take to my husband's house. I started menstruation in my husband's house. I started sexual relations with my husband before menstruation. I had eight menstrual cycles before my first pregnancy. I labored about twenty-four hours at home with the assistance of my mother, no traditional birth attendant. My mother administered (traditional) herbal medicines. She wrote Quranic verses onto a chalk board then washed them off, catching the murky water in a cup. I drank the solution of water and chalk. There was an attempt to take me to the hospital, but it was too late. I delivered a still born baby at home. I started leaking urine immediately after the birth. It was eight months of leaking before I was assisted by a World Health Organization grant to go to Katsina for an operation.<sup>538</sup>

Evidence exists documenting the first menstrual and sexual experience of girls as painful and traumatic. They also explain the fear and uncertainty they felt during their first pregnancy.

I had hardly started menstruating. It was the first time I saw blood come from my vagina for three days. I was afraid to tell my people, but I finally told my grandmother. Then she said that I'm now a mature woman, but that's all she said. Then I started having stomach pains. My husband saw me weeping several times and he asked me why. I told him I did not know but I'm having stomach pains, not knowing it was pregnancy (Married girl, age 14, married at 13, 2 pregnancies, 1st child died, 3 years education, 2 co-wives).<sup>539</sup>

The first time I had sex with my husband, I felt serious pains and was bleeding. I had to tell my auntie and she gave me some medicine then I told her that I will never allow him to do that to me again. My auntie told me that if I stop after the first time, the wound will never heal. At that time my husband was a stubborn man and anytime he came to have sex with me, I just started crying. He would tell me that Allah is blessing and rewarding me so I

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<sup>537</sup> Gammage et al, *supra* note 375 at 9.

<sup>538</sup> Bunting, *supra* note 284 at 158.

<sup>539</sup> Erulkar & Bello, *supra* note 321 at 10.



should not be crying (Married girl, age 14, married at 13, 2 co-wives, 2 pregnancies, 1st child died, 3 years education).<sup>540</sup>

A few girls in Northern Nigeria willingly accept their roles and positions, often explaining it as an arrangement by Allah. As seen in the excerpt below, a girl's agency underscores struggle over balancing her ability to make free choices and act independently while rooted and shaped by discriminatory and oppressive structures conditioning her capabilities and identity.<sup>541</sup>

Interviewer. How did you get your husband - was he selected for you?

Respondent. No, he wasn't selected for me. It was Allah who gave him to me. I was with my mother...he came looking for me... It was Allah who arranged it and when my father introduced me to him, he later asked me if I liked him and I said yes, and he gave me to him...

Interviewer. Looking at you at that time, do you think it was right for you to marry?

Respondent. Yes, it was right for me (Divorced girl, age 17, married at 13).<sup>542</sup>

It is very important to always obey your husband's instructions. This will go a long way to help them benefit from the marriage. Married women can only go to heaven on the heels of the husband. A married woman should not complain - only at the point of death - and even then, you should exercise patience. It is also not good for a married woman to reveal the secrets between her and her husband. This does not help because the husband will always think that what he discussed with you is a secret not knowing that everybody outside has heard it. So, I just want to appeal to all that no matter what your husband asks you to do, please do it and you will be rewarded by Allah (Married young woman, age 22, married at 15, polygamous, pregnant with 4th child).<sup>543</sup>

Some girls in this context are exposed to two forms of male violence in marriage. Girls who resist arranged marriage are threatened by their fathers to limit their ability to influence or challenge parental decisions on marriage.<sup>544</sup> Girls describe fathers intimidating them and their mothers if they refused marriage. Within marriage, husbands also use violence to establish and maintain the balance of power.<sup>545</sup>

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<sup>540</sup> Erulkar & Bello, *supra* note 321 at 3.

<sup>541</sup> Elisabeth Le Roux & Selina Palm, "What Lies Beneath? Tackling the Roots of Religious Resistance to Ending Child Marriage" (2018) online (pdf): <https://www.girlsnotbrides.org/wp-content/uploads/2018/11/FINAL-Religious-leaders-report-High-Res.pdf>

<sup>542</sup> Erulkar & Bello, *supra* note 321 at 6.

<sup>543</sup> Erulkar & Bello, *supra* note 321 at 9.

<sup>544</sup> See Bunting, *supra* note 284.

<sup>545</sup> Erulkar & Bello, *supra* note 321 at 6.

There is nothing I could have done because my father said if I refused, he will throw my mother out of the house unless I agree to marry. My auntie promised me that she is going to do everything I need so she has been sending me money and even assured me that she is going to send me to Mecca to perform pilgrimage and come back (Married girl, age 14, married at 13, 2 pregnancies, 1st child died, 3 years education, 2 co-wives).<sup>546</sup>

The man I married took all my things, even my clothes and sold them. Sometimes from morning until 4pm, I go without eating anything. Until, a day when my parents came and saw me in a critical condition, and they brought food for me to eat.<sup>547</sup>

From the above, it is easy to assume that neither logic nor principle can fully explain why despite the negative consequences of this practice, the pattern of child marriage persists. Women and girls in this region continue to face substantial difficulties vis-à-vis men. As discussed in subsequent chapters, the protection mechanisms available to girls who experience this practice are extremely limited, at least from the perspective of the states' regulation of social and cultural life. Callaway and Creevey opine that in this context it is unlikely that in the "near future, the ideal of sexual equality" will be realised, accepted, or even accorded legitimacy as problems to be openly addressed.<sup>548</sup> As we will see in chapter 5, such issues are strictly defined as questions of religious law, not public policy.

## **Conclusion**

The tensions highlighted in this chapter reveal that even though the indirect and direct consequences of the practice of child marriage are well documented and clear, the problem persists. I believe the incidence of child marriage is indicative of a larger problem confronting women and girls in Northern Nigeria. Poverty, poor infrastructures, and limited access to education are simply social mechanisms that assist in securing the reproduction of HTPs like child marriage whilst shaping their social significance. Sensitization through local campaigns and education in Western and Islamic schools were not very successful in that few girls remained in school for long and some women still choose to remove girls from school to marry.

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<sup>546</sup> *Ibid.*

<sup>547</sup> Women's Rights Advancement and Protection Alternatives (WRAPA), "Girls in their Own Voices, Child marriage in Nigeria- ISA WALI Empowerment Initiative" (2016), online: <https://youtu.be/m32PIHGe9UM>

<sup>548</sup> Callaway & Creevey, *supra* note 92 at 193.

As previously highlighted, early marriage is also prevalent in societies outside of Nigeria. However, the uniqueness of this problem in Northern Nigeria is that child brides in this region have the youngest average age of marriage, as low as seven. Since traditional ideas on childhood, maturity and responsibility vary from context to context, in turn affecting the minimum age of marriage standards, the question remains, will the wellbeing of girls in Northern Nigeria be better protected through a uniform marriage age? One must be cautious in proposing solutions to this practice. From the individual stories, we see how some girls sit in a conflict between agency and protection narratives.<sup>549</sup> Some girls may be viewed as victims while other girls may be viewed as exercising agency with regards to their culture. On the one hand, girls should be listened to and their choices considered, but their vulnerability to being forced into situations shaped by discriminatory social standards should not be overlooked.<sup>550</sup> I believe the choices made by a 17-year-old will not be the same as choices made by a 10-year-old girl. So, given the diverse cultures and sometimes contradictory belief systems existing within plural Nigeria and the problems which come with attempts at arriving at universal but nationalised solutions to childhood issues, should girls between ages eight and seventeen be characterised as children for the purposes of child marriage regulation? Is there a unifying idea of childhood that can hold together or concretise any potential regulation of HTPs affecting girls within all cultures? Can this idea of childhood influence the ways in which people in different cultures, groups, and social class, react to the idea of “culturally endangered children”.<sup>551</sup> These questions are considered in the next chapter.

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<sup>549</sup> Elisabeth Le Roux & Selina Palm, “What Lies Beneath? Tackling the Roots of Religious Resistance to Ending Child Marriage” (2018) online (pdf): <https://www.girlsnotbrides.org/wp-content/uploads/2018/11/FINAL-Religious-leaders-report-High-Res.pdf>

<sup>550</sup> *Ibid.*

<sup>551</sup> Sloth-Nielsen & Mezmur, *supra* note 72 at 339.

## CHAPTER 4

### The Social Construction of Childhood and Girlhood in Nigeria

#### Introduction

The problems highlighted in chapter 3 are many. Girls are reaching puberty at younger and younger ages but society's failure to respond to the increasing rate of child marriage is having an enduring effect on girls.<sup>552</sup> However, the depiction that child marriage is a social problem in need of regulation relies on an assumption that childhood is a universal concept, and that adolescence is a separate phase of development. The experiences and discourses of childhood, adolescence and marriage cannot be presumed to be similar across culture, place, and time.<sup>553</sup> Girls' diverse experiences and backgrounds also challenge an essentialization into one classification of 'child bride'. As emphasised in the previous chapter, the choices made by a 17-year-old girl are not identical to those made by a 10-year-old girl.<sup>554</sup> Therefore, an approach centered on a uniform marriageable age may ignore the multiplicity of childhoods. Ignoring the socially structured nature of childhood will have overwhelming effects on children and women.<sup>555</sup> It risks aggravating, not alleviating, the fundamental social problems confronting girls in Northern Nigeria.

Childhood is a "social construction or category that is biologically, historically and culturally specific".<sup>556</sup> There is no universal conception of a child or childhood. Instead, at various times, under different laws and under different conditions, societies have defined and redefined childhood to suit specific socio-cultural purposes.<sup>557</sup> This is particularly evident in the Nigerian context, where legal and social constructions generate conflicting understandings of the place of the child

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<sup>552</sup> See discussion in Annabel Erulkar & Mairo Bello, *The Experience of Married Adolescent Girls in Northern Nigeria* (Abuja: The Population Council, 2007).

<sup>553</sup> Bunting, *supra* note 280 at 18; Catriona Macleod, "Teenage Pregnancy and The Construction of Adolescence: Scientific Literature in South Africa" (2003) 10:4 *Childhood* 419 at 420.

<sup>554</sup> Elisabeth Le Roux & Selina Palm, "What Lies Beneath? Tackling the Roots of Religious Resistance to Ending Child Marriage" (2018) online (pdf): <https://www.girlsnotbrides.org/wp-content/uploads/2018/11/FINAL-Religious-leaders-report-High-Res.pdf>

<sup>555</sup> Allison James, "From the Child's Point of View: Issues in the Social Construction of Childhood" in Catherine Panter-Brick, ed, *Biosocial Perspectives on Children* (Cambridge: Cambridge University Press, 1998) at 58.

<sup>556</sup> Saheed Aderinto, *When Sex Threatened the State: Illicit Sexuality, Nationalism, and Politics in Colonial Nigeria, 1900-1958* (Chicago: University of Illinois Press, 2014) at 75. In some academic disciplines, 'social construction' refers to a particular theoretical orientation. I would like to note that I am not drawing upon any theoretical framework; I refer to 'social construction' more generally and conceptually.

<sup>557</sup> *Ibid.*

within the legal system and the larger society.<sup>558</sup> The history of childhood in Nigeria is not an uncomplicated story of progress, it comprises different interwoven narratives. The age at which it is appropriate for girls to marry remains a contentious political and social question. Those who recommend a lower age of marriage are faulted for enabling child abuse, while those who endorse increasing the age of consent are often criticized for being insensitive to the pluralistic nature of the state and the implications this may have on ethno-religious groups.<sup>559</sup> This is so especially in Northern Nigeria where marriage is seen as an entitlement of families, children are hardly consulted, and the age of marriage is quite low.

To speak of child marriage and its many consequences on the health and well-being of children, “what is a child, or to be a child”<sup>560</sup> in Nigeria is a question that runs through this chapter. From pre-colonial Nigeria’s starting point, up to the current century, the answer to this question has varied immensely. The chapter tries to understand the trajectory of childhood and girlhood in a way that produces a culturally specific version that can be used in future regulations of child/girl specific issues. It describes childhood, focusing on children’s identities and experiences, in addition to exploring the underlying social mechanisms at work.<sup>561</sup> More specifically, building on the important foundational work of child rights scholars in Nigeria, this chapter centres on the shifting roles of girls and perceptions of girlhood in Nigeria. Childhood and the social constructions of the concept of the ‘child’ are more complicated when one considers these constructions from a gendered perspective.

In the Nigerian context, there are many levels and diverging ways one can approach girls’ history. As complex as the history of girlhood is in Nigeria, using a postcolonial feminist lens, I make two principal arguments forming the centerpiece of the range of ideas discussed in this chapter. Firstly, girlhood in Nigeria cannot be understood in isolation from larger historical and political processes. Critical knowledge of girls’ experience under colonialism and the shifting meaning of girlhood since the pre-colonial period is significant in uncovering the origin of some of the problems

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<sup>558</sup> *Ibid.*

<sup>559</sup> *Ibid.*

<sup>560</sup> Hugh Cunningham, *The Invention of Childhood* (London: BBC Books, 2006) at 14.

<sup>561</sup> Leena Alanen, “‘Intersectionality’ and other challenges to theorizing childhood” (2006) 23:2 *Childhood* at 160.

confronting girls today.<sup>562</sup> In modern-day Nigeria, many images and representations of girlhood can be found. However, for my research, the early 1940s remains a significant era in the history of girlhood for two main reasons. First, the decade ushered in the formation of the first government-sponsored organization for addressing child and juvenile delinquency, the Colony Welfare Office (CWO). Regulating sexual violence against girls was a core aspect of the creation of child and juvenile welfare services.<sup>563</sup> Second, and most important, the colonial state became deeply involved in regulating girlhood sexuality as an element of its wider task of modernization. The colonial moral panic over imperiled girlhood led to a struggle between intersecting “categories of new and old, modern and traditional, urban and rural lifestyles”.<sup>564</sup> There was a construction of several categories such as abandoned girls, child prostitutes, girls in moral danger, and child wives to create institutional structures for protecting girls against sexual harm.

Second, I argue that the reformist discourse about child marriages and how it should be regulated should be a discourse about sexual cultures and the place of girls within them. The age of girls implicated in the practice of child marriage plays a significant factor in any reform project aimed at shaping the perception and institutional attention towards child marriages. This is explored with reference to the campaign referred to as ‘the girl hawker project’ which unfolded from the 1930s to the 1950s during the time of British rule which was between 1901 and 1960. I discuss this campaign because, during this period, girl hawkers were “symbolic of cultural practices, whether these were positively or negatively valued”.<sup>565</sup> A substantial aspect of the anxiety about sexuality and girl hawkers came down to the question of age.<sup>566</sup> Sexual encounters highlighting significant age differences between girls and men were most disturbing to colonial administrators.<sup>567</sup> The fundamental problem for reformers from the 1930s to the 1950s was that girls of a particular age should not be sexual because they were girls.<sup>568</sup> But what was that age and how was this age of sexual transformation connected to notions of childhood?<sup>569</sup> The girl hawker project is also

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<sup>562</sup> Saheed Aderinto, “Researching Colonial Childhoods: Images and Representations of Children in Nigerian Newspaper Press, 1925-1950” (2012) 39 *History in Africa* at 243.

<sup>563</sup> Aderinto, *supra* note 556 at 121.

<sup>564</sup> Aderinto, *supra* note 556 at 74.

<sup>565</sup> *Ibid.*

<sup>566</sup> George Abosedo, *Making Modern Girls: A History of Girlhood, Labor, and Social Development in Colonial Lagos* (Ohio: Ohio University Press, 2014) at 137.

<sup>567</sup> *Ibid.*

<sup>568</sup> *Ibid.*

<sup>569</sup> *Ibid.*

significant because it reveals the different representations of children in different contexts in Nigeria. It was a combination of institutions and beliefs collectively used to direct state and community action for developing a strategy focused on removing girl hawkers from the streets and re-shaping local perceptions of girls to conform with modernised conceptions of girlhood.<sup>570</sup> As far as girlhood is concerned, through the girl hawkers project, I explore the cultural change that ensued as a vehicle for examining gendered ideas of childhood and historicizing the transformations in childhood over time. The girl hawkers project also assists in establishing who is a child and what standard was used to demarcate the boundaries of the category. The impact of street hawking regulation on childhood from the 1930 to the 1950s cannot be overstated. First, it provides room for asking questions about the shifting conceptions of childhood overtime. Second, the colonial welfare policies launched in the 1940s influenced and shaped the first generation of political leaders, welfare, probation, and police officers. Post-colonial Nigeria's welfare services also kept intact juvenile regulations and similar institutions and policies were put in place during the 1960s.<sup>571</sup>

The chapter begins by outlining the different limitations and boundaries of this part of my research. I explain my reason for focusing on specific regions in Nigeria. Part two provides brief contextual information on the nature of childhood in African societies. In the social construction of childhood, the discreet stage between childhood and adulthood, called adolescence is not well defined in Nigeria. Childhood is understood more in terms of rites of passage. We see that the progression from childhood to adolescence and to adulthood is in correspondence with identity and social roles, not age. Only at the turn of British rule was this concept of adolescence introduced. The discussion in this section provides background to my discussion in part three regarding the colonial institutionalisation of age as an organizing category.

With a focus on girls, in part two, I maintain that girlhood in Northern Nigeria cannot be understood in isolation of other social and cultural practices. In this section, it is evident that the social construction of girlhood is defined and located in the contested and interconnected domains

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<sup>570</sup> Abosede George, *Gender and Juvenile Justice: Girl Hawkers in Lagos, Nigeria (1926-1955)* (PhD Dissertation, Stanford University, 2006) [unpublished] at 5.

<sup>571</sup> Paul Osifodunrin & Saheed Aderinto, *The Third Wave of Historical Scholarship on Nigeria: Essays in Honor of Ayodeji Olukoju* (New Castle: Cambridge Scholars Publishing, 2012) at 266.

of the Muslim religion, Hausa tradition and more recently by Islamic fundamentalism. Constructions of girlhood must be considered in terms of these structures. Part three briefly explores the origin of the emergence of the African child as a universal subject in need of regulation.<sup>572</sup> I am of the view that colonial laws remain a valuable lens to be used in understanding and tracing social change in Nigeria. Numerous components of colonial laws and structures have survived the formal end of colonial rule and persistently exert strong influence today in culture, politics, and law in Nigeria.<sup>573</sup> The fact that several laws were age specific introduced a significant legal discourse about the shifting meaning of childhood and adulthood in a colonial state striving to reconcile the inconsistencies between African and Western cultures. As such, in this section, I make the case that colonialism in Nigeria brought with it ideas of “appropriate expectations of adolescents and young adults” including a view of children “as in need of protection and care”.<sup>574</sup> Setting itself up as the only caregiver and advocate of children’s rights, the colonial administration sought to structure the various stages of childhood by using age as an organizational category. In this section, we also see that the basis of what we see as differing gender roles in law after colonial rule were laid from the mid-nineteenth century, a colonial period. In most regions in Nigeria, Christian missionaries imagined the future of boys and girls differently and thus equipped them for different prospects. Lastly, I conclude by making comments and observations on the contested ideas of childhood and girlhood discussed in the chapter. The insight produced from a deep analysis of childhood assists in ascertaining what could be an appropriate legal intervention on behalf of the girl-child and in particular the girl-child bride.

## **Part I**

### **(1) Definitional Issues: A Summary**

There is tremendous variation in Nigeria in the different ways to conceptualise the maturity of children. There have been numerous changes in the definition of a ‘child’ and there is still no agreement on when childhood ends. At puberty? When children cease to be financially dependent on their parents? When they are at an age to be criminally responsible, or to engage in sexual activities? After the performance of certain rituals? Depending on what region and legislation we

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<sup>572</sup> Abosede, *supra* note 566 at 6.

<sup>573</sup> For example, euro-centric preoccupation with Western forms of law and notions of justice, state and individuals. See discussion in Philipp Dann & Felix Hanschmann, “Post-colonial Theories and Law” (2012) 45:2 *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America* 123-127.

<sup>574</sup> Bunting, *supra* note 280 at 21.



analyze, these are all markers of an end to childhood in Nigeria. While legislation incorporates a definition of childhood linked to a chronological age, social construction emphasises the status and social role of the child.<sup>575</sup>

The guiding standard for defining ‘child’ is contained in section 277 of the *Child Rights Act* (CRA) which defines age of majority as the “age at which a person attains the age of eighteen years”.<sup>576</sup> Section 21 of the CRA also prohibits the marriage of children under the age of eighteen years.<sup>577</sup> However, as discussed in chapter 5 of this dissertation, under Nigeria’s governance framework, no state in the federation is bound to adopt the CRA and those that have done so, by enacting *Child Rights Law* (CRL), did so at their discretion.<sup>578</sup> This substantially weakens the effectiveness of the CRA and provides justification for different interpretations and practice. Also, even though most state CRL adopt the CRA, in respect of the definition of the term ‘child’, there are differences, especially that of Islamic Northern states where, instead of the minimum age of 18 stipulated by the CRA, ‘puberty’ is used as the threshold for ascertaining age of majority.<sup>579</sup>

Informal systems of social control render the determination of childhood by age particularly challenging. Cultural and religious norms justify the change in the definition of a ‘child’ within the CRL of most Islamic Northern states.<sup>580</sup> While the CRA sets a child to be a person under 18 years, it is believed that “in Islam, there is no age that marks childhood”.<sup>581</sup> A child’s maturity is generally established by “signs of puberty such as menstruation, the growth of breasts and pubic hair”.<sup>582</sup> In *Folata v Dawomo*, it was held that under Islamic law, “maturity is determined by physical maturity or a declaration of the youth in question or failing this by reaching the age of

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<sup>575</sup> Aderinto, *supra* note 562 at 75.

<sup>576</sup> *The Child Rights Act*, 2003.

<sup>577</sup> Section 21 of the *Child Rights Act* prohibits child marriage by stating 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 of no effect whatsoever’.

<sup>578</sup> Enyinna Nwauche, “Child Marriage in Nigeria: (Il)Legal and (Un)Constitutional” (2015) 15 Afr. Hum. Rts. L.J. 421 at 423.

<sup>579</sup> For example, although section 15(1) of the *Jigawa State CRL, 2006* prohibits child marriage, it defines a child in section 2(1) as a person below the age of puberty.

<sup>580</sup> The minimum age for marriage set in the CRA continues to be a primary reason it has proved incredibly challenging to convince Northern houses of assembly to ratify it.

<sup>581</sup> Braimah, *supra* note 504 at para 481.

<sup>582</sup> *Ibid.*

lunar months”.<sup>583</sup> Some Islamic schools of thought set marriageable age at 10 years if the child has attained puberty.<sup>584</sup> Nigerian customary law as established in the case of *Labinjo v Abake* also proclaims a person a child, if he has not reached puberty.<sup>585</sup> Using ‘puberty’ as a threshold seems gender neutral but it has a discriminatory impact on girls who are more likely to attain puberty earlier than boys. It implies that a girl as young as 8 or 10 years who shows signs of puberty, like her first menstruation, will be suitable for marriage and considered an adult.

The legal system makes other distinctions between boys and girls in defining a child. This is particularly apparent in the *Criminal Code Act* of 1990.<sup>586</sup> In article 216 and article 222, there is an obvious disparity in the severity of sanctions, depending on both the age and the gender of the child victim. Article 216 states that “[a]ny person who unlawfully and indecently deals with a boy under the age of fourteen years is guilty of a felony, and is liable to imprisonment for seven years”; while article 222 states that “[a]ny person who unlawfully and indecently deals with a girl under the age of sixteen years is guilty of a misdemeanor, and is liable to imprisonment for two years, with or without caning...If the girl is under the age of thirteen years, he is guilty of a felony and is liable to imprisonment for three years, with or without caning”. The *Criminal Procedure Act* of Southern Nigeria and the *Penal Code* of Northern Nigeria also contain different provisions for girls and boys.<sup>587</sup> The implication of these distinctions between the treatment of boys and girls is discussed in chapter 5.

Likewise, depending on the region and context of legislation looked at, in Nigeria the definition of a child varies. Minimum and maximum ages are set by different laws and are frequently mutually contradictory. For example, according to article 2 of *Children and Young Persons Act*, enacted in Eastern, Western and Northern regions, a ‘child’ means “[a] person under the age of fourteen years, while ‘young person’ means a person who has attained the age of fourteen years

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<sup>583</sup> *Folata v Dawomo*, [1970] NWLR 105.

<sup>584</sup> FH Ruxton, *Maliki Law* (London: Luzac and Co., 1916) 93.

<sup>585</sup> *Labinjo v Abake*, [1924] 5 NLR at para 33.

<sup>586</sup> *Criminal Code Act*, Chapter 77, Laws of the Federation of Nigeria 1990.

<sup>587</sup> They prohibit acts of indecent treatment of boys under 14 years (section 216) and of girls under 16 years (section 222).

and is under the age of seventeen years”.<sup>588</sup> Furthermore, the *Immigration Act*<sup>589</sup> stipulates that any person below 16 years is a minor, whereas the *Matrimonial Causes Act* puts the age of maturity at 21 years.<sup>590</sup> The latter Act becomes irrelevant in practice, since individual states stipulate their own marriageable age. Regarding criminal responsibility, under the *Criminal Code*,<sup>591</sup> a child for the purpose of conviction for unlawful carnal knowledge is a person below the age of 12; while the *Penal Code*<sup>592</sup> in Northern Nigeria states that a child is a person below the age of 7. In the *Labour Act*, a person is a child for the purpose of employment in Nigeria, if he is below the age of 14 years.<sup>593</sup> These are only a few examples of different ages contained in various legal texts and in customary law all over the country. Laws affecting children are inconsistent and dispersed in diverse legislations. There is currently no universal definition of the term ‘child’, valid for both boys and girls in Nigeria. As we will see below, childhood in Nigeria is a complex interlocking set of beliefs, policies, social structures, and the everyday activities of adults and children. Using age to classify ‘child’ depends on who is defining, and it differs depending on gender, purpose, region, and cultural background.

## (2) Academic Literature Review

The sociology of childhood, as a field, draws attention to certain overlooked features of childhood, such as the intersections between childhood and gender, to provide an improved account of how

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<sup>588</sup> *The Children and Young Persons Act* remains the most important legislation in the country pertaining to the treatment of juvenile offenders. This Act was initially enacted as an ordinance in 1943. It has been subsequently amended through several legislation (i.e., Ordinances 44 of 1945; 27 of 1947; 16 of 1950 as well as the Laws of Nigeria 131 of 1954; 47 of 1955.) and Order in Council 22 of 1946). Intended as a national law (Cap 32 laws of the Federation of Nigeria and Lagos 1958), provisions were made for their adoption as regional laws and subsequently as state laws. As a result, the law was extended to the Eastern and Western Regions of Nigeria in 1946 by Order –in-Council, No 22 of 1946. The law was enacted for the Northern Region in 1958 and constituted the *Children and Young Persons Law*, Cap 21 of the Laws of Northern Nigeria (1963). Lagos State also adopted the law in 1970 - *Children and Young Persons Law* (Cap. 26 of the Laws of Lagos State).

<sup>589</sup> Section 18 and 23 of *Immigration Act*, 2015.

<sup>590</sup> Section 4 of the *Matrimonial Causes Act*, 1970 provides that “infant” means a person who has not attained the age of 21 years.

<sup>591</sup> Cap C38, Laws of the Federation of Nigeria, 2010, section 30. The Act is the principal enactment on crime in Southern Nigeria, comprised of the following states: Abia, Akwa-Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers.

<sup>592</sup> Section 50(a), *Cap 89, Laws of Northern Nigeria*, 1963. The Act is the principal enactment on crime in Northern Nigeria, comprised of the following states: Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe, Zamfara and Abuja (the Federal Capital Territory).

<sup>593</sup> *Labour Act*, 2010, Cap. L. 1, Laws of Federation of Nigeria, Section 59 (2).

social orders work and how this knowledge can be used to improve the lives of children.<sup>594</sup> This “socially constructed character of childhood” is not only recognized as an important factor shaping children’s everyday experiences but is also a tool to be used in understanding the circumstances in which children’s rights are not respected.<sup>595</sup> The increasing connection between local struggles and public issues created a need to consider children’s experiences in light of social-cultural structures.<sup>596</sup> This is largely because children’s experiences in most parts of the world are not only influenced by nationwide policies but also by established traditions rooted in social practices.<sup>597</sup> Therefore, in recognizing childhood as a social construction, it becomes easy to understand the circumstances in which children’s rights in Africa are or are not respected and how these rights can be interpreted in accordance with the prevailing religious and cultural traditions in society.

An area attracting much attention of African scholars is the application of universal standards of children’s rights to pluralistic African states.<sup>598</sup> On the one hand, there is a need to realize a universal protection of children’s rights while also attempting to protect the “cultural integrity” of groups subscribing to different normative standards.<sup>599</sup> Although more generally, arguments against the universality of children’s rights and protection strategies are raised with specific reference to the prohibition of cultural practices deemed prejudicial to the health and welfare of children, a majority of arguments focus more on the need to show how numerous social and cultural factors give specific meaning to childhood within the African context.<sup>600</sup> Emphasis is

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<sup>594</sup> Berry Mayall, “The Sociology of Childhood and Children’s Rights” In Wouter Vandehole et al, eds, *Routledge International Handbook of Children’s Rights Studies* (London: Routledge, 2015).

<sup>595</sup> Allison James & Adrian James, “Childhood: Toward a Theory of Continuity and Change” (2001) 575 *The Annals of the American Academy of Political and Social Science* at 25.

<sup>596</sup> Mayall, *supra* note 594 at 80.

<sup>597</sup> *Ibid.*

<sup>598</sup> See for example Thoko Kaime, “The Convention on the Rights of the Child and the Cultural Legitimacy of Children’s Rights in Africa: Some Reflections” (2005) 5 *Afr. Hum. Rts. L.J.* at 222; Berry Mayall, “The Sociology of Childhood in Relation to Children’s Rights” (2000) 8 *The International Journal of Children’s Rights* at 245; Bart Rwezaura, “Competing Images of Childhood in the Social and Legal Systems of Contemporary Sub-Saharan Africa” (1998) 12 *Int’l J.L. Pol’y & Fam.* at 253; Thoko Kaime, “Vernacularising the Convention on the Rights of the Child: Rights and Culture as Analytic Tools” (2010) 18 *Int’l J. Child. Rts.* at 638; Bart Rwezaura, “The Concept of the Child’s Best Interests in the Changing Economic and Social Context of Sub-Saharan Africa” (2005) 8 *Int’l J.L. & Fam.* 83-84; Abdullahi An-Na’im, *Cultural Transformation and Human Rights in African Societies* (London: Zed Books Ltd, 2000).

<sup>599</sup> Thoko Kaime, “Vernacularising the Convention on the Rights of the Child: Rights and Culture as Analytic Tools” (2010) 18 *Int’l J. Child. Rts.* at 638.

<sup>600</sup> Bart Rwezaura, “Competing Images of Childhood in the Social and Legal Systems of Contemporary Sub-Saharan Africa” (1998) 12 *Int’l J.L. Pol’y & Fam.* at 253; Geraldine Van Bueren, “Children’s Rights: Balancing Traditional Values and Cultural Plurality” in Douglas Gilliam & Sebba Leslie, eds, *Children’s Rights and Traditional Values*

placed on the fact that despite the different protective strategies within statutes, the “reality of children’s lives in Africa remains substantially unchanged”.<sup>601</sup> As such, it becomes important to take account of context in considering the numerous social and economic forces inhibiting a full realization and enforcement of laws devised to protect children’s interests and how these factors play a role in the decisions of parents.<sup>602</sup> These authors argue that a failure to account for context is a failure to account for the “complex interactions” between the worsening economic conditions, the plurality of cultural systems and the historical factors undermining the protective role of law in Africa.<sup>603</sup>

Anthropological research in Africa, gives us an idea of the processes repositioning children into adulthood and the various ideologies and institutions developed for that process.<sup>604</sup> However, childhood studies in Africa has not provided extensive details of the lives of children, especially girls. This may be due to the fact that politics and economics have been the main focus of literature, and these are sectors where children are not necessarily visible.<sup>605</sup> Existing scholarship has focused on children mainly through the extension of institutions, such as war, health, labour and education.<sup>606</sup> In addition, literature on African children is annexed to the growing interest in women in Africa and the varying impact of socio-economic change and development on women and children.<sup>607</sup> In this way, child labour, maternal and child health, education and schooling

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(London: Routledge, 2016) at 18; Kristen Lee, “Female Genital Mutilation- Medical Aspects and the Rights of the Children” (1994) 2:1 *International Journal of Children’s Rights* 35; Geraldine Van Bueren, “Child Sexual Abuse and Exploitation; A Suggested Human Rights Approach” (1994) 2 *International Journal of Children’s Rights* 45.

<sup>601</sup> Rwezaura, *supra* note 600 at 253.

<sup>602</sup> *Ibid*; Mayall, *supra* note 594 at 80.

<sup>603</sup> Bart Rwezaura, “The Concept of the Child’s Best Interests in the Changing Economic and Social Context of Sub-Saharan Africa” (2005) 8 *Int’l J.L. & Fam.* 83; R Pannikar, “Is the Notion of Human Rights a Western Concept?” (1982) 120 *Diogenes* 75; Allison Renteln, *International Human Rights: Universalism versus Relativism* (New Orleans, Quid Pro Books, 1990).

<sup>604</sup> Steve Howard, *Children and Childhoods* (New York: Oxford University Press, 2013).

<sup>605</sup> *Ibid*.

<sup>606</sup> Loretta Bass, *Child Labor in Sub-Saharan Africa* (London: Lynne Rienner publishers, 2004); Kennedy Amone-P’Olak, Nadia Garnefski & Vivian Kraaij, “The Impact of War Experiences and Physical Abuse on Formerly Abducted Boys in Northern Uganda” (2007) 10:2 *South African Psychiatry Review* 76.

<sup>607</sup> Victor Lotter, “Childhood Autism in Africa” (1978) 19:3 *Journal of Child Psychology and Psychiatry* 231; Raheem Usman, Raheem Sheu & BT Segun-Agboola, “Exploring the Social and Environmental Determinants of Child Health in Ilorin, Nigeria” (2009) 2:3 *Ethiopian Journal of Environmental Studies and Management* 73; Robert Snow, Jean-Francois Trape & Kevin Marsh, “The Past, Present and Future of Childhood Malaria Mortality in Africa” (2001) 17:12 *Trends in Parasitology* 593; Amy Stambach, *Lessons from Mount Kilimanjaro: Schooling, Community, and Gender in East Africa* (New York: Routledge, 2000).

becomes the prevailing field of study. However, there are a few scholars who have made the historical study of children and the roles they occupy in Nigeria a significant field.<sup>608</sup>

With the growing literature on childhood, many analyses on the legality of cultural practices carried out on girls have focused on the debates over diverging conceptions of “what childhood is and who children are”.<sup>609</sup> The underlying question in literature in this area surrounds the issue of when childhood begins and when it ends. This is so because, the end of childhood is inherently linked to issues of age of maturity, consent to actions affecting the girl’s body, autonomy, and evolving capacities of a child. An overview of the literature reflects that the answer to this question depends on a multiplicity of factors which could be biological, psychological, cultural or highly dependent on the relations of the child with the state.<sup>610</sup> However, there is tremendous variation in the literature on the different ways to conceptualise the maturity of children and there is still no clear answer on what can be done about the “disappearance of childhood”.<sup>611</sup> Even though there is continuous disagreement over where childhood begins and ends, most agree that the dividing line between childhood and adulthood is quickly diminishing.<sup>612</sup> The concept of ‘child’ cannot be discussed outside the dimensions of childhood as a social construct.<sup>613</sup> The central premise in literature is that childhood is not a “natural or universal category, predetermined by biology, nor is it something within a fixed meaning”.<sup>614</sup> These authors agree that childhood is culturally, socially and historically variable.<sup>615</sup> Markers of adulthood in Africa have strong ties to socio-cultural factors. The meanings of childhood and child are therefore not rigid but are subject to a

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<sup>608</sup> See for example Saheed Aderinto, *Childhood in Colonial Nigerian Histories* (New York: Palgrave Macmillan, 2015) at 4; George Abosedo, *Making Modern Girls: A History of Girlhood, Labor, and Social Development in Colonial Lagos* (Ohio: Ohio University Press, 2014).

<sup>609</sup> Julia Fionda, *Legal Concepts of Childhood* (Oxford: Hart Pub, 2001).

<sup>610</sup> See Gill Valentine, “Boundary Crossings: Transitions from Childhood to Adulthood” (2003) 1:1 *Children's Geographies* at 37; Neil Postman, *The Disappearance of Childhood* (London: Vintage, 1994); Julia Fionda, *Legal Concepts of Childhood* (Oxford: Hart Pub, 2001).

<sup>611</sup> The phrase is derived from Postman, *supra* note 605. A few authors have been helpful in providing a number of different ways to conceptualise a child’s developmental process. For example, Alan Carr, *The Handbook of Child and Adolescent Clinical Psychology* (London: Routledge, 1999); Patricia Miller, *Theories of Developmental Psychology* (New York: WH Freeman, 1993).

<sup>612</sup> Postman, *supra* note 605 at xi.; Fionda, *supra* note 604 at 3; Valentine, *supra* note 605 at 37.

<sup>613</sup> Amasa Ndofirepi & Almon Shumba, “Conceptions of “Child” among Traditional Africans: A Philosophical Purview” (2014) 45:3 *J Hum Ecol* 233 at 233.

<sup>614</sup> *Ibid.*

<sup>615</sup> Chinekwu Obidoa et al, “Perspectives on Markers of Adulthood among Emerging Adults in Ghana and Nigeria” (2018) *Emerging Adulthood* 1; Ndofirepi & Shumba, *supra* note 613 at 233.

continuous “process of struggle and negotiation”.<sup>616</sup> This explains why in Nigeria the question of who a child is has not been clearly answered.

### **(3) Limitations and Boundaries**

In a fight to give girls in Northern Nigeria a safe childhood free from sexual exploitation and abuse, it is important to understand that the conditions in which children live across the country are markedly different. Historians agree that childhood in Nigeria is culturally specific as each ethnic group establishes its own social beliefs and prerequisites for progression to adulthood.<sup>617</sup> Therefore, in exploring childhood in Nigeria, it is erroneous to assume that all Nigerian societies have the same conception of childhood. Nonetheless, there are some prevailing themes that pervade the over-all understanding of childhood.

Presenting a reasoned history of childhood is difficult because of the extraordinary diversity of Nigeria. In addition, there is a relative absence of published analysis and primary sources about childhood in colonial Nigeria. As previously highlighted, ideas about adolescence were transferred through colonialism, especially in regions most affected by the Christian missionaries and the British administration.<sup>618</sup> The social problems experienced by girls in this era include child prostitution and street trading. These social issues flourished in most parts of Nigeria, but I narrowed my historical focus to Lagos<sup>619</sup> where these phenomena were most rampant and the first modern juvenile system and child welfare office was established.<sup>620</sup> Lagos, was the first part of modern Nigeria where the campaign for child protection became vigorous.<sup>621</sup> Therefore, to

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<sup>616</sup> Ndofirepi & Shumba, *supra* note 613 at 233; Annika Hipple, “Coming-of-Age Rituals in Africa: Tradition & Change” online: <http://www.annikahipple.com/writing/coming-of-age-rituals-in-africa/>.

<sup>617</sup> Aderinto, *supra* note 608 at 4.

<sup>618</sup> Bunting, *supra* note 280 at 22.

<sup>619</sup> Lagos became the first part of modern Nigeria to be placed under colonial rule in 1861. Lagos is a relevant location because most endangered children found in Lagos, that is, child prostitutes and hawkers, migrated and had been trafficked from all parts of Nigeria to Lagos. Some came to Lagos as wives but absconded from their husbands and later coopted into prostitution. Others had been brought primarily for the purpose of street trading and other economic activities. See Saheed Aderinto, ““The Girls in Moral Danger”: Child Prostitution and Sexuality in Colonial Lagos, Nigeria, 1930s to 1950” (2007) 1:2 *Journal of Humanities & Social Sciences* at 10. For a history of the slave trade in Lagos see Kristin Mann, *Slavery and the Birth of an African City: Lagos, 1760–1900* (Bloomington: Indiana University Press, 2007).

<sup>620</sup> Aderinto, *supra* note 608 at 4.

<sup>621</sup> *Ibid.*

understand the “colonial trappings”<sup>622</sup> in which current federal laws on childhood are based, reference must be made to Lagos, in South-west Nigeria.

In contrast to the South-west, in Northern Nigeria, Christian missionaries were not actively operational, and the British policy of indirect rule respected Muslim marriage to a greater extent than in other African locations. Nonetheless, for my research, it is important to understand how the colonial past continues to influence the present. Therefore, to properly understand whether the problem of cultural violence against girls lies within the structures put in place with decolonization in Nigeria, I cannot solely rely on historical information from Northern Nigeria. I need to uncover the continuing role played by colonialism in postcolonial legal and cultural structures. As such, although the chapter focuses on the Northern region, I draw on cultural understandings among other cultural groups in Nigeria.

## Part II

### (1) The ‘Child’ in Context



Fig. 2: Children in the marketplace, Lokoja, Northern Nigeria.<sup>623</sup>

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<sup>622</sup> Inderpal Grewal & Caren Kaplan, “Introduction” in Inderpal Grewal & Caren Kaplan, eds, *Scattered Hegemonies: Postmodernity and Transnational Feminist Practices* (Minneapolis: University of Minnesota Press, 1994) 1–33.

<sup>623</sup> Courtesy of the Nigerian National Archives, Ibadan; See Aderinto, *supra* note 608 at 192.



Childhood is not a recent social occurrence in African societies, it has existed for a long time.<sup>624</sup> African societies are largely designed around the lives of its children.<sup>625</sup> Across the continent, children represent continuity with customs and present-day traditions devised to ensure children's survival and prosperity.<sup>626</sup> They are also considered in many African cultures as essential to family survival, in that they help preserve household economies through their cheap labor at home, in trade, farming or other family food-processing activities.<sup>627</sup> The notion of a completely dependent child who is nurtured, clothed, educated and generally raised at the expense of parents is an idea that is foreign to the traditional African setting.<sup>628</sup>

While childhood may be described as short-lived in Africa, compared to Western Europe, its short length has not reduced its cultural or political significance.<sup>629</sup> Traditionally, African beliefs and practices are embedded on the principle of communalism where society is made up of groups of people connected by inter-personal bonds with common values defining and directing social relationships.<sup>630</sup> Childhood is located in this system; a system of kinship and community relationships where "every child is everybody's child".<sup>631</sup> This communalistic attitude imposes a range of duties and obligations on the child, not only towards direct family members but also the

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<sup>624</sup> See Bart Rwezaura, "Competing Images of Childhood in the Social and Legal Systems of Contemporary Sub-Saharan Africa" (1998) 12 Int'l J.L. Pol'y & Fam.

<sup>625</sup> Howard, *supra* note 604.

<sup>626</sup> *Ibid.*

<sup>627</sup> *Ibid.*

<sup>628</sup> W Ncube, "The African Cultural Fingerprint? The Changing Concept of Childhood" in W Ncube, ed, *Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa* (Aldershot: Ashgate/Darmouth, 1998).

<sup>629</sup> Thoko Kaime, "The African Children's Charter: Does it Represent a Relevant Vision of Childhood and Children's Rights" (2009) 29 Child. Legal Rts. J. 11 (2009) at 17.

<sup>630</sup> AK Fayemi, "Human personality and the Yoruba worldview: An ethico-sociological interpretation" (2009) 2:9 The Journal of Pan African Studies 166.

<sup>631</sup> M Hansungule, "Administering the African society through the law" in Lone Linholt, ed, *Human Rights in Development: Human Rights and Local/ Living Law* (Leiden: Martinus Nijhoff, 2005) 371-401.

wider community.<sup>632</sup> The child is expected to abandon their individuality in order to yield to the collective interest of the community.<sup>633</sup> This is exemplified by Abiodun Adepoju's EWI poem.<sup>634</sup>

OLOMO LO L'AIYE  
EDUMARE WA FUN WA L'OMO AMUSEYE  
OMO TII TOJU ARA  
TII TOJU ILE  
TII TOJU BABA  
FUN WA L'OMO ATATA  
TII MU'NU IYA DUN

To have a child, is to have joy in life,  
Edumare give us a child who will fill us with pride.  
A child who takes care of the family,  
Who takes care of the home,  
Who takes care of the father,  
Give us a precious child.  
Who makes the mother happy.<sup>635</sup>

The poem outlines a representation of the ideal child. This ideal child embodies values of "reciprocity and community".<sup>636</sup> The poem also reflects competing concepts of affection and happiness, in addition to accountability, collectivity and collaboration.<sup>637</sup> The audience for an EWI performance usually includes the infant; the infant is addressed as one who is already functional in the family structure and the larger social world.<sup>638</sup>

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<sup>632</sup> It comes as no surprise that even the African Children's Charter, Article 27 endorses this dimension by entrenching that "[e]very individual shall have duties towards his family and society" while under Article 31(a) the child shall also have the duty to "...work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need". See M Mutua "The Banjul Charter and the African cultural fingerprint: An evaluation of the language of duties" (1995) 35 Virginia Journal of International Law 339; Ndofirepi & Shumba, *supra* note 613 at 235.

<sup>633</sup> Ndofirepi & Shumba, *supra* note 613 at 235.

<sup>634</sup> EWI poems are Yoruba ethnic poems typically performed on occasions of growth in a family's history, such as weddings and naming ceremony. The poem is simultaneously a prayer and a command and a wish for the child as much as for the parents. See Abosede, *supra* note 566 at 2.

<sup>635</sup> Abosede, *supra* note 566 at 2.

<sup>636</sup> *Ibid.*

<sup>637</sup> *Ibid.*

<sup>638</sup> *Ibid.*

Most traditional African societies do not use age as social standard for differentiating children from adults.<sup>639</sup> Instead of using age to define “social status, social status defines age”.<sup>640</sup> West African cultures are known to have distinctive markers for developmental transitions. For example, historically in traditional societies in Ghana, the transition to adulthood was marked by marriage which usually took place immediately after puberty and marked the attainment of adulthood, particularly for girls.<sup>641</sup> In some African societies, transitions from childhood to adulthood were properly demarcated by certain ceremonies.<sup>642</sup> In other West African societies, an uninitiated person would remain a child in the eyes of the community regardless of age.<sup>643</sup> A child generally becomes an adult through a long process of ritual and social transformation by the community.<sup>644</sup> And so, only after this process of inclusion, socialisation and ritualization can children advance into adulthood.<sup>645</sup>

In Northern Nigeria, the relationships between parents and children are determined primarily in accordance with entrenched acceptable standards of behaviour grounded in behavioural norms of respect, avoidance, and affection.<sup>646</sup> The same applies to the relationships between children and other members of the extended family. Until the age of seven or eight, male and female children are attached to their mothers.<sup>647</sup> After this age, they are required to take part in the adult activities of members of the compound of their own gender.<sup>648</sup>

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<sup>639</sup> Ndofirepi & Shumba, *supra* note 613 at 240.

<sup>640</sup> L McNee, “The languages of childhood: The discursive construction of childhood and the colonial policy in French West Africa” (2004) 7:4 African Studies Quarterly 20.

<sup>641</sup> Obidoa et al, *supra* note 610 at 2.

<sup>642</sup> For example, in Nigeria, young girls known as iriabo spend several weeks in “fattening rooms” being pampered and wearing copper coils around their legs to restrict movement as part of a ritual marking their official transition into womanhood. In Senegal, Bassari boys undergoing the Koré rite are taken into a sacred forest where they experience a symbolic death and a simulated return to infancy, a state of ritual purity from which they are reborn as mature members of the community. For the Maasai of East Africa, circumcision represents the beginning of adulthood for both boys and girls. See Annika Hipple, “Coming-of-Age Rituals in Africa: Tradition & Change” online: <http://www.annikahipple.com/writing/coming-of-age-rituals-in-africa/>.

<sup>643</sup> L McNee, “The languages of childhood: The discursive construction of childhood and the colonial policy in French West Africa” (2004) 7:4 African Studies Quarterly 20.

<sup>644</sup> IA Menkiti, “Person and community in African thought” in RA Wright, ed, *African Philosophy: An Introduction* (Lanham: University Press of America, 1984) at 127.

<sup>645</sup> Ndofirepi & Shumba, *supra* note 613 at 240.

<sup>646</sup> ER Yeld, “Educational Problems among Women and Girls in Sokoto Province of Northern” (1961) 11:2 Sociologus 160 at 164.

<sup>647</sup> *Ibid* at 165.

<sup>648</sup> *Ibid*.

Hausa children experience a physical freedom that no other group in society has; this includes the ability to roam in and out of the houses of friends, relatives and sometimes even strangers in search of playmates, to purchase goods, sell items or to relay messages.<sup>649</sup> There are many important implications of this, including the learning experience children gain by observing many aspects of the community that they will later be excluded from as adults.<sup>650</sup> In this context, the shift from childhood to adulthood really comes about when the liberty to move inside and outside houses, between the male and female domains is limited.<sup>651</sup> This transition brings about the full assumption of adult sex roles, and as reflected below, it occurs differently for boys and girls.<sup>652</sup> In this way, adulthood denotes separation and avoidance between “male and female in all non-sexual activities”, while childhood is a phase in which these borders are insignificant.<sup>653</sup>

### **1. Girling the Subject: Producing the Desirable Girl**

The life of a girl in Northern Nigeria encompasses several themes: marriage, kinship, naming, seclusion, and widowhood. Numerous incidents demonstrate different aspects of these, in addition to several other significant cultural attitudes and institutions. What makes a ‘proper’ or ‘good’ girl is framed by systemic configurations of religiously and culturally legitimated “perceptions, priorities, and institutional arrangements”.<sup>654</sup> These elements are pertinent to understanding the social positions and existence of girls in Northern Nigeria. In researching the social construction of Muslim-Hausa girls, in this section, I focus specifically on the relationship between age and gender as “principles of social organization”.<sup>655</sup> Centering on the performative aspects of girlhood, I also seek to understand how girlhood is shaped by everyday actions, behaviours, experiences and practices that are normatively feminine.

Girlhood in Northern Nigeria is not easily defined. The life of a girl is a multifaceted social construct and any attempt at defining and demarcating it is inevitably difficult. Unlike infancy,

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<sup>649</sup> Enid Schildkrout, “Recommended Readings: Age and Gender in Hausa Society Socio-economic Roles of Children in Urban Kano” (2002) 9:3 *Childhood* at 359.

<sup>650</sup> *Ibid.*

<sup>651</sup> Schildkrout, *supra* note 649 at 362.

<sup>652</sup> *Ibid.* Please see discussion in *supra* note 5 and 34.

<sup>653</sup> *Ibid.*

<sup>654</sup> Barbara Callaway, *Muslim Hausa Women in Nigeria: Tradition and Change* (Syracuse University Press: New York, 1987).

<sup>655</sup> Schildkrout, *supra* note 649 at 344.

girlhood is a social concept, not a biological category.<sup>656</sup> As a social institution, it comprises of actively negotiated social relationships which girls experience in the early years of their lives.<sup>657</sup> The elements that characterise the life of a girl in Northern Nigeria’s social system are not formally taught, they are progressively internalised and reinforced through cultural beliefs, values and perceptions.<sup>658</sup> Social training and interaction in childhood shapes and strengthens this largely “unconscious process”.<sup>659</sup>

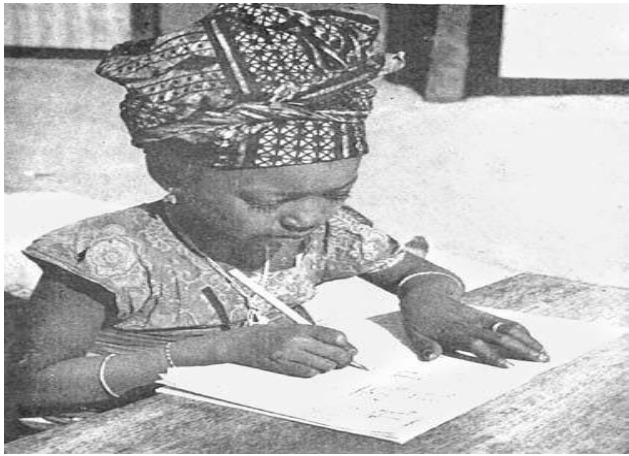


Fig. 3: A picture of A’ishatu Yola.<sup>660</sup>

As previously stated, the ultimate defining principle of childhood is its separation from adulthood, even if in a somewhat modified form for girls.<sup>661</sup> Boys are permitted to be ‘little boys’, but girls are raised to be ‘little women’.<sup>662</sup> As reflected in Fig 2 above, the status and identity of girls are made visible through their appearance that are enhanced by cultural jewellery and clothing to improve their beauty.<sup>663</sup> They are dressed to replicate adult styles; although they may only be 8 or

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<sup>656</sup> Postman further asserts that our genes contain no clear instructions about who is and is not a child and the laws of survival do not require that a distinction be made between the world of adult and the world of a child. Postman, *supra* note 605 at xi.

<sup>657</sup> Kaime, *supra* note 629 at 13.

<sup>658</sup> Callaway, *supra* note 315 at 433.

<sup>659</sup> *Ibid.*

<sup>660</sup> Source: Nigeria Magazine, No. 34, 1950; Aderinto, *supra* note 608 at 186.

<sup>661</sup> Lynne Chisholm et al, *Childhood, Youth and Social Change: A Comparative Perspective* (London, The Palmer Press, 1990) at 75.

<sup>662</sup> Callaway, *supra* note 315 at 434.

<sup>663</sup> Lantana Usman, “Street Hawking and Socio-Economic Dynamics of Nomadic Girls of Northern Nigeria” (2010) 37:9 International Journal of Social Economics 717 at 721.

10 years old, girls wear gold jewelry, eye make-up, and often paint their lips.<sup>664</sup> They are raised to be womanlike, to envision themselves as wives, mothers and sexual entities without regard for their individual personalities and interests as children.<sup>665</sup> They are viewed as symbols of beauty, peace, love and unity between tribes through marriage.<sup>666</sup> Girls are expected to maintain this identity and dignity by exhibiting respectable behaviour, displaying passiveness and endurance in all situations.<sup>667</sup>

The content of this female sex-role cuts across socio-economic class, personality differences, and educational levels.<sup>668</sup> Female sex-roles exist in most societies, but in Northern Nigeria, I believe this disposition is extreme, thorough, and methodical. The girl-child begins to be allocated domestic duties around the age of three, by age six she is dressed in imitation of adult women and begins to be viewed as a future wife, and by the time she is between ages twelve and fourteen, she is married, after which she enters seclusion which leads to her confinement to female quarters for the rest of her life.<sup>669</sup> On the other end, boys are culturalized into believing that they are superior to girls. They are encouraged to engage in child-like activities, but also persuaded to only play with boys, to separate themselves from girls, to be indifferent about domestic chores, and to be independent from their mothers.<sup>670</sup> This process solidifies the difference in status between boys and girls. The generational reproduction of masculine and feminine personalities produces psychological obligations to gender differences that are persistently sustained and so severely imbedded to become vital to a “consistent sense of self”.<sup>671</sup>

Girlhood in the family is especially important and it takes place under specific conditions. It is impossible to properly understand the meanings and significance of girlhood if it is not set in the context of family and kinship. In Northern Nigeria, the rights, and duties of girls in the family are linked to stages in development of her life cycle.<sup>672</sup> As reflected below, aspects of a woman’s life

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<sup>664</sup> *Ibid*; Callaway, *supra* note 315 at 434.

<sup>665</sup> Callaway, *supra* note 315 at 434.

<sup>666</sup> Usman, *supra* note 663 at 721.

<sup>667</sup> *Ibid*.

<sup>668</sup> Callaway, *supra* note 315 at 434.

<sup>669</sup> By age three, a head tie is obligatory, and girls begin to be taught the rules of feminine deportment. See Callaway, *supra* note 649 at 30; Callaway, *supra* note 315 at 434.

<sup>670</sup> Callaway, *supra* note 315 at 434.

<sup>671</sup> Callaway, *supra* note 654 at 22.

<sup>672</sup> See discussion in Schildkrout, *supra* note 649 at 357.

cycle emphasise her position in relation to men, her reproductive status as well as her approximate age. This is usually reflected through language, songs, poems, proverbs, and anecdotes. For example, a girl looking to join boys at play could be addressed with a common children's song:

Mai wasa da maza karya  
Tunda na gan ta na rena ta  
(She who plays with boys is a bitch  
When I see her, I detest).<sup>673</sup>

An Hausa woman's life is divided into different categories: *jinjinya* (female infant), *yarinya* (girl), *bera* (pre-nubile girl), *buduruwa* (a girl whose breasts have started growing but who is not yet married or a maiden or virgin), *mata aure* (woman or wife), *bazarawa* (divorced or widowed), or *tsohuwa* (old woman).<sup>674</sup> As a *bera* and *buduruwa*, a girl's primary task is to help in the household chores and to hawk the craft of the married women of her compound.<sup>675</sup> They have the freedom to wander in and out of people's houses to buy and sell goods and to look for playmates.<sup>676</sup> Barkow asserts that the life of a *buduruwa* is a happy one because at this stage, her main task is street hawking and household chores; these are her most enjoyable labour.<sup>677</sup> The transition from the pleasant life of *buduruwa* to that of *mata aure* or married woman is abrupt; from her unrestricted wanderings around the community and the market, she quickly transitions to a life of seclusion in the home of her in-laws.<sup>678</sup>

Girls are often told "*ki dinga yin abu kamar mace*", to act like a woman.<sup>679</sup> She is told- "a girl should sit quietly, talk softly, cover her head and never disagree with a male".<sup>680</sup> *Ba ki ganin ke mace ce, she namiji ne*, meaning "can't you see you are a woman while he is a man"- is a phrase

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<sup>673</sup> Callaway, *supra* note 654 at 31.

<sup>674</sup> The description of the stages of a Hausa girl's life is based on Jerome Barkow, "The Institution of Courtesanship in the Northern States of Nigeria" (1971) 10:1 *Geneve-Afrique* 59; See also Enid Schildkrout, "The Employment of Children in Kano" in Gery Rodgers & Guy Standing, eds, *Child Work, Poverty and Underdevelopment* (Geneva: International Labour Office, 1981) at 96; Callaway, *supra* note 611 at 22. For a biography of the life of a Hausa woman, see Baba (of Karo) & Marry Fellice Smith, *Baba of Karo, a Woman of the Muslim Hausa* (New York: Yale University Press, 1954) 99.

<sup>675</sup> Jerome Barkow, "Hausa Women and Islam" (1972) 6:2 *Canadian Journal of African Studies* 317 at 319.

<sup>676</sup> Schildkrout, *supra* note 649 at 357.

<sup>677</sup> Barkow, *supra* note 670 at 319.

<sup>678</sup> *Ibid.*

<sup>679</sup> Callaway, *supra* note 654 at 29.

<sup>680</sup> *Ibid.*

repeated to her from her earliest years.<sup>681</sup> She will often hear “*ke mace, gidan wani zaki*, (after all, you are a woman and you are going to someone else’s house), or *komai abinki, gidan wani zaki* (no matter what you do, you are going to someone else’s house)”.<sup>682</sup> *Matar na tuba ba ta rasa miji*, an Hausa proverb meaning, “a submissive woman won’t lack for a husband”.<sup>683</sup> Girls are also frequently warned that “*duk mace a bayan namiji take*”, that is “every woman is inferior to a man”.<sup>684</sup> Another Hausa proverb also says “*matar mutum kabarinsa* (a man’s wife is his grave)”; another proverb mocks men who fall in love, “*maso mace wawa; bai san za ta ki shi ba* (He who loves a woman is a fool, for he never knows if she hates him or not)”.<sup>685</sup> Notably, the Hausa term for ‘woman’ and the term for ‘wife’ are the same- *mace*.<sup>686</sup> From the above, it is clear that language is a strong medium for expressing beliefs and principles about girlhood. And so, if girls operate within a linguistic system in which men are constantly referenced as superior and women inferior, they will inevitably accept these constructs and their connotations unquestionably and then consciously or sub-consciously, she will eventually believe the power relations implied in its usage.<sup>687</sup>

For an overwhelming majority of girls in Northern Nigeria, it is almost unimaginable to desire to be anything other than a wife or mother.<sup>688</sup> I do not find the desire for girls to be wives or mothers concerning. The gendered norms highlighted above may not be problematic for girls’ physical well-being and development. As discussed below, girls are raised to develop certain skills and knowledge that may not be available to girls in other settings. However, the problem lies in the fact that girls are constrained and groomed to believe that marriage and motherhood are the only options available to them. I believe these cultural norms emphasise and contribute to the inequalities disadvantaging a tremendous number of women and girls. They translate into

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<sup>681</sup> *Ibid.*

<sup>682</sup> Kabir Sa’ad, “The Silent Oppression: Male-Female Relations in Kano” (Kano: Bayero University Faculty, 1981); Callaway, *supra* note 611 at 31.

<sup>683</sup> Lewis Wall, “Dead Mothers and Injured Wives: The Social Context of Maternal Morbidity and Mortality among the Hausa of Northern Nigeria” (1998) 29:4 *Studies in Family Planning* at 348.

<sup>684</sup> Callaway, *supra* note 654 at 31.

<sup>685</sup> Wall, *supra* note 683 at 348.

<sup>686</sup> *Ibid.*

<sup>687</sup> Titi Ufomata, “Linguistic Images, Socialisation and Gender in Education” (1998) XXIII:3 *Africa Development* at 61.

<sup>688</sup> Wall, *supra* note 683 at 348.



indisputable roles and standards of behaviour for individuals of all ages and gender.<sup>689</sup> This limits the choices available to girls and creates boundaries that regulate and constrain girls' abilities to visualise different ways of doing things. It makes imbalances of power seem natural, God-given, and inherently unchangeable.

## 2. Seclusion and Children's Agency

The traditional view of socialisation regards adult behaviour in society as an autonomous variable, grounded on sets of rules, roles, and modes of conduct to which children must conform before they become meaningful social actors.<sup>690</sup> This view emphasises the dependence of children on the older generation. However, overstating the dependency of children on adults often "blinds us to the dependence of the older generation on the younger one".<sup>691</sup> To understand the social construction of girlhood in Northern Nigeria, I believe it is important to also assess the interaction of people of different ages and the advancement of individuals from one age group to the next. The relevant questions to be addressed include for example: what would happen to the adult female world if there were no children? What is the significance of children in preserving the relative status of men and women?<sup>692</sup> I am of the view that gendered roles in Northern Nigeria cannot be demarcated as they are without children performing certain roles that are distinct from but complementary to adult roles. Therefore, any change in the roles of children will have far reaching consequences, not only on children but possibly on the whole structure of the Hausa family. In analysing these issues, I am concerned primarily with the relations between girls and mothers and to the autonomy and agency exercised by girls in Northern Nigeria. I refer to the practice of *kulle*<sup>693</sup> as it provides a productive space to confront these concerns.

The previous section hinted that among the Hausa, transitioning from childhood to adulthood demanded severing relations between men and women in all non-sexual activities, but these restrictions were less significant in the world of children (*bera* and *buduruwa*). Only children had the right to carelessly roam in and out of people's houses. For married women and girls, severing

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<sup>689</sup> *Ibid.*

<sup>690</sup> Schildkrout, *supra* note 649 at 344.

<sup>691</sup> *Ibid.*

<sup>692</sup> Schildkrout, *supra* note 649 at 346.

<sup>693</sup> The Hausa term *kulle* literally means "to lock up" or "to lock in". See Katja Werthmann, "Matan Bariki, 'Women of the Barracks' Muslim Hausa Women in an Urban Neighborhood in Northern Nigeria" (2002) 72:1 *Journal of the International African Institute* at 119.

relations between men and women is enforced through the practice of kulle.<sup>694</sup> *Kulle*, meaning ‘confinement’, ‘imprisonment’, ‘seclusion’, also referred to as ‘purdah’ is a cultural practice<sup>695</sup> that places stringent restrictions on the interaction between men and women.<sup>696</sup> Married women and girls in *purdah* do not generally leave their compounds except for the purpose of attending marriages, funerals and visiting relatives or close female friends.<sup>697</sup> Therefore, since most girls marry between age twelve and fourteen, they are secluded to the “female quarters of their compound” all their lives.<sup>698</sup> If a girl is married as young as ten, she may not be expected to assume certain responsibilities like cooking, until puberty begins, but she enters *kulle* and loses the freedom she enjoyed as a child.<sup>699</sup> The compound becomes the girls’ world.

The puzzling nature of seclusion, and the confusing social division that it produces gives unmarried girls the kind of freedom and independence that is usually not expected of children in other societies. Since married women are unable to go out during the day, it is their young unmarried daughters, *budurwa*, who are sent on errands, transmit messages and sent to the market for the hawking of goods.<sup>700</sup> Even though they may have demanding household tasks, the girls engage in street hawking for their mothers, and are relatively free until they are married and subsequently secluded.<sup>701</sup> At an early age, girls learn to bargain, to keep accounts and the importance of financial independence for women.<sup>702</sup> A young girl immediately comprehends that this income is not to be shared with her father or brothers and that it gives her mother dignity and respect not attainable in other ways.<sup>703</sup>

The significant amounts of money women earn while secluded is only possible with the assistance and support of pre-pubertal girls who are very active at this work; they buy the materials, transport,

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<sup>694</sup> See Charmaine Pereira, “Domesticating Women? Gender, Religion and the State in Nigeria Under Colonial and Military Rule” (2005) 3:1 *African Identities* at 78; A Imam, “The Development of Women’s Seclusion in Hausa land, Northern Nigeria” (1991) 9:10 *Women Living Under Muslim Laws Dossier* 4.

<sup>695</sup> Refer to the definition Of Cultural Practice in Chapter 1.

<sup>696</sup> Schildkrout, *supra* note 649 at 349.

<sup>697</sup> *Ibid.*

<sup>698</sup> Callaway, *supra* note 654 at 31.

<sup>699</sup> Sometimes girls who have not attained puberty could be married but are only expected to assume wifely duties after puberty. See Callaway, *supra* note 654 at 32.

<sup>700</sup> Callaway, *supra* note 315 at 440.

<sup>701</sup> See Schildkrout, *supra* note 649 at 440.

<sup>702</sup> Callaway, *supra* note 315 at 440.

<sup>703</sup> *Ibid.*

and sell the final products at the market.<sup>704</sup> Understandably, mothers support street hawking because of the perceived benefits they receive from the income. However, for girls, the consequences can be severe. They may commence hawking as early as 7 a.m. and end at 5 or 6 p.m.<sup>705</sup> They experience physical stress from the daily long distant walk to the cities and are occasionally lured into prostitution.<sup>706</sup> They encounter all forms of male harassment, intimidation, and sexual, emotional, verbal, and psychological abuse.<sup>707</sup> An eleven (11) year old in a focus group interview commented:

When the men continue making such comments without addressing the price and quantity of nono and fura purchase, we consider that a bad signal that they are not “true” customers but have a different motive. We then insist by asking them how much worth of our product they want, but they ignore us and insist on their compliments which often may lead them touching us in inappropriate places. At this point we lift out calabashes and leave immediately before we are harmed.<sup>708</sup>

Mothers maintain that culture prohibits them from revealing or retelling girls’ sexual abuse experiences as this is considered a family dishonor and shameful. A mother of one of the girl participants of the Lantana’s study commented:

We were informed by our mothers and older sisters that it happened before. We have been told the stories in a sad, soft, and quiet way as a precaution to protect our daughters when they are in the cities selling our products. Malama [referring to the interviewer] we cannot tell you the details, we are forbidden to mention it to strangers. Even when you speak to our mothers, they will never mention it to you. Please, do not tell our mothers we mentioned this to you in your interview with them [referring to the interviewer].<sup>709</sup>

The presentation of girlhood in the context of seclusion serves an important purpose; it marks the transitory status of girls before they take a significant step into adulthood, marriage. The above excerpts explain the strength and fortitude girls as young as eleven (11) years are expected to have to maintain the culture of silence and privately deal with the consequences of street trading. The goods and services market girls are exposed to at incredibly young ages govern the process of becoming independent. The marketplace emancipates girlhood from traditional mechanisms of

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<sup>704</sup> Schildkrout, *supra* note 649 at 341.

<sup>705</sup> Nasir, *supra* note 83 at 81.

<sup>706</sup> *Ibid.*

<sup>707</sup> B Audu, A Geidam & H Jarma, “Child Labour and sexual Assault among Girls in Maiduguri, Nigeria” (1988) 104:1 International Journal of Obstetrics and Gynecology 64.

<sup>708</sup> Usman, *supra* note 663 at 725.

<sup>709</sup> *Ibid.*

socialisation and control inside the family.<sup>710</sup> It also marks the close of certain life phases offering parental and familial protection. This system has the effect of removing children from the private domain of the family into confrontation with new rules of behaviour drawn from a social code that is possibly different from that functioning within the parental home.<sup>711</sup>

Taking up adult entrepreneurs' responsibilities very early accelerates their emotional development and so by the time they are of marriageable age, Hausa girls have understood the physical and social world they live in and from which they will withdraw in differing degrees upon marriage.<sup>712</sup> Unlike most children in other societies, they have mapped out the social networks of kinships and friends, understood the formal and informal hierarchies of their families and society, and should have a practical education that will "stand them in good stead" throughout their marriage.<sup>713</sup> To the casual observer, life as a girl in this context seems challenging. However, it can also be assumed that the knowledge girls acquire hawking goods, running errands, listening, and sharply observing life in their community assists them in making an 'adult' transition to married life. It equips them with the skills needed to manage the resources and personalities in their first homes as brides.<sup>714</sup> Since 1977, there have been a few efforts to control hawking by young girls, but the practice persists in present-day Nigeria, as will certainly be visible to any traveller in Northern Nigeria.<sup>715</sup>

Given the deeply entrenched nature of social practices in this region, it is clear that any change in the domestic lives of girls will give rise to profound changes in other cultural institutions and in broad cultural patterns in general. For example, in 1976, although schooling rates were still very low, introducing Western education to some parts of Northern Nigeria, through the Universal Primary Education program, gradually resulted in the enrollment of children in school. This made it difficult for women to pursue independent economic activities, and especially the poorer classes of women who were unable to retain workers to replace their absent children.<sup>716</sup> Without children,

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<sup>710</sup> Chisholm, *supra* note 661 at 27.

<sup>711</sup> *Ibid.*

<sup>712</sup> Mary Bivins, *Telling Stories, Making Histories: Women, Words and Islam in Nineteenth-Century Hausa Land and the Sokoto Caliphate* (Heinemann: Portsmouth, 2007) at 91.

<sup>713</sup> *Ibid.*

<sup>714</sup> *Ibid.*

<sup>715</sup> *Sokoto State Legal Notice* No. 24 of 1977 (Control of Hawking); *Katsina State Hawking (Control) Law* of 1985, Cap. 57 of the 1991 Laws; *Kano State Petty Trading (Prohibition of Female Juveniles) Law* of 1988, Cap. 109 of the 1991 Laws; *Jigawa State Petty Trading (Prohibition of Female Juveniles) Law*, Cap. 110 of the 1998 Laws.

<sup>716</sup> Schildkrout, *supra* note 649 at 343.

women in seclusion were cut off from information and communication with the outside world, making it difficult for them to engage in independent economic activities.<sup>717</sup> Their incomes lower, and their position within the institution of *kulle* was more challenging.<sup>718</sup> As such, it is important to acknowledge the ways new paradigms could create significant tensions between parents and children.

Children are instrumental in maintaining the present definition of female roles and the different cultural systems used to uphold this definition. Consequently, regulating the ‘age’ for marriage could affect every other aspect of a girl’s life that provides meaning. It is in this context that efforts to introduce reforms affecting the lives of girls must be evaluated. This informs my analysis in the next section. The institutionalisation of modernised ideals of childhood in Northern Nigeria is not merely a question of its significance to children. By setting standards within legislation, Northern childhood will not only be erased within the purview of law, but this new modernised model becomes the standard to be used to judge other actors in Northern Nigeria. Guardians, parents and specifically mothers could be recast as child abusers, and their child rearing practices indicted as falling short of certain standards.

My analysis in the succeeding sections acknowledges that prescribing an ideal model of childhood for Northern Nigerian children may purely be echoing “colonial paternalism”.<sup>719</sup> The colonial imposed boundaries between adult and child in certain regions in Nigeria functioned to create a universal image of childhood. This imagery led to the application of “inappropriately homogenised and culturally chauvinistic”<sup>720</sup> developmental models. Models that were subsequently reproduced and employed by agencies and institutions in regulating childhood in postcolonial Nigeria. This element of history is important for my research because culturally neutral ideas of childhood diminish children’s claims to their own social membership and contribution within their communal and family struggles.<sup>721</sup> In part 4, we see that addressing childhood concerns in this way creates ineffective laws that disqualify children from their social world; it basically removes them from it.

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<sup>717</sup> Schildkrout, *supra* note 649 at 364.

<sup>718</sup> *Ibid.*

<sup>719</sup> Erica Burman, “Innocents Abroad: Western Fantasies of Childhood and the Iconography of Emergencies” (1994) 18:3 *Disasters* 241.

<sup>720</sup> *Ibid* at 243.

<sup>721</sup> *Ibid.*

The regulation of street hawking in colonial Nigeria presents a case in point, this is discussed below. Therefore, in exploring ways to address issues experienced by girls in Nigeria, the historical constructions of childhood, its impact and its reproduction in modern Nigeria should not be overlooked. Overlooking these standards could easily be the subtle side of cultural imperialism. My position in writing the succeeding sections therefore reiterates the dilemma's faced by colonial administrators, in that I risk replicating the same assumptions I wish to question.

### **Part III**

#### **(1) The Institutionalisation of Age as an Organizational Category**

There is no better place to commence tracing the emergence of childhood in modern Nigeria than with the “institutionalisation of age as a basic organizing category”.<sup>722</sup> The introduction of novel government mechanisms along with their underlying ethical principles during the colonial period saw the emergence of new legal and political differences between African children and adults and a parallel restructuring of the developmental, moral and social disposition of the African child.<sup>723</sup> In precolonial Nigeria, a child was defined according to the culture of each ethnic group; however, colonialism imposed a unitary standard for distinguishing between a child, a young person and an adult.<sup>724</sup>

Chronological age was institutionalised as an aspect of power relations and a marker by which society gaged progression in life.<sup>725</sup> Compared to the variable precolonial emphasis on the fulfillment of social responsibility as the marker of maturity, under colonialism, age as an organizing category was inflexible.<sup>726</sup> Public programs, policies, institutional reform, as well as legal and social practices were all tied to age.<sup>727</sup> The laws precluding children from engaging in sexual activities below a certain age, from engaging in specific forms of labour, from partaking in political processes, from working in specific jobs and from criminal prosecution were all informed by rigid biological constructions of age. Aderinto asserts that if colonialism overlooked ethnic diversity in forming an “artificial state called Nigeria”, it also denigrated pre-colonial notions of

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<sup>722</sup> Aderinto, *supra* note 608 at 6.

<sup>723</sup> Aderinto, *supra* note 608 at 2.

<sup>724</sup> Aderinto, *supra* note 608 at 22.

<sup>725</sup> Aderinto, *supra* note 608 at 6.

<sup>726</sup> *Ibid.*

<sup>727</sup> *Ibid.*

childhood among several ethnic groups by attempting to standardize the experience of childhood.<sup>728</sup>

The young as a group were not legally defined until the 1940s.<sup>729</sup> Before this period, in the various decrees, there was instead a general category called ‘children’ with inconsistent age limits.<sup>730</sup> The *Alien Children Registration Ordinance* was the first colonial regulation to detail children’s experiences as colonized subjects.<sup>731</sup> This ordinance instituted a significant innovation to the idea of the child. It marked childhood and children’s social needs as ontologically distinct from adulthood and adult needs.<sup>732</sup> Integral to this concept of childhood is that children are immature, weak and susceptible, therefore, they must be protected from themselves and from others who may cause them harm.<sup>733</sup> Consequently, in certain regions, children were relegated to schools, hospitals, playgrounds and young offender institutions.<sup>734</sup> More specifically, the state’s involvement in girls’ lives through legislation inserted their experience into the legal record and marked them clearly as a sexually endangered population.<sup>735</sup>

The most comprehensive legislation introduced to protect children was *the Children and Young Person’s Ordinance* (CYPO).<sup>736</sup> The phrase ‘young person’ first emerged in this legislation and it clearly created two groups- a “child is under 14 and a young person is over 14 and under 17”.<sup>737</sup>

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<sup>728</sup> Aderinto, *supra* note 608 at 6.

<sup>729</sup> Laurent Fourchard, “Lagos and the Invention of Juvenile Delinquency in Nigeria, 1920-60” (2006) 47:1 *The Journal of African History* 115 at 122.

<sup>730</sup> For example, 17 years in the *Alien Children Registration Ordinance* of 1878, 15 years in the *Native Children (Custody and Reformation) Ordinance* of 1928, 16 years in the same 1928 Ordinance amended in 1932.

<sup>731</sup> *The Alien Children Registration Ordinance* of 1878.

<sup>732</sup> Abosede, *supra* note 566 at 10.

<sup>733</sup> Kaime, *supra* note 629 at 19.

<sup>734</sup> *Ibid.*

<sup>735</sup> Aderinto, *supra* note 556 at 114.

<sup>736</sup> *Children and Young Person’s Ordinance*, Ordinance No. 41 of 1943. The CYPO was enacted for the colony of Lagos and later reproduced with amendments for the whole country as the Children and Young Persons Act (CYPA), chapter 31 in the revised laws of Nigeria, 1948. This was subsequently reproduced in the laws of the Federation of Nigeria and Lagos in 1958 (Cap 32, Laws of Federation, of Nigeria (LFN), 1958) but currently operates as States’ *Children and Young Person’s Law* (CYPL) with identical provisions to the Act. The CYPA can be described as obsolete with modern development having been enacted originally by the colonial masters since 1943 (over 70 years ago) without any major reforms that comply with current standard. See Grace Ayodele Arowolo, “An Appraisal of the Legal Framework for Child Justice Administration in Nigeria” (2018) 6:1 *Journal of Law and Criminal Justice* 82.

<sup>737</sup> Section 25 of *Children and Young Person’s Ordinance* of 1943. *Children and Young Persons Street Trading Regulations*, 1946, made under the *Children and Young Persons Ordinance*, 1943 in the Annual Volume of the Laws of Nigeria Containing all legislation enacted during the Year 1946 (Lagos: Government Printer).

This legal delineation of childhood was significant for two reasons: first, it influenced the definition of childhood in other statutes<sup>738</sup> and directed prosecution of crimes against children; second, it ascertained the eligibility and the type of rehabilitation programs for victims of child abuse.<sup>739</sup> However, beyond legitimising the protection of children, the dichotomy established by the CYPO also introduced the “science of childhood development”.<sup>740</sup> By maintaining that adulthood did not come before the age of 17 years, childhood became defined in strictly legal terms. At age 17 years, the Colony Welfare office (CWO) believed, an individual was emotionally, physiologically, and mentally competent.<sup>741</sup>

However, the CYPO’s definition of a child was not an absolute; overtime, a few changes were made to this definition. The definition of a child was continuously contested despite efforts by the British to impose a rigid dichotomy between a ‘child’ and ‘young’ person.<sup>742</sup> Different legislation gave conflicting definitions of a child for different purposes. For example, the *Venereal Diseases Ordinance* defined a child as someone under the age of 14.<sup>743</sup> At the same time, in the wake of the socioeconomic abuse of children through pawn ship, the colonial government made it illegal for “children under 16 to be pawned for debt or other purposes”.<sup>744</sup> This pawn ship law effectively established that a child was a person under 16 years.

### **1. Age of Consent**

The notion of ‘age of consent’ is a significant form of regulation that influenced understandings of childhood in colonial Nigeria. Age of consent generally referred to the legal age for young people to participate in a range of activities; however, when age of consent is discussed, it is usually understood that sexual conduct is at issue.<sup>745</sup> In colonial Nigeria, children falling within

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<sup>738</sup> Legally, a child (someone under 14) or a young person (at least 14 but under 17) who practiced prostitution voluntarily was an “offender” who violated section 249(a-i & ii) of the *Criminal Code* that made solicitation an offense.

<sup>739</sup> *Children and Young Person’s Ordinance*, Annual Volume of the Laws of Nigeria, Legislation enacted during 1943 (Lagos: Government Printer, 1944), A111–3.

<sup>740</sup> Aderinto, *supra* note 556 at 123.

<sup>741</sup> *Ibid.*

<sup>742</sup> Aderinto, *supra* note 608 at 22.

<sup>743</sup> *Venereal Diseases Ordinance*, 1943 and the *Children and Young Persons Ordinance*, 1943.

<sup>744</sup> Aderinto, *supra* note 556 at 75.

<sup>745</sup> Matthew Waites, *The Age of Consent: Young People, Sexuality and Citizenship* (New York: Palgrave Macmillan, 2005) at 1.



this category were labelled as “children in moral danger”.<sup>746</sup> Abandoned girls, child prostitutes and child wives fell within this category. Sources providing insight into ages of children considered to be in moral danger during the colonial period can be grouped into four main categories: petitions by the public; records produced by the Colonial Welfare Office; newspaper reports or stories; and relevant sections of the Criminal Code Ordinance. Newspaper sources used phrases and statements such as “young...young and small...small girls as prostitutes”.<sup>747</sup> For example, a plea dated July 10, 1943 highlights:

These girls they never become up to the age of sexual intercourse which this woman treating by giving them to different a kind of men for sexual intercourse. What moves me to bring my complaint against them is I went there a certain evening by 7.30 pm. I heard a girl voice was crying in the room and to my observation, I discovered that a girl not up to age of haven to do with man is in a room with a certain seaman. So, pity I am...<sup>748</sup>

The statutes promulgated during this period promoted greater involvement in the lives of girls on the grounds of moral danger.<sup>749</sup> Up until 1958, an underage girl in Nigeria was a “female below the age of thirteen”.<sup>750</sup> The Criminal Code Ordinance made a sharp dichotomy between two categories of females: “woman” and “underage” but the age of consent remained thirteen.<sup>751</sup> This implied that marriage at age thirteen could not be considered as child marriage.<sup>752</sup>

Despite the different categories constituting moral endangerment, the most worrying for the colonial state was child prostitution in that it was regarded as the end product of all forms of sexual danger for girls.<sup>753</sup> In other words, street hawking, abandonment, and child marriage set in motion a process, as the CWO believed, that conclusively ended in child prostitution. A clearer definition of a child appeared in colonial records through the undertakings of the CWO, which documented the life stories of girls in order to push for institutional reforms. A majority of the girls rescued from prostitution were between the ages of 5 to 13 years, and others from 15, but not over 20

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<sup>746</sup> Saheed Aderinto, ““The Girls in Moral Danger”: Child Prostitution and Sexuality in Colonial Lagos, Nigeria, 1930s to 1950” (2007) 1:2 *Journal of Humanities & Social Sciences* at 12.

<sup>747</sup> There are numerous references to child prostitutes as “small...small... girls”. See for instance, West African Pilot “Bribery, Prostitution and theft in Nigeria,” January I, 1943, 2.

<sup>748</sup> Social Welfare, General Questions, Establishment of Welfare Department, 1942-1945NAI, COMCOL 1, 2600 Vol. II.

<sup>749</sup> Laurent Fourchard, “Lagos and the Invention of Juvenile Delinquency in Nigeria, 1920-60” (2006) 47:1 *The Journal of African History* 115 at 135.

<sup>750</sup> Annual Volume of the Laws of Nigeria, legislation enacted during 1944 (Lagos: Government Printer, 1945), 234.

<sup>751</sup> *Ibid.*

<sup>752</sup> Aderinto, *supra* note 608 at 22.

<sup>753</sup> Aderinto, *supra* note 556 at 74.

years.<sup>754</sup> If the CWO relied on the legal definition of ‘child’ as a guiding principle, it would not have expanded its regulatory and rehabilitative acts to girls over 13 years.<sup>755</sup> Irrespective of legislative provisions, the CWO was of the view that all females under the age of 16 years were mentally and psychologically too immature to consent to “sexual intercourse and that all forms of sexual relations (whether under a properly consummated marriage or disgraceful prostitution) was a sex crime against minors”.<sup>756</sup> As such, child marriage was plainly and fundamentally defined by the CWO as marriage involving a girl under the age of 16 years.

Colonial efforts to increase the age of sexual consent or marriage to 16 years by criminalizing child marriage were criticized by Nigerian local authorities both in Southern and Northern Nigeria.<sup>757</sup> The *Native Authority Child Betrothal Order* (NACBO) of 1943 was a bill aimed at criminalizing “child marriage, betrothal of girls under 17, or their removal from their parents or legal guardians”.<sup>758</sup> Even though the NACBO was not the first attempt at regulating the marriage of underage girls, it was the “boldest attempt” in Nigeria’s history to reform customary marriage countrywide to fit the British mission of safeguarding endangered girlhood.<sup>759</sup> The framers of the NACBO intended to remake the country’s socio-cultural practices involving people under 17 years of age. By limiting the age of marriage to 17 years, the NACBO began to create a legal framework that enables both state and society to adopt a protective role for its child citizens.<sup>760</sup> Children were viewed as a special category in need of protection from abuses. However, the passage of this bill would have undermined and weakened the influence and control that local communities had over customary marriage. This is so because, unlike child prostitution and street hawking laws that were enforced only regionally (in Lagos), the NACBO was projected to jurisdictionally apply to the entire country with a population of over 20 million.<sup>761</sup>

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<sup>754</sup> *Ibid.*

<sup>755</sup> Aderinto, *supra* note 556 at 76.

<sup>756</sup> *Ibid.*

<sup>757</sup> “Child Prostitution and Child Marriage” Secretary Northern Province to Resident Kano Province, June 22, 1946, Kano Prof 1, 186/MSWCA National Archives Kaduna; “Child Welfare: Prostitution and Child Marriage by Faulkner” 1942, COMCOL 1, 2844, National Archives Ibadan. As cited in Aderinto, *supra* note 565 at 22.

<sup>758</sup> *The Native Authority Child Betrothal Order*, 1943.

<sup>759</sup> Aderinto, *supra* note 556 at 126.

<sup>760</sup> *The Native Authority Child Betrothal Order*, 1943.

<sup>761</sup> *Ibid.*; Aderinto, *supra* note 556 at 125.

In drafting the NACBO, the attorney general recognized that the major challenge would be using age as a basis for defining “carnal knowledge”.<sup>762</sup> But unreservedly, the bill was set to standardize the age of marriage, delay early marriage, and criminalize sexual intercourse with girls under the age of 17 years.<sup>763</sup> Despite British efforts, the provisions of the NACBO was highly contested and strongly condemned by the Islamic authorities in the North. Unlike their Southern counterparts who denied betrothal of girls or claimed that girls were not given in marriage until 16 or 17 years, the Northern clerics, according to Varvill, the secretary of the Northern provinces, argued that betrothal was the only way to maintain a girl’s chastity “in the present atmosphere of sexual promiscuity”.<sup>764</sup> In addition, the NACBO met firm disapproval because the phrase “unlawful carnal knowledge” was also understood as “sexual intercourse between husband and wife”, if the wife was underage.<sup>765</sup> This was observed to be an undesirable intrusion with Muslim marriage customs.<sup>766</sup> The cover letter by the chief secretary to the government of Nigeria accompanying the proposed bill directed to all the resident officers explained this position:

The expression husband and wife without further qualification includes a man and woman married in accordance with native law and custom and it is therefore a defense, even in the case of a child of ten, if the man alleges and the prosecution cannot disprove that he is the husband by native law and custom of the child.<sup>767</sup>

Other attempts by the Colony Welfare Office to enforce a uniform age of consent on all the ethnic groups in Nigeria was found to have contravened cultural marriage practices that seldom used chronological age as an indicator of adulthood or readiness for marriage but instead considered the fulfilment of social obligations and participation as rites of passages.<sup>768</sup> Historian, Saheed asserts that the NACBO was bound to fail given the nationwide outlook on which the bill was based, in addition to the biased British position on marriage, a core aspect of traditional existence.<sup>769</sup> I also believe the bill failed because it was structured by cultural assumptions about gender and gendered

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<sup>762</sup> Aderinto, *supra* note 556 at 125.

<sup>763</sup> *The Native Authority Child Betrothal Order*, 1943.

<sup>764</sup> NAK, Kano Prof. 1, 186/MSWCA, “Child Prostitution and Child Marriage: Secretary Northern Province to Resident Kano Province” June 22, 1946 as cited in Aderinto, *supra* note 510 at 147.

<sup>765</sup> *Ibid.* In a confidential memo to the resident of Kano Province, MH Varvill, the secretary of the Northern provinces pointed this out.

<sup>766</sup> NAK, Kano Prof. 1, 186/MSWCA, “The Criminal Code (Amendment) Bill: Secretary of Northern Province to the Resident of Kano Province,” July 10, 1946.

<sup>767</sup> Aderinto, *supra* note 556 at 126.

<sup>768</sup> Aderinto, *supra* note 556 at 147.

<sup>769</sup> *Ibid.*

power relations. British understandings of girlhood informed their formulations of laws; if the primary goal is to protect girls, the law cannot be too disconnected from localised understandings of girlhood.

As reflected in chapter 5, there are many underlying areas of commonality between colonial and post-colonial Nigeria's attempt at regulating girlhood within culture. Since the passage of the NACBO, several laws have been passed in an attempt at regulating child marriage. Like colonial times, despite numerous condemnations of child marriage, the biggest issue remains using 'age' to regulate marriage in a pluralistic society.

## **Part IV**

### **(1) Encountering Colonial Modernity**

In literal and figurative ways, girls “functioned as subjects of contestation” between the colonial state, its subjects, and elites.<sup>770</sup> The girl-child was an object of scrutiny and thus elicited an array of nationalist desires. She was a contested figure, “an image, either an object of celebration or of attempted control”.<sup>771</sup> She became a person in need of regulation by the state, social reformers, and missionaries, as well as national elites. The policing of girls was carried out through representational governmental projects and social development schemes. The street hawking campaign is an example of this. As highlighted in part 2 of this chapter, hawking is fundamental to the domestic economy in both precolonial, colonial, and post-colonial times. It is a means of selling and delivering items across and within local communities.<sup>772</sup> The income it generates limits the hardships experienced by the mothers and grandmothers for whom girls' hawk.<sup>773</sup>

At the core of street hawking regulation were very fundamental questions about the nature of the girl and her relationship to society, the state and modernity.<sup>774</sup> Focusing on the transformation of girlhood, this section seeks to understand the different ways girls were symbolically constructed and the meaning of particular ideas of girlhood for the colonial state and political actors. More

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<sup>770</sup> Abosede, *supra* note 566 at 2.

<sup>771</sup> Alys Weinbaum et al, *Modern Girl Around the World: Globalization* (Durham: Duke University Press, 2008) at 15.

<sup>772</sup> Aderinto, *supra* note 556 at 78.

<sup>773</sup> George Abosede, “Within Salvation: Girl Hawkers and the Colonial State in Development Era Lagos” in Saheed Aderinto, ed, *Childhood in Colonial Nigerian* (New York: Palgrave Macmillan, 2015) at 209.

<sup>774</sup> *Ibid* at 225.

specifically, I uncover how the meaning of girlhood structured policies around children and struggles between local practices and British culture. As a special issue of governmental concern, girl hawkers confronted colonialist notions of the child as well as their efforts to impose girlhood, a particularly gendered variation of childhood, onto their lives.<sup>775</sup>

Like child marriage, hawking was viewed by colonial administrators as dangerous, not just because it subjected girls to sexual exploitation, but also because it allowed them to be extremely sexualized.<sup>776</sup> Even though public narratives reflected the state's failure to properly protect its imperiled children, the bigger issue was the changing character of hawking, an established way of raising and educating children, financially supporting the family, and transferring skills from one generation to another.<sup>777</sup> In addition, street hawking violated core values of modern childhood like dependency, vulnerability, powerlessness and innocence.<sup>778</sup> The transformation of girlhood through hawking practice was conceived as a modernization strategy that would play a critical role in maintaining and promoting modern womanhood in the nation for years to come.<sup>779</sup>

The colonial framework for regulating street trading was primarily directed at the South-west region of Nigeria.<sup>780</sup> In 1946, the colonial administration commenced implementing the street hawking provision of the *Children and Young Person's Ordinance* (CYPO) passed in 1943. The CYPO was modeled upon the *Children and Young Person's Act*, a law that was foundational to juvenile justice policy in England until the 1960s.<sup>781</sup> A significant innovation of this statute was that it empowered the state to rescue children from "dangerous home surroundings" and severely increased the probability that the state would actually do so.<sup>782</sup> Following passage of the law, where parental control was unsatisfactory, it was more likely than before to result in the state stepping in.<sup>783</sup> The CYPO introduced new questions about child welfare policies, as it tried to

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<sup>775</sup> Abosede, *supra* note 773 at 223.

<sup>776</sup> Aderinto, *supra* note 556 at 81.

<sup>777</sup> George Abosede, "Within Salvation: Girl Hawkers and the Colonial State in Development Era Lagos" (2011) 44:3 *Journal of Social History* 837.

<sup>778</sup> Aderinto, *supra* note 608 at 16.

<sup>779</sup> Abosede, *supra* note 566 at 11.

<sup>780</sup> Reference can be made to part 1 of this chapter.

<sup>781</sup> *Children and Young Person's Act*, 1933.

<sup>782</sup> Victor Bailey, *Delinquency and Citizenship: Reclaiming the Young Offender, 1914–1948* (Oxford: Oxford University Press, 1987) at 8.

<sup>783</sup> *Ibid.*

create new social categories like the ‘modern girl’.<sup>784</sup> For the first time in Nigeria’s history, girls were to be managed through a distinct set of procedures and legally grounded institutions.<sup>785</sup> The policy barred all children under the age of 14 years from selling goods on the street and from “playing, singing or performing for profit”.<sup>786</sup> Girls between ages 14 and 16 years were subjected to further limitations determined by the time of day, the vicinity and region where the sale was carried out.<sup>787</sup>

It is important to note that unlike general “market trading”, in most of Nigeria, street hawking was a “female gendered activity”.<sup>788</sup> Therefore, although the language of the regulations was largely gender neutral, the law was still understood to be aimed at placing a strategic ban on hawking by girls.<sup>789</sup> In response to street hawking by girls, a similar legislation was enacted in Northern Nigeria. The *Kano State Petty Trading Control (Amendment) Edict* prohibited hawking by girls under the age of 16 years.<sup>790</sup> Like the CYPO, the decree was also intended to “protect young female children from moral danger and exploitation”.<sup>791</sup> Instead of viewing the problem as being rooted in patriarchy and male dominance, the law focused on arresting the girls themselves and taking them to court, not by prosecuting the men who abuse young girls.<sup>792</sup> Secluded Muslim women and the young girls on whom they rely for their trade were the main victims of this legislation. By focusing on regulating the girl-child, the state simply rationalizes girls’ suffering and explains away the occurrence of child abuse. If protecting female children was indeed the purpose of state policy, then it is significant that other routes were not pursued. For example, the subject of the minimum age of marriage was first raised in 1950 in the Northern Regional House of Chiefs and the House of Assembly, but since such action would conflict with vested patriarchal interests, no

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<sup>784</sup> Abosede, *supra* note 566 at 11.

<sup>785</sup> The street trading regulations of the Children and Young Person’s Ordinance of 1943 were the first of a string of laws passed in the latter half of the twentieth century that made itinerant trading or hawking by children a punishable offense. See Bayo Lawal, “Markets and Street Trading in Lagos” in Toyin Falola & Steven Salm, eds, *Nigerian Cities* (Trenton: Africa World Press, 2004).

<sup>786</sup> *Children and Young Persons Street Trading Regulations*, 1946.

<sup>787</sup> The street trading regulations of the *Children and Young Person’s Ordinance* of 1943.

<sup>788</sup> Girls were not the only hawkers in Lagos, but hawking was a distinct practice of mainstream Lagosian girlhood. See Abosede, *supra* note 773 at 202.

<sup>789</sup> The number of girls arrested for street trading was greater than the number of boys arrested for criminal offenses and street trading violations put together. See Abosede, *supra* note 773 at 202.

<sup>790</sup> *Kano State Petty Trading Control (Amendment) Edict*, 1988.

<sup>791</sup> *Ibid.*

<sup>792</sup> See discussion in Pereira, *supra* note 694 at 89.

state directive on the minimum age was enacted in Northern Nigeria.<sup>793</sup> Also, under the pre-independence *Native Authority Law* of Northern Nigeria, a local authority could legislate in the area of “regulating child betrothals” and “regulating and controlling the movement of children and young females from or within the area”.<sup>794</sup> There were several attempts to utilize these powers in the late 1950s and early 1960s, at independence, to regulate child marriage.<sup>795</sup> Local authorities made declarations regarding a minimum marriageable age for Idoma, Biu, Tiv and Borgu marriages.<sup>796</sup> These four orders had diverse ages: puberty, 12, 13, and 14 years.<sup>797</sup> At the time, the laws were largely unsuccessful but they remained on the books in Nigeria in the 1990s although they were unknown even within the legal profession.<sup>798</sup>

Girl hawkers were different things to different observers. On the one hand, some observers viewed girl hawkers as simply vessels of cultural ideals and essential contributors to their families and the larger economy.<sup>799</sup> On the other hand, girl hawkers, unlike boys or women who hawked, were very sexualized in the imagination of certain observers who assumed that hawking encouraged and enabled sexual trading among some girls while it made other girls susceptible to sexual assault.<sup>800</sup> However, the campaign against girl hawkers was not only limited to the sexual dangers girls were potentially exposed to. Public condemnation of street hawking also aimed at controlling girls’ social interactions and public display.<sup>801</sup> The domesticity ideology underlying child marriages, reflected in chapter 3, seems to be an unwritten feature of street hawking regulations. Limiting girls to the home context, engaged with preparation for a life of domesticity, seemed to be both a “matter of necessity and of unwritten policy for the juvenile welfare system”.<sup>802</sup> As workers in the public domain, girls challenged elite gender standards that positioned women in private domestic

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<sup>793</sup> Renee Pitin, “Women, Work and Ideology in Nigeria” (1991) 52 *Review of African Political Economy* 38 at 39.

<sup>794</sup> Sections 38(17) and 38(18) of *Native Authority Law*, 1954 of Northern Nigeria respectively. Native Authorities are now called Local Governments in Nigeria.

<sup>795</sup> Bunting & Merry, *supra* note 313 at 326.

<sup>796</sup> *Ibid.*

<sup>797</sup> *Native Authority (Declaration of Tiv Native Marriage law and Custom) Order*, 1955, s 2(a): age of puberty; *Native Authority (Declaration of Idoma Native Marriage law and Custom) Order*, 1959, s 2(I)(a): age twelve; *Native Authority (Declaration of Borgu Native Marriage law and Custom) Order*, 1961, s 2(I)(a): age thirteen; *Native Authority (Declaration of Biu Native Marriage law and Custom) Order*, 1964, s 1(a): age fourteen.

<sup>798</sup> Bunting & Merry, *supra* note 313 at 326.

<sup>799</sup> Abosede, *supra* note 773 at 208.

<sup>800</sup> *Ibid.*

<sup>801</sup> Weinbaum, *supra* note 766 at 17.

<sup>802</sup> Abosede, *supra* note 773 at 219.

spaces.<sup>803</sup> Walking the streets with goods and cash in hand, girl hawkers could not be described using modern ideals and terms like vulnerable, innocent, powerless or dependent.<sup>804</sup> Their female gender made this even more challenging. At a certain point, “regulation advocates” proposed that there was an adequate number of boys in the city to take over the job of girl hawkers and so there was no demographic need for girls to street trade.<sup>805</sup> This domesticity ideology motivating juvenile girl reform reproduced and preserved a gender ideology that regarded men as the normative breadwinner, while women were homemakers.<sup>806</sup> This was an area of commonality between British and Northern Nigeria’s cultural understanding of girlhood. This commonality is still apparent in post-colonial Nigerian laws, as discussed in chapter 5.

## **(2) Illusions of Universality: The Modern Child**

Like child marriage, the street hawking campaign reflects a clear battle with the state for control over children. The “rhetoric of modernity” was strongly exhibited in colonial systems that viewed civilization as the pathway to the development of the African race.<sup>807</sup> The lives of children became a marker of modernity, African development, or the lack thereof.<sup>808</sup> As such, the regulation of childhood would justify and require cultural intrusions and impositions. Transformations in childhood and transformations in colonial rule were closely tied.<sup>809</sup> Policies reflected modernist colonial ideologies of individuality and autonomy; ideas that would eventually lead to a restructuring of people’s perceptions and understanding of childhood. Therefore, the more colonization was recognized as a force for social change, the more childhood was transformed in all spaces, including neighborhoods, playgrounds, and maternity wards.<sup>810</sup> The British method of child rearing portrayed what it means to be a child and what a typical child’s experience should be by regulating education and children’s conduct. Part of a highly informative newspaper is worth quoting:

Because the neglect of timely correction permits their contraction a stubbornness and obstinacy which ultimately become unconquerable unless through the most painful severity.

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<sup>803</sup> Abosede, *supra* note 773 at 213.

<sup>804</sup> *Ibid.*

<sup>805</sup> *Ibid.*

<sup>806</sup> For a nuanced discussion of the complex politics of this gender ideology in colonial Nigeria see Lisa Lindsay, “Domesticity and Difference: Male Breadwinners, Working Women, and Colonial Citizenship in the 1945 Nigerian General Strike” (1999) 104:3 *The American Historical Review* 783.

<sup>807</sup> Aderinto, *supra* note 608 at 8.

<sup>808</sup> Abosede, *supra* note 773 at 203.

<sup>809</sup> Abosede, *supra* note 773 at 202.

<sup>810</sup> Aderinto, *supra* note 608 at 8.



Before overlooking minor childish follies, the will of the child should be subdued and brought to revere its parents. . . . The conquest of the will of the children at home and at the school seem to be the only strong and rational foundation for a religious education without which it will not be unreasonable to expect that both example and precept will be practically ineffectual. The child must be capable of being governed by the reason and piety of its parents and spiritual teachers and masters till its own understanding shall come to maturity and the principles of religion shall have taken root in its mind.<sup>811</sup>

From the late 1920s, manuals on childhood and child rearing practices began to flourish as newspapers dedicated special columns to modern ways of raising children.<sup>812</sup> Issues such as the best meals and products for children, how children can be prepared for adulthood and the content of school curricula, were used to push forward a specific idea of childhood.<sup>813</sup>



Fig 3. An advert of children's body lotion<sup>814</sup>

The history of colonialism makes it possible to understand how Northern states view social reform as a developmentalist agenda rather than a protective agenda centring on the well-being of children. Beyond the need to improve services and provide infrastructure, the colonist state sought

<sup>811</sup> Education of Children, LDN, July 20, 1932.

<sup>812</sup> Aderinto, *supra* note 608 at 7.

<sup>813</sup> *Ibid.*

<sup>814</sup> Nigerian Daily Times, August 11, 1942; Abosede, *supra* note 773 at 38.

to improve people's lives directly. The objective of improving people's lives in ways that would be tolerable and accepted by both natives and colonists was resolved through a focus on children for new forms of regulation.<sup>815</sup> In this way, endangered children became the primary focus of the colonial state. Beyond simple improvement, children presented an even bigger opportunity for the colonist state. The state demonstrated a "bolder will to save" children from danger, from themselves and most importantly from their communities.<sup>816</sup> By urging a direct relationship with children as the future and hope of the state, the colonial state grounded its legitimacy in its position as a "source of salvation".<sup>817</sup>

Therefore, an assertion that the application of child protection legislation to girls in Northern Nigeria could be a developmentalist effort to progressively advance a new culture of girlhood may not be entirely unfounded. The street trading regulations discussed in the previous section were part of complex mechanisms that served the coming into being of the "universal child in Africa".<sup>818</sup> To be saved by the developmentalist state, the girl had to be remodeled from an unrestricted, autonomous working girl into a dependent, innocent, and modern child. That identity also had to be balanced with a notion of femininity that favoured and emphasized women's domestic activities over their public activities. These regulations missed their main target of reducing delinquency by criminalizing cultural practices rather than dismantling the main issues underlying the practice; criminalizing hawking did not change delinquency in colonial Nigeria.<sup>819</sup> These policies also changed the meaning of childhood in most regions; therefore, despite attempts at understanding childhood, it remains difficult to produce a true description in Nigeria. Nonetheless, while there are continuities between the developmentalist agenda in the 1940s and current imperialist practices of exploitation, I would contend that fixation on developmentalist and imperialist agendas could obscure the problem of violence experienced by girls.

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<sup>815</sup> Abosede, *supra* note 773 at 205.

<sup>816</sup> *Ibid* at 206.

<sup>817</sup> *Ibid*.

<sup>818</sup> Abosede, *supra* note 773 at 223.

<sup>819</sup> Laurent Fourchard, "Lagos and the Invention of Juvenile Delinquency in Nigeria, 1920-60" (2006) 47:1 *The Journal of African History* 115 at 135.

## Part V

### (1) Present-day Nigeria: Constructing Gender in Learning Materials and Visual Discourses

A girl's perception of herself and her relationship with others is not only conditioned by culture, religion, or other value systems. It is also conditioned through autonomous mechanisms participating in the construction of knowledge central in shaping the everyday lives of girls.<sup>820</sup> Relying on the language and terms within texts, my investigation in this section makes visible various domains of organisational processes that are otherwise ignored. In modern Nigeria, educational institutions and the media are useful channels for conveying ideas and conventions about girlhood and passing these ideas from one generation to the other. As Smith would predict, texts' ability to fulfill its institutional role depends heavily on the very effective technology of "reproducibility and stability".<sup>821</sup> These material properties enable the text to be extensively circulated and read by different people for different reasons.<sup>822</sup> And so, created with the primary purpose of being disseminated widely, the information produced by the media and educational institutions in Nigeria gives them "permanence- an immutability and duplicability" that is directly linked to their ability to be reproduced in a multitude of spaces at any point in time.<sup>823</sup> A number of studies on the portrayal of gender in media and school materials have been carried out in different regions in Nigeria.<sup>824</sup> The images and languages in adverts, newspapers and textbooks all embody a particular androcentric ideology that still maintain and sanction "masculinized ways of knowing".<sup>825</sup> They strengthen gender stereotypes already initiated at the family level where boys

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<sup>820</sup> Dan Sperber, *Rethinking Symbolism* (Cambridge: Cambridge University Press, 1975) 2.

<sup>821</sup> Dorothy Smith, *Writing the Social: Critique. Theory and Investigations* (Toronto: University of Toronto Press, 1999) at 39.

<sup>822</sup> *Ibid.*

<sup>823</sup> Jessica Gerrard & Lesley Farrell, "'Peopling' Curriculum Policy Production: Researching Educational Governance through Institutional Ethnography and Bourdieuan Field Analysis" (2013) 28:1 *Journal of Education Policy* 1 at 8.

<sup>824</sup> MB Bello et al, "Gender Sensitivity and Sustainable Development: A Representation from Macmillan Social Studies Textbooks for Basic Education in Nigeria" (2014) 7:2 *Journal of Educational Review* 189; JM Kobia, "Femininity and Masculinity in English Primary School Textbooks in Kenya" (2009) 28 *The International Journal of Language, Society and Culture* 57. In Bello et al's study of the images in lower basic (primary) Nigerian Social Studies textbooks found more male characters, but with particularly high numbers of young boys (40 percent of all characters, as compared to girls, who represented 17 percent of all characters). This trend can also be seen on the covers of textbooks. In four Nigerian English language textbooks, Kobia found that the number of girls represented on textbook covers decreased at higher levels. In Class 1, girls represented 4 of the 7 characters on the textbook cover but by Class 8, girls represented only 2 of the 9 characters". Also see Ifeoma Vivian Dunu & Gregory Obinna Ugbo, "South- East Nigerian Women's Perceptions and Responses: Alternative Views to Gender-Based Advertising Messages" (2018) 4:1 *International Journal of Journalism and Mass Communication* 050.

<sup>825</sup> See Marie Campbell & Frances Gregor, *Mapping Social Relations: A Primer in Doing Institutional Ethnography* (Toronto: AltaMira Press, 2004); Deveau JL, "Examining the Institutional Ethnographer's Toolkit" (2008) 4 *The Journal of the Society for Socialist Studies* 8; Penelope Simons & Melisa Handl, "Relations of Ruling: A Feminist

are raised to be strong and bold and girls to be submissive, “malleable, traditional preservers of nature”.<sup>826</sup>

## 1. Education

Education is a mechanism that structures social change while adjusting the roles of women and girls to meet the demands of this change.<sup>827</sup> From colonial to post-colonial Nigeria, educational institutions play a significant role in defining what it means to be a child and what a normal child’s experience should be by regulating such things as care for the children and childhood behaviour. Western style education was vital to accelerating the modernization of African girlhood.<sup>828</sup> In colonial Nigeria, imported ideas of women’s domesticity, primarily concentrated on preparing girls to become good wives and mothers through curriculum that emphasised “hygiene and courtyard culture”; boys by contrast, were equipped for public roles.<sup>829</sup> More specifically, in introducing education to girls in Northern Nigeria, the object was primarily to teach child care, welfare work, personal hygiene and domestic science.<sup>830</sup> It was hoped that the study of these subjects would make girls ‘good’ wives. Girls were permitted to leave school at the customary age of marriage.<sup>831</sup> The emphasis on domesticity of girls accorded with the need observed by the British to instruct and prepare a group of elite Hausa girls as modern housewives and helpers to the rising group of “male Nigerian administrators as well as the socialization of their children along similar lines”.<sup>832</sup> The Hausa ruling class was completely supportive of this. This education-linked system of domesticity strengthened and emphasized the concept of women’s dependence within the context of increasing physical control over women through other cultural practices like seclusion.<sup>833</sup>

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Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction” (2019) 31:1 Canadian Journal of Women and the Law 138.

<sup>826</sup> Florence Etta, “Gender Issues in Contemporary African Education” (1994) XIX:4 Africa Development 57.

<sup>827</sup> Titi Ufomata, “Linguistic Images, Socialisation and Gender in Education” (1998) XXIII:3 Africa Development at 61.

<sup>828</sup> See Pittin, *supra* note 299 at 12.

<sup>829</sup> *Ibid.*

<sup>830</sup> Tibenderana, *supra* note 488 at 94.

<sup>831</sup> J Trevor, “Western Education and Muslim Fulani/Hausa Women in Sokoto, Northern Nigeria” in GN Brown & M Hiskett, eds, *Conflict and Harmony in Education in Tropical Africa* (Rutherford: Fairleigh Dickinson University Press, 1976) at 257; Pittin, *supra* note 299 at 12.

<sup>832</sup> Pittin, *supra* note 299 at 13.

<sup>833</sup> Pittin, *supra* note 299 at 13.

This is still the situation in modern-day Nigeria. As discussed below, the language used in textbooks reinforce the same gender stereotypes. We will see that there is a strong inter-generational thread of cultural continuity, specifically that which emphasizes the subordination of women. Feminist textuality, as described in chapter 2, reveals that issues of cultural violence against girls are “acted-out realities inscribed within cultural attitudes that are textually transmitted”.<sup>834</sup> These texts shape the discourses around women and girls and give meaning to everyday practices that subordinate women and girls.<sup>835</sup> I see educational development in Nigeria as a cyclical process emphasizing and reproducing specific constructions of girlhood. The use of texts in the organisation of school knowledge produces and circulates knowledge and skills that have powerful effects on children.<sup>836</sup> I argue that teachers and educators translate policies through learning materials, forms, textbooks, teaching curricula, and so on. They contribute and push forward particular ideas of girlhood in their daily work. By the time girls finish primary education, they are conditioned to think in terms of feminine stereotypes. For example, Fig 4 and 5 below are excerpts of different textbooks relaying examples of roles assigned to men and women. Numerous studies show that there is still the issue of sexism in the language of textbooks, a gendered selection of subjects, sexual differentiation in career orientation and an over-all lack of understanding to social norms that affect girls.<sup>837</sup>

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<sup>834</sup> Meijer, *supra* note 231 at 368.

<sup>835</sup> *Ibid.*

<sup>836</sup> See discussion in Iduma Ogbonnaya-Iduma, “Gender Disparity in English Language Textbooks in Nigeria: Bridging the Gap for Literacy Development” (2014) 4:7 *Journal of Educational and Social Research* 19-24.

<sup>837</sup> Titi Ufomata, *supra* note 783 at 67; Ayodeji Ifegbesan, “Gender-Stereotypes Belief and Practices in the Classroom: The Nigerian Post-Primary School Teachers” (2010) 10:4 *Global Journal of Human Social Science* 29; Samuel Mustapha, “Gender Equality in and through Education in Nigeria: Gender Representation in Learning Materials” (03 July 2012), online: <http://shura.shu.ac.uk/5503/>.

	Male	Female
1	Boys should have toys such as footballs, building blocks, hammers, lawn mowers, ladders and paint brushes.	Girls should have toys such as dolls, tea sets and dinner sets.
2	Men should be in charge at home and in the workplace.	Women should support men in the home. Women should not be in charge at the workplace.
3	Men can be doctors, engineers, surveyors, directors, and do any jobs they love, and be in positions they want.	Women should be secretaries, nurses, teachers, librarians, cooks and so on.
4	The husband should earn money.	The wife should look after the children, cook, serve, do the dishes, ensure the house is clean, ensure children are well behaved and do their home work and make sure members of the nuclear family and the extended family are happy
5	Men should do maintenance work like mowing the lawn and repairing things around the house.	Women should do domestic chores.

Fig. 4: A page from a Nigerian textbook describing gender roles.<sup>838</sup>

In Kobia's analysis of images in English textbooks in Nigeria, male characters were frequently portrayed with positive character traits such as being studious, hardworking, creative, ambitious and knowledgeable.<sup>839</sup> On the other hand, females were more likely to be depicted as having more nurturing traits, such as being polite, shy, courteous, caring and dutiful, in addition to negative personality traits like being careless and indecisive.<sup>840</sup> Men were consistently positioned as more

<sup>838</sup> Daily Advent Nigeria, (18 January 2019), online: <http://www.dailyadvent.com/education/2019/01/18/see-what-a-textbook-is-teaching-school-children-about-gender-roles-photos/>

<sup>839</sup> JM Kobia, "Femininity and Masculinity in English Primary School Textbooks in Kenya" (2009) 28 *The International Journal of Language, Society and Culture* 57-71.

<sup>840</sup> See also Iduma Ogbonnaya-Iduma, "Gender Disparity in English Language Textbooks in Nigeria: Bridging the Gap for Literacy Development" (2014) 4:7 *Journal of Educational and Social Research* 19-24.

likely to be leaders, and women as needing to be led.<sup>841</sup> In Figure 5 below, we also see the advancement and promotion of a particular form of family organization and the allocation of gender roles.

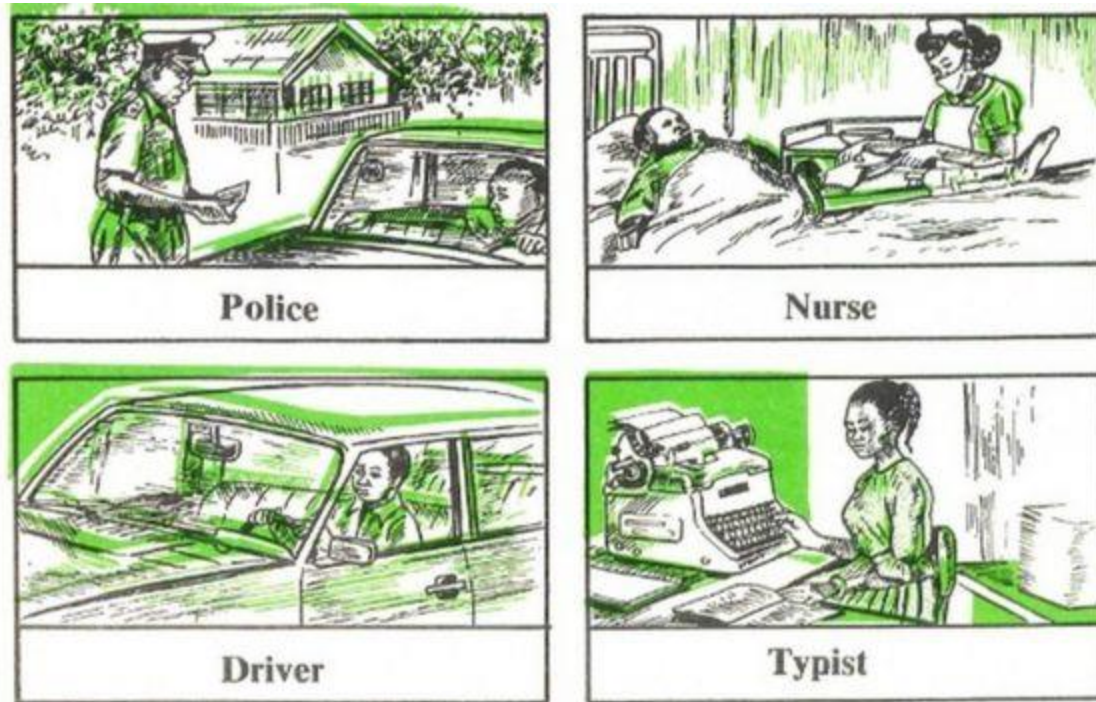


Fig. 5: A page from a Nigerian textbook teaching students about jobs and occupations with portraits.<sup>842</sup>

These instructional resources are powerful mechanisms in conveying the place of women and girls in society. For example, if children are exposed to schoolbooks where doctors and engineers are frequently male, and nurses and schoolteachers continuously female, girls logically aim to be nurses and schoolteachers while boys desire to become engineers and medical doctors.

## 2. Media

The above is also replicated in media advertisements. Using the media to understand girlhood is important because of the pervasiveness of media influence. Even in the most remote rural areas, media influence still infiltrates through “portable transistor radios, calendars and almanacs”.<sup>843</sup>

<sup>841</sup> Kobia, *supra* note 839 at 57.

<sup>842</sup> Valeria Perasso, “100 Women: ‘We can’t teach girls of the future with books of the past’” (9 October 2017), online at: <https://www.bbc.com/news/world-41421406>.

<sup>843</sup> Ufomata, *supra* note 837 at 62.



The internet also increases the speed and flexibility of information exchange to multiple and diverse settings in Nigeria.<sup>844</sup> The media are powerful agents of socialisation that subtly and indirectly shapes social reality for girls.<sup>845</sup> Nigerian media constructs normative boyhood and girlhood behaviour as core components of social organisation; they push forward a specific idea of the place of women and girls in society. Even with more women in positions of authority in the country, the Nigerian advertising media remains rigid in gender representations, with women overrepresented in the home and underrepresented in public and business settings.<sup>846</sup>



Fig. 6: Maggi and Der Rica adverts.

Since the ideal woman is a mother, housekeeper and a protector of morals, marrying girls early is preferred because it is easier to teach them to be submissive- socially, economically and sexually, to their husbands, to stay focused on bearing children and take up other domestic roles.<sup>847</sup> The

<sup>844</sup> In northern Nigeria, men refuse to allow their wives and children to use the Internet; and so, there is low internet use among women and girls. However, while the issues around equity of public access to the internet are still to be resolved in northern Nigeria, its possibilities as a resource for disseminating gendered information should not be underestimated and its ability to reproduce information creates a longer-term impact for women and girls. See discussion in YZ Ya'u and MA Aliyu, *Internet for Men? The Digital Marginalization of Women in Northern Nigeria* (Kano: Centre for Information Technology and Development, 2017).

<sup>845</sup> *Ibid.*

<sup>846</sup> Ifeoma Vivian Dunu & Gregory Obinna Ugbo, "South- East Nigerian Women's Perceptions and Responses: Alternative Views to Gender-Based Advertising Messages?" (2018) 4:1 *International Journal of Journalism and Mass Communication* at 52.

<sup>847</sup> Mohl, *supra* note 451 at 2-20.



advertisement of Dettol antiseptic below shows a mother playing with her baby on the floor and a male doctor at the front, confidently posed with hands crossed and focused on the camera with a woman and a girl in the background, smiling at the camera. Although these images have no obvious harmful depictions, children who view these advertisements are constantly exposed to subliminal messages of male dominance and female submission. The main consequence of the ideology in these images is to ensure coherence in society, whether by leading girls to accept false beliefs or by blocking their development of oppositional beliefs.<sup>848</sup>



Fig. 7: An advertisement of Dettol antiseptic.

I believe the gender stereotypes emerging from the above examples affect and condition a girl's expectation from life and society, the way in which she views herself, what she observes her role to be, how far she expects to advance in the family, education, her career and in society.<sup>849</sup> These texts show how the particular use of images and words reinforce ideologies that govern girlhood in modern Nigeria. They are coordinators of peoples' doings and their replicability gives them the ability to shape the experiences of girls in localized contexts.<sup>850</sup> These texts speak the same language and the meanings attached to them trigger a multiplicity of events within the social

<sup>848</sup> Nicholas Abercrombie & Bryan Turner, "Dominant Ideologies Thesis" (1978) 29:2 The British Journal of Sociology 150.

<sup>849</sup> Ufomata, *supra* note 837 at 63.

<sup>850</sup> Dorothy Smith, *Texts, Facts and Femininity: Exploring the Relations of Ruling* (London: Routledge, 1990) at 215.

setting.<sup>851</sup> As such, it becomes easier to understand how children in separate locations in Nigeria could be culturalized in the same manner.

## **Conclusion**

There is no single or simple answer to the question posed in this chapter. The social construction of childhood, specifically girlhood, is an ongoing process that has evolved through the pre-colonial era, colonisation, decolonisation, and nation-building in Nigeria. In referencing history, this chapter contends that postcolonial Nigeria's understanding of childhood is basically a compilation of principles and ideals reflected in the varying treatment of children within the legal, social, historical, and cultural domains. In the cultural sphere, these ideals are reflected in the entwined domains of Hausa tradition and Muslim ideology; in the historical, we see it through the priorities and interests of the British system of indirect rule and its ideology of female domestication; and in present-day Nigeria, we see it through the media and the schooling system. While we may not ignore the changes in political and legal developments taking place in Nigeria, a central feature of girlhood in Nigeria is that it remains remarkably the same. The gendered roles reflected in education and media assisted in discovering just how a girl's life is structured by social relations that go beyond the scope of her everyday experiences. Even though the adult male and female roles that children are trained to aspire to could change over time, this chapter showed that the gendered difference is a persistent aspect in the construction of childhood as a social category.

Another reason for including historical and social elements in this chapter is to avoid a standardization of childhood. The idea of defining childhood in terms of chronological age was a colonialist import not in line with most cultures. Present-day definitions of childhood in Nigeria continue to rely on the Western criterion of age. It was revealed that in the first place, most ethnic groups define childhood and adulthood not in terms of age, but through rites of passage and other aspects of culture. In Northern Nigeria, instead of the conventional emphasis on vulnerability, growing up, for girls, is measured in terms of autonomy and responsibility. Girls are expected and raised to be knowledgeable, independent, reliable, and mature at incredibly young ages. This view of girlhood is a critical determinant for the development of legislation and social policy. As such,

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<sup>851</sup> *Ibid.*

it could be said that the regulation of child marriage should not rely on a number or age but should instead be grounded in the experience of girls in specific cultural contexts. Defining girlhood in a way that is not reflective of Northern Nigeria's cultural contexts may give justification to, and even require incursions into their culture.

## CHAPTER 5

### A Violence Continuum: Internalization of Oppression

#### Introduction

I now turn to a fundamental aspect of this dissertation: examining the institutional and individual dimensions of oppression and how they are reciprocally determined. In chapter 4, I took the position that childhood in Nigeria is a complex interlocking set of beliefs, policies, social structures, and the everyday actions of adults and children. Even though advancing equality for all children using age as a marker is persuasive, different competencies and incapacities connected to childhood in various parts of Nigeria are numerous, and often suggest conflicting ideas of childhood.<sup>852</sup> In addition, the reality of oppression for girls is such that simply raising the age of marriage may not reduce the prevalence of harmful traditional practices (HTPs). Consequently, while I am concerned primarily with child protection, a comprehensive analysis is necessary to arrive at sustainable solutions. Otherwise, efforts to reduce HTPs will be constrained by limited views that neglect an analysis of the internal and external systems of control accounting for the continued oppression of girls.

This chapter analyses the dynamics of oppression faced by girls in cultural communities. Each dimension discussed can best be conceptualised as a continuum. In using the term ‘continuum’, I do not wish to make a connection between the different forms of violence experienced by women and girls. Several authors connect the different acts constituting a continuum of abuse for women, both in terms of time and space.<sup>853</sup> They argue that whether violence ensues in periods of conflict, post-conflict, or peace, the several forms and expressions of violence against women are simultaneously causes and consequences of inequality, discrimination, and oppression.<sup>854</sup> Instead, in this chapter, I consider child marriage across a continuum of relationships. My assumption is that cultural violence is a continuum of acts and attitudes embedded within individual, social and

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<sup>852</sup> Kaime, *supra* note 629 at 22.

<sup>853</sup> See for example Rashida Manjoo, “The Continuum of Violence against Women and the Challenges of Effective Redress” (2012) 1:1 Int’l Hum. Rts. L. Rev. 1; Marjorie Whittaker Leidig, “The Continuum of Violence against Women: Psychological and Physical Consequences” (1992) 40:4 Journal of American College Health 149-155; Aysan Sev’er, “Exploring the Continuum: Sexualized Violence by Men and Male Youth against Women and Girls” (1999) 24:1 Atlantis 92.

<sup>854</sup> Manjoo, *supra* note 853 at 1.

institutional practices. This continuum does not imply a hierarchy but instead suggests the interlocking nature of a girl's experience.

The primary intention of this chapter is to move the problem of power to the forefront of my analysis. Preceding chapters hinted that in Northern Nigeria, men are dominant and have superior status in the private sphere and that control is a key motivation for child marriage. However, in this chapter, I would like to pay close attention to other structures of power shaping the dynamics of change in the lives of women and girls. For example, law is a power-institution participating in legitimating processes that advance male dominant ideas. Laws are especially powerful texts, utilised repeatedly, reiterated by judges, referred to by lawyers while constructing our sense of the just and right.<sup>855</sup> Power is also applied when women reinforce social and cultural values and practices that constrain and endanger girls' well-being. There is an important difference between the two. In one case, the state openly participates through language and content of legislation and other political practices; in the other, women covertly participate by working to maintain the principles and ideologies that subject girls to violence.<sup>856</sup> As discussed below, there are many possible reasons rationalizing the role of women in perpetuating violence against girls. However, whatever the case, the central point to be made remains the same. To the extent that an individual or group intentionally or unintentionally creates or reinforces barriers to the protection of girls, that individual or group has power.<sup>857</sup> As such, it becomes impossible to overlook the role women play in strengthening community values and rituals.

In this chapter, I refer mostly to mothers and not fathers for specific reasons. As reflected in chapter 4, the principal caregiver in a girl's life is the mother. In Northern Nigeria, this is not necessarily the biological mother.<sup>858</sup> Mothers play a significant role in conditioning girls at an early age to be indifferent and unquestioning of what is really being done to her. Mothers overlook and offer clear validation of HTPs affecting the health and well-being of girls. In this respect, part one of the chapter draws attention to the fact that given the authority of older women over younger women,

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<sup>855</sup> Meijer, *supra* note 231 at 367.

<sup>856</sup> Peter Bachrach & Morton Baratz, "Two Faces of Power" (1962) 56:4 *The American Political Science Review* 947 at 948.

<sup>857</sup> *Ibid* at 949.

<sup>858</sup> In this context, a "mother" is not limited to a biological mother. Within the African communal setting, mothering goes beyond biological mothers to include extended family relatives (aunties, grandmothers).

older women are uniquely positioned to attain the dual objective of either “honoring tradition or negotiating change”.<sup>859</sup> Rather than opposing change, some older women may be positioned to reassess norms and practices while seeking solutions to protecting the physical well-being and cultural identity of girls in their families. Acknowledging older women as possible change makers and relying on the flexibility and adaptability of social norms, it may be possible to conceive interventions that encourage the abandonment of HTPs without undermining the value of culture.<sup>860</sup>

My focus on mothers in part one is also to understand how oppression is produced and reproduced among people in close relationships. Mothers in Northern Nigeria suffer from a duality which I believe has established itself in their inmost being. They battle over the choice of following “prescriptions or having choices; between speaking out or being silent; between spectators or actors”.<sup>861</sup> We will see how women have adapted to the structure of dominance, they have become accepting of it and are restrained by external factors from fighting for their autonomy. Even though some discover that without their freedom, they cannot live authentically, they still fear it.<sup>862</sup> They choose the safety of conforming with their present state to the possibility of a world free of oppression. This dilemma is one that should be carefully considered in attempting to address HTPs. Any reform strategy seeking to transform the situation of girls must confront this phenomenon. Women will need to perceive the reality of oppression not as an impenetrable domain from which there is no exit but as a limiting situation which can be transformed.<sup>863</sup> However, as reflected in part two of the chapter, this perception is necessary but not sufficient for the protection and liberation of girls. As women transform, we also need to ensure that they have a governance system capable of decreasing the unavoidable social costs resulting from their negotiations for change.

In this chapter, I argue that individual and institutional oppression supplement each other; there cannot be one without the other. Women do not exist in isolation; they exist in constant interaction with legal and political institutions. For most women in this context, oppression is systemic and

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<sup>859</sup> Bettina Shell-Duncan, Amadou Moreau et al, “The Role of Older Women in Contesting Norms Associated with Female Genital Mutilation/Cutting in Senegambia: A Factorial Focus Group Analysis” (2018) 13:7 PLoS One at 1.

<sup>860</sup> *Ibid.*

<sup>861</sup> Freire Paulo, *Pedagogy of the Oppressed* (New York: Continuum, 1970) at chapter 1.

<sup>862</sup> *Ibid.*

<sup>863</sup> Paulo, *supra* note 856 at 47.

institutionalised. There are institutional factors inhibiting women from fighting to transform their reality. These factors must be recognised to challenge the status quo. I do this in part two. In the end, any solution to child marriage must focus as much on institutional change as it does on individual transformation.

Part two analyses the capacity of law to validate dominant social and power relations in ways that come to be seen as normal and unchanging.<sup>864</sup> It also explains how cultural hierarchies and relations of subordination, even between mothers and daughters, have become acceptable to those who are persistently disadvantaged. Laws tend to romanticise women's lives and their roles in the family while according men significant power. In this section, I note that statutes, policies, and ideological assertions are created and executed on several levels. The state must be demarcated, since federal, state, and local governments reflect different policies and different sets of interests which merge and conflict around specific issues. In Nigeria, the federal and state government pursue parallel yet often conflicting policies, differentially expressed and operationalised depending on the interests to be protected.<sup>865</sup> Policy at the federal level appears accommodating to the interests of women, with the inclusion in the constitution of sections prohibiting sex discrimination.<sup>866</sup> This, however, must be related to other aspects of law associated with control over women. The Nigerian framework allows violence against women and girls to occur, too often with impunity. At state level, laws are rarely neutral in either text or application; instead, laws display a focus on "gender as part of cultural identity".<sup>867</sup> I also refer to statements made by political elite. By referring to statements, we notice a link and ideological continuity in the way women are perceived in the private and public sphere of knowledge production.

An overriding theme in this chapter is that although the institutional and individual dimensions of power are separate, they are related to each other through various mechanisms. The big theoretical problem is to understand the nature of this relationship in Nigeria. I must restate that although I focus primarily on women and girls in Northern Nigeria, the ideological power of this paradigm

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<sup>864</sup> Van Blerk, *supra* note 191 at 95.

<sup>865</sup> Renée Pittin, "Women, Work and Ideology in Nigeria" (1991) 52 *Review of African Political Economy* 38 at 39.

<sup>866</sup> Section 42 of the 1999 Constitution prohibits discrimination on the grounds of sex.

<sup>867</sup> Farida Shaheed, "Constructing Identities: Culture, Women's Agency and the Muslim World" (2002) 51:159 *International Social Science Journal* at 67.

in structuring social and legal policies is relevant to women in all regions in Nigeria. Its impact may differ according to class, ethnicity, and other factors.

## **Part I**

### **(1) Motherhood and Power**

In March 2006, twelve-year-old Halima lived with her grandmother and father in Darba, a ward in Kibiya Local Government Area of Kano State, northern Nigeria. Holding to tradition, Halima's grandmother insisted that Halima marry rather than return to school. Though Halima's father was a teacher and was deeply concerned about his daughter's well-being, he had no funds to pay the school fees. Adding to the dilemma, the grandmother threatened to ostracize Halima's father if he went against her wishes.<sup>868</sup>

Guglielmino's study on cultural variation in Africa confirms that culture is well-preserved when parents transfer culture to children.<sup>869</sup> Most traits examined in the study showed that cultural preservation over generations is largely made possible through group pressure and linguistic transmission by family members.<sup>870</sup> These cultural traits are well preserved because they are absorbed within the family by children at a young age when they are more easily manipulated and "plasticity is highest".<sup>871</sup> He further argues that under these conditions, reform strategies from outside groups through for example, teachers or powerful authorities, may have a limited chance of acceptance within family structure and kinship.<sup>872</sup> And so, in this section, I focus on one of the forces I find to be implicated in cultural preservation and change in Northern Nigeria. I pay specific attention to the 'power' sometimes held by women in the context of HTPs and what interpretations we can give it.

Generally, the way adults, specifically mothers, exercise power over children can go unnoticed. Much of the literature discussed in previous chapters highlight that control over women and girls are embedded in cultural, political, and legal structures. While some women oppose the status quo, others tolerate the demands of these structures and accept the task of upholding a system that to observers appear to work to their disadvantage. In chapter 4, it was highlighted that, as part of the

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<sup>868</sup> Armstrong Ukwuoma, *Child Marriage in Nigeria: The health Hazards and Socio-Legal Implications* (Abuja: Lulu Press Inc, 2014) at 203.

<sup>869</sup> CR Guglielmino et al, "Cultural Variation in Africa: Role of Mechanisms of Transmission and Adaptation" (1995) 92 Proc. Natl. Acad. Sci. 7585.

<sup>870</sup> *Ibid.* On linguistic transmission to girls during childhood, see discussion in chapter 3, part II.

<sup>871</sup> Guglielmino et al, *supra* note 864 at 7589.

<sup>872</sup> *Ibid.*



family, it is often women who will protect the boundaries demarcating proper female behaviour most jealously.

Seen superficially, it may not be in the best interest of women to discuss this mechanism of control. It is easier to keep a clear conscience by simply focusing on external factors, like poverty, education, male sexual violence, patriarchy, or health, that rationalizes the persistent oppression of girls. However, I believe it is important to appreciate how power is brought into play in the context of mothering. Women are not passive victims in HTPs performed on girls. Women reproduce male domination through their actions toward the young, that is, in referencing their role in female initiations, marriage ceremonies, their control over grand-daughters, daughters-in-law or younger cowives, etc.<sup>873</sup> Practices like breast ironing, female genital mutilation, forced feeding and virginity testing are generally spearheaded by women. For example, it is women whose breasts were ironed that actively participate in breast ironing and it is circumcised women who actively participate in genital mutilations.<sup>874</sup> Women are frequently active campaigners of cultural practices, arguing for them and conceiving them as being in the interests of children as members of cultural communities. Women describe HTPs as inherited from ancestors, reciting an often-repeated phrase, “we found it from our grandmothers”.<sup>875</sup> This phrase is a powerful explanatory rationale for the continuation of various HTPs.

Older women, as “custodians of tradition”, also play a major role in passing down traditional knowledge and ensuring that traditional values and practices are preserved.<sup>876</sup> Their skill, experience and knowledge is renowned, and their role in fostering the spiritual and physical well-being of family members is profoundly valued.<sup>877</sup> Given their role as social agents, these women play a crucial part in defining certain acts as legitimate. Mohanty argues that, often when a particular practice is the norm, even the victims of violence internalize it and accept it as

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<sup>873</sup> Nicole-Claude Mathieu, “When Yielding is not Consenting: Material and Psychic” (1989) 9 *Feminist Issues* at 54.

<sup>874</sup> Ngunshi, *supra* note 43 at 4.

<sup>875</sup> In the context of FGM, see Shell-Duncan et al, *supra* note 854 at 1; Ylva Hernlund, “Cutting without Ritual and Ritual without Cutting: Female “Circumcision” and the Re-ritualization of Initiation in the Gambia” in Bettina Shell-Duncan & Ylva Hernlund, eds, *Female “Circumcision” in Africa: Culture, Controversy, and Change* (Colorado: Lynne Rienner Publishers, 2000).

<sup>876</sup> Shell-Duncan et al, *supra* note 854 at 1.

<sup>877</sup> *Ibid.*

legitimate.<sup>878</sup> And so, it is not uncommon in many societies for women to support and participate in violence against other women, even when they themselves were subjected to the same violence. They work directly or indirectly to sustain such practices. As a result, women become direct participants in the promotion and perpetuation of violence against girls.

From the above, it is unsurprising that girls lack the power to challenge gendered norms associated with child marriage because it represents an objectionable challenge of the authority of women. As reflected in chapters 3 and 4, girls are compelled to assume certain responsibilities and perform tasks that are tied to the survival of their families. Mothers explain that the anguish and suffering girls experience toughens and prepares them to be resilient and strong in their marital homes.<sup>879</sup> Female elders also stress that through marriage, girls are taught the “art of subordination” to their husbands, their husband’s brothers and, significantly, to their mothers in-law.<sup>880</sup> Training in properly showing respect is carried out by “women in the extended family throughout a girl’s childhood”.<sup>881</sup> Since training begins at infancy, early conditioning makes it nearly impractical for the child to discern what is actually happening to her.<sup>882</sup>

The conviction that mothers are right and their actions, whether conscious or unconscious, are an indication of their love is profound because it is based on a process of internalization occurring during the first months of a girl’s life.<sup>883</sup> It is also a form of harm reduction by mothers. By enforcing and modelling behaviour that complies with patriarchal norms, mothers assist their daughters in avoiding the male violence that follows ‘unwomanly’ behaviour.<sup>884</sup> Girls are then expected to become mothers, to also realize fulfilment in their mothering, and to forgo their selfhood for their children’s needs. These expectations are defining qualities serving as guideposts

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<sup>878</sup> Chandra Talpale Mohanty, “Introduction: Catagographies of Struggle: Third World Women and the Politics of Feminism” in Chandra Talpale Mohanty, Ann Russo & Lourdes, eds, *Torres Third World Women and the Politics of Feminism* (Bloomington: Indiana University Press, 1991).

<sup>879</sup> Isaac Prilleltensky & Lev Gonick, “Politics Change, Oppression Remains: On the Psychology and Politics” (1996) 17:1 *Political Psychology* 127 at 134.

<sup>880</sup> F Ahmadu, *Cutting the Anthill: The Symbolic Foundations of Female and Male Circumcision Rituals among the Mandinka of Brikama, The Gambia* (Doctoral Dissertation, London School of Economics, 2005) [unpublished] at 58.

<sup>881</sup> *Ibid.*

<sup>882</sup> Alice Miller, *For Your Own Good: Hidden Cruelty in Child-Rearing and the Roots of Violence* (New York: Farrar, Straus and Giroux, 1990).

<sup>883</sup> *Ibid.*

<sup>884</sup> Insightful comments from Prof. Cameron.

for a reproduction of behaviours, attitudes, and ideologies about gender in Northern Nigeria. It confines generations of families in cycles of violence.

However, there are serious limitations to claiming that the ‘power’ exercised by women is enough to determine the stability of cultural practices. I do not want to persistently use the word ‘power’ to describe women’s minor success in the mysteries of male dominance in Northern Nigeria. My arguments above are merely suggestive. Simply using ‘power’ to paint a picture of oppression, regarding women, could be camouflaging the mental and material work women must accomplish to survive in society.<sup>885</sup> And so, through the lens of postmodern feminism, in the next section, I look at the details of women’s lives in Northern Nigeria. Benhabib’s approach to postmodern feminism allows us to critically analyze and recognize the lived experiences of mothers in Northern Nigeria.

### **1. Internalised Oppression and the Dialects of Mothering**

Attempting to reduce the vulnerability of children, a few scholars believe that criminal justice reform is a vital component of efforts to reduce cultural violence against girls.<sup>886</sup> Section 23(c) of the *Child Rights Act* provides that a “person who promotes the marriage of a child commits an offence” and is liable on conviction of a fine or imprisonment.<sup>887</sup> Holding mothers accountable for girls’ exposure to violence could be a vital step in the process of ending the intergenerational transmission of cultural violence. It might also be argued that women who expose children to violence and abuse by encouraging child marriage and other HTPs should be prosecuted. A caring mother would be one who appreciates her daughter as a person not a possession to be married off. Many justifications can be used in support for this point of view. However, while concern for the girl-child is my selling point, problematic interventions could completely worsen the situation for

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<sup>885</sup> Mathieu, *supra* note 868 at 51.

<sup>886</sup> See for example Karen Hughes, “The Criminalization of Female Genital Mutilation in the United States” (1995) 4:1 *Journal of Law and Policy* 321-370; Andrew Morrison, Mary Ells berg et al, “Addressing Gender-based Violence in the Latin American and Caribbean Region: A Critical Overview of Interventions” (2004) 3438 *World Bank Policy Research Working Paper* 16; Nancy Kellner, “Under the Knife: Female Genital Mutilation as Child Abuse” (1993) 14 *J. Juv. L.* 118; Els Leye & Jessika Deblonde “A Comparative Analysis of the Different Legal Approaches Towards Female Genital Mutilation in the 15 EU Member States, and the Respective Judicial Outcomes in Belgium, France, Spain, Sweden and the United Kingdom” (2004) 8 *ICRH Publications* 10-40.

<sup>887</sup> Section 23 of the CRA criminalises the practice by stating that “A person – (a) who married a child; (b) to whom a child is betrothed; (c) who promotes the marriage of a child; or (d) who betroths a child, commits an offence and is liable on conviction of a fine of 500,000 (five hundred thousand) Naira or imprisonment for a term of five years or both such fine and imprisonment”.

women and girls. I realise that it would be easy to adopt a criminal law position while neglecting the burdens and struggles associated with parenting for women in Northern Nigeria. I also acknowledge that my argument about women's 'power' does not provide the complete picture of women's lives. There are (rare) occasions where women's situation is socially revealed, as in the weeping or wailings that follow a girl's marriage.<sup>888</sup> And so, in this section, I focus on highlighting important aspects of women's lives found in many communities in Northern Nigeria- aspects that are generally ignored or simply denied by advocates of criminal justice reform.

Dissecting the isolated and complicated lived experiences of women unveils reasons and motivation behind women's actions. A "punitive maternal focus" decontextualizes women from wider institutional, societal, and familial factors shaping their experiences.<sup>889</sup> It could also expand the scope of state intervention beyond child protection into every area of women's lives in the name of making them suitable mothers.<sup>890</sup> This creates a system likely to focus on maternal conduct and not on the larger circumstances, such as male violence, in which the families exist or the fact that many women have very limited choices. The result would be a "punitive, rather than empowering system" fixated on mothers rather than on children.<sup>891</sup> Therefore, to understand, to try to explain, we need to step back and untangle certain inconsistencies in mothering ideology in Northern Nigeria.

The mothering experience of women in Northern Nigeria is filled with dialectical tensions. For example, mothering confers both parental power and an enormous load of responsibility. Mothers are romanticized as life-giving, self-sacrificing, and forgiving,<sup>892</sup> and at the same time demonized as overpowering, overly involved, and oppressive.<sup>893</sup> They are also believed to be all-powerful, "holding the fate of their children and ultimately the future of society in their hands, and as

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<sup>888</sup> Mathieu, *supra* note 868 at 54.

<sup>889</sup> Annette Appell, "Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System [An Essay]" (1997) 48:3 SCL Rev at 580.

<sup>890</sup> *Ibid.*

<sup>891</sup> Appell, *supra* note 884 at 579.

<sup>892</sup> See BA Oladele, "Yoruba Understanding of Authentic Motherhood" in Toyin Falola & Sati Umaru Fwatshak, eds, *Beyond Tradition: African Women and Cultural Spaces* (Trenton: Africa World Press, 2011).

<sup>893</sup> See discussion in previous section.

powerless subordinated to the dictates of nature, instinct, and social forces beyond their kin”.<sup>894</sup> Mothers make different choices in navigating the difficulties around preparing children to fit into systems of domination. Some women remain helpless in the face of external forces that encourage girls to assimilate and submit to sexist ideologies, male sexual violence and hierarchical structures in the family and community.<sup>895</sup> Other mothers become unknowing conduits of the dominant ideology; they persuade their daughters to fit in, for reasons of survival.<sup>896</sup>

In communities where child marriage prevails, kinship remains the prominent form of social organization.<sup>897</sup> While each family has their own dynamics, hierarchy and ways of engaging with their community, the idea of a person tends to be highly relational; an individual’s identity and personhood are often entwined with that of their family, and extends to the social group.<sup>898</sup> This social fabric implies that collective involvement in maternal decisions is part of current social dynamics in African communities.<sup>899</sup> This interdependence and interconnectedness encourages unity and support within the social environment, but produces great pressure for compliance, which mothers experience.<sup>900</sup> As discussed in chapter 3, through marriages, alliances are created between relatives.<sup>901</sup> Support for the family is grounded in culture; economic opportunities, access to property, health care, and social security all emanate from relations between close or extended kin. Conforming to the status quo, could be the best possible means of protecting children from adverse consequences, in their best interests. In addition, sexual restraint is an issue of family honour, and honour is conferred mainly on the actions of women, specifically daughters and sisters.<sup>902</sup> As such, a family’s “fund of honour” determines its capacity to control material

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<sup>894</sup> Evelyn Nakano Glenn, “Social Constructions of Mothering: A Thematic Overview” in Evelyn Nakano Glenn, Grace Chang & Linda Rennie Forcey, eds, *Mothering: Ideology, Experience, Agency* (London: Routledge, 2016) at 10.

<sup>895</sup> Patricia Hill Collins, “Shifting the Center: Race, Class, and Feminist Theorizing about Motherhood” in Evelyn Nakano Glenn, Grace Chang & Linda Rennie Forcey, eds, *Mothering: Ideology, Experience, Agency* (London: Routledge, 2016) at 58.

<sup>896</sup> *Ibid.*

<sup>897</sup> Boddy, *supra* note 433 at 94.

<sup>898</sup> H Triandis, “The Self and Social Behavior in Different Cultural Contexts” (1989) 96:3 *Psychol Rev.* 506.

<sup>899</sup> K Wiredu & K Gyekye, *Person and Community: Ghanaian Philosophical Studies* (Washington: Council for Research in Values and Philosophy, 1992).

<sup>900</sup> Sophia Koukoui, Ghayda Hassan & Jaswant Guzder, “The Mothering Experience of Women with FGM/C Raising ‘Uncut’ Daughters, in Ivory Coast and in Canada” (2017) 14:51 *Reproductive Health*.

<sup>901</sup> Boddy, *supra* note 433 at 94.

<sup>902</sup> *Ibid.*

resources, which in turn affects its ability to be seen as valued and reputable allies.<sup>903</sup> A family that loses honour could find its sons and daughters unmarriageable, its continuity threatened, its financial opportunities limited and its “political maneuverability gone”.<sup>904</sup> Therefore, for women, power, as well as clan solidarity and assured marriageability, is gained from maintaining the practice. Failure to uphold traditional practices is viewed as “maternal negligence” on the part of the collective of women who are responsible for their daughter’s upbringing.<sup>905</sup>

In addition, the underlying realities of women’s lives in Northern Nigeria are so ‘private’ and ‘secluded’ that their experiences and hidden wounds are not fully publicized.<sup>906</sup> Preparing children to cope with and survive within systems of oppression is extremely difficult. Mothers face specific challenges pertaining to societal and familial pressure to have daughters married off. As highlighted above, raising unmarried daughters has important consequences for women’s mothering experience. If a mother allows her daughter to reach the age of 15 years at home, she is seen as irresponsible and her children are snubbed.<sup>907</sup> Therefore, by continuing child marriage, women also protect themselves from the cost of nonconformity. They encourage child marriage not because they desire to do them harm, but because they want the best for their children.<sup>908</sup>

There is undoubtedly some truth in the idea of women's power over children, but it could be wrongly understood if we ignore that it is the kind of power delegated through mental and physical oppression, a power that in fact only expresses women’s absence of power.<sup>909</sup> It is not difficult to understand that if their submission in their youth was their means of survival, these women could be unable to imagine any other way than training the young in line with what they believe to be their personal method of adaptation, a method also presented to them as constituting their worth or their courage as a woman.<sup>910</sup> Also, given the deep-seated nature of socio-cultural beliefs and gender hierarchy, women’s views on dominant beliefs and roles most certainly constitutes a

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<sup>903</sup> *Ibid.*

<sup>904</sup> *Ibid.*

<sup>905</sup> BA Oladele, “Yoruba Understanding of Authentic Motherhood” in Toyin Falola & Sati Umaru Fwatshak, eds, *Beyond Tradition: African Women and Cultural Spaces* (Trenton: Africa World Press, 2011).

<sup>906</sup> Pittin, *supra* note 860 at 39.

<sup>907</sup> Girls not Brides, “Maimuna’s Story, Nigeria” (19 September 2013), online: <https://www.girlsnotbrides.org/girls-voices/maimunas-story-nigeria/>

<sup>908</sup> Boddy, *supra* note 433 at 95.

<sup>909</sup> Mathieu, *supra* note 868 at 54.

<sup>910</sup> *Ibid.*

minority; women may be fearful that acting contrary to these beliefs could be interpreted as an expression of disloyalty to the institution, and Islam in the contested political and religious context in Nigeria.

Under such conditions, the substantial constraints on women's lives give them no realistic option other than to cooperate with cultural rules.<sup>911</sup> Women know what they must do to survive in a world whose "terms they did not set but which their own actions help to ensure".<sup>912</sup> I believe the argument about women's power does not present a complete picture of women's lives in Northern Nigeria. And so, tackling harmful traditional practices by punishing mothers who fail to protect their children from abuse is a doubtful strategy.

## **2. Resisting New Essentialisms: A 'model' Mother**

Based on the discussion above, could it be said that a mother who supports child marriage is neither incompetent nor thoughtlessly following custom but simply making a perceptive and contextually proper decision about the future welfare of her daughter? In simplified terms, despite constraints to her autonomy, should she not be perceived as a 'bad mother'? The answer to this question is extremely important for women in Northern Nigeria because a specific construction of mothering is required for any reform of child protection laws. For example, such construction could take the form of ideological and legislative imperatives requiring women's role in society to be principally, if not exclusively, "bearers and rearers of 'fit' children".<sup>913</sup> If women are caretakers of the family, any advancement of a 'model' childhood or 'model' family in child protection legislation cannot happen without concurrent promotion of a 'model' mother.<sup>914</sup> It carries with it specific expectations of behaviour and attitude, laying emphasis on care and protection of children, and less value on the control of women.<sup>915</sup>

Despite the underlying realities of women's lives in Northern Nigeria, supporting unsympathetic women, 'bad mothers', may be the most challenging aspect of my research. Especially when considering the significant injuries experienced by girls, the task of morally interpreting women's

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<sup>911</sup> Boddy, *supra* note 433 at 96.

<sup>912</sup> *Ibid.*

<sup>913</sup> Alison Diduck, "Legislating Ideologies of Motherhood" (1993) 2:4 Social & Legal Studies 461 at 467.

<sup>914</sup> *Ibid* at 466.

<sup>915</sup> Diduck, *supra* note 908 at 465.

actions becomes daunting. Nonetheless, I acknowledge that labelling women who sanction harmful traditional practices as ‘bad mothers’ generates essentialist notions of motherhood and women’s roles within culture that is not necessarily dedicated solely to the protection of children.<sup>916</sup> And so, in this section, I interrogate certain essentialisms I believe contribute to sustaining the structures of violence that oppress women and guarantee the perpetuation of HTPs as a prevailing cultural reality for girls. Applying a postmodern feminist approach in this section means examining essentialist ideas of motherhood and creating a space within which the experiences and motivations of women who practice HTPs on girls can be understood.

An anti-essentialist effort strongly opposes reducing women’s experience in Northern Nigeria to a single unified figure of womanhood.<sup>917</sup> Essentialist cultural labelling of ‘bad mothers’ operate to limit our inquiry into the material conditions of women’s lives, making those conditions irrelevant to any law reform agenda.<sup>918</sup> It renders women’s true “narratives unknowable”, denies them agency and accepts patriarchal gender ideologies.<sup>919</sup> It assumes an all-powerful mother who is entirely responsible for her children and is subsequently blamed for everything from her daughter’s shortcomings to the crisis of cultural experience.<sup>920</sup> The woman is positioned as a housekeeper, protector of morals, and the best way to eradicate violence is to educate women and police their behaviour.<sup>921</sup> This is the narrative adopted in child protection campaigns. Imagery puts women on the frontline of dealing with harmful cultural practices.

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<sup>916</sup> *Ibid.*

<sup>917</sup> Marie Ashe, “Bad Mothers, Good Lawyers, and Legal Ethics” (1993) 81 Geo. L.J. 2533 at 2549.

<sup>918</sup> Sarah Singh, “Criminalizing Vulnerability: Protecting ‘Vulnerable’ Children and Punishing ‘Wicked’ Mothers” (2017) 26:4 Social & Legal Studies at 512.

<sup>919</sup> *Ibid.*

<sup>920</sup> Glenn, *supra* note 889 at 10.

<sup>921</sup> Abdi Gele et al, “Attitudes Toward Female Circumcision among Somali Immigrants in Oslo: A Qualitative Study” (2012) 4:7 Int J Womens Health 7; BA Oladele, “Yoruba Understanding of Authentic Motherhood” in Toyin Falola & Sati Umaru Fwatschak, eds, *Beyond Tradition: African Women and Cultural Spaces* (Trenton: Africa World Press, 2011).



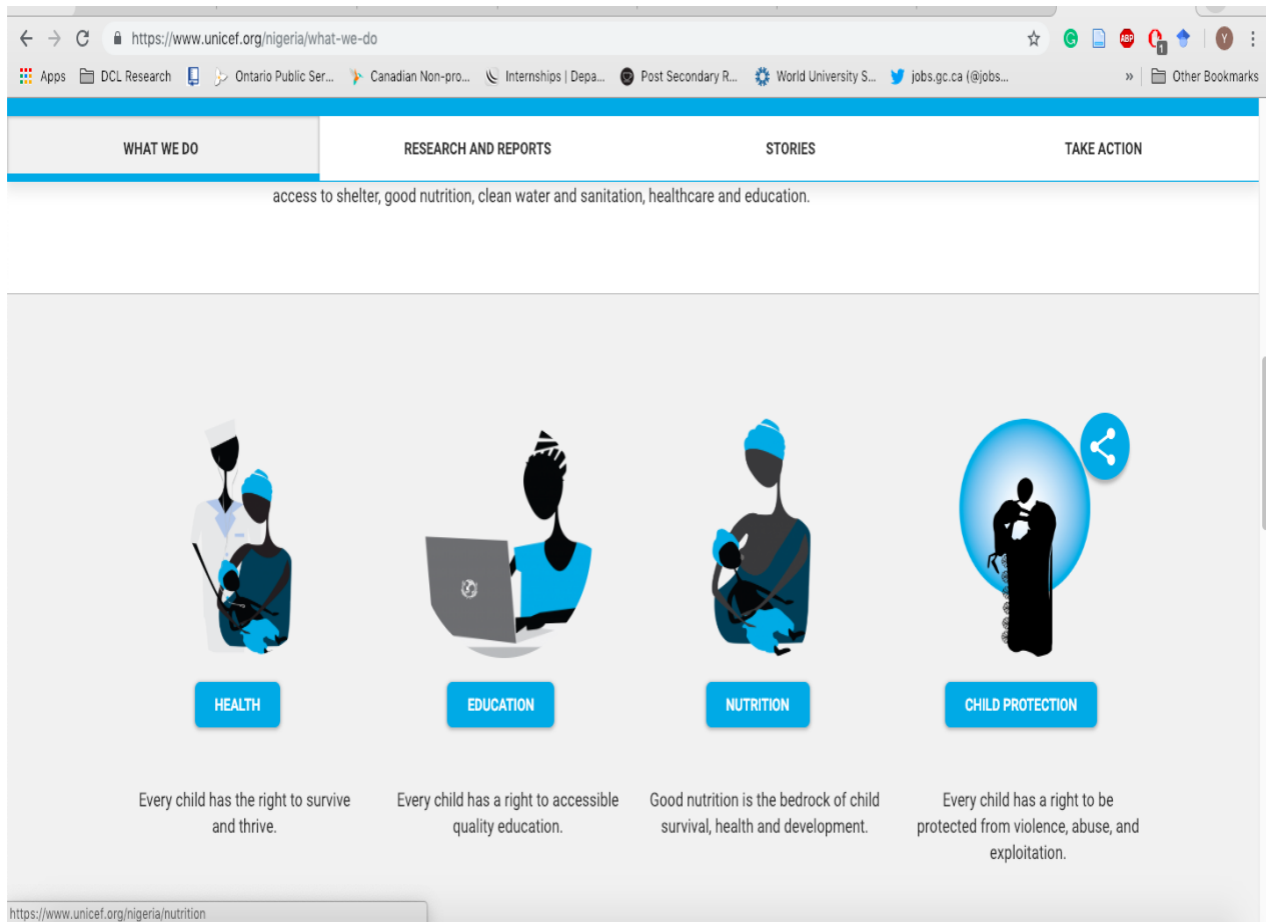


Fig. 8: UNICEF Nigeria.<sup>922</sup>

Print media images used in chapter 4, in addition to the above image used for example by UNICEF in their campaign for children in Nigeria creates a gendered division of labour which puts a strain on women to hold the family together as a work site.<sup>923</sup> As Smith would predict, these texts privilege certain actors over others and prioritise authoritative male ways of knowing. Within these campaigns, images of fathers are removed from the private “sphere of relations of care” but instead positioned in the public, an “autonomous and emotionally detached realm”.<sup>924</sup> This “feminization of responsibility” and the idea of a good mother shifts focus from destabilising ideological structures forming the foundation for the continuous perpetration of these practices within the

<sup>922</sup> UNICEF Nigeria, “Child Survival and Development” online at: <https://www.unicef.org/nigeria/what-we-do>

<sup>923</sup> A majority of the images used in these campaigns tend to show women either teaching or caring for a group of children at the exclusion of men.

<sup>924</sup> Freeman, *supra* note 435 at 54.

home.<sup>925</sup> The emphasis placed on women in these campaigns implies that only women can properly guide their children. It puts women in service of the society, her husband and her children.

## **Part II**

### **(1) Ideology in a Patriarchal Society**

By highlighting family systems and the reproduction of violence from mothers to daughters across generations, the preceding section assists in expanding our understanding of (un)conscious motivations of cultural violence and internalised oppression. However, not only internal systems, but also powerful explicit rules embedded within discriminatory legal institutions permit the expressions of violence in culture. In this section, I argue that internalised gender oppression in Northern Nigeria is “institutionalised and systematic”.<sup>926</sup> This position reflects the Critical Legal Studies (CLS) approach that views law as an instrument used to sustain the status quo of society’s power structures.<sup>927</sup> Through the lens of CLS, I focus on legitimating systems and, more specifically, on how law is used as a tool to bring into being specific gender ideologies that assist in the production and reproduction of violent and discriminatory practices within homes. In this way, we see that the oppression experienced by girls within homes does not derive exclusively from the inner workings of cultural life.<sup>928</sup>

The diverse ideas on whether the state should interfere with cultural norms and whether it should single out disadvantaged groups for special protection have had a lasting impact on the social position and identity of women in Nigeria. In Nigeria, the state is not monolithic. Diverse policies and ideas are presented and pursued at different political levels, for specific and distinct political purposes.<sup>929</sup> We will see how the state occasionally presents conflicting policy and ideology within and between several levels of government, with significant consequences on women and girls in Northern Nigeria. Intervention in HTPs is couched in different terms, with several justifications and with women and children sometimes adjusting to shifting ideological positions.<sup>930</sup> While

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<sup>925</sup> Sylvia Chant, “The ‘Feminisation of Poverty’ and the ‘Feminisation’ of Anti-Poverty Programmes: Room for Revision?” (2008) 44:2 *Journal of Development Studies* at 165 at 185.

<sup>926</sup> Sandra Lee Bartky, *Femininity and Domination Studies in the Phenomenology of Oppression* (New York: Routledge, 1990) at 23.

<sup>927</sup> See discussion in Chapter 2.

<sup>928</sup> Prilleltensky & Gonick, *supra* note 874 at 132.

<sup>929</sup> Pittin, *supra* note 860 at 50.

<sup>930</sup> *Ibid.*

acknowledging that HTPs may originate from culture, culture does not explain the techniques through which these practices are secured despite its fluid nature.

Certain basic notions about women and social relations provide meaning to the lives of women and girls in Northern Nigeria. For women, who are regularly made the “repositories of culture”,<sup>931</sup> the problem of ideology is crucial. Exploring the maneuvering of the state in Asia, Agarwal contends that the state focuses on “institutional and ideological contradictions” in order to advance a specific gender ideology; it sets itself up in opposition to a prevalent ideology; or mediates between prevailing conflicting ideologies in order to “legitimise its own position and policies regarding women”.<sup>932</sup> I would suggest that in the Nigerian context, the different levels of laws and policies regarding gender are neither coordinated nor necessarily coherent, except insofar as they encourage the domestication and domesticity of women and girls.<sup>933</sup>

In defining the limits of this ideological space, I note that women’s reality is not the governing ideology, and women’s perspective is dominated by men’s views. Therefore, if women decide to enlarge their space as women by rejecting and reformulating the roles formerly assigned to them, they are in fact challenging more than the “contours of their own lives”.<sup>934</sup> Women’s empowerment both challenges and is challenged by cultural, legal and political norms.<sup>935</sup> How women’s identity is created, who defines it, how understandings of gender fit into definitions of “community and those of a collective and personal self”,<sup>936</sup> the interaction between definitions of the local, regional, and federal levels of government in Nigeria- these are of direct significance to women and girls’ desire to redefine the conditions of their lives.

The CLS idea that certain features in legal discourse impede fundamental change is useful. As reflected below, in Nigeria, the body of laws, especially in personal and family law, structures women and girls’ everyday lives and determines what is possible and impossible at the personal,

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<sup>931</sup> Shaheed, *supra* note 862 at 63.

<sup>932</sup> B Agarwal, “Patriarchy and the “Modernizing” State: An Introduction” in B Agarwal, ed, *Structures of Patriarchy: State, Community and Household in Modernizing Asia* (New Delhi: Zed Books, 1988) at 14.

<sup>933</sup> Pittin, *supra* note 860 at 50.

<sup>934</sup> Shaheed, *supra* note 867 at 63.

<sup>935</sup> *Ibid.*

<sup>936</sup> *Ibid.*

community and national levels. Whether formal or informal, expressly or implicitly, laws project an ideal for society.<sup>937</sup> I view law in Nigeria as a “source of alienation and oppression” and also an instrument used in maintaining the status quo of society’s power structures.<sup>938</sup> Just as CLS requires us to think critically about law’s language and the relevance of power structures, in this section, I contend that laws are framed with a specific social end in sight and that the oppression experienced by girls at the individual level is grounded in law.<sup>939</sup> My focus here is on the capacity of the state to enhance, protect and promote the rights of women and girls. I reveal how legal reasoning within federal and state laws regulating violence against girls’ center on specific interests, ideals, priorities, and standards. If a life free of violence requires protection provided by the state, then the state must assist girls in realising their needs and aspirations.

## **(2) Law as an Apparatus of Transmission of Beliefs**

I contend that the state in Nigeria is primarily patriarchal and male-controlled. There is substantial agreement in describing post-independence African states as patriarchal, but this is usually attributed to inherited colonial systems that excluded women or to the exclusionary nature of state formation.<sup>940</sup> Chazan puts it this way:

Women have neither played a significant part in the creation of the modern state system on the continent, nor have they been able to establish regular channels of access to decision-makers. State policies toward women have, as a result, exhibited varying degrees of discrimination and coercion.<sup>941</sup>

It is beyond the scope of this chapter to analyse the roles of women in contemporary African states or the involvement of women in the formation of modern Nigeria.<sup>942</sup> A more fruitful approach would be to consider the ways in which current state practices are gendered and exclusionary. In this way we quickly see how law is fundamentally conceived with male needs and ideals in

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<sup>937</sup> Shaheed, *supra* note 867 at 67.

<sup>938</sup> Unger, *supra* note 188 at 563.

<sup>939</sup> Christopher Norris, “Law, Deconstruction, and the Resistance to Theory” (1988) 15:2 *Journal of Law and Society* at 174.

<sup>940</sup> Amina Mama, “Feminism or Femocracy? State Feminism and Democratization in Nigeria” (1995) 20:1 *Africa Development/Afrique et Development* 37 at 39.

<sup>941</sup> N Chazan, “Gender Perspectives on African States” in Jane Parpart & Kathleen Staudt, eds, *Women and the State in Africa* (Boulder: Lynne Rienner Publisher, 1989) at 186.

<sup>942</sup> For a discussion of this, reference can be made to Amina Mama, “Feminism or Femocracy? State Feminism and Democratization in Nigeria” (1995) 20:1 *Africa Development/Afrique et Development* 37.

mind.<sup>943</sup> Deeming law as a “gendering terrain” allows an understanding of inconsistencies within law’s engagement with women.<sup>944</sup> How law shapes society’s evaluation of women and girls is particularly important. I contend that the social arrangements highlighted in previous chapters, including the role played by women, are provisional cultural constructions rather than intrinsic or inescapable conditions. Therefore, understanding the architecture of the governmental action behind the institution of child marriages is very crucial.

In Nigeria, there are different ways of depicting the different interests that law tries to satisfy. The idea that law is gendered arises from my observation of constitutional and legislative provisions, in addition to political statements made by men in power. From this observation, we see how legal discourse features a sexual division not only in terms of what law can validly do with regards to its provisions and procedures, but at a deeper level of what the “law can intelligibly think”.<sup>945</sup> The provisions in the texts I refer privilege certain actors over others and prioritise authoritative male ways of knowing. As discussed in chapter 2, a crucial aspect in Smith’s thinking, writing and teaching is the significance of questioning “practices of knowing and knowledge that are taken for granted”.<sup>946</sup> With this approach in mind, my aim is to “deconstruct law as gendered in its vision and practices” and also highlight how patriarchal beliefs are extremely embedded in legal thought and legal reasoning.<sup>947</sup> In this section, we will see that, despite the state’s efforts at law reform, these efforts contain rather obvious inconsistencies. Legal discourse in Nigeria exemplifies a male standpoint and institutionalises male interests. It cannot envisage a “subject in whom gender”<sup>948</sup> is not a decisive attribute; it cannot contemplate such a subject.

Consequently, instead of inquiring into how “law can transcend gender”, the more productive question posed in this section is “how does gender work in law and how does law work to produce gender?”<sup>949</sup> By asking this question, we will then be able to view law as a system that produces

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<sup>943</sup> Wendy Williams, “The Equality Crisis: Some Reflections on Culture, Courts, and Feminism” in Katharine Bartlett & Rosanne Kennedy, eds, *Feminist Legal Theory: Readings in Law and Gender* (Boulder: Westview Press, 1991).

<sup>944</sup> Carol Smart, “The Woman of Legal Discourse” (1992) 1 *Social and Legal Studies* 29.

<sup>945</sup> Hillary Allen, *Justice Unbalanced* (Milton Keynes: Open University Press, 1987) at 30.

<sup>946</sup> Dorothy Smith, *Institutional Ethnography: A Sociology for People* (New York: Altamira Press, 2005) at 169.

<sup>947</sup> Janet Riflndn, “Toward a Theory of Law and Patriarchy” (1980) 3 *Harv. Women’s Law J.* 83; Diane Polan, “Toward a Theory of Law and Patriarchy” in David Kairys, ed, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982).

<sup>948</sup> Allen, *supra* note 940 at 30.

<sup>949</sup> Smart, *supra* note 939 at 34.

not only gender difference but also a system that validates the oppression of women and girls. This section is devoted to an investigation of the incoherence uncovered in certain legal ideas and views and to determine the implications of these contradictions for women and girls in Northern Nigeria. I am concerned with the specific ways in which legal rules promote a systematic domination of women and girls by providing the certainty that facilitates the rationalisation of HTPs and the reproduction of violence within the home. Recognizing that some achievements have been realised in rights protection, in this section, I hope to demonstrate that these achievements mask the reality for women and girls within the cultural context.

### **1. Constitutional Language**

At independence, most African states inherited constitutions containing provisions safeguarding human rights to varying degrees.<sup>950</sup> There was, however, no reason to assume new leaders, who had no understanding or knowledge of democracy or constitutional rule, would hurriedly forget the lessons of authoritarianism and oppression learned from colonizers.<sup>951</sup> Since most sub-Saharan African states gained independence in quick succession, the British colonial office engaged in rigorous drafting and logged numerous hours in the constitution making process.<sup>952</sup> The so-called “third wave of democratization of the 1990s” released a trend of constitution-making and re-making in Africa, and nurtured hopes for a modern era of constitutionalism, respect for human rights and good governance.<sup>953</sup>

The language of these constitutions had many similarities, suggesting that the constitutional provisions were primarily drawn from patterns familiar to the departing colonial power, hence reflecting assumptions uncommon to African societies.<sup>954</sup> A number of these drafting similarities appeared in the Bill of Rights provisions. The drafters of these post-colonial constitutions grappled with balancing minority group rights protection and individual rights.<sup>955</sup> These constitutions contained some protection of fundamental rights, such as non-discrimination, but contained

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<sup>950</sup> Abdullahi An-Na'im, “The legal protection of human rights in Africa: How to do more with less” in A Sarat & TR Kearns, eds, *Human Rights Concepts, Contests and Contingencies* (Michigan: University of Michigan Press, 2001).

<sup>951</sup> *Ibid.*

<sup>952</sup> Johanna Bond, “Gender and Post-colonial Constitutions in Sub-saharan Africa” in Helen Irving, ed, *Constitutions and Gender* (Cheltenham: Edward Elgar Publishing, 2017) at 87.

<sup>953</sup> Charles Fombad, “The Context of Justice in Africa: Emerging Trends and Prospects” in Evelyn Edroma, ed, *Rethinking the Role of Law and Justice in Africa's Development* (Addis Ababa: UNDP, 2013) at 6.

<sup>954</sup> Bond, *supra* note 947 at 87.

<sup>955</sup> *Ibid.*

exclusionary provisions that removed personal and customary law from the purview of the constitution.<sup>956</sup> As such, these modern African constitutions failed to address the several human rights abuses integral to customary laws and practices, especially those marginalizing women and children.<sup>957</sup> Therefore, contrary to what many expected, the constitutional entrenchment of fundamental rights, especially the non-discrimination provisions, has not provided a solid foundation for the protection of women and girls. For example, according to Chapter II, section 17(1) of Nigeria's constitution the state's social order is grounded on the ideals of "freedom, equality and justice".<sup>958</sup> However, the relief these provisions are thought to have provided is eliminated by the constitution itself in section 6(6)(c) which states that the provisions of Chapter II of the constitution are mere policy guidelines and not justiciable.<sup>959</sup> The Supreme Court of Nigeria, in *Okogie v The Attorney General of Lagos State*<sup>960</sup> reinforced this non-justiciability. This was also echoed in *AG Ondo v AG Federation* when the court held:

No court can enforce the provisions of chapter ii until the [National Assembly] has enacted specific laws for their enforcement... They remain mere declarations, they cannot be enforced by legal process... It is for the executive and the legislature, working together [,] to give expression to them through enactment. Thus, they can be made justiciable through legislation.<sup>961</sup>

The belief that a country's constitution is gendered implies that it has an unequal or disparate effect on women and men.<sup>962</sup> Symbolic messages of laws unequal treatment of women can be found in the masculine language and grammatical expressions used in the constitution. While vocabulary or linguistic expressions of gender is not the focus of this thesis, one cannot be complacent about the legal implication and discriminatory potential of the ideologies projected by the single use of masculine words. This is exemplified in the recurring use of male-only pronoun references for all nominated and appointed public offices in the executive, judicial and legislative arms of government in Nigeria. Section 131 of the constitution states:

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<sup>956</sup> *Ibid.*

<sup>957</sup> Fombad, *supra* note 948 at 6.

<sup>958</sup> Section 17 of the *Constitution of the Federal Republic of Nigeria, 1999*.

<sup>959</sup> See the case of *Oronto Douglas v Shell Petroleum Development Company Limited*, [1999] 2 NWLR 591; Section 6(6)(c) of the 1999 Constitution; Apart from section 42 which prohibits discrimination on the grounds of sex, the Constitution contains no specific and substantive provisions on the protection of women's rights.

<sup>960</sup> *Okogie v The Attorney General of Lagos State* [1981] 2 NCLR 337 SC.

<sup>961</sup> *AG Ondo v AG Federation* [2002] 9 NWLR (772) 222 SC.

<sup>962</sup> Helen Irving, *Constitutions and Gender* (Cheltenham: Edward Elgar Publishing, 2017) at 1.

A person shall be qualified for election to the office of the President if - (a) **he** is a citizen of Nigeria by birth; (b) **he** has attained the age of forty years; (c) **he** is a member of a political party and is sponsored by that political party; and (d) **he** has been educated up to at least School Certificate level or its equivalent.<sup>963</sup>

Even though it is unlikely that gendered language in a constitution would be interpreted literally to exclude women today, the symbolic implication of this language remains.<sup>964</sup> According to Smith, texts, particularly written texts in law, are used within institutions to regulate almost every aspect of life, and so, they are undoubtedly of major importance in producing certain “generalization and standardization of people’s doing”.<sup>965</sup> It is not simply by accident that masculine pronouns are mostly used for individuals in the Nigerian constitution. A total of 480 male pronoun references was used and no single example of a female pronoun reference.<sup>966</sup> I would like to think that this remained in constitutional language simply as a remnant of history but this type of representation has important implications for the ideology embedded in the constitution.<sup>967</sup> The question is, basically, how much should a constitution “speak to the members of its community”?<sup>968</sup> Yes, judicial interpretation could influence the meaning of words; however, carefully chosen words could reduce negative outcomes for girls. A constitution that speaks only to or mostly to men leads to harmful assumptions about the roles, qualities and capacities of women and girls. There is a risk that such assumptions will be embedded in the consciousness of girls. For example, the recurring use of male pronouns for the positions of President and Vice President, and other posts indicates that women are neither qualified nor expected to occupy such positions.<sup>969</sup> The effect of this ostensibly harmless representation on the consciousness of a girl-child who reads this at school may be significant. First, such representations may impress in her consciousness the belief that her identity as an individual is not acknowledged, and second, it may repress a growing

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<sup>963</sup> Section 131 of the 1999 Constitution. Also see sections 132, 133, 134 and 135.

<sup>964</sup> Irving, *supra* note 957 at 63.

<sup>965</sup> Smith, *supra* note 237 at 167.

<sup>966</sup> This is also confirmed by Chinwe Ezeifeke & Nneka Osakwe, “Gender Representation in the 1999 Nigerian Constitution: A Critical Discourse Analysis for Socio-political Equity” (2013) 24:6 *Discourse & Society* 687.

<sup>967</sup> *Ibid.*

<sup>968</sup> Irving, *supra* note 957 at 63.

<sup>969</sup> Ezeifeke & Osakwe, *supra* note 961 at 687.



desire to aim to the heights specified since she is trained from youth by the school system and by the “constitution to think of such positions as the exclusive preserve of males”.<sup>970</sup>

Nonetheless, Nigeria’s constitutional text holds great prospects for addressing the subordination of women to men. Many amendments to the Constitution were made over the course of this century to change law’s role, both in limiting women’s rights and in relegating women to powerless positions within the private sphere.<sup>971</sup> Human rights provisions guaranteeing non-discrimination and recognising gender equality progressively address the rights of women and girls.<sup>972</sup> The constitution also recognises and provides better prospects for the protection of children.<sup>973</sup> Nigeria’s legal foundations and case law also reflects an eagerness for the next step in the development of judicial equality for women. Courts have reformed some discriminatory practices. In *Anekwe & Anor v Nweke*, the Supreme Court struck down an Awka Igbo custom that “excludes a childless widow from inheriting her husband’s property”.<sup>974</sup> In *Ukeje v Ukeje* the court found unconstitutional an “Igbo customary law that denied female offspring the right to inherit the property of their fathers”.<sup>975</sup> There are also a host of court decisions stating that the best interests of the child should be given paramount consideration in decisions affecting children. The case of *William v William*<sup>976</sup> and *Odogwu v Odogwu*<sup>977</sup> are landmark cases touching on the best interests

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<sup>970</sup> *Ibid.*

<sup>971</sup> The 1999 constitution restored democratic rule to Nigeria. In January 2011, several amendments of the 1999 constitution were signed by President Olusegun Obasanjo, including section 42(1) which states that (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

<sup>972</sup> Chapter IV of the 1999 Constitution recognizes various human rights, particularly in relation to civil and political rights. These include the right to life, dignity, personal liberty, private and family life, freedom from discrimination, freedom of thought, conscience and religion, and the right to freedom of expression and the press; Section 17(2) notes that “in furtherance of the social order: (a) every citizen shall have equality of rights, obligations and opportunities before the law; and (b) the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced”.

<sup>973</sup> According to section 17(3)(f) of the 1999 Constitution, children, young persons and the age are protected against any exploitation whatsoever, and against moral and material neglect.

<sup>974</sup> *Anekwe & Anor v Nweke* [2014] LPELR – 22697 (SC) 2.

<sup>975</sup> *Ukeje v Ukeje* [2014] LPELR-22724 (SC).

<sup>976</sup> *Williams v Williams* [1987] 7 NWLR (Pt 252) 187.

<sup>977</sup> *Odogwu v Odogwu* [1992] 2 NWLR (Pt 252) 539.

principle. Section 1 of the *Child Rights Act*<sup>978</sup> defines this principle and it is applied to custody, divorce, and the division of property.<sup>979</sup> For several reasons discussed below, it has not been applied to child marriage.

Nigeria's equality jurisprudence, having come this far for women and children and bearing such huge promise, is inspiring. However, these laws and legal institutions developed from systems originally designed, implemented, structured and interpreted by men.<sup>980</sup> Accordingly, they are likely to have taken as definitive the concerns their male creators knew from personal experience, overlooking or masking the consequences on women.<sup>981</sup> For example, section 26 of the constitution confers the right of citizenship to any foreign woman who is married to a male Nigerian citizen but denies such right to foreign men married to a female Nigerian citizen.<sup>982</sup> Of particular importance is section 29(4)(a) of the constitution which specifies that "full age means the age of eighteen years and above" but section 29(4)(b) states that "any woman who is married shall be deemed to be of full age". During the review of the 1999 constitution, the Senate Committee in July 2014 voted to remove paragraph (b) of section 29(4) because it validates child marriage; however, after much deliberation, the Senate reversed its position and retained this paragraph.<sup>983</sup>

Therefore, despite the progress made, there remain enormous obstacles in applying constitutional rights in a meaningful way that will advance the lives of girls. The state's idea of and approach toward gender profoundly shapes the power of the constitution to change gender-based inequality in law and society. My inference is that the male subtexts concealed within sections like 29(4)(b) are not accidental but are integral to the ideologies fuelling the continuous perpetration of violent

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<sup>978</sup> Section 1 states that "in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration".

<sup>979</sup> See for example *Onwochei Odogwu v Otemeoku Odogwu* [1992] LPELR-SC.297/1991; *Ayemoba v Ayemoba* [2018] LPELR-CA/K/382/2016; *Ojeniran v Ojeniran* [2018] LPELR-CA/IL/112/17.

<sup>980</sup> Vicki Jackson, "Gender Equality, Interpretation, and Feminist Pluralism" in Helen Irving, ed, *Constitutions and Gender* (Cheltenham: Edward Elgar Publishing, 2017) at 222.

<sup>981</sup> *Ibid.*

<sup>982</sup> Section 26(2)(a) of the 1999 Constitution.

<sup>983</sup> Kayode Olatunbosunx Fayokun, "Legality of Child Marriage in Nigeria and Inhibitions against Realisation of Education Rights" (2015) 12 US-China L. Rev. 818.

practices.<sup>984</sup> What is important here is that through provisions like section 29(4)(b), law is used as a tool to bring into being specific forms of division by constructing identities to which individuals, in our case girls, become tied or associated.<sup>985</sup> In this way, we see that the same forces determining women's status relative to men within culture determine the nature of constitutional guarantees of equality and how vigorously they are interpreted and implemented.<sup>986</sup>

## 2. Other Legal Provisions

In relation to women and girls, the inclusion in the constitution, for example, of sections prohibiting discrimination based on sex must be related to other aspects of law and policy. Powerful oppressive discourses in legislation exist alongside the equality provisions in the constitution; these constraints render good intentions ineffective. The laws referred to in this section are created and implemented at the federal and state level. The overall direction of these policies is the maintenance of an ideological affirmation of women as wives, mothers, and helpmates to men.<sup>987</sup> These policies ensure that there is strong inter-generational thread of cultural continuity, specifically that which emphasises the subordination of women. In this section, we also see that gender roles are not just limited to realm of family and interpersonal relationships. We will see that the construction of gender is visible even in areas where the state claims universality and neutrality,<sup>988</sup> for example in labour and criminal laws.

The different statutes analysed here regulate different facets of the social environment. Even though they each regulate disparate fields, as Smith would predict, these texts speak the same language and the meanings attached to them trigger a multiplicity of events within the social setting.<sup>989</sup> Their capacity to transcend the evolving nature of cultural and social processes while retaining its uniformity across disparate local settings in Nigeria is key to its peculiar force.<sup>990</sup> Like Campbell, I am of the view that once we fully understand the notion that power is entrenched in written materials, and in organizational actions around texts, we will begin to see how individuals

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<sup>984</sup> Julie Ada Tchoukou, "Religion as an ideological weapon and the feminisation of culture in Nigeria: a critical analysis of the textuality of violence through the legal regulation of child marriages" (2020) 24:10 at 1525.

<sup>985</sup> Smart, *supra* note 939 at 34.

<sup>986</sup> Catharine Mackinnon, "Gender in Constitutions" in Michel Rosenfeld & András Sajó, eds, *The Oxford Handbook of Comparative Constitutional Law* (Oxford: Oxford University Press, 2012) at 5.

<sup>987</sup> Pittin, *supra* note 860 at 39.

<sup>988</sup> Smith, *supra* note 236 at 4.

<sup>989</sup> Ada Tchoukou, *supra* note 979 at 1524.

<sup>990</sup> Dorothy Smith, *Institutional Ethnography: A Sociology for People* (New York: Altamira Press, 2005) at 169.

at separate sites are bound together to act in concert.<sup>991</sup> This inherently leads to a reconceptualization and provides a different way of reflecting on the numerous cultural practices perpetrated against girls.<sup>992</sup>

In understanding how legal texts function as constituents of social relations, relying on Smith's methodology, my interest here is in explicating texts as creating an active social process.<sup>993</sup> These statutes exclude certain experiences from the realm of legislative concern and reflect certain organizational interests as the dominant interest.<sup>994</sup> For example, section 118 of the *Police Act* states that "married women are disqualified from enlisting in the police".<sup>995</sup> Section 121 also provides that "women police officers shall as a general rule be employed on duties which are concerned only with women and children".<sup>996</sup> Section 124 of the same Act states that "a woman police officer who is desirous of marrying must first apply in writing to the commissioner of police for the state police command in which she is serving, requesting permission to marry...". While section 127 states that "an unmarried woman police officer who becomes pregnant shall be discharged from the Force and shall not be re-enlisted except with the approval of the Inspector-General".<sup>997</sup>

Gendered provisions within policy regulating the police force, an agency of the executive arm of government, evidences a specific ideology that encourages an intense disregard for women's experiences while privileging a masculinised way of knowing.<sup>998</sup> The constructions of gender in this Act facilitates a specific idea of womanhood, an idea that shapes the experiences of girls.<sup>999</sup> According to Smith, textual materials generally present themselves as "sources of information about something else, rather than as a phenomenon in their own right".<sup>1000</sup> Therefore, even though the Police Act has no correlation with the practice of child marriages, its approach shares a presupposition represented as "part of an active process of dialogue" between the external and the

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<sup>991</sup> Campbell & Gregor, *supra* note 266 at 25.

<sup>992</sup> Ada Tchoukou, *supra* note 979 at 1524.

<sup>993</sup> Dorothy Smith, *Texts, Facts and Femininity: Exploring the Relations of Ruling* (London: Routledge, 1990) at 215.

<sup>994</sup> Campbell & Gregor, *supra* note 266 at 37.

<sup>995</sup> Section 118 of the *Police Act*, 2004.

<sup>996</sup> Section 121 of the *Police Act*, 2004.

<sup>997</sup> Section 127 of the *Police Act*, 2004.

<sup>998</sup> Ada Tchoukou, *supra* note 979 at 1525.

<sup>999</sup> *Ibid.*

<sup>1000</sup> Dorothy Smith, *Texts, Facts and Femininity: Exploring the Relations of Ruling* (London: Routledge, 1990) at 120.

internal.<sup>1001</sup> This dialogue is evident in the correlation between child marriage and gender in Northern Nigeria. Marrying girls early is preferred because it is easier to teach them to be submissive, socially, economically, and sexually, to their husbands, to stay focused on bearing children and take up other domestic roles.<sup>1002</sup> By marginalizing and excluding women and emphasising the role of men in this sector, the *Police Act* reinforces similar ideologies embedded in the practice of child marriage.

Other gendered provisions include section 55 of the *Labour Act* barring women from employment at night except as nurses.<sup>1003</sup> This provision seems to be female protective, in the way that it accounts for the unequal reality of women since they are at greater risk of experiencing violence if commuting at night but its purpose and effect is also paternalistic in the sense that it keeps women in subordinate roles.<sup>1004</sup> Laws, like the *Labour Act*, generate several frameworks and hierarchies of workplace rights which can easily be manipulated to the detriment of women. Another example is section 360 of the *Criminal Code* which makes the indecent assault of women a misdemeanour punishable with a two-year term, as opposed to three years' prison term imposed for indecently assaulting a man, which is a felony in section 353.<sup>1005</sup> In addition, even though section 218 of the same *Criminal Code* punishes by life imprisonment any person who has unlawful carnal knowledge of a girl under the age of thirteen and can imprison for two years

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<sup>1001</sup> These sections of the Police Act also have significant social consequences and may deprive impoverished families of a source of economic support. For example, demographic indicators suggest that the economics of parenting in Nigeria encourages elevated rates of early marriage. A few scholars contend that within these poor settings, child marriage is a strategy to alleviate parents of the expenses and obligations of raising a girl. Therefore, a provision that limits employment to only unmarried women and encourages the immediate discharge of pregnant unmarried women increases the economic vulnerability of women and girls. See N Otoo-Oyortey & S Pobi, "Early Marriage and Poverty: Exploring Links for Policy and Programme Development" (2003) 11 *Gender & Development*; Annabel Erulkar & Eunice Muthengi, "Evaluation of Berhane Hewan: A Program to Delay Child Marriage in Rural Ethiopia" (2009) 35:1 *International Perspectives on Sexual and Reproductive Health* 6.

<sup>1002</sup> Mohl, *supra* note 451 at 2-20.

<sup>1003</sup> The *Labour Act*, Chapter 198, Laws of the Federation of Nigeria 1990 provides at section 55(1) that "no woman shall be employed on night work in a public or private industrial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof". Subsection 2 states that "subsection (1) of this section shall not apply to women employed as nurses".

<sup>1004</sup> Mackinnon, *supra* note 986 at 8.

<sup>1005</sup> The *Criminal Code Act*, Chapter 77, Laws of the Federation of Nigeria 1990. Section 360 states that "any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanor and is liable to imprisonment for two years"; while Section 353 states that "any person who unlawfully and indecently assaults any male person is guilty of a felony and is liable to imprisonment for three years. The offender cannot be arrested without warrant". This provision also encodes continuing discrimination against homosexuals in Nigeria. By impeding their basic rights and entitlements, homosexuals have been and still are targets of discrimination and violence in multiple spheres of life. And so, they encounter difficulties when they are victims of crimes.

anyone who has similar knowledge of a girl above thirteen but under sixteen, unlawful carnal knowledge is held not to include “sexual relations by a man with a **girl under sixteen to whom he is married**”.<sup>1006</sup> This law is ironic because on the one hand it purports to protect girls under sixteen and on the other hand withdraws such protection by recognizing child marriage.

### **3. Women, Morality and Decency in Northern Nigeria**

When one looks at the Nigerian legal system as a whole and to the system in operation in Northern Nigeria, it can easily be said that the system is centered on male dominant agendas. Since the beginning of Indirect Rule,<sup>1007</sup> Northern Nigeria has preserved and applied strongly patriarchal policies.<sup>1008</sup> At that time, these policies represented an ideological and material merging of interests between colonial authorities and the Northern elite but the present ideological and political environment displays a “consistency and continuity in relation to control over women”.<sup>1009</sup> However, the structures through which this control is exercised, and the ideological explanation for it, have changed in line with shifting conflicts in Nigeria.<sup>1010</sup> At one level, as highlighted in chapter 3, there is the conflict between secularity and religious affiliation.<sup>1011</sup> There is also the clash between the professed equality of women and men, and the reality of formal and informal control over women.<sup>1012</sup> This is followed by the periodic “scapegoating of women as saboteurs of the economy and moral community”.<sup>1013</sup>

Since 1999, states in Northern Nigeria officially adopted Islam into their legal system.<sup>1014</sup> These states insist that the application of Sharia will decrease social vices like prostitution and alcoholism

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<sup>1006</sup> Section 6 *Criminal Code* which states that “unlawful carnal knowledge” means carnal connection which takes place otherwise than between husband and wife”.

<sup>1007</sup> Indirect rule was a system of administration used by the British colonial government to govern people using traditional rulers and traditional political institutions. The colonial government determined what these traditional institutions were and rejected aspects of tradition deemed unacceptable. This process led to a gradual modification of pre-colonial institutions in various parts of Nigeria. See Obaro Ikime, “Reconsidering Indirect Rule: The Nigerian Example” (1968) 4:3 *Journal of the Historical Society of Nigeria* 421.

<sup>1008</sup> Pittin, *supra* note 860 at 38.

<sup>1009</sup> *Ibid.*

<sup>1010</sup> See Pereira, *supra* note 694 at 89.

<sup>1011</sup> *Ibid.*

<sup>1012</sup> *Ibid.*

<sup>1013</sup> *Ibid.*

<sup>1014</sup> Sarah Crutcher, “Stoning Single Nigerian Mothers for Adultery: Applying Feminist Theory to an Analysis of Gender Discrimination in International Law” (2004) 15:2 *Hastings Women’s Law Journal* at 239.

and thus decrease society's social and moral corruption.<sup>1015</sup> In principle the adoption of Sharia could address a number of challenges in economic and social development.<sup>1016</sup> However, in practice, all twelve Sharia states put emphasis on public morality and punishment for offences such as *zina* (extra-marital sex).<sup>1017</sup>

The workings of the Sharia states are used by dominant groups to permanently suppress the lives of women and girls. Beliefs, rituals, values, and institutional processes operate systematically and consistently to the advantage of certain individuals and groups at the expense of others.<sup>1018</sup> The emphasis on morality is part of the new fundamentalism in which women are represented as domestic and domesticated beings.<sup>1019</sup> For example, the debate over women's use of motorcycle transportation changed its focus from women's safety to public morality. In May 2004, the Kano State House of Assembly passed its *Traffic Amendment Law* banning women from "riding on commercial motorcycles".<sup>1020</sup> According to the Director-General of the Sharia Commission in Kano State:

Everyone knows the type or manner in which women sit on motorcycles and it looks quite adulterous because women sit quite close to Achaba riders with their bodies touching each other. If mere looking can lead to adultery, then the manner in which women sit on motorcycles can increase the rate of adultery.<sup>1021</sup>

Systemic and institutionalised dominance, as well as discriminatory policies, tighten the oppression of women and girls in Northern Nigeria. The Sharia penal codes' treatment of rape and *zina* is a clear example of this. The Quran establishes *zina* as a punishable crime, but at the same time, it creates an extremely high standard of proof for *zina* prosecutions: four eyewitnesses to the

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<sup>1015</sup> Hussaina Abdullah, "Religious Revivalism, Human Rights Activism and the Struggle for Women's Rights in Nigeria" in Abdullahi An-Na'im, ed, *Cultural Transformation and Human Rights in Africa* (London: Zed, 2002) at 177.

<sup>1016</sup> These include provisions for the collection and distribution of *zakat*- the charity tithe, one of the five pillars of Islam- or the implementation of regulations prohibiting usury the interest charged on loans by banks or moneylenders. See Abdullah, *supra* note 1010 at 177.

<sup>1017</sup> Any form of consensual sexual relations between a man and a woman who are not married to one another (Arabic). Offences are referred to as fornication or adultery, depending on marital status. See Charmaine Pereira & Jibrin Ibrahim, "On the Bodies of Women: The Common Ground Between Islam and Christianity in Nigeria" (2010) 31:6 *Third World Quarterly* 921.

<sup>1018</sup> Pittin, *supra* note 860 at 45.

<sup>1019</sup> *Ibid.*

<sup>1020</sup> *Traffic Amendment Law*, 2004. The law punishes a defaulter with a six-month imprisonment and a fine of 5,000 Naira (US\$37).

<sup>1021</sup> Fatima Adamu, "Gender, Hisba and the Enforcement of Morality in Northern Nigeria" (2008) 78:1 *Journal of the International African Institute* at 148.

act of sexual intercourse.<sup>1022</sup> All but one of the many schools of Islamic law<sup>1023</sup> adopt this high standard, making it virtually impossible for any case to be prosecuted. However, the Maliki school, as practiced in Northern Nigeria, adopts a lower standard: it uses ‘unmarried pregnancy’ as prima facie proof of *zina*.<sup>1024</sup> As evidenced in the *zina* cases of *Safiyatu Hussaini*<sup>1025</sup> and *Amina Lawal*,<sup>1026</sup> this Maliki rule in Nigeria creates a discriminatory situation in which women are prosecuted for being pregnant and unmarried, while her male sexual partner can completely avoid prosecution.<sup>1027</sup> Although both cases were eventually successful on appeal, after intervention by women’s organizations,<sup>1028</sup> the striking fact about these cases was not only the severe punishment imposed, *rajm*, stoning to death, but the obvious inequality involved; the men, refuting all allegations with impunity, while the female accused, pregnant and unmarried, was condemned.<sup>1029</sup> Rape is also treated as a form of *zina*; reporting rape is equivalent to a confession of *zina*. Proof of rape under the Sharia penal codes requires an admission from the perpetrator or two witnesses to the rape; conditions that are highly unlikely to be fulfilled. In addition, a woman or girl who brings an unsuccessful rape charge is not only subject to *zina* punishments but also liable for false witnessing. The latter arises from the prescription that “whoever makes an allegation of *zina* that is not upheld is guilty of bearing false witness and will themselves be subject to punishment”.<sup>1030</sup> As a result, very few cases of rape are reported to the police for fear of being accused of *zina*.<sup>1031</sup>

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<sup>1022</sup> See Philip Ostien, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Ibadan: Spectrum Books Limited, 2007).

<sup>1023</sup> Islamic law is not a monolithic code; it is made up of several different schools of law, each with its own interpretive method and collected doctrine, often disagreeing with each other in significant ways. *Zina* evidence is just one example of the many significant real world impacts these inter-school disagreements can have. For more on these schools’ interpretive methods, see Asifa Quraishi, “Interpreting the Quran and the Constitution: Similarities in the Use of Text, Tradition and Reason in Islamic and American Jurisprudence” (2006) 28 *Cardozo L. Rev.* 67.

<sup>1024</sup> *Ibid* at 179.

<sup>1025</sup> Safiyatu Hussaini was sentenced by the Upper Sharia Court sitting in Gwadabawa, Sokoto State, to die by stoning. The complete court records in the two famous *zina* cases of Safiyatu Hussaini and Amina Lawal are reproduced in Ostien, *supra* note 1017 at chapter 6.

<sup>1026</sup> Amina Lawal Kurami had been convicted of *zina* by the Sharia Court in the town of Bakori, Katsina State and sentenced to die by stoning. The complete court records in the two famous *zina* cases of Safiyatu Hussaini and Amina Lawal are reproduced in Ostien, *supra* note 1017 at chapter 6.

<sup>1027</sup> Asifa Quraishi, “What if Sharia weren’t the Enemy: Rethinking International Women’s Rights Advocacy on Islamic Law” (2011) 22:1 *Colum J Gender & L* at 179.

<sup>1028</sup> Women’s organisations, including Women’s Rights Advancement and Protection Alternative (WRAPA) and BAOBAB for Women’s Human Rights, a Lagos-based NGO were very much involved in the successful prosecution of the appeals in these cases.

<sup>1029</sup> Jamila Nasir, “Sharia Implementation and Female Muslims in Nigeria’s Sharia States” in Philip Ostien, ed, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Ibadan: Spectrum Books Limited, 2007) at 99.

<sup>1030</sup> *Jigawa Shari’ah Penal Code*, 2000; Pereira and Ibrahim, *supra* note 1012 at 929.

<sup>1031</sup> Gunnar Weimann, “Divine Law and Local Custom in Northern Nigerian *zinā* Trials” (2009) 49: ¾ *Die Welt des Islams* at 451.



The gendered nature of the state is also evident in section 68 of the *Niger Penal Code* which holds that the “testimony of men is worth more than women in proving zina”.<sup>1032</sup> Rape must also be proved with corroborating evidence or by the testimony of four males who witnessed the act of penetration.<sup>1033</sup> Legal provisions like these not only construct women, they work to construct men.<sup>1034</sup> Masculinity is made through the constant display of dominance, not only in culture, but also in legislation. Other examples include, section 55(1)(d) of *the Penal Code*<sup>1035</sup> which permits a husband to beat his wife “for the purpose of correcting her”.<sup>1036</sup> Section 182 of the same *Penal Code* provides that “sexual intercourse by a man with his own wife is not rape if she has attained puberty”.<sup>1037</sup> These legal rules are partially responsible for moulding peoples’ consciousness by naturalizing and validating dominant social arrangements.<sup>1038</sup> Since they are the manifestation of a lawful act of legislation, they control and convince readers while producing a sense of normalcy.<sup>1039</sup> By echoing and repeating one another, certain cultural attitudes, gendered identities, fixed ways of seeing and of thinking are re-enacted and constantly constructed through law.<sup>1040</sup>

Judicial practice in Northern Nigeria also confirms male dominance. For example, because of the lenience with which the lower Sharia court judges treat male sex offenders, the effects of the Sharia penal codes on male misconduct have remained minimal.<sup>1041</sup> For example, Dalha Danbako, Ibrahim White, Nura Garba, Sha'aibu Muhammed and Sule Jubril (Jigawa state) were sentenced

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<sup>1032</sup> Also, section 76 of the *Zamfara Penal Code*, a post-1999 revolution sharia penal code, permits physical correction of a wife by her husband and stipulates that because of implied consent, a man is not capable of raping his wife.

<sup>1033</sup> Each state shares a similar definition of *zina*. See for example Section 121 of the *Sharia Penal and Criminal Procedure Codes*, 2002 of Kaduna State; *The Niger State Penal Code Amendment Law*, 2000; *The Katsina State Islamic Penal System (Adoption) Law*, 2000. But the main source for all the Sharia Penal Codes was the *Penal Code* of 1960.

<sup>1034</sup> Meijer, *supra* note 231 at 369.

<sup>1035</sup> Section 55(1)(d) of the *Northern Nigeria Penal Code*, 1960. The Nigerian legal system is pluralist in nature. Also, there are three variants of criminal codes in Nigeria, and they are the *Criminal Code* operational in the Southern part, the *Sharia Penal Code* operational in about 12 states in the Northern part of Nigeria and the *Penal Code* which is operational in the non-Muslim majority states in the North.

<sup>1036</sup> Section 55(1)(d) of the *Northern Nigeria Penal Code*, 1960 provides that an assault by a man on a woman is not an offense if they are married, if native law or custom recognizes such ‘correction’ as lawful, and if there is no grievous hurt.

<sup>1037</sup> Section 182 of the *Northern Nigeria Penal Code*, 1960.

<sup>1038</sup> Karl Klare, “Legal Theory and Democratic Reconstruction: Reflections on 1989” (1991) 25 U. Brit. Colum. L. Rev. 69 at 75.

<sup>1039</sup> Richard Kay, “Original Intentions, Standard Meanings, and the Legal Character of the Constitution” (1989) 6:39 Constitutional Commentary at 43.

<sup>1040</sup> Meijer, *supra* note 231 at 368.

<sup>1041</sup> Weimann, *supra* note 1031 at 464.

to five months in prison and fined for sexually assaulting an eleven-year-old girl; Aminu Ruwa (Niger state) was sentenced to only one hundred lashes and paying the medical bill of the victim, a six-year-old girl; Ibrahim Ayuba and Mohammed Ibrahim (Katsina state) was apparently indicted summarily for raping a four and three year old girl, respectively; Tukur Aliyu (Zamfara) was sentenced to forty strokes of the cane and fined for raping a four year old girl who was his student.<sup>1042</sup> The very high proportion of young victims shows how sexual assault against girls is either not considered a crime or is a matter not necessitating state attention.<sup>1043</sup> In Kano, it is reported that cases of rape of young girls, mostly between age three and eleven years, have significantly increased in recent years.<sup>1044</sup> Again, we see that the victims are primarily girls who move freely and hawk the goods of their secluded mothers.<sup>1045</sup>

From the above, we see that law is part of the “juridical body that wields power”.<sup>1046</sup> These legal rules and practices construct power relations in society, in both the public and private spheres.<sup>1047</sup> It seems to me that this aspect of power, which the text of law so clearly displays in Northern Nigeria, cannot be ignored. Legislation produces gendered identities and positions and if legal texts can be situated on the same level as culture in terms of representation of women, it could be claimed that masculinity can be created and acted out, in ways that may not be easily traced back to culture.<sup>1048</sup> The critical point for my purposes is that violence experienced by women and girls within local contexts “cannot materialise out of the air”.<sup>1049</sup> Law partly institutes this social order. Therefore, reforming law becomes a reasonable and necessary part of shifting discourse.

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<sup>1042</sup> Aminu Ruwa was reported to the police by Mohamed Alhaji of Tutjiba area. See *The Guardian* (Nigeria) “Man gets 100 strokes for indecency” (20 November 2002); Mohammed Ibrahim’s offence was allegedly reported to the police by a certain Shuaibu Sani. See *This Day*, “Two Charged with Raping Minors” (27 January 2013), online: <http://www.thisdayonline.com>; Tukur Aliyu was handed over to a hisba group by his neighbours. See *Daily Independent*, “Man, 45, gets 40 lashes for raping four-year-old girl” (20 October 2003), online: <http://www.independentngonline.com>. Original citation from Weimann, *supra* note 1031 at 446.

<sup>1043</sup> Weimann, *supra* note 1031 at 451; Gunnar Weimann, “Judicial Practice in Islamic Criminal Law in Nigeria? A Tentative Overview” (2007) 14:2 *Islamic Law and Society* 240.

<sup>1044</sup> IRIN, “Nigeria: Child Rape in Kano on the Increase” (03 January 2008), online: <http://www.irinnews.org>.

<sup>1045</sup> *Ibid.*

<sup>1046</sup> Meijer, *supra* note 231 at 368.

<sup>1047</sup> Klare, *supra* note 1033 at 75.

<sup>1048</sup> Meijer, *supra* note 231 at 369.

<sup>1049</sup> Kay, *supra* note 1034 at 45.

(i) *Political Speech*

Politics in Nigeria generates very real policies that affect people in every aspect of their lives. As already highlighted, the social, legal, and political world are constitutive of a multiplicity of power relations that help produce certain ideologies through their activities and practices.<sup>1050</sup> The question then is who promotes the endless reproduction of oppressive practices and social perception of women. The difference between written laws and policies and what is verbalised through public speech is where one can see the actual policy trends towards women.<sup>1051</sup> In this section, I focus on political speech and I try to connect the political world to the experiences of women and girls at the cultural level. We will come to a gradual realisation of how the legal and political arena are organised in terms of gendered meanings within which cultural institutions are constructed.<sup>1052</sup>

Devaluing women at the institutional level makes mistreatment likely at the cultural level. The more you can get state officials in government to publicly devalue women and girls, the more success in degrading women and girls locally. This is strongly reflected in the public discourse produced by some male Nigerian political actors around women's participation in politics. These elite truths are especially unreservedly traded in public life on days celebrating women. My first example is a statement by Gudaji Kazaure, a member of the Nigerian House of Representatives from Jigawa state in Northern Nigeria. On International Women's day in March 2018, Mr. Kazaure argued against calls for more political opportunities for women in Nigeria. He stated:

It is good to give women opportunity, but not too much. When we give them opportunity at home and outside, they will capture everything, Mr. Speaker. If you consider, Mr. Speaker, almost 60-70% of my votes is from women. So, if women understand this thing very well, they will vote us out. If one-woman contests in your constituency, they will say, 'Let's go and support our sister', they will vote for her, and you will come here one day, and you will be found out that all is women in this chamber. And, seriously, if women become 60-70% in this chamber, they will mess up, Mr. Speaker, because when they go zig zag, we are the ones who straighten them. We are the ones controlling them. That is why God said they should come under us. We will marry them, and they will serve under us.<sup>1053</sup>

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<sup>1050</sup> Dorothy Chunn & Dany Lacombe, *Law as a Gendering Practice* (Oxford: Oxford University Press, 2000) 13.

<sup>1051</sup> In the Armenian context, see Ruzanna Tsaturyan, "Women in Politics and Political Texts in Armenia" (01 April 2016), online: <http://feminism-boell.org/en/2016/04/01/women-politics-and-political-texts-armenia>.

<sup>1052</sup> Sandra Harding, *The Science Question in Feminism* (New York: Cornell University Press, 1986) 10.

<sup>1053</sup> Oak Tv, "Given opportunity women will takeover, Rep. Kazaure cautions" (09 March 2018) at 0:44, online (video): *Youtube* <<https://www.youtube.com/watch?v=6LEMHo7CjAk>>

To see how much ideological effect is produced, this statement should be understood in terms of an active process of organising society premised on the control of women. The statement leads up to a conclusion that limits and excludes women's participation and perspective. It creates truths about hierarchical social norms between men and women, thus rendering any legislative reform a mere formality.

Another example, in 2016 at a press conference with the German chancellor Angela Merkel, Nigeria's current president, Muhammadu Buhari, was displeased at being asked about criticism of his government's performance by his wife, Aisha Buhari.<sup>1054</sup> Referring to his wife, he responded by stating "she belongs to my kitchen and my living room, and the other room".<sup>1055</sup> These seemingly unintended oversights in public speaking build narratives imported by public officials and political leaders to shape public attitudes and perceptions towards women.<sup>1056</sup> There are many striking parallels between associating women with the private domain, and the gendered associations I described above with respect to mothering. By limiting women's roles to the family environment, the political discourse consistently positions women as caretakers and custodians, which is in fact at odds with some state documents claiming equality and freedom from gender discrimination.

We observe something similar in news content with statements made by prominent public figures condoning their marriage to underage girls. In defending his marriage to a 13-year-old girl at age 49, Senator Ahmed Sani Yerima of Northern Nigeria is quoted stating the following:

Nigeria has uncountable problems and none of them is early marriage...As a matter of fact early marriage is the solution to about half of our problems...For those who wonder if I can give my daughter(s) out in marriage at the age of 9 or 13, I tell you honestly, I can give her out at age of 6 if I want to...This is because I am a Muslim and I follow the example of the best of mankind, Muhammed...<sup>1057</sup>

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<sup>1054</sup> Sede Alonge, "'My wife belongs in the kitchen'- President Buhari isn't helping Nigeria" (17 October 2016) at 0:01, online (video): <<https://www.theguardian.com/commentisfree/2016/oct/17/wife-job-look-after-me-buhari-nigerian-girls>>

<sup>1055</sup> *Ibid.*

<sup>1056</sup> In the Armenian context, see Ruzanna Tsaturyan, "Women in Politics and Political Texts in Armenia" (01 April 2016), online: <http://feminism-boell.org/en/2016/04/01/women-politics-and-political-texts-armenia>.

<sup>1057</sup> Jameelu Mabai, "Child Not Bride: In Defence of Senator Yerima" (14 September 2013), online: <https://www.abusidiqu.com/childnotbride-in-defence-of-senator-yerima-by-jameelu-mabai/>

A focus on men's language as exemplified in the above statement tell us a lot about women's place in Nigeria. It reflects a power dynamic that shapes constructions of meanings around marriage to the exclusion of women. Statements like these create a "false consciousness", one that is used to manipulate and obscure reality for the public while maintaining the status quo for ruling relations.<sup>1058</sup> The language and vocabulary of powerful politicians signals the workings of gender and gender partitioning of the household to preserve male dominance. These statements generate interpretations of women's roles while defining masculine power. In this way, we see that legislation described in the preceding section emphasises, supports, and acts on behalf of and protects specific interests. The law is an arena in which men's interests are actively constructed and protected.<sup>1059</sup> The public speech of state authorities is simply a platform for the reproduction and reinforcement of a male value system.

### **(3) Federalism and Child Marriage**

Certain features of Nigeria's historical legacies have shaped the state's response to cultural violence against girls. As highlighted in chapter 3, gendered questions posed by culture, especially those touching on family and sexual relations, usually present themselves in constitutional discourse as issues of morality, "culturally relative, value based, open to differing judgments, demanding tolerance".<sup>1060</sup> Although there is no specific formula to be used in assessing the state's choice in deciding whether to support or enact specific legal reforms, I contend that the choice to support or not to support any particular reform is a political decision. I believe that all gender-based violence in culture that are ignored, dismissed, and trivialized are also made possible through the federal system of governance operating in Nigeria.

Federalism plays a complicating role in the proliferation of child marriage. In addition to the masculine bias of the legal system, discussed above, the version of federalism at play in Nigeria shapes women and girls in ways that undermine the basic premise of equality expressed in the Nigerian constitution. This system of governance renders women and girls within cultural communities vulnerable to specific forms of bodily harms and bodily invasion that men do not normally experience and that the law, as a result, does not recognize.

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<sup>1058</sup> Ada Tchoukou, *supra* note 979 at 1529.

<sup>1059</sup> Smith, *supra* note 236 at 165.

<sup>1060</sup> Mackinnon, *supra* note 986 at 14.

Gender is institutionalised; the division and scope of power of each governing structure, including whether and to what extent legislatures are permitted to guarantee equality rights where inequality pervades, doubtlessly affects social outcomes for girls. To put it slightly differently, when inequality is institutionalised, it creates differences between people that serve as appropriate justifications for treating women worse while appearing reasonable and not arbitrary at all.<sup>1061</sup> Each regional government's concept of and attitude towards rights profoundly shapes the capacity of law to be used to change gender-based inequality in society. Sources and hierarchy of laws are also crucial; the place of customary and religious law is significant because family law is generally governed by personal status laws, and women and girls' lives are often confined to and by the family.<sup>1062</sup> By bringing the experiences of women and girls to the centre, we quickly observe the countless ways in which federalism is dominated by male interests. The implications for women and girls are far reaching. The larger political context in which laws are made and interpreted strongly affects its effectiveness for gender justice.<sup>1063</sup> These structural questions form the basis of this section.

### **1. Federalism in Nigeria: A Story of Self-Interest**

Nigeria is one of the world's leading federal democratic experiments.<sup>1064</sup> Its population of over 195 million is composed of about 350 ethnic groups.<sup>1065</sup> In the early 1950s the Sardauna of Sokoto, leader of the Northern Peoples' Congress, referred to the amalgamation of the Nigerian provinces as "the mistake of 1914".<sup>1066</sup> The mix of strong ethno-regional, male-dominated political parties influencing the character of the state makes federalism challenging in Nigeria.<sup>1067</sup> This combination generated tensions and traditions that has marked the country's legal and political framework.

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<sup>1061</sup> Catharine MacKinnon, "Sex Equality under the Constitution of India: Problems, Prospects, and Personal Laws" (2006) 4 International Journal Constitutional Law at 187.

<sup>1062</sup> Mackinnon, *supra* note 986 at 3.

<sup>1063</sup> *Ibid.*

<sup>1064</sup> Pereira & Ibrahim, *supra* note at 1012.

<sup>1065</sup> The World Bank, "Data Bank" (2021), online: <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=NG>

<sup>1066</sup> Pereira & Ibrahim, *supra* note at 1012.

<sup>1067</sup> *Ibid.*

Upon attaining independence in 1960, the most destabilizing factor was ethnicity.<sup>1068</sup> To preserve and protect diverse ethnicities, a federal system of governance, as determined by both British colonial officials and Nigerian politicians, was deemed most suitable for the country.<sup>1069</sup> However, in negotiating for federalism, little attention was paid to the dynamics of inter-ethnic competition.<sup>1070</sup> The federal system adopted in 1954 through the Lyttleton constitution<sup>1071</sup> comprised a national government and three regional governments: Western, Eastern and Northern, with the North having political and demographic pre-eminence over the two other regions.<sup>1072</sup> Amidst significant and furious protest of minorities, the British colonial government adamantly opposed all requests for a further division of the country to accommodate minority ethnic groups.<sup>1073</sup> This was the case in spite of the clear warning that a federal system where one region had a population majority could be a possible cause of instability.<sup>1074</sup>

Nigeria is a federation consisting of 36 relatively sovereign and equal states, with each having an independent legislature.<sup>1075</sup> Governance is shared between three levels of government: federal/central government, state/regional government and local government.<sup>1076</sup> Each level possesses legislative competence to enact laws within the confines of the legislative list designated in the constitution.<sup>1077</sup> The legislative list is structured into three categories: the first relates to

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<sup>1068</sup> Falola, *supra* note 300 at 21.

<sup>1069</sup> See UyiIawa Usuanlele & Bonny Ibhawoh, *Minority Rights and the National Question in Nigeria* (Switzerland: Palgrave Macmillan, 2017) at 5.

<sup>1070</sup> *Ibid.*

<sup>1071</sup> The *Lyttleton Constitution*, 1954 established the federal principle and paved the way for Nigeria's independence in 1960.

<sup>1072</sup> The country has experimented with two other types of regimes since independence, the Westminster-style parliamentary system (1960-1966) and the US-style presidential system (1979-1983). These regimes influenced the evolution of the Nigerian federal system. See Ladipo Adamolekun, "Introduction: Federalism in Nigeria" (1991) 21:4 *Publius: The Journal of Federalism* 1; Jonas Elaigwu, "Federalism and National Leadership in Nigeria" (1991) 21:4 *Publius: The Journal of Federalism* 125.

<sup>1073</sup> Emmanuel Amah, "Federalism, Nigerian Federal Constitution and the Practice of Federalism: An Appraisal" (2017) 8 *Beijing Law Review* 287 at 291.

<sup>1074</sup> *Ibid.*; See also Egbert Udoma, *History and Law of the Constitution of Nigeria* (Lagos: Malthouse Press Ltd, 1994) at 7; C Chukwujekwu, "Historical Origin and Evolution of Nigerian Federalism" in Emeka Obi & Obiajulu Obikeze, eds, *Federalism and National Integration in Nigeria* (Onitsha: Book Point Ltd, 2004).

<sup>1075</sup> Amah, *supra* note 1068 at 291.

<sup>1076</sup> *Constitution of the Federal Republic of Nigeria*, 1999.

<sup>1077</sup> Section 4 & 7 of the 1999 Constitution; The Supreme Court in *Attorney General of the Federation and Minister of Justice and Attorney General of Lagos and Commissioner for Justice*, SC. 340/2010 declared that the federal government lacks the Constitutional powers to make laws outside its legislative competence, which are by implication residual matters meant for the State Assembly.

matters within the exclusive<sup>1078</sup> legislative powers of the federal government who makes laws through the National Assembly; the second relates to matters within the concurrent legislative powers where both federal and state parliaments may equally exercise legislative powers through the State Houses of Assembly.<sup>1079</sup> The third group concerns matters over which only State Houses of Assembly may exercise authority exclusively, referred to as residual legislative powers.<sup>1080</sup> States' residual powers affect matters that are within neither the exclusive competence of the federal legislature nor the concurrent powers of both federal and state legislatures.<sup>1081</sup> The federal parliament is incapable of legislating on matters falling within states' residual powers.<sup>1082</sup>

Federalism plays a strong role in the proliferation of child marriage. In 1954, when Nigeria adopted a federal constitution, it was clear that marriage was a subject to be placed within the competence of regional legislature.<sup>1083</sup> Accordingly, it was not mentioned in either the exclusive or the concurrent legislative lists and was thus regarded as a residual matter.<sup>1084</sup> However, in 1957, "marriages other than marriages under Moslem law or other customary law" was included in the exclusive legislative list<sup>1085</sup> and is also enumerated in the current 1999 constitution.<sup>1086</sup> The result was that the law relating to the relatively small but increasing number of civil marriages became subject to the jurisdiction of the federal legislature while marriages under Islamic and customary

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<sup>1078</sup> Issues on the exclusive legislative list include state creation; customs and excise duties; creation of banks; defence; citizenship; diplomatic and consular relations; external affairs; extradition; and nuclear energy. See generally the 1999 Constitution, second schedule, part I (legislative powers).

<sup>1079</sup> Concurrently shared powers include legislation relating to electricity and the establishment of electric power stations; health care; archives and public records of state governments; and the establishment of educational institutions. See the Constitution, second schedule, part II (extent of federal and state legislative powers).

<sup>1080</sup> It should be noted that the term "residual" is not expressly mentioned in the Constitution but has been used to refer to state legislative powers. Unlike the 1995 Draft Constitution, which specified a state legislative list, the 1999 Constitution has no such list. However, all matters not identified in the exclusive federal, concurrent, and the local government lists come under the jurisdiction of the states. See section 4(2) & (3) of part I second schedule of the Nigerian Constitution; Section 4(4)-part II second schedule of the Nigerian Constitution; *Lagos State v Federation of Nigeria* (2003) vol. 35 W.R.N. 1.S.C.

<sup>1081</sup> Daniel Ogunniyi, "The Challenge of Domesticating Children's Rights Treaties in Nigeria and Alternative Legal Avenues for Protecting Children" (2018) 62:3 Journal of African Law at 453.

<sup>1082</sup> *Ibid.*

<sup>1083</sup> FRA Williams, "Legal Development in Nigeria, 1957-67: A Practising Lawyer's View" (1967) 11:2 Journal of African Law at 79.

<sup>1084</sup> *Ibid.*

<sup>1085</sup> The Nigeria (Constitution) (Amendment No. 2) Order in Council 1957, s. 50(I) (d).

<sup>1086</sup> Part I, item 61 of second schedule of the 1999 Constitution. Under the Constitution, the federal government has the exclusive right to regulate the formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto.



law continued to be regulated by regional legislature.<sup>1087</sup> Also, in the current constitution, child related matters are residual matters within the exclusive legislative powers of states.<sup>1088</sup> Likewise, primary education is a residual matter exclusive to regional governments; the national assembly only has power to regulate post-secondary education.<sup>1089</sup>

The practical effects of this framework on women and girls within cultural communities are numerous. For example, due to obligations emanating from the *Convention on the Rights of the Child* (CRC)<sup>1090</sup> and the *African Charter on the Rights and Welfare of the Child* (ACRWC),<sup>1091</sup> the National Assembly enacted the *Child Rights Act* (CRA). The CRA was a major piece of reforming legislation enacted to address the rights of children in Nigeria.<sup>1092</sup> This legislation remains the most in-depth legislation in Nigeria recognising that children need to be protected. More importantly, it explicitly prohibits the practice of child marriage and sets the minimum age for marriage at 18 years.<sup>1093</sup>

The CRC and the ACRWC were domesticated in Nigeria by the promulgation of the CRA pursuant to section 12(1) of the 1999 constitution which requires all international conventions to be “domesticated before they can create domestic legal obligations”.<sup>1094</sup> However, child rights matters are residual matters within the exclusive legislative powers of regional governments in accordance with section 4(7)(a)(b) & (c) of the constitution. This gives regions complete responsibility and authority to make laws relevant to their specific situation. As a result, before the CRA becomes applicable within individual states, it must be adopted by them through the

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<sup>1087</sup> Williams, *supra* note 1078 at 80.

<sup>1088</sup> See generally the Constitution, second schedule, parts I and II (legislative powers).

<sup>1089</sup> Part II, item 30 of second schedule of the Nigerian Constitution.

<sup>1090</sup> *Convention on the Rights of the Child*, 20 November 1989, UNTS art 24 (entered into force 2 September 1990).

<sup>1091</sup> *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (entered into force 29 November 1999).

<sup>1092</sup> *Child Rights Act*, No. 26 of 2003.

<sup>1093</sup> Section 21 of the *Child Rights Act* prohibits child marriage by stating 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 of no effect whatsoever”. Also, section 22 states that: “(1) No parent, guardian or any other person shall betroth a child to any person; and (2) A betrothal in contravention of subsection (1) of this section is null and void”. According to some scholars, the rationale for prohibition of child marriage is because of incessant cases of VVF in some parts of the country where early child marriages are common. See Ngozi Oluchukwu Odiaka, “The Concept of Gender Justice and Women’s Rights in Nigeria: Addressing the Missing Link” (2013) 2:1 Afe Babalola University: Journal of Sustainable Development Law and Policy 190; Felix Eboibi, “The Impact of Federalism and Legal Pluralism on the Enforcement of International Human Rights Law against Child Marriage in Africa” (2017) 1 AJLHR at 79.

<sup>1094</sup> Nwauche, *supra* note 573 at 423.

legislative powers provided in section 4(7) of the constitution. States are not under an obligation to adopt the CRA, and those that adopted it, by enacting *Child Rights Law* (CRL), did so at their discretion.<sup>1095</sup> In addition, item 61, schedule II to the constitution removes customary and Islamic marriages out of federal legislative competence. Therefore, laws enacted by the National Assembly will have no effect on the formation, amendment, and dissolution of marriages under Islamic or customary law.

While the CRA prohibits child marriage, its application is also limited in scope because it limits the cultural/religious rights of Sharia states in Nigeria. This is fortified by section 277 of the Constitution granting the “Sharia Court of Appeal the right to decide questions of personal law for Muslims, including the validity or dissolution of a marriage, guardianship, inheritance, and succession”.<sup>1096</sup> Also, section 38(1) of the Constitution entitles “persons to freedom of thought, conscience and religion”.<sup>1097</sup> In this way, we see that even though some states adopted the CRA, in defining marriageable age, there are modifications, especially in Northern Nigeria where instead of the minimum age of 18 years stipulated by the CRA, ‘puberty’ is used as the threshold for ascertaining marriage capacity.<sup>1098</sup> For example, although section 15(1) of the *Jigawa State Child Rights Law* prohibits child marriage, it defines a child in section 2(1) as a person below the age of puberty.<sup>1099</sup> It sets the age of maturity as when “one is physically and physiologically capable of consummating a marriage”.<sup>1100</sup> Also, the bill of *Child Rights Law* of Borno state provides that “that no person under the age of eighteen years is capable of contracting a valid marriage unless, regarding the law being applied to the child, majority is attained earlier”.<sup>1101</sup> In other Northern states, like Niger, the CRL contains a primacy clause which provides that where there is a conflict, Islamic personal law prevails.<sup>1102</sup> Therefore, while on the surface, the enactment of the CRA makes

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<sup>1095</sup> *Ibid.*

<sup>1096</sup> Section 277 of the Constitution.

<sup>1097</sup> Section 38(1) of the Constitution.

<sup>1098</sup> Nwauche, *supra* note 573 at 423.

<sup>1099</sup> *Jigawa State Child Rights Law*, 2006.

<sup>1100</sup> Section 2(1).

<sup>1101</sup> Section 21 of *Child Rights Law, Borno State*; Proposed Bill for the Enactment of a Child's Rights Law in Borno State, (2006) (Nigeria).

<sup>1102</sup> Section 27 of the *Child Rights Law of Niger State*, 2010 which provides that where there is a conflict involving questions of Islamic law with any of the provisions of the CRL, Islamic personal law shall prevail.

a strong political statement of the need to protect girls from violent practices, in reality, it fails to establish a standard of justice to which cultural practices may be subject.<sup>1103</sup>

The practical consequences of these legislative provisions on girls are played out in the trials of *Maimuna Abdulmumini*<sup>1104</sup> and *Wasila Tasi'u*<sup>1105</sup> two child brides accused of murdering their husbands and subsequently subjected to the death penalty. Both cases aroused public controversy about the girls, about the social and legal issues raised in their trials, and the severity of the punishment. It encouraged public debates about justice, childhood, gender, relationships, and motherhood. The outcome of these cases could have made a significant contribution to ongoing conversations in Nigeria on child marriages, the meaning of justice for children and women within the legal system. However, after long battles lasting 6 years, there was no form of federal intervention on behalf of these girls.<sup>1106</sup> In both cases, I was incredibly perplexed by the fact that the age of the girl was never raised as a significant issue to exclude them from subjection to the death penalty. This is predictable since under Sharia law, 'puberty' and 'age of responsibility' are used as thresholds and not the minimum age mandated by section 221 of the CRA which prohibits sentencing children under 18 years to capital punishment. In Tasui's case, on account of her age, the case was initially supposed to be convened to a juvenile court, but the state withdrew this charge and requested transfer to the Kano state high court.<sup>1107</sup> In Maimuna's case, when age was raised as a factor to be considered alongside the fact that she was a nursing mother, the prosecutor remarked that "nursing her baby in jail was only a way of gaining sympathy" and "because Maimuna was married, she could not be considered to be a child".<sup>1108</sup>

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<sup>1103</sup> Eboibi, *supra* note 1088 at 79.

<sup>1104</sup> *Maimuna Abdulmumini v. Federal Republic of Nigeria*, Katsina State Government and the Nigerian Prison Service ECW/CCJ/jud/14/14.

<sup>1105</sup> Maimuna Abdulmumini at age 13 was accused of murdering her husband of 5 months. She was sentenced to death for culpable homicide. While on death row, Maimuna was nursing an 18-month-old baby; Wasila Tasi'u is also 14 years of age. She too faces the death penalty for allegedly murdering her 35-year-old husband, Umar Sani, with rat poison at her own wedding party in Gaya local government area of Kano state.

<sup>1106</sup> In Maimuna's case, after a long legal battle lasting 6 years, Avocats Sans Frontieres successfully took the case to the ECOWAS Community Court, naming the Nigerian federal government and the Nigerian Prison Service as defendants. The Court ruled the imposition of the death penalty violated the rights of the plaintiff. The Court found against the State, holding that the plaintiff had been a minor at the time the offence was committed.

<sup>1107</sup> This is according to the text of a charge sheet filed under section 185(b) of the *Criminal Procedure Code Cap.105 Laws of Kano State*, 1991, signed on behalf of the Attorney General and Commissioner for Justice by a Senior State Counsel in the ministry, Lamido A Soron Dinki'.

<sup>1108</sup> *Maimuna Abdulmumini v. Federal Republic of Nigeria*, Kastina State Government and the Nigerian Prison Service ECW/CCJ/jud/14/14.

An element that looms in the texts of cases involving accused girl brides, is the extended and exclusive focus on the child as a woman. What we see here is the power of a legal system to transform a person's identity. A new sense of responsibility and maturity is placed on girls by virtue of marriage, while at the same time limiting their agency within the legal system.<sup>1109</sup> There is also a collapsing of the adult and the child, in turn reducing the possibility of court analysis of certain aspects of girlhood. The legal system is structured in a way that the accused in each of these cases can never be herself, either as a child or a woman. While ignoring the figure of a girl-child, the court at the same time restricts and fails to create a space for the girls' use of critical reason, autonomy, and self-governance that the "new woman might be expected to possess".<sup>1110</sup>

From the above, I believe group or regional autonomy employed within ethno-federal frameworks, like Nigeria places direct barriers to the protection of girls and marginalizes vulnerable groups.<sup>1111</sup> The general presumption towards cultural autonomy for ethno-religious groups draw issues of individual equality into ethnic politics.<sup>1112</sup> To expand on this point, even before the CRA was enacted in Nigeria, several unsuccessful attempts were made to domesticate human rights conventions. For instance, in 1993, a comprehensive children's rights bill was drafted and presented to the federal parliament for approval.<sup>1113</sup> The bill was resisted by religious and traditional groups, on the ground that it conflicted with Islamic and customary norms.<sup>1114</sup> As a result, the government mandated a special committee to assess the bill, taking into account religious and customary laws.<sup>1115</sup> Yet again, the bill did not succeed, for similar religious and customary reasons.<sup>1116</sup> Many national and international non-governmental organizations criticized the choice to abandon the bill and urged the legislators to re-evaluate it again. This eventually led to the enactment of the CRA in 2006, about 10 years after the debates and controversies around the enactment of a child rights bill. The CRA is still unsuccessful in protecting children from

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<sup>1109</sup> Lal, *supra* note 32 at 322.

<sup>1110</sup> *Ibid.*

<sup>1111</sup> Timofey Agarin, Allison McCulloch & Cera Murtagh, "Others in Deeply Divided Societies: A Research Agenda" (2018) 24 Nationalism and Ethnic Politics 299 at 304.

<sup>1112</sup> *Ibid.*

<sup>1113</sup> OS Akinwunmi "Legal Impediments on the Practical Implementation of the Child Rights Act 2003" (2009) 37:3 The Journal of Legal Information 385 at 385.

<sup>1114</sup> *Ibid* at 386.

<sup>1115</sup> Daniel Ogunniyi, "The Challenge of Domesticating Children's Rights Treaties in Nigeria and Alternative Legal Avenues for Protecting Children" (2018) 62:3 Journal of African Law at 452.

<sup>1116</sup> *Ibid.*

harmful traditional practices. This can be paralleled to the colonial efforts to increase the age of marriage through enacting the *Native Authority Child Betrothal Order* (NACBO). As highlighted in chapter 4, even though the framers of the NACBO intended to remake the country's socio-cultural practices involving children, this legislation was rejected by regional governments because it weakened the influence and control that communities had over cultural marriage.

From the above, we begin to understand the natural tendency on the part of lawmakers to blame the rejection of laws on those who should comply with them, in our case, ethno-religious groups.<sup>1117</sup> However, my concern in the Nigerian case is that this problem is not just limited to cultural practices but specifically to issues affecting women and girls. There is an evident failure of many legislative initiatives, specifically initiatives seeking to transform or reform society. If we focus only on child marriage, the failure of a law to realise its intended effect may appear as a “matter of a small moment when taken in isolation”.<sup>1118</sup> But if the scope of analysis is multiplied, we see that there are reasons for such failures, specifically when such a law touches on some fundamental aspect of social life.<sup>1119</sup> For example, in recent years, the *Gender and Equal Opportunities Bill* was introduced; it was aimed at domesticating the *Convention on the Elimination of all forms of Discrimination against Women*, including enacting legislation to ensure “gender equality in both public and private spheres”.<sup>1120</sup> It sought to enact certain measures to address past and present discriminatory practices, including modifying sociocultural practices subjugating women.<sup>1121</sup> At the first reading, the bill failed in the Senate, largely because of resistance on religious grounds, especially from Senators representing the country's mainly Muslim Northern states.<sup>1122</sup> They asserted that the bill was in conflict with the constitutional right

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<sup>1117</sup> Anthony Allott, “The Effectiveness of Laws” (1981) 15:2 Val. U. L. Rev. at 229.

<sup>1118</sup> *Ibid.*

<sup>1119</sup> *Ibid.*

<sup>1120</sup> *Gender and Equal Opportunities Bill*, 2011.

<sup>1121</sup> The stated purpose of the legislation was to implement parts of the Nigerian Constitution (including the chapter on fundamental rights) and international instruments to which Nigeria is a state party, including the Convention on the Elimination of all Forms of Discrimination against Women and the Protocol to the African Charter on the Rights of Women in Africa. See *Gender and Equal Opportunities Bill*, 2011.

<sup>1122</sup> The legislation reportedly encountered insurmountable opposition on the Senate floor, led by Senator Ahmad Rufa'i Sani of Zamfara State. He called on the sponsor of the Bill to withdraw it because it falls short of Constitutional requirements. The Bill failed to scale through second reading when it was put on voice vote by the Senate President, Bukola Saraki. See Federal Republic of Nigeria, National Assembly, “Bill on All Forms of Discrimination Against Women Fails to Scale First Reading, Motion on Interim Financial & Material Support to IDPs Passed” (16 March 2016) online: <https://www.nassnig.org/news/item/220>; Musawah: For Equality in the Muslim Family, “Musawah Thematic Report on Article 16 & Muslim Family Law: Nigeria” (2017), online: <http://www.musawah.org>.

to religion and certain provisions of the Sharia law.<sup>1123</sup> A few senators from the Southern states also cited the Bible as the basis for their opposition to the legislation.<sup>1124</sup> The *Violence against Persons (Prohibition) Act* (VAPP) is another legislation that could also be used to protect women and girls within cultural settings. It also prohibits violence against women in public and private spaces and establishes efficient remedies and sanctions for offenders.<sup>1125</sup> However, by virtue of section 47 of the VAPP Act, this legislation only applies to the Federal Capital Territory and thus is not applicable to the country at large, hence, limiting its impact on women and girls within cultural communities.

## 2. Gendered implications of the Residual List

The issue of whether or not to retain a federal system of government in Nigeria goes beyond the scope of this dissertation. The relevance of federalism in this dissertation focuses on the ways the federal system designates issues of relevance to women and girls under subnational jurisdiction, undermining national guarantees of universal rights.<sup>1126</sup> As highlighted in the previous section, when the CRA was finally passed to protect girls from child marriage, implementation remained weak due to jurisdictional issues and conflicts over which government was responsible. The question remains: how do we demand national solutions to the problem of child marriage? This question is critical because in Nigeria, it seems to be more significant to leave certain determinations of gender and family life to culture than to enforce gender equality rights.

Generally, federal systems' transfer of policymaking down to more local levels enable the public's access to policy decision making.<sup>1127</sup> However, in this case, a division of power between the levels of government in ways that track traditional gender role categories is problematic and carries

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<sup>1123</sup> For example, on the issue of equitable sharing of inheritance between the male and female, see Global Legal Monitor, Library of Congress, "Nigeria: Gender Equality Bill Fails in the Senate" (28 March 2016), online: <http://www.loc.gov/law/foreign-news/article/nigeria-gender-equality-bill-fails-in-the-senate/>.

<sup>1124</sup> Yomi Kazeem, "Nigerian lawmakers voted down a women equality bill citing the bible and sharia law" (15 March 2016), online: <https://qz.com/africa/639763/nigerian-lawmakers-voted-down-a-women-equality-bill-citing-the-bible-and-sharia-law/>.

<sup>1125</sup> *Violence against Persons (Prohibition) Act*, 2015. The bill was introduced as the Violence against Women (Prohibition) Bill but was subsequently renamed with its current gender-neutral title to assuage the virulent criticisms of many influential Nigerians and members of the National Assembly. See Solomon Ukhuegbe, "Recent Legislation against Sexual and Gender-Based Violence in Nigeria" (2015) 16:1 University of Benin Law Journal 304.

<sup>1126</sup> Susan Franceschet & Jennifer Piscopo, "Federalism, Decentralization, and Reproductive Rights in Argentina and Chile" (2013) 43:1 *Publius: The Journal of Federalism* 129 at 130.

<sup>1127</sup> Susan Williams, "Federalism and Gender Equality" (2018) 46 *Federal Law Review* at 497.

enormous disadvantages for women and girls. For example, the constitution gives regional governments power over marriage, primary education, agriculture; while the federal government is charged with control over issues like foreign policy, defense, external affairs, military and other commercial and capital-consuming aspects of development.<sup>1128</sup> In terms of this division, regional authority is concentrated in those areas that most commonly affect women in their relationships with children, spouses, parents and the society.<sup>1129</sup> They inevitably exclude from constitutional protection matrimonial matters related to marriage, childhood education, adoption, divorce, burial, devolution of property and other matters of personal law. Customarily masculine roles are attributed to the national level while the traditionally feminine ones to the regional level. This reinforces the idea that feminine issues are less important and that traditional roles are natural, inevitable, and necessary.<sup>1130</sup> If government structures mirror cultural constructions of gender, then it will inevitably be challenging to get individuals to question gender hierarchy.

A federal division of power that follows conventional gender roles has detrimental symbolic effects on women and girls. The division increases the likelihood that regional governments, who are more traditional in terms of gender ideologies than national elites, will consider gender roles as a major “battle ground” with the national level, and will keep on opposing nationwide reforms.<sup>1131</sup> In Nigeria, regional governments seeking to exercise power under a federal system have an extensive and rich range of issues that differentiate them at the national level. These include, religion, food, language, familial structures, property arrangements, customs and of course, gender roles. If the division of powers makes gender a prominent category for regional power, then, it is most likely to be the area where “the battles for local autonomy will be fought”.<sup>1132</sup> However, if the division mixes things up, that is, providing both levels of governments control regarding feminine and masculine roles, in effect, decentring gender as a central category of analysis, it may assist in limiting the situation where women and girls become the main culturally contested terrain.<sup>1133</sup> Moving policy making power to local levels makes it difficult for

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<sup>1128</sup> Part I and II of the second schedule to the 1999 Constitution.

<sup>1129</sup> Bond, *supra* note 947 at 97.

<sup>1130</sup> See generally Judith Resnik, ““Naturally” without Gender: Women, Jurisdiction, and the Federal Courts” (1991) 66 New York University Law Review 1682; Williams, *supra* note 1083 at 502.

<sup>1131</sup> Williams, *supra* note 1122 at 503.

<sup>1132</sup> *Ibid.*

<sup>1133</sup> *Ibid.*

reforms to be implemented. Women and girls within ethno-religious communities continue to bear the burden of positioning themselves with respect to power-sharing.<sup>1134</sup>

#### **(4) Gender Equality and Personal Laws in Northern Nigeria**

As previously highlighted, Nigeria's equality jurisprudence has come far for women and girls; one major exception that stands out is the reluctance to secure equal guarantees of rights protection to personal laws. Personal laws tend to rationalise the dominance of women by men and the oppression of children by parents, characterizing them as legal.<sup>1135</sup> In Northern Nigeria, Islamic law and practices govern personal status law.<sup>1136</sup> Section 277 of the constitution grants the Sharia Court of Appeal the right to decide questions of personal law for Muslims, including the validity or dissolution of a marriage, guardianship, inheritance, and succession.<sup>1137</sup> It permits implementation of legal systems ungoverned by constitutional equality rules to the systematic disadvantage of women and girls. This leaves unchallenged countless practices occurring within families.

Looking deeply at the reality of this family sphere, termed 'personal', attentive to the way women, a historically disadvantaged group, are treated there, one realizes that the family is a primary site of oppression for girls and women. It is a domain for women's unequal position and "subordinate treatment sexually, physically economically".<sup>1138</sup> The family, across cultures, is a site of violence, a place where women and girls are violated with clear and virtually perfect impunity.<sup>1139</sup> Excluding laws from constitutional scrutiny when they are labelled 'personal', laws that are in fact public and certainly political in the sense that they "enforce the sexual politics of relationships between women and men", is another way of institutionalising male dominance and subordinating women by law.<sup>1140</sup>

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<sup>1134</sup> Agarín et al, *supra* note 1106 at 305.

<sup>1135</sup> Olsen, *supra* note 211 at 2.

<sup>1136</sup> Philip Ostien & Albert Dekker, "Shari'ah and National Law in Nigeria" in Jan Otto, ed, *Shari'ah Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010) at 578.

<sup>1137</sup> Section 277 of the Constitution.

<sup>1138</sup> Mackinnon, *supra* note 1061 at 194.

<sup>1139</sup> See Radhika Coomaraswamy, Report submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences, UN Commission on Human Rights, 50th Sess., Agenda Item 11(a), U.N. Doc. E/CN.4/1995/42 (1995).

<sup>1140</sup> Mackinnon, *supra* note 1061 at 199.



Even though the regulation of family relationships in Nigeria is the sphere of social norms and not of formal legal enforcement, this does not imply a total absence of legal regulation of family obligations. Personal laws are legislated. The state is far from uninvolved in this alleged personal sphere. It enters it in numerous ways, including, through legislating and implementing family law that essentially supports custom.<sup>1141</sup> The state may or may not be the definitive source of their authority, but it made them legally and socially authoritative.<sup>1142</sup> For example, parental responsibilities are generally regulated by informal social norms but the law recommends minimum parental duties and interferes readily when parents deviate.<sup>1143</sup> The law also pre-empts parental authority in several areas, demanding compulsory school attendance and controlling child labour. Also, when parents depart from certain minimum standards of care, state agents intervene under child abuse laws. In this way, it would seem that occasionally the law acts as a “norm manager” strengthening norms of family obligations, while at other times its norm management efforts encounter resistance and are ineffective.<sup>1144</sup> Therefore, at first glance, it could appear that in regulating family relationships, law and social norms function principally in two separate and different spheres.<sup>1145</sup> If the family was truly personal, it would not need to be managed by law or officially and judicially enforced like other laws; in the same way, if the authority of personal laws were “other than legal, there would be no need to legislate them”.<sup>1146</sup> Instead, these so-called personal laws are deemed off-limits to legal interference only when contested by those they hurt.<sup>1147</sup>

As described in previous sections, in Northern Nigeria, norms regulating personal and family matters demarcate the boundaries within which Muslim women and girls can define her identity.<sup>1148</sup> Shaheed asserts that precisely because personal laws are regularly labelled ‘Muslim’

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<sup>1141</sup> Valentine Moghadam, *Modernizing Women* (Boulder: Lynne Rienner, 1993) at 104; Mackinnon, *supra* note 1061 at 195.

<sup>1142</sup> Mackinnon, *supra* note 1061 at 197.

<sup>1143</sup> See Chapter 21 of the *Criminal Code Act*, Chapter 77, Laws of the Federation of Nigeria 1990; The *Child Rights Act* provisions implemented through Child Right Laws in the different states; The *Matrimonial Causes Act* enacted in 1970 (now Cap. M7 Laws of the Federation 2004) mainly governs marriages, marital breakdown and the welfare of children in Nigeria but only in respect of civil marriages.

<sup>1144</sup> Elizabeth Scott, “Social Norms and the Legal Regulation of Marriage” (2000) 86:8 *Virginia Law Review* 1901 at 1904.

<sup>1145</sup> *Ibid* at 1923.

<sup>1146</sup> Mackinnon, *supra* note 1061 at 197.

<sup>1147</sup> *Ibid*.

<sup>1148</sup> Shaheed, *supra* note 867 at 68.

and validated with reference to Islamic doctrine or culture, the “identity/space defined for women is put forward as that of a ‘Muslim woman’”.<sup>1149</sup> Therefore, a person who confronts any aspect of law relating to family or personal matters is regarded as denying or challenging “Muslim womanhood”.<sup>1150</sup> However, if we recognize the family as a site of inequality, calling this arena ‘personal’ is revealed to be simply a means of limiting women and girls’ assertion of equality there.<sup>1151</sup> I believe the treatment of women and girls in this arena is purely based on gender, there is nothing ‘personal’ about it. Calling a law based on gender ‘personal’ is a way of saying that women and girls whose lives are largely constructed and confined to the family, should not have enforceable legal rights to equality.<sup>1152</sup> The injury experienced by women and girls may “cut close to the person”, as several aspects of cultural identity and life do, but when this experience is commonly shared with other women and girls in similar cultures, it becomes gender-based.<sup>1153</sup>

This reasoning, that family relations at the cultural level should not be intruded by the federal government, impedes attempts at eradicating harmful traditional practices. It is no coincidence that what is attributed to the personal is usually where the greatest gender disparities are implemented. The exclusion of the personal from gender equality principles is a way of saying that women and girls have no equality rights and protection where it matters the most. When gender equality laws are inoperative, personal laws leave women in the hands of men.<sup>1154</sup> By refusing to enter the cultural sphere to address problems of power abuse, law and the state maintain an unequal power dynamic in Nigeria. This is an official way of regarding women as “second-class citizens in society”.<sup>1155</sup>

## **Conclusion**

In this chapter, I presented cultural violence against girls in terms of ideological understandings at the levels of the individual, state, and society. I argued that the law, despite its appearances, is not a neutral entity; instead, it reflects the ideology of society’s dominant group, while maintaining

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<sup>1149</sup> *Ibid.*

<sup>1150</sup> *Ibid.*

<sup>1151</sup> Mackinnon, *supra* note 1061 at 197.

<sup>1152</sup> Mackinnon, *supra* note 1061 at 196.

<sup>1153</sup> Mackinnon, *supra* note 1061 at 197.

<sup>1154</sup> Mackinnon, *supra* note 1061 at 198.

<sup>1155</sup> *Ibid.*

existing power structures.<sup>1156</sup> I took the position that the problem of child marriage is for me, a problem of male domination. A domination that is evident at the individual, state, and societal level. From the dynamics operating in Nigeria, this is not a problem with straightforward solutions.

As I try to understand the problem of cultural violence against girls in Northern Nigeria, understanding the dynamics of oppression was a necessary building block. I commenced with a heuristic division of the institutional and individual levels of oppression. I pointed to the complexity of adopting strategies that take account of women's role in fostering harmful traditional practices to facilitate more effective social transformation. By recognizing the role of women and drawing on the variability of cultural norms, it may be possible to accelerate change. To achieve this goal, mothers must confront their reality critically. However, simply confronting reality without a critical evaluation of institutions will not transform the lives of girls.

The claims made by women and girls are not too radical or far-reaching. However, in the Nigerian context, I argued that gender equality debates are not so much about rights, but about fundamental legal and political analysis and visions and also about who has power to define the terms of equality.<sup>1157</sup> In addition, the federal structure of Nigeria, which provides regional and local authorities with extensive legislative powers, and the application of different interpretations of the law (Sharia or Customary Law) makes it even more challenging to change the situation. Consequently, while Nigeria experiences economic, cultural, and political changes, the constant oppression of women and girls remains.

It will be more than unfortunate to view the challenges facing girls in Northern Nigeria as derived exclusively from culture, religion, or their identity as Muslims. Such a view simply hinders an understanding of structural inequities; belittles the efforts of those striving for change within their community, sometimes at the cost of their lives and most times for their freedom; it also obscures the various social and political forces that are often in conflict.<sup>1158</sup> To the extent that my analysis of the Nigerian system in this chapter is descriptively valid, it leaves a few questions unanswered.

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<sup>1156</sup> Farida Shaheed, "Controlled or Autonomous: Identity and the Experience of the Network, Women Living under Muslim Laws" (1994) 19:4 *Signs: Feminism and the Law* at 1000.

<sup>1157</sup> Didi Herman, "Beyond the Rights Debate" (1993) 2 *Social & Legal Studies* 25 at 40.

<sup>1158</sup> Shaheed, *supra* note 867 at 70.

To draw themes of this dissertation together, I return to the question of why the problem of cultural violence against girls remains entrenched. Why is the gendered nature of these practices so challenging to change through law reform? Is it possible to establish a standard of justice to which cultural practices may be subject?

## CHAPTER 6

### Legal Pluralism and the Framing of Human rights

#### Introduction

In plural settings, like Nigeria, normative orders, including local cultural systems and human rights regimes, present both prospects and obstacles in the fight for gender equality. As highlighted in chapter 5, the conflict between the need to preserve minority culture and the protection of rights forms the basis for how legal reforms have failed to reach the real issues affecting girls within cultural communities. Ethno-religious differences divide Nigeria, and so reforms towards cross-ethnic matters in accordance with the more inclusive ideals of human rights are not easily sustained. Tribal divisions, as the basis for most state policies, have set the goal of human rights realisation for women and girls on the horizon, but never quite realized.

The challenges of pluralism are not unique to Nigeria; many African states struggle with identifying ways to sustain the cultural heritage reflected in customary and religious norms and institutions, as they attempt to also function as modern democratic states.<sup>1159</sup> Some of modern-day Africa's struggles emanate from a forceful amalgamation of diverse ethnic groups into one "centrally administered territory".<sup>1160</sup> As a consequence, since the establishment of countries in Africa, ethnicity has generated increasing conflict that conditions law and politics.<sup>1161</sup> Colonial legal systems were imposed in a disorganised manner; some neighbouring countries possess dissimilar legal systems even when these countries are occupied by the same ethnic groups.<sup>1162</sup> In several cases, countries had two or three colonial experiences resulting in different legal systems

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<sup>1159</sup> For a discussion on pluralism in Africa, see Julie Ynès Ada Tchoukou, "A Conceptual Framework for Regulating Customary Law within Pluralistic African States: Reassessing Justice Sector Reforms for Reconciling Legal Traditions" (2020) 9 Global Journal of Comparative Law 245-270.

<sup>1160</sup> Efem Ubi & Vincent Ibonye, "Is Liberal Democracy Failing in Africa or is Africa Failing under Liberal Democracy?" (2019) 15:2 Taiwan Journal of Democracy at 148.

<sup>1161</sup> *Ibid.*

<sup>1162</sup> Jacques Frémont, "Legal Pluralism, Customary Law and Human Rights in Francophone African Countries" (2009) 40 Victoria University of Wellington Law Review at 152.

imposed on them.<sup>1163</sup> The illegitimate colonial legal paradigms and institutions imposed on local realities have caused difficulties in human rights implementation.<sup>1164</sup>

From the point of view expressed in earlier chapters, a small group of fundamental human rights are necessary to protect girls from harmful traditional practices (HTPs). The most obvious are the right to life, liberty, security of the person,<sup>1165</sup> health, human dignity, equality, and the right to be free from all forms of physical and mental violence.<sup>1166</sup> Although these rights are recognized and valued, at least in theory, by many countries, their local application is also highly contested by political thinkers, scholars, and activists around the world. Like the case of Nigeria, some rights are challenged on cultural grounds and others are a question of which rights should be prioritised in developing countries.<sup>1167</sup> Other times, the issue is also whether or not the language of rights should be used in the first place.<sup>1168</sup> As a result, certain notions of Western political philosophy such as liberalism, gender equality and individual autonomy, commonly presumed to be universal principles, are now confronted by political, religious and ethnic diversity.

In this chapter, I argue that to use the human rights framework as a mechanism for sustained change in the lives of women and girls in cultural communities, post-colonial Nigeria needs to properly understand itself as a multi-ethnic state. Failing to do this will result in the development of new forms of ‘identity politics’ that continue to silence and subordinate women. The identity markers of ‘religion’ and ‘ethnicity’ support differing interpretations and applications of human rights. Therefore, the impact of human rights on ethno-religious issues stays ambiguous. In Nigeria, identity driven struggles complicate and escalate centuries-old conflict between the universal values of human rights ushered in by the West and the specificities of religion, ethnicity, and

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<sup>1163</sup> For example, Cameroon experienced three divergent colonial regimes, German, French and British, inheriting triple colonial legacies that conditioned its post-colonial experience. The German colonial rule was from 1884 to 1914 and the joint anglo-french administration from 1914 until independence in 1960. See Sean Hawkins, “Disguising Chiefs and Gods as History: Questions on the Acephalousness of Lodagaa Politics and Religion” (1996) 66 *Journal of International African Institute* 202-247.

<sup>1164</sup> Frémont, *supra* note 1162 at 152.

<sup>1165</sup> See Article 3 of the *Universal Declaration of Human Rights*, 10 December 1948.

<sup>1166</sup> See Article 1(1) & (3) of the *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (entered into force 29 November 1999); Refer to Article 19, 24, 28 & 32 of the *Convention on the Rights of the Child*, 20 November 1989, UNTS art 24 (entered into force 2 September 1990).

<sup>1167</sup> Daniel Bell, *East Meets West Human Rights and Democracy in East Asia* (New Jersey: Princeton University Press, 2000) at 3.

<sup>1168</sup> *Ibid.*

nationality. As discussed below, the irony in the spread of human rights norms in Nigeria is that it is accompanied by new forms of resistance and demands for the right to observe ancient divine and ancestral injunctions.

I also show that the failure to regulate harmful traditional practices arises not simply from the plurality of legal orders but also from their competition and opposition.<sup>1169</sup> I am under the impression that post-modern Nigeria overlooks or tries to conceal the enormous diversity of its traditions, ethnicities, peoples, religions, and historically formed attitudes. Nigeria must acknowledge that there are severe limits and resistance to formal laws within the society, that there are spaces where its authority is not absolute and that “legal pluralism is a fact”.<sup>1170</sup> Custom and religious norms are major factors influencing and inhibiting the effectiveness of law in modern Nigeria. These factors are the causes of the incoherence in interpreting several legal authorities. There is endless competition between normative systems for the loyalty of those to whom they are addressed.<sup>1171</sup> Other than being a justification for popular resistance, they also influence the level of respect afforded to the official lawmaker.<sup>1172</sup>

Legal pluralism creates a range of complex legal problems in Nigeria. It is often hard to determine what subgroups’ rules are, especially when they are not part of a written tradition, for example, African customary law. Even those normative systems with written codes, such as Islamic law, are often rooted in remarkably different ways of thinking about the law. Legal problems of this kind confront leaders of many post-colonial societies, who commonly view their complex customary

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<sup>1169</sup> As briefly highlighted in chapter 3, there seems to be a correlation between ethnic and religious diversity in Nigeria. The North is dominated by Hausa and Fulani ethnic groups, which are predominantly Muslim. In the South-west the Yoruba ethnic group constitutes the majority, but there is no dominant religion. In the east, the Igbo ethnic group dominates while the Catholics and Methodists are the majority, but many Igbos observe traditional rites and ceremonies. Rough estimates suggest that approximately 50 percent of the population are Muslim, 40 percent is Christian and 10 percent practice exclusively traditional religions or no religion”. See Abdullahi An-Na’im, *African Constitutionalism and the Role of Islam* (Philadelphia: University of Pennsylvania Press, 2006) at 141.

<sup>1170</sup> A legal system is truly pluralistic in the juristic sense when the state commands different bodies of law for different groups of its population based on ethnicity, religion, nationality, or geography, and when legal regimes are all dependent on the state legal system. See Sally Engle Merry, “Legal Pluralism” (1988) 22:5 *Law & Society Review* at 870. Hooker also provides a masterful and comprehensive overview of legal pluralism in this sense, surveying plural legal systems in Asia, Africa, and the Middle East. See MB Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975); Ihsan Yilmaz, *Muslim Laws, Political and Society in Modern Nation States* (London: Routledge, 2006) at 15.

<sup>1171</sup> Yilmaz, *supra* note 1170 at 14.

<sup>1172</sup> *Ibid.*

legal systems as challenging, disorganised, and obstructive to progress.<sup>1173</sup> As such, it is easier for contemporary elites in Africa to see modernization and nation-building as necessitating a uniform legal system, often drawing on European law.<sup>1174</sup> To this extent, they seem to have accepted the dominant legal ideology of Western society. However, as these states try to adopt uniform state law, there is extreme resistance from groups whose customary law has been conserved in some fashion.<sup>1175</sup>

I commence the chapter by briefly examining some of the normative hallmarks of Western democracies, specifically essential issues of individual versus collective rights and freedoms. The assertion that rights are fundamental, indisputable, and universal may be historically entrenched; however, it is my task to truly engage and employ a pluralist discourse. This exercise is significant and necessary in societies like Nigeria where profound religious, ethnic, and other divisions obscure the application of human rights in the traditional Western sense. As discussed below, there are powerful arguments from religious groups that do not observe secular anti-discrimination rules. These groups provide their own forms of justice, care, rights, and duties. This should not be too contentious because I believe human rights norms typically validated by Western countries should not be mechanically accepted elsewhere. However, the problem lies in the fact that Muslims in Northern Nigeria, like Westerners, claim to have a separate system of universal values that lie at the heart of Islam.<sup>1176</sup> As discussed below, universalizing strategies, whether in the Western or Islamic context, ignores the relativity of women and girl's struggles.

This chapter also tries to go beyond the rhetoric that has trailed the Islamic values debate and to identify convincing criticisms of conventional Western advances of human rights. It is easy to claim that we respect each other, but we may not know what such respect demands in extreme cultural conflict.<sup>1177</sup> While some may deem certain practices offensive to human rights, others may

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<sup>1173</sup> See Merry, *supra* note 1170 at 871.

<sup>1174</sup> HWO Okoth-Ogendo, "The Imposition of Property Law in Kenya" in Sandra Burman & Barbara Harrell-Bond, eds, *The Imposition of Law* (New York: Academic Press, 1979) at 165.

<sup>1175</sup> Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983) at 228.

<sup>1176</sup> Judith Nagata, "Elusive Democracy: Appropriation of "Rights" Ideologies in Malaysian Ethnic and Religious Political Discourse" in Susan Henders, eds, *Democratization and Identity: Regimes and Ethnicity in East and Southeast Asia* (New York: Lexington Books, 2007) at 243.

<sup>1177</sup> Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (New Jersey: Princeton University Press, 2002) at 12.



consider our valuation a form of “ethnocentric imperialism”.<sup>1178</sup> As such, this chapter considers the meanings and priorities Northern Nigerians attach to certain beliefs largely shaped by their colonial experience. I hope to shed light on certain philosophical concerns overlooked or undervalued in Northern Nigeria’s culture.

In part two, I shift my inquiry to the selective and self-serving use of the term ‘westernisation’ as a justification for persevering gender inequality in Northern Nigeria. Since many developing countries in postcolonial times are still subject to political interference and economic domination and control by the West, resistance to this control and imposition is frequently articulated in terms that reproduce problematically essentialist notions of culture.<sup>1179</sup> As such, I explore how ‘westernisation’ is employed to define national culture in ways that insist on a specific form of cultural continuity. My analysis here reveals an image of culture and nation that emphasises imagined continuities over variation and transformation, suggesting that certain traditions and institutions are valuable simply by virtue of the fact that they are long-standing.<sup>1180</sup> To confront this depiction of ‘unchanging traditions’, I point to the careful, fractured and shifting usage of the label ‘westernisation’. This label is a device used to critique and reject only the changes and disruptions in culture that those with the power to define ‘culture’ deplore.<sup>1181</sup>

In part three, I delve into the politics of culture in Northern Nigeria. Upon close analysis, I recognise that the politics of culture is about the “push and pull of the mechanisms of power”<sup>1182</sup> over cultural issues. In addition to the organisation of parties and the formation of alliances among interest groups, politics in Northern Nigeria involves manoeuvring public rhetoric over cultural issues.<sup>1183</sup> For that reason, in this section, I contend that before a practice is protected as part of group identity, it is imperative that we establish the type of problem being debated. Groups and

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<sup>1178</sup> *Ibid.*

<sup>1179</sup> Uma Narayan, “Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism” (1998) 13:2 *Hypatia* at 90.

<sup>1180</sup> *Ibid.*

<sup>1181</sup> Elisabeth Le Roux & Selina Palm, “What Lies Beneath? Tackling the Roots of Religious Resistance to Ending Child Marriage” (2018) online (pdf): <https://www.girlsnotbrides.org/wp-content/uploads/2018/11/FINAL-Religious-leaders-report-High-Res.pdf>; Uma Narayan, *Dislocating Cultures: Identities, Traditions, and Third World Feminism* (New York: Routledge, 2013) at 29.

<sup>1182</sup> See Wolfe’s discussion in the context of the United States of America. Alan Wolfe & James Hunter, “Is there a Culture War?” (2006) *The Faith Angle Forum* at 5.

<sup>1183</sup> *Ibid.*

individuals' cultural histories should never be taken at face value; they have their own logics.<sup>1184</sup> Instead, the history and totality of circumstances of cultural practices should be properly examined through a process that goes beyond simply contextualizing the meanings of such norms. Historical investigation in Northern Nigeria shows declines, renewals, flexibility, and variations in the significance of certain cultural practices. Ultimately, my analysis in this chapter reveals child marriage to be a practice of some sort; but a practice that is different from what it is imagined to be by fundamentalists who depict it as an intrinsic element of Islamic culture and way of life. I do not attempt to make a distinction between authentic and inauthentic practices, and I do not take the status of child marriage as a religious practice for granted without understanding its politically constituted nature. However, understanding cultural practices as entities distinct from what they are taken to be is essential for this dissertation.

Finally, I believe a serious challenge to the inequities produced by ethno-religious disagreements is the failure to establish a clear standard of justice to which harmful traditional practices (HTPs) may be subject. I acknowledge that there is no easy way to reconcile individual liberty with collective rights of cultural groups; however, taking my cue from the analysis done in this chapter, I suggest how a diverse ethno-religious state, like Nigeria may succeed in realizing opportunities for women and girls while securing collective intergroup justice.

## **Part I: Cultural Barrier- A Problem in the Exchange of Ideas**

### **(1) Cultural Respect and Liberal Neutrality**

The origin of the contemporary concept of human rights is strongly debated; it is contested terrain. The universalism and relativism debate also raise several theoretical questions. Several scholars have approached these questions from different historical and legal perspectives.<sup>1185</sup> In basic terms, the human rights system is a legal system dedicated to ensuring a “universal application of

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<sup>1184</sup> Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (New Jersey: Princeton University Press, 2002).

<sup>1185</sup> See for example Jack Donnelly, *Universal Human Rights in Theory and Practice* (London: Cornell University Press, 2013); Josiah Cobbah, “African Values and the Human Rights Debate: An African Perspective” (1987) 9:3 *Hum Rts Q* at 328; Mahmood Mamdani, “The Social Basis of Constitutionalism in Africa” (1990) 28:3 *The Journal of Modern African Studies* 359; Paul Zeleza, Philip McConaughay, *Human Rights, the Rule of Law, and Development in Africa* (Philadelphia: University of Pennsylvania Press, 2004).

a code of conduct” to various particular contexts.<sup>1186</sup> Human rights documents explain in detail this shared code formalised through a consensual process of document creation and ratification.<sup>1187</sup> The difficulty arises in the fact that the logic at the core of this human rights process does not accept the existence of other normative systems as a justification to revoke or limit its scrutiny.<sup>1188</sup> Basically, there is little to no room to modify human rights norms to specific contexts or to limit their application in favor of a different idea of justice.<sup>1189</sup> As such, countries that ratify human rights conventions accept the obligation of complying with their requirements, irrespective of their individual socio-cultural contexts.<sup>1190</sup> As examined in the example of Nigeria, the gap between universal conceptions of justice and particularities within local settings generate a serious dilemma for human rights implementation.

Relativists and universalists agree that human rights are a specific manifestation of an international secular legal philosophy and that the Western political tradition is its primary inspiration.<sup>1191</sup> They disagree over whether the specific expression of “a common standard of achievement for all peoples and all nations” in the Universal Declaration of Human Rights is suitable for all contexts, backgrounds and peoples.<sup>1192</sup> More specifically, they disagree on where cultural beliefs fit within international human rights principles and practice.<sup>1193</sup> Treaties are mostly formed with a specific idea of social justice based on a “neoliberal privileging of choice” ascribing significant independence and agency to people instead of alternatives that may be group-centred or focused on religious or collective conceptions of fairness.<sup>1194</sup> This is contentious because it regards the individual as the focus of the moral universe, and so, it diminishes groups, collectives, and

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<sup>1186</sup> Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006) at 130.

<sup>1187</sup> *Ibid.*

<sup>1188</sup> *Ibid.*

<sup>1189</sup> This universalizing approach is structured by the human rights conventions themselves and their committee’s mandate to apply it to all countries equally. See Merry, *supra* note 1186 at 130.

<sup>1190</sup> However, a state may make a reservation that excludes or limits the legal effect of a specific provision within a treaty. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations must not be incompatible with the object and the purpose of the treaty. See Article 2(1)(d) & 19-23, *Vienna Convention of the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155 (entered into force 27 January 1980).

<sup>1191</sup> Ellen Messer, “Pluralist Approaches to Human Rights” (1997) 53:3 *Journal of Anthropological Research* at 294.

<sup>1192</sup> *Universal Declaration of Human Rights*, 1948; *Ibid* at 294.

<sup>1193</sup> Messer, *supra* note 1191 at 294.

<sup>1194</sup> Merry, *supra* note 1186 at 103.

communal rights.<sup>1195</sup> It is one of the biggest challenges with the human rights movement in parts of the world where group rights are deeply entrenched within culture and intensified by the multi-ethnic nature of post-colonial states.<sup>1196</sup> As highlighted in chapter 5, cultural factors affect the prioritizing of rights, and this matters when there is a conflict and it must be decided which right should be sacrificed.<sup>1197</sup> Not all rights valued in Western countries resonate to the same extent in Nigeria. Individual rights of people are usually addressed within the framework of group rights.

The inkling that a group of Western states would not only define human rights for other states but also oversee its education and implementation until these states are ready to be trusted with effecting those predetermined standards is precisely “the civilizing mission” that was used to legitimize colonialism in the 19th century.<sup>1198</sup> Having inherited the liberal state and its institutions from the colonial past, African countries are held by the international community, consisting of Western states, to the principles of Western liberalism.<sup>1199</sup> Accordingly, I acknowledge the difficulty of African human rights scholars in operating through the lens of a foreign Western framework when discussing African cultural issues. At inception, African postcolonial states were given an almost unattainable task: immediately integrate the individualistic standards of the liberal tradition within inherited colonialist structures and simultaneously build a nation from diverse groups.<sup>1200</sup> Instead, most African postcolonial elites chose to first consolidate their own political power.<sup>1201</sup> As discussed below, in Nigeria, this meant dismantling liberal ideas, emphasising nationalist notions and tribal loyalties, amongst others. Mutua asserts that it is a miracle that many African states did not completely collapse, given the “challenges to internal legitimacy”.<sup>1202</sup> Howard asserts that the charge of nation building might be somewhat easier in Africa if the consolidation of borders had developed from years of local political conflict, as they did in

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<sup>1195</sup> Makau Mutua, “Human Rights and Powerlessness: Pathologies of Choice and Substance” (2008) 56 Buffalo Law Review at 1029.

<sup>1196</sup> *Ibid*; Makau Mutua, “The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties” (1995) 35 VA. J. INT’L L. 340.

<sup>1197</sup> Daniel Bell, *East meets West: Human Rights and Democracy in East Asia* (New Jersey: Princeton University Press, 2000) at 40.

<sup>1198</sup> Abdullahi An-Na’im, “The Spirit of Laws is not Universal: Alternatives to the Enforcement Paradigm for Human Rights” (2016) 21 Tilburg Law Review at 256.

<sup>1199</sup> Cobbah, *supra* note 1180 at 328.

<sup>1200</sup> Makau Mutua, “Human Rights in Africa: The Limited Promise of Liberalism” (2008) 51:1 African Studies Review at 28.

<sup>1201</sup> *Ibid*.

<sup>1202</sup> Mutua, *supra* note 1200 at 29.

Europe.<sup>1203</sup> For example, if Northern, Western and Eastern Nigeria had developed as three separate countries.<sup>1204</sup> Instead, in Africa, the ruling elites were obliged to forge a sense of nationhood out of artificially forced geographical boundaries.<sup>1205</sup> Whatever the case, the point to be made here is that the liberal tradition failed to take hold as human rights are still violated across the board under the guise of culture.<sup>1206</sup>

I believe universalists and liberalists operate with a general ignorance of what culture is and its significance to people. They appear to ridicule deeply entrenched normative values like the collectivism emphasised in culture. In the African context, it should not be assumed that individuals are unconstrained and independent from culture and its ethical obligations defined through membership in a community. Culture in Nigeria is more pervasive, influential, and compelling than is permitted in the liberal interpretation of self. Culture is very real and runs very deep. Therefore, diminishing culture to a product which people can choose reduces culture to something insignificant.<sup>1207</sup> Culture is what compels compliance with authority; that is, the authority of parents, tradition, religion, history, and of superstition.<sup>1208</sup> A culture is, after all, a total way of “thinking, feeling, and viewing the world”; it is “an organic whole” not something that can be selected in bits and pieces.<sup>1209</sup> As highlighted in chapter 3, women and girls in Northern Nigeria are products of their cultural context. Eradicating child marriage and similar practices could lead to a questioning of the entire ethno-religious tradition in Northern Nigeria. However, this does not mean that no interchange or interaction between different Nigerian cultures is possible.

My intention here is not to overestimate the significance of culture. Fundamentally, culture is not a static entity passed on from one generation to another through DNA, instead of experience.<sup>1210</sup> I would also like to note that I do not reject the idea that individualism is necessary for the proper

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<sup>1203</sup> Rhoda Howard, “Evaluating Human Rights in Africa: Some Problems of Implicit Comparisons” (1984) 6 *Human Rights Quarterly* at 168.

<sup>1204</sup> *Ibid.*

<sup>1205</sup> *Ibid.*

<sup>1206</sup> See Zeleza Tiyambe & Philip McConaughay, *Human Rights, the Rule of Law, and Development in Africa* (Philadelphia: University of Pennsylvania Press, 2004).

<sup>1207</sup> Hunter Davison, *Before the Shooting Begins* (New York: Free Press, 1994) at 200-202.

<sup>1208</sup> Richard Bernstein, *Dictatorship of Virtue* (New York: Vintage, 1995) at 6.

<sup>1209</sup> Irene Thomson, *Culture Wars and Enduring American Dilemmas* (Michigan: The University of Michigan Press, 2010) at 20.

<sup>1210</sup> Linda Chavez, “Demystifying Multiculturalism” (1994) 46:3 *National Review* 26.

functioning of any constitutional democracy. What I totally disagree with is the impression that we can or should stop there. That would be a restricted understanding of rights. Given the significance of culture, for rights to be meaningful, it is imperative that we go beyond the individual and also address collective identities in the legal, political and economic framework of the states.<sup>1211</sup> One way political democracy addresses the multiplicity of groups within a single state is to allow autonomous systems for groups or to decentralise powers through forms of federalism.<sup>1212</sup> But as highlighted in the previous chapter, the irony for Africa is that the federalist arrangements have not functioned well where they have been tried.<sup>1213</sup> The deeply pluralistic nature of African states makes it difficult to divide the scope of power of governing structures in a way that effectively manages ethno-religious problems and conflicts.

While Nigerians may have to accept the boundaries they inherited from colonialism, they do not have to accept all aspects of liberalism. As such, it is imperative that I earnestly examine certain cultural patterns, values, and fundamental features in Northern Nigeria's ethno-religious system. Also, to reach an effective coexistence of individual autonomy and collective rights, a dismantling of certain preconceived and misguided nationalist conceptions is necessary. I try to do this in the next section.

## **(2) Modernists and Traditionalists**

The cultural distinctions constructed during colonial struggles in Nigeria are salient to modern-day rights agendas. Colonialism resulted in problematic pictures of both Western culture and the local culture of certain colonies; pictures that relied on a clear contrast between the two cultures.<sup>1214</sup> Views of gender, of customs and practices concerning women was significant in this contrast.<sup>1215</sup> As briefly highlighted in chapter 3, anti-colonial struggles for independence in Nigeria not only

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<sup>1211</sup> Mutua, *supra* note 1195 at 1029.

<sup>1212</sup> Henry Steiner, "Ideals and Counter-ideals in the Struggle over Autonomy Regimes for Minorities" (1991) 66 *Notre Dame Law Review* at 1539.

<sup>1213</sup> For example, the Mali Federation collapsed before its second anniversary. The Federation of Arab Republics was barely into its fifth year when it was abolished in 1977. The Federation of Rhodesian lasted from 1953-1963. The story of other federations on the continent is not different. See discussions in Yonatan Fessha, "Federalism, Territorial Autonomy and the Management of Ethnic Diversity in Africa: Reading the Balance Sheet" (2012) 1:363 *L'Europe en Formation* 265; Rhoda Howard, "Evaluating Human Rights in Africa: Some Problems of Implicit Comparisons" (1984) 6 *Human Rights Quarterly* at 168.

<sup>1214</sup> Narayan, *supra* note 1181 at 14.

<sup>1215</sup> *Ibid.*

rejected the legality of Western colonisation but also formed a nationalist political identity by contrasting local cultural values to those of the West, asking for a rejection of the latter.<sup>1216</sup>

Much of the debate incited by present-day incidents of child marriage in Nigeria depict it as a conflict between ethno-religious tradition on the one hand and westernisation or modernisation on the other.<sup>1217</sup> Modernist positions on harmful traditional practices accept to a greater degree that some aspects of Nigerian culture is in need of an undeniable degree of transformation and change.<sup>1218</sup> Traditionalists tend to be more resilient and defiant to some changes in their tradition, especially practices affecting women.<sup>1219</sup> They view cultural modifications endorsed by modernists as deeply undermining their way of life and a submission to the cultural dominance of a colonizing Western culture.<sup>1220</sup> In this way, modernity, discussed in opposition to culture, is a concept which, in African history, is connected to the colonial experience and has developed more distinct local features that emphasise the approval or disapproval of certain cultural norms.<sup>1221</sup> I believe understanding the expansive historic forms of these cultural contrasts assists in making sense of why ‘westernised’ is an unconstructive and undesirable “epithet of choice”.<sup>1222</sup> West-centric positions present serious barriers to constructive cross-cultural dialogue in Nigeria. It is inevitably implicated in the political and discursive struggles around cultural practices and is a significant part of attempts to justify these practices and interrelated attempts to challenge the legitimacy of human rights in Nigeria.

Many of the cultural conflicts between Western and local cultures in colonial Nigeria between 1900 and 1958 concerned issues relating to women and girl’s roles and sexuality, making women and girls a principal site of the political struggles between Western culture and the culture of the

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<sup>1216</sup> *Ibid*; Elisabeth Le Roux & Selina Palm, “What Lies Beneath? Tackling the Roots of Religious Resistance to Ending Child Marriage” (2018) online (pdf): <https://www.girlsnotbrides.org/wp-content/uploads/2018/11/FINAL-Religious-leaders-report-High-Res.pdf>.

<sup>1217</sup> See examples highlighted in chapter 5.

<sup>1218</sup> See EO Oyelade, “Trends in Hausa/Fulani Islam since Independence: Aspects of Islamic Modernism in Nigeria” (1982) 14:1 *Ibadan Journal of Religious Studies* 3; Narayan, *supra* note 1181 at 17.

<sup>1219</sup> See examples in chapter 3 and 5.

<sup>1220</sup> Narayan, *supra* note 1181 at 17.

<sup>1221</sup> Platte, *supra* note 60 at 173.

<sup>1222</sup> Narayan, *supra* note 1181 at 114.

colonized.<sup>1223</sup> Child marriage, girl hawkers, female genital mutilation, virginity testing, polygamy, are all noteworthy points of dispute and attempted mediation between Western culture and the different African cultures. In these conflicts, local practices were depicted as backward and barbaric in contrast to the progressive nature of Western culture.<sup>1224</sup> Political elites often reacted by constructing these very practices as sacred and longstanding traditions that were constitutive of ethno-religious values, and as practices associated with the religious place of, and respect for, women.<sup>1225</sup> In these constructions, women are represented as essential to the task of challenging westernisation and protecting national culture.<sup>1226</sup> Women's compliance to the status quo is often linked to the conservation of culture and any challenge to these cultural practices are casted as "betrayals of nation and culture".<sup>1227</sup>

As evidenced in subsequent sections, in the case of Northern Nigeria, there could be little significant dialogue on the effect of HTPs on women's well-being and agency that can escape becoming entangled in the struggles between colonialism and nationalism. It is almost impossible to extricate discussions of cultural practices that adversely affect women and girls from this conflict-laden conceptual framework. Attempts to end child marriage are interpreted as a condemnation of all religious values and traditional ways of living, while religion and culture are perceived as static opponents of secular modernity. This is problematic because it leaves women and girls' issues susceptible to co-option by both colonial and nationalist agendas. As such, the issue of child marriage in post-colonial Nigeria may not be so much about the specific situation of girls within a defined set of social relationships as it is about the "encounter between a colonial state and the supposed tradition of a conquered people".<sup>1228</sup>

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<sup>1223</sup> See Saheed Aderinto, *When Sex Threatened the State: Illicit Sexuality, Nationalism, and Politics in Colonial Nigeria, 1900-1958* (Chicago: University of Illinois Press, 2014); George Abosede, *Making Modern Girls: A History of Girlhood, Labor, and Social Development in Colonial Lagos* (Ohio: Ohio University Press, 2014); Narayan, *supra* note 1181 at 17.

<sup>1224</sup> Narayan, *supra* note 1181 at 17.

<sup>1225</sup> Partha Chatterjee, "Colonialism, Nationalism and Colonized Women: The Contest in India" (1989) 16:4 *American Ethnologist* (1989) at 623; Narayan, *supra* note 1181 at 17.

<sup>1226</sup> Chatterjee, *supra* note 1225 at 623; Narayan, *supra* note 1181 at 17.

<sup>1227</sup> Uma Narayan, "Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism" (1998) 13:2 *Hypatia* at 91.

<sup>1228</sup> Chatterjee, *supra* note 1225 at 623.



## Part II: Cultural Backlash

### (1) Essentializing Nationalism

Huntington asserts that modernisation does not require nor produce Westernised societies.<sup>1229</sup> In contrast, it stimulates a revival of, and renewed devotion to local cultures.<sup>1230</sup> The movement of people into new cities, locations, and professions disrupts their traditional connections, produces feelings of alienation, and generates a crisis of identity to which culture usually provides an answer.<sup>1231</sup> As a result, numerous non-western communities have seen a return to their cultures. The quest for identity is now a hallmark of modernity expressed in a variety of “politics of recognition” over ethnic, linguistic, national, religious, and other indicators of individual and group identity.<sup>1232</sup> I believe the revival of nationalism in Northern Nigeria is a direct consequence of modernisation. This revival does not only assume an anti-western notion in the form of rejecting Western culture because it is Christian or because it is secular and corrupt.<sup>1233</sup> It also extends to the creation of nationalist ideologies and movements looking to cleanse and purify the culture of its impure Western features and thus making it whole again.<sup>1234</sup> By doing this, the intention is to create a compulsory unity out of diversity, consistency out of inconsistencies, and uniformity out of difference.<sup>1235</sup>

Historical forms of colonialist and nationalist cultural self-definition shed light on why westernisation is a prevalent expression of cultural disapproval in Northern Nigeria and in Africa in general. The quick transformation of socio-economic structures in many Third-World contexts, a process largely induced by “Western economic agendas and visions of development”, strengthens the belief that culture is at risk of westernisation.<sup>1236</sup> Even after colonialism, many Third-World countries are still susceptible to economic exploitation and political manipulation by Western powers.<sup>1237</sup> This problem is best conveyed through an ancient often repeated statement,

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<sup>1229</sup> Samuel Huntington, “The West Unique, not Universal” (1996) 75:6 *Foreign Affairs* at 37.

<sup>1230</sup> *Ibid.*

<sup>1231</sup> *Ibid.*

<sup>1232</sup> Christian Green, “Religion, Family Law, and Recognition of Identity in Nigeria” (2011) 25:2 *Emory Intl L Rev* at 946.

<sup>1233</sup> Huntington, *supra* note 1229 at 37.

<sup>1234</sup> Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (New Jersey: Princeton University Press, 2002) at viii.

<sup>1235</sup> *Ibid* at viii.

<sup>1236</sup> Narayan, *supra* note 1181 at 20.

<sup>1237</sup> *Ibid.*

“We do not want to turn our blacks into imitation Englishmen”.<sup>1238</sup> This view gives the impression that nothing could be more dreadfully catastrophic for Africans. For example, in Kenya, in the 1950s, some nationalists denounced certain Western establishments and lifestyles. Africans who were baptized and raised as Christians rejected their Christian names, refused Western forms of worship, and commenced religious establishments of their own.<sup>1239</sup> They assert that “Africans must go back to their own ways and institutions”.<sup>1240</sup> This is just a summary of a pattern that has repeated itself time and again in most parts of Africa.

For this dissertation, the problem lies in the fact that formulating demands based on nationalist ideas creates more and more fixed and firmly defined symbols of cultural exclusivity demarcating boundaries between cultures.<sup>1241</sup> Thus, in Nigeria, many nationalists endorse a dichotomy between the ‘rest of Nigeria’ and the ‘spiritual/moral North’ who must remain unpolluted by westernisation.<sup>1242</sup> For example, members of the reform movement in Northern Nigeria- in particular the local reform movement, whose main representative is the Jama'at izalat al-bida wa-iqamat al-sunna (Society for the removal of innovation and reinstatement of tradition)- saw legal reform as an opportunity to transform Muslim society through the elimination of Western cultural influences.<sup>1243</sup>

Also, among the more noticeable changes in Nigeria, in the recent decade, is the increasing number of women participating in local and national politics and entering professional and public spheres of activity initially designated to be exclusively male. The cultural anxiety generated by social change results in reactions focused on transformations in gender roles as a definitive indicator of cultural threat and loss.<sup>1244</sup> This is then used to rationalise abuse and reject a variety of legal and

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<sup>1238</sup> Peter Abrahams, “The Conflict of Culture in Africa” (1954) 16:4 *International Affairs* 304 at 387.

<sup>1239</sup> *Ibid* at 389.

<sup>1240</sup> *Ibid*.

<sup>1241</sup> Shaheed, *supra* note 867 at 63.

<sup>1242</sup> See discussion in chapter 3 of dissertation.

<sup>1243</sup> Weimann, *supra* note 1031 at 433. For a discussion of the emergence and ideological orientation of the 'Yan Izala see Roman Loimeier, *Islamic Reform and Political Change in Northern Nigeria* (Evanston: Northwestern University Press, 1997) and Ousmane Kane, *Muslim Modernity in Postcolonial Nigeria: A Study of the Society for the Removal of Innovation and Reinstatement of Tradition* (Boston: Brill, 2003).

<sup>1244</sup> Narayan, *supra* note 1181 at 20.

political demands for equality, justice and protection of the human rights of women and girls.<sup>1245</sup> It results in requests for a return to and reestablishment of “our traditional way of life”, a return that is to be achieved by reinstating women and girls to their traditional place.<sup>1246</sup> Therefore, any reform agenda demanding an increased equality of women and girls or the eradication of oppressive cultural practices instead of a return to traditional roles is perceived as cultural disloyalty.

From the above, it is clear that the scope of women and girls’ struggles in Nigeria needs to incorporate not only contestations of specific practices and institutions but also include challenges to the larger depictions of nation and culture. These pictures of culture and nation conceal the degree to which calls to restore the ‘traditional way of life’ are motivated by political agendas. As discussed below, these narratives often appear to be about actual and descriptive elements of a national and cultural past, but are instead political ideas used to stipulate which groups are important, which ways of life should be honored and respected, and how the state should envisage its political future.<sup>1247</sup> For example, fundamentalists in Northern Nigeria, portray child marriage as an important aspect of Islamic tradition and religious values.<sup>1248</sup> Scholars and media reports against child marriage criticize the practice precisely on the grounds that it is religious, traditional, cruel and out-dated.<sup>1249</sup> Much of this public disapproval did not query or confront its status as culture or as a central feature of religion; they oppose the practice without questioning the terms in which the practice is characterised. In so doing, they contribute to the portrayal of child marriage as a plain opposition between westernisation and religion/tradition.

## **(2) Selective Labelling**

In this section, using a postcolonial feminist lens, I draw attention to a process called “selective labeling”; a process by which those with societal power conveniently label some changes in

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<sup>1245</sup> Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder: Westview Press, 1995); Rhoda Howard, Cultural Absolutism and the Nostalgia for Community (1993) 15 Human Rights Quarterly 315.

<sup>1246</sup> Narayan, *supra* note 1181 at 20.

<sup>1247</sup> Narayan, *supra* note 1181 at 21.

<sup>1248</sup> See Jameelu Mabai, “Child Not Bride: In Defence of Senator Yerima” (14 September 2013), online: <https://www.abusidiqu.com/childnotbride-in-defence-of-senator-yerima-by-jameelu-mabai/>.

<sup>1249</sup> For example, Tim Braimah, “Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage” (2014) 14 AHRLJ 474; Enyinna Nwauche, “Child Marriage in Nigeria: (Il)Legal and (Un)Constitutional” (2015) 15 Afr. Hum. Rts. L.J. 421 at 423; Association for Reproductive and Family Health, “Child Marriage, an Unending Abomination in Nigeria” (2018), online: <https://arfh-ng.org/child-marriage-an-unending-abomination-in-nigeria/>

tradition as consonant with “cultural preservation” while describing other modifications as “cultural loss” or “cultural betrayal”.<sup>1250</sup> Selective labelling plays a significant role in facilitating essentialist notions of culture because it permits changes that are sanctioned by socially dominant groups to look consonant with the protection of fundamental aspects of a culture, while portraying changes that confront the “status quo as threats to cultural preservation”.<sup>1251</sup> I argue that selective labelling is at work in Northern Nigeria because those with social power tend to disregard or amend custom when it suits them. However, what interests me in this section is that while some inclusions of Western products and practices are criticized and opposed as ‘westernization’, not all are.<sup>1252</sup> In my discussion in this section, I do not wish to assert that culture is simply a smoke screen, I only insist on a thorough assessment of modern motivations underlying its revival and deployment.

The judicious labelling of specific changes and not others as expressions of westernisation permits a depiction of undesirable changes as inexcusable betrayals of entrenched and fundamental traditions, while desirable changes are perceived as simply practical alterations that are fully consonant with the protection of cultural values.<sup>1253</sup> Not surprisingly, the gender of the actors appears to be an element that determines if a specific change is considered an example of westernisation that is incompatible with tradition.<sup>1254</sup> For example, gender equality and autonomy issues are characterised as Western conceptions by the same groups who use the language of rights in arguing for political and religious rights. I also do not imagine that the many Northern Nigerian men wearing shirts and trousers or suits today consider themselves wearing Western attire.<sup>1255</sup> In this context, I contend that what counts as westernisation is very specific; modifications affecting women and the family are more controversial than transformations with respect to men in the public domain. As reflected below, in many instances, men appear to be allowed more cultural

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<sup>1250</sup> Narayan, *supra* note 1181 at 21.

<sup>1251</sup> Narayan, *supra* note 1179 at 95.

<sup>1252</sup> Kumari Jayawardena, *The White Women's Other Burden* (New York: Routledge, 1995) at 15. For related critiques of appeals to ‘tradition and culture’ to justify denials of human rights to Third-World women, see Arati Rao, “The Politics of Gender and Culture in International Human Rights Discourse” in Julie Peters & Andrea Wolper, eds, *Women's Rights Human Rights* (New York: Routledge, 1995); Ann Elizabeth Mayer, “Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience” in Julie Peters & Andrea Wolper, eds, *Women's Rights Human Rights* (New York: Routledge, 1995).

<sup>1253</sup> Narayan, *supra* note 1181 at 23.

<sup>1254</sup> Narayan, *supra* note 1181 at 26.

<sup>1255</sup> Pambazuka news, “Why Salafi Clerics’ London visit Sparked a Debate” (15 December 2017), online: <https://www.pambazuka.org/global-south/modernity-and-morality-northern-nigeria>.

liberty to effect changes, than women, and their changes are less frequently branded as ‘westernisation’. Also, in several other examples less linked to gender, artifacts, processes, and ideas originating in the West, from computers to cars to constitutions, are embraced and modified for local use, without generating a discourse that frames them as symbols of westernisation, while other “borrowings are seen as problematically Western”.<sup>1256</sup>

In Northern Nigeria, rather than a persistence of tradition in the face of Western or modern impositions, what we see is instead an incomplete westernisation, cultural muddling, and the enthusiastic acceptance of specific modern practices and values.<sup>1257</sup> For example, the majority of legislation relating to public service, commerce, revenues/taxes, administrative matters, banking and the military consists of policies either inherited from the colonial authority or adapted from elsewhere.<sup>1258</sup> In sharp contrast, rules governing personal and family matters are regulated almost entirely through Muslim jurisprudence and justified with reference to Islamic law. Also, upon closer analysis, the *Sharia Penal Code* used by Northern Nigerian states is different from the main tenets of Sharia.<sup>1259</sup> Unlike the unmodified provisions of the Quran and the *sunnah*, the *Penal Code* downplays certain offences and penalties. This was done to reflect a restrained Sharia for the country.<sup>1260</sup> Islamic banking is another example. *Riba* (usury) or any form of interest is considered very offensive in Islam.<sup>1261</sup> The Quran dismisses persons involved directly or indirectly with usury, but Muslims in Northern Nigeria and their government normally charge interest on loans because it is understandably difficult to have feasible economic systems today without these practices.<sup>1262</sup>

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<sup>1256</sup> Narayan, *supra* note 1181 at 27.

<sup>1257</sup> Jack Donnelly, “Cultural Relativism and Universal Human Rights” (1984) 6:4 Human Rights Quarterly at 411.

<sup>1258</sup> Shaheed, *supra* note 867 at 67. See Abiodun Oladiti, “Justice in the Threshold of Culture: A Comparative Study of Yoruba and Islamic Legal Systems” in Pieter Coertzen, Christiaan Green, Len Hansen, eds, *Law and Religion in Africa: The Quest for the Common Good in Pluralistic Societies* (Stellenbosch: Sun Media Stellenbosch, 2015) at 119.

<sup>1259</sup> Salim Magashi, “Pluralism in the Nigerian Legal System as a Panacea for an Inclusive National Development” in Pieter Coertzen, Christiaan Green & Len Hansen, eds, *Law and Religion in Africa: The Quest for the Common Good in Pluralistic Societies* (Stellenbosch: Sun Media Stellenbosch, 2015).

<sup>1260</sup> *Ibid.*

<sup>1261</sup> In a *hadith*, Jabir said that the Prophet Muhammad cursed the taker, giver, writer, and witnesses of *riba*, saying: “They are all equal”. See Sahih Muslim, The Book of MUSAQAH, bk 22, ch 9, hadith 132, online: <http://sunnah.com/muslim/22/132>.

<sup>1262</sup> “If ye do it not, take notice of war from Allah and his Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly” Holy Quran, Al-Baqarah 2:279. See also, Holy Quran, Al-Baqarah 2:278; See Abdullahi An-Na’im & Louis Henkin, “Islam and Human Rights: Beyond the Universality Debate” (2000) 94 American Society of International Law at 98.

The forces of westernisation preventing the eradication of child marriage are paradoxically also responsible for the recent marriages of girls by Northern Nigerian political elites. Take the example of a politician who married a thirteen-year-old girl from Egypt and paid her bride price with foreign (Western) currency, \$100,000.<sup>1263</sup> Public figures and religious leaders (Salafi clerics) condemn individualism of Western values and act like they are completely oblivious to the changing social realities in their communities while they drive imported luxury automobiles, and plan European or American vacations.<sup>1264</sup> Similar arbitrariness is demonstrated by Boko haram (meaning ‘Western education is forbidden’<sup>1265</sup>) in Northern Nigeria. Boko haram’s goal is to purify Islam by rejecting secular Western education but appear to have no qualms about the cultural effects of its considerable dependence on foreign or Western-produced weapons to maintain state power or the use of media and other modern technology to broadcast their ideological messages.<sup>1266</sup> In other words, the traditions used to defend against Western ideological intrusions far too often no longer exists. While acknowledging some genuine claims of culture, I believe it is important to be attentive to “cynical manipulations of a dying, lost or even mythical cultural past”.<sup>1267</sup>

We should also not be deceived by criticisms of the inappropriateness of Western human rights made by exploitive regimes whose practices have at best only a weak connection to culture.<sup>1268</sup> For example, after a close assessment of the political framework in Northern Nigeria, it is not clear that Nigerian Muslims reject Western ideals of democracy in favour of Sharia. In Northern Nigeria, political elites use the language of constitutional rights for the distribution of state resources along religious and ethnic lines, in crafting their local definition of democracy.<sup>1269</sup> Debates over Sharia also include common expectations about the benefits of democracy in religious terms, contending that citizens lack essential resources (dowries, jobs, food, and education) to live decent Islamic

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<sup>1263</sup> Daily News- Egypt, “Nigerian senator justifies marriage to 13-year-old Egyptian girl” (11 May 2010), online: <https://dailynewsegypt.com/2010/05/11/nigerian-senator-justifies-marriage-to-13-year-old-egyptian-girl/>.

<sup>1264</sup> See Donnelly, *supra* note 1257 at 412; Also see Pambazuka news, “Why Salafi Clerics’ London visit Sparked a Debate” (15 December 2017), online: <https://www.pambazuka.org/global-south/modernity-and-morality-northern-nigeria>.

<sup>1265</sup> In Hausa language.

<sup>1266</sup> Michelle Faul & Haruna Umar, “Boko Haram leader says violent campaign continues” (13 December 2016), online: <https://apnews.com/49a3fe4c7a1449ffa06145e780fdf474>.

<sup>1267</sup> Donnelly, *supra* note 1257 at 411.

<sup>1268</sup> *Ibid.*

<sup>1269</sup> Brandon Kendhammer, “The Sharia Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies” (2013) 45:3 Comparative Politics at 308.

lives.<sup>1270</sup> Instead of rejecting democratic institutions as an obstacle to Sharia, Sharia proponents maintained that Islamic law implementation would increase their performance by protecting the religious ‘rights’ of Muslims, improving economic growth and social justice.<sup>1271</sup> As such, even if Sharia proponents in Northern Nigeria presented themselves as “restorers” of Islamic social institutions, it was their ability to frame the Sharia debate using a language of rights and development that played the biggest role in attracting mass support.<sup>1272</sup> This ‘rights’ framework played a significant part in linking explicitly religious demands to democratic governance.<sup>1273</sup> I believe relying on constitutional provisions and invoking the language of rights reinforces Western liberal democratic ideals. Hence, I am of the view that the nationalism in Northern Nigeria is not a complete rejection of the West but instead a justification for the selective appropriation of aspects of Western modernity.<sup>1274</sup>

Extensive changes have also occurred in the lives of women. Certain practices once considered problematic are now tolerable cultural modifications. For instance, the incursion of the #MeToo movement in Northern Nigeria was unexpected. Socially, women and girls’ voices are not to be heard as the “conservatism and Islamic edicts” of Northern Nigeria mandate the invisibility and silence of women.<sup>1275</sup> However, with the introduction of social media, internet and technology, there is a gradual transformation taking place where women are emboldened to liberally share their sexual abuse experiences on twitter.<sup>1276</sup> Although this was an obvious threat to established societal and religious norms, this hashtag was the first time women and girls in Northern Nigeria took a united public stance on their experiences of abuse on social media.<sup>1277</sup>

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<sup>1270</sup> *Ibid.*

<sup>1271</sup> *Ibid.*

<sup>1272</sup> Kendhammer, *supra* note 1269 at 307.

<sup>1273</sup> See also Michael Bratton, “Briefing: Islam, Democracy, and Public Opinion in Africa” (2003) 102 *African* 494; Kendhammer, *supra* note 1269 at 303.

<sup>1274</sup> Chatterjee, *supra* note 1225 at 624; Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse?* (Minneapolis: University of Minnesota Press, 1986).

<sup>1275</sup> Medinat Malefakis, “The #MeToo Movement in Northern Nigeria: A Collusion of Islam, Culture, and Modernity” (3 July 2019), online: <https://www.wzb.eu/en/events/the-metoo-movement-in-northern-nigeria-a-collusion-of-islam-culture-and-modernity>

<sup>1276</sup> Women tweeted about their sexual abuses using the hashtag #ArewaMeToo. See Fakhriyyah Hashim, “How Nigeria’s conservative Northern region came to terms with its MeToo movement” (22 July 2019), online at: <https://qz.com/africa/1671204/nigeria-metoo-movement-shook-up-north-with-arewametoo/>.

<sup>1277</sup> Medinat Malefakis, “The #MeToo Movement in Northern Nigeria: A Collusion of Islam, Culture, and Modernity” (3 July 2019), online: <https://www.wzb.eu/en/events/the-metoo-movement-in-northern-nigeria-a-collusion-of-islam-culture-and-modernity>

Modernity is also celebrated by women in Northern Nigeria through the integration of Western produced goods in women's rooms, as opposed to locally produced items.<sup>1278</sup> A Hausa woman's room contains an array of objects that originate from Europe. These goods are idealised as prestigious and displayed in a ritualised manner during wedding and baby naming ceremonies. The incorporation of these foreign objects in Northern Nigeria gradually led to "cultural standardisation" in an area where, before the introduction of industrially manufactured items, locally produced goods reflected regional and ethnic differences in style.<sup>1279</sup> What is noteworthy here is that these European goods were not simply adopted without modification; instead, their form, purpose and significance are altered in order to be locally acceptable for "new uses and different life-styles".<sup>1280</sup> Although unrelated to child marriage, this informal interaction between Western culture and traditional systems in Northern Nigeria is significant because, in some extreme Islamic fundamentalist societies in Africa, like the *pièd nus* in Mali, Western goods are completely rejected.<sup>1281</sup> This is done to protect themselves against anything that can threaten their cultural values. The *pièd nus* refuse all forms of Western influences, including the wearing of shoes, Western clothing, medicine and national state taxes.<sup>1282</sup> The point to be made here is that, the goods incorporated into a Muslim Hausa woman's room, exemplify an aspect of Nigerian modernity where emphasis is not on the loss of 'authentic tradition' but a recognition that these cultural imports can be received and modified to reflect the "identity and value system not of the producers or inventors", but of women who have incorporated them into their lives.<sup>1283</sup>

Huntington asserts that dialogue and borrowing between societies occurs regularly, and with modern forms of communication and transportation, they are much more pervasive.<sup>1284</sup> Historically, civilizations have borrowed from other civilizations in order to improve their own

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<sup>1278</sup> It is said that the previous generation used only mats, a bed made of mud and a wooden frame tied together with leather strings, wooden bowls, baskets and calabashes. The metal beds, in addition to a variety of objects brought in from Europe were incorporated into rural women's rooms during the 1960s. During the 1990s, imported elements like, wall carpets, porcelain 'roses'- faience's brought from Italy, electronic equipment. The types of family bed in use copied icons of the Western market economy such as the Mercedes. Platte, *supra* note 60 at 173.

<sup>1279</sup> Platte, *supra* note 60 at 173.

<sup>1280</sup> *Ibid.*

<sup>1281</sup> The *pièd nus* are an Islamic fundamentalist movement, active Mali, which was founded in 1982/83 with roots in Burkina Faso and Guinee-Conakry. Platte, *supra* note 60 at 188.

<sup>1282</sup> Cath.ch, "La secte des 'pièd-nus' se dit 'soldat de l'islam'" (3 August 2012), online at: <https://www.cath.ch/newsf/la-secte-des-pieds-nus-se-dit-soldat-de-l-islam/>

<sup>1283</sup> Platte, *supra* note 60 at 189.

<sup>1284</sup> Huntington, *supra* note 1229 at 36.



“chances of survival”.<sup>1285</sup> He gives the example of China’s reception of Buddhism from India and how this absorption did not generate an “Indianization” of China; instead, they tailored Buddhism to their purposes and this resulted in the “Sinification of Buddhism”.<sup>1286</sup>

To conclude this section, it is clear that intricate and subtle processes of adaptation and borrowing take place in Northern Nigeria. As such, I am suspicious of self-interested criticisms of Western human rights. Despite what is claimed, this often has little to do with a return to the genuine and positive aspects of African culture. There is a very high level of self-interest; arguments of westernisation are mostly made by political and economic elites that have “long since left traditional culture behind.”<sup>1287</sup> While it may seem like a commendable effort to preserve or recapture treasured traditional ideals, even in such instance it is still ironic to see very westernised elites and religious leaders advising against practices they have adopted.

### **(3) Culture Wars: A Moral Vision**

Given the pluralistic nature of the state, Nigerians’ value choices are very heterogeneous, with several inconsistent preferences about basic principles like equality, freedom, and the like. This heterogeneity generates different value orientations that break down along group and political lines. Since these differing value systems entail mutually exclusive social arrangements and societal goals, historically, they produced fundamental disagreements that can be characterized as “culture wars”.<sup>1288</sup> Fundamental to these conflicts are allegiances to various formulations and sources of moral authority regulating the lives of individuals and the community.<sup>1289</sup> These moral visions are not just limited to the private sphere; at the heart of present-day culture conflict is the relatively different and competing ideas of public life. Due to its public nature, the conflict includes disputes over national identity, over the meaning of Nigeria, its past and its future. This war also plays out in many debates over the public life of the nation related to sexuality, religion, and family life. Culture wars are expressed in several institutional settings, and without question, for the

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<sup>1285</sup> *Ibid.*

<sup>1286</sup> *Ibid.*

<sup>1287</sup> Donnelly, *supra* note 1257 at 411.

<sup>1288</sup> Phrase adopted from William Jacoby, “Is there a Culture War? Conflicting Value Structures in American Public Opinion” (2014) 108:4 American Political Science Review at 1.

<sup>1289</sup> See Toyin Falola, *Violence in Nigeria: The Crisis of Religious Politics and Secular Ideologies* (Rochester, University of Rochester Press, 1998); Olufemi Vaughan, *Religion and the Making of Nigeria* (Durham: Duke University Press, 2016) at 2.

purposes of this dissertation, one of the battlegrounds on which culture wars have been fought vigorously in recent years in Nigeria is with regards to gendered practices within culture. I believe the struggle over a minimum age of marriage in Nigeria represents a firm, no-surrender conflict engrained in the incommensurable and unreconcilable disagreements about moral authority.

In Northern Nigeria, the absolute basis for morality is Islam. Between October 1999 and December 2001, twelve states in Northern Nigeria enacted legislation codifying Islamic criminal law and established Islamic codes of behaviour, such as the prohibition of alcohol, strict sexual morals and the segregation of sexes in public transport.<sup>1290</sup> These measures were advanced under the phrase: the “restoration of the Sharia”.<sup>1291</sup> The moral assessment of the Nigerian state as “sick, decaying or rotting” (prevalent in popular and scholarly writing by Nigerians) is common beyond ethno-religious and socio-economic class in Nigeria, and echoes beyond the Sharia issue.<sup>1292</sup> The main conveyors of these moral visions and systems of meaning in the public realm are the elite.<sup>1293</sup> For example, re-establishing Sharia was the main campaign guarantee of the gubernatorial candidate of Zamfara state in Northern Nigeria.<sup>1294</sup> After his success, he commenced acting on this pre-election promise to create Sharia courts and introduce Islamic criminal legislation.<sup>1295</sup> The governors of eleven other Northern states followed suit.<sup>1296</sup> The Sharia implementation dispute in Nigeria also characterised economic or social problems as moral problems.<sup>1297</sup> By associating policies enforcing Islamic morality to developmental issues, state morality is then linked with economic opportunity. Demands for state-led moral reform were bundled with and related to appeals for government intervention on behalf of the poor.<sup>1298</sup> This economic development and social justice framework was a passive promise to create the environment required for a moral revival, frequently through “enlightenment campaigns” to educate people about Sharia.<sup>1299</sup>

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<sup>1290</sup> Weimann, *supra* note 1031 at 429.

<sup>1291</sup> On the introduction of Islamic criminal law in Nigeria, see Ruud Peters, *Islamic Criminal Law in Nigeria* (Ibadan: Spectrum Books Ltd, 2003); Franz Kogelmann, “The ‘Sharia Factor’ in Nigeria’s 2003 Elections” in Benjamin Soares, ed, *Muslim-Christian Encounters in Africa* (Boston: Brill, 2006) at 257.

<sup>1292</sup> Kendhammer, *supra* note 1269 at 300.

<sup>1293</sup> James Hunter, *Culture Wars: The Struggle to Define America* (New York: Basic, 1991) at 59-60.

<sup>1294</sup> See Ibrahim Sada, “The Making of the Zamfara and Kano State Sharia Penal Codes” in Philip Ostien, ed, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Ibadan: Spectrum Books Limited, 2007) 22-32.

<sup>1295</sup> *Ibid.*

<sup>1296</sup> Weimann, *supra* note 1031 at 432.

<sup>1297</sup> Kendhammer, *supra* note 1269 at 300.

<sup>1298</sup> *Ibid.*

<sup>1299</sup> *Ibid.*

I believe the culture war in Nigeria is mainly about power and “where it is properly located”.<sup>1300</sup> Operating from this perspective, we see a clear difference between elites and local community members.<sup>1301</sup> Researchers working in the American context have long argued that elite discourse and the media mediate the relationship between personal principles, collective morals and public opinion.<sup>1302</sup> They also assert that elites, such as public officials, religious and traditional leaders, politicians, journalists, public intellectuals, and activists upon whom people rely for information, structure this relationship.<sup>1303</sup> The power to define culture is held by people who occupy a broad range of spaces in the political field.<sup>1304</sup> I argue that the role of elites in Northern Nigeria is very significant because they have disproportionate access to the media compared to individuals in rural communities, they have financial resources available to them and they have played a significant role in leading institutions framing public debates on culture.

From my point of view, power in society is symbolic; it is the ability to structure public disputes, to define reality, and that power rests on elites.<sup>1305</sup> As such, I contend that part of what encourages the persistence of child marriage in Northern Nigeria is the ability of local elites, amply independent of the rest of Nigeria, to carry on their own economic and cultural agendas. As already highlighted in chapter 5, on certain residual issues, the Nigerian governance framework permits the development of regional networks over and beyond the federal government, making it possible for officials to escape traditional centralized decision making as practiced in other areas like banking and communications.

For this dissertation, why does it matter whether there is a culture conflict? I believe a society undergoing a culture war faces severe struggles. It would lack shared fundamental ideals and norms, and so its capacity to make public policy decisions is seriously compromised.<sup>1306</sup> Certainly, a society without such basic common ground might hardly function.<sup>1307</sup> This is especially true in

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<sup>1300</sup> Wolfe & Hunter, *supra* note 1182 at 18.

<sup>1301</sup> Wolfe & Hunter, *supra* note 1182 at 93.

<sup>1302</sup> John Zaller, *The Nature and Origins of Mass Opinion* (Cambridge: Cambridge University Press, 1992) at 6; Kendhammer, *supra* note 1225 at 292.

<sup>1303</sup> *Ibid.*

<sup>1304</sup> Narayan, *supra* note 1179 at 96.

<sup>1305</sup> Wolfe & Hunter, *supra* note 1182 at 18.

<sup>1306</sup> Thomson, *supra* note 1209 at 12.

<sup>1307</sup> *Ibid.*

a country as plural and multifaceted as Nigeria. Consequently, in subsequent sections, I suggest that cultural identity be defined more dynamically. More importantly in reflecting upon politics of culture, emphasis should be less on group difference in Nigeria but on what elites and leaders of such groups demand in the public domain.

### **Part III**

#### **(1) The Politics of Tradition Formation**

The assumption that women and girl's problems in Northern Nigeria are fundamentally problems caused only by patriarchal cultural practices is problematic. This perspective leaves the idea of tradition/culture unproblematized. It buys into an oversimplified, apolitical, and ahistorical depiction of culture. The outcome is both a misleading idea of culture and a disregard of the political struggles that may have influenced the significance and interpretation of these traditions.<sup>1308</sup> Without attempting to provide a complete summary of Nigeria's complex history, I simply highlight certain aspects that will serve my purpose. The perceived value of present-day cultural practices like seclusion and child marriage must be understood in light of their historical and structural features and interests. However, there is limited historical scholarship on the emergence of child marriage as a cultural practice in Nigeria. As a result, I rely on the discourse of women's personhood and the way it has shifted at different points in history.

Historical work on Nigeria suggests that Islam in Nigeria is far more complicated than is usually suggested. Islam has been practiced as a way of life since the fourteenth century in Hausa land.<sup>1309</sup> It is documented that some forty Wangarawa traders introduced Islam in the early ninth century, but it was not until the reign of Muhammad Rumfa, the Emir of Kano between 1463 and 1499 that Islam became an official religion in Nigeria.<sup>1310</sup> After research and reading different works of Islamic scholars, specifically about North African Muslim cultures, I am faced with an irony: all of these societies follow Islamic legal orthodoxy, at least in theory, but all of them appear to emphasize and deemphasize different aspects of the law. For example, in Morocco, polygamy and attending to the five daily prayers is not as emphasized in the same way as complete abstention

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<sup>1308</sup> Narayan, *supra* note 1181 at 60.

<sup>1309</sup> For a discussion of the history of Islam in Nigeria, see HB Harunah, *Sharia Under Western Democracy in Contemporary Nigeria, Contradictions, Crises and the Way Forward* (Lagos: Perfect Printers, 2008) 18-33.

<sup>1310</sup> EA Taiwo, "Justifications, Challenges and Constitutionality of the Penal Aspects of Shariah Law in Nigeria" (2008) 17:1 Griffith Law Review at 187.

from alcohol; while in Nigeria, polygamy is emphasized as a divine right.<sup>1311</sup> Upon close analysis, I realised that polygamy's rationalization in Islamic law is imperative because polygamy was a customary practice in Northern Nigeria before the introduction of Islam.<sup>1312</sup>

An-Na'im asserts that Islam strengthened, invigorated and animated life in African societies but at the same time Islam has also been molded by its African setting.<sup>1313</sup> Due to the interaction between Africans and Muslims, the development of Islam has deeply influenced religious beliefs and practices of African societies, while local customs have "Africanized Islam".<sup>1314</sup> In Northern Nigeria, for centuries, there has been an intermingling of local practices and Islam to the extent that in many cases what Muslims take as a religious duty is actually a product of Hausa or Fulani culture.<sup>1315</sup> Shaheed asserts that the threads of custom and religion are so firmly interwoven that, for example, where it is practiced amongst Muslims, female genital mutilation (FGM) is believed to be a religious act.<sup>1316</sup> In other areas like Gambia, FGM is practised by Muslims and non-Muslims alike but this practice is also unfamiliar to most Muslim societies, who have not only never heard of it, but are often outraged at the belief that it is even remotely Islamic.<sup>1317</sup> Nonetheless, for women and girls living in societies where FGM is practiced, challenging FGM is equivalent to challenging religious doctrine.<sup>1318</sup> Likewise, women from the Middle East are astonished that Muslims in South Asia have such a prevalent practice of dowry.<sup>1319</sup> These examples are by no means exhaustive but they show that some beliefs and practices are often not so much a direct result of Islamic law but are the products of local custom.

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<sup>1311</sup> Sarah Eltantawi, "The Difficulty of Accounting for Women who critique Sharia in Northern Nigeria" in Timothy Daniels, ed, *Sharia Dynamics* (New York: Palgrave Macmillan, 2017) at 216.

<sup>1312</sup> *Ibid.*

<sup>1313</sup> Abdullahi An-Na'im, *African Constitutionalism and the Role of Islam* (Philadelphia: University of Pennsylvania Press, 2006) at 109.

<sup>1314</sup> *Ibid.*

<sup>1315</sup> Sanusi Lamido Sanusi, "The Politicisation of Ontological Questions: Discourses, Subjectivities and Muslim Family Law in Nigeria" (2008), online (pdf):

[http://www.nigerdeltapeoplesworldcongress.org/articles/politicisation\\_of\\_o.pdf](http://www.nigerdeltapeoplesworldcongress.org/articles/politicisation_of_o.pdf)

<sup>1316</sup> Shaheed, *supra* note 867 at 68.

<sup>1317</sup> *Ibid.*

<sup>1318</sup> *Ibid.*

<sup>1319</sup> See Khawar Mumtaz & Farida Shaheed, *Women of Pakistan: Two Steps Forward, One Step Back?* (London: Zed Books, 1987); Shaheed, *supra* note 867 at 69.

Narayan asserts that the “individuation” of a culture usually proceeds by casting particular principles and practices as fundamental and vital elements of that culture in order to differentiate it from other cultures.<sup>1320</sup> Instead of accepting the significance of specific values or practices of any culture as given, we need to trace the political and historical processes through which these values have come to be regarded as essential constitutive features of a specific culture.<sup>1321</sup> For example, although Islam was prominent in Hausa society for centuries, it was not until the Jihad in 1804 that the fight for political power took place on the ideological ground of Islam.<sup>1322</sup> This had serious consequences, not only for Hausa society in general but in particular for women and girls’ positions. They condemned immorality and ‘free women’, that is women who were neither under the control of husbands nor fathers.<sup>1323</sup> Data from historical sources such as the Kano Chronicle indicate that before the Jihad movement in 1804, women occupied public positions in society.<sup>1324</sup> They were leaders and appeared to have been no more legally constrained than men by their gender.<sup>1325</sup> With the Jihad, female behaviour and gender roles were significantly altered.<sup>1326</sup>

Limiting women’s roles to those associated with domestic life commenced as a result of the reinterpretation of Islam that followed Jihad.<sup>1327</sup> Although the Jihad leader’s, Usman dan Fodio, position was fairly liberal and supportive of women’s education, his followers understood Islam more narrowly than he did.<sup>1328</sup> They encouraged roles for women removed from public decision-making arenas, one in which women’s religious obligations were to be fulfilled through a life centered on domestic responsibilities.<sup>1329</sup> Women’s responsibility as good Muslims was to focus

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<sup>1320</sup> Narayan, *supra* note 1179 at 93.

<sup>1321</sup> *Ibid.*

<sup>1322</sup> Pereira, *supra* note 694 at 78.

<sup>1323</sup> See M Last, “From Sultanate to Caliphate: Kano, 1450—1800” in Bawuro Barkindo, ed, *Studies in the History of Kano* (Ibadan: Heinemann, 1933).

<sup>1324</sup> A Imam, “The development of women’s seclusion in Hausaland, Northern Nigeria” (1991) 9:10 *Women Living Under Muslim Laws Dossier 4*; A Imam, “Politics, Islam and women in Kano, Northern Nigeria” in Valentine Moghadam, ed, *Identity Politics and Women: Cultural Reassertions and Feminisms in International Perspective* (Boulder: Westview Press, 1993); Catherine Coles & Beverly Mack, “Women in twentieth century Hausa society” in Catherine Coles & Beverly Mack, eds, *Hausa Women in the Twentieth Century* (Wisconsin: University of Wisconsin Press, 1991).

<sup>1325</sup> Reference can be made to the following authors for eighteenth century accounts of Hausa land and the place of women in society. See Herbert Palmer, *Sudanese Memoirs* (Lagos: Government Printer, 1928) at 142-143; Denham Dixon, John Barrow & Walter Oudney, *Narrative of Travels and Discoveries in Northern and Central Africa in Years 1822, 1823 and 1824* (London: John Murray, 1826).

<sup>1326</sup> See Pereira, *supra* note 694 at 79.

<sup>1327</sup> *Ibid.*

<sup>1328</sup> Coles & Mack, *supra* note 1324 at 3.

<sup>1329</sup> Imam, *supra* note 1324 at 4.

on child rearing, maintaining the home and guaranteeing peace in it.<sup>1330</sup> The outcome was the creation of a new order characterised by justice, fair taxation and the moral purity of Muslim women.<sup>1331</sup> The practice of seclusion began during this period. It was emphasised that women's seclusion was not only legitimate in Islam but also mandatory.<sup>1332</sup> Alongside this, there was the development of an increasingly specialised gendered division of labour, in which many of the duties assigned to women could be performed within the compound.<sup>1333</sup> As such, even though Islam was already a dominant religion in Northern Nigeria, the years following the Jihad saw a noticeable decline in the importance of women's roles as educators and scholars, their political office and formal authority had effectively disappeared; gradually, women's opportunities were restricted to the domestic sphere, with a specific focus on the family and its dependents.<sup>1334</sup>

Between 1800 and 1960, British colonial administrative policy also encouraged Islamisation in Northern Nigeria, specifically when colonial administrators regarded Islamic law not as religious law, but as customary law.<sup>1335</sup> The intention was to give Islamic law the same status as customary law and customs. I believe the treatment of Islamic law as customary not religious law was pertinent in determining whether certain practices could be safely abolished. This is because, changing the status of Islamic law to customary law activates a procedure by which Islamic law could be subject to a validity test established by colonial administrators.<sup>1336</sup> According to this test, customary practices must not be "repugnant to natural justice, equity and good conscience; it must not be incompatible with any written law; and it must not be against public policy".<sup>1337</sup> In opposition to colonial rule, the rise of nationalism spurred the creation of the Northern People's Congress, a political party that had an interest in establishing a power base in the North, which they did by emphasizing differences in religion and culture between the North and the South.<sup>1338</sup>

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<sup>1330</sup> Coles & Mack, *supra* note 1324 at 3.

<sup>1331</sup> See Last, *supra* note 1323 at 214.

<sup>1332</sup> Imam, *supra* note 1324 at 4.

<sup>1333</sup> *Ibid.*

<sup>1334</sup> Coles & Mack, *supra* note 1324 at 3.

<sup>1335</sup> Magashi, *supra* note 1259 at 108.

<sup>1336</sup> The validity test and its current application in Nigeria is discussed in part 4 of this chapter.

<sup>1337</sup> See for example Section 34(1) of the *High Court Law of Kano State*, which provides "the high court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any law for the time being in force".

<sup>1338</sup> The NPC was ostensibly a pan-northern party, made up of the ruling class who had allied with the colonial administration and were thus able to retain many of their privileges and control of government. See J Ibrahim,

This had additional implications; the North was depicted as homogeneously Muslim, despite the existence of Christians and other non-Muslim communities.<sup>1339</sup> What was most significant about using Islam as a means of resistance to colonial domination was that the increased “proselytization” in rural areas meant that women’s appropriate status in Islam became the main subject of preaching to rural communities.<sup>1340</sup> Yusuf asserts that since the early twentieth century, men have intentionally interpreted Islamic laws to dispossess women of their rights.<sup>1341</sup> In addition to cultural resistance to colonialism, other factors such as an ever-increasing burden of taxation, the establishment of Sharia courts throughout the region and the expansion of the *malamai* as clerks for the colonial administration in the 1900s, collectively provided added motivation to Islamisation.<sup>1342</sup> The point here is that the situation of women and girls in Northern Nigeria is not a natural given, as discussed in succeeding sections, legal and political events help produce and reproduce certain cultural ideologies through their activities and practices. And so, highlighting these legal and political events assist in breaking the illusion that existing social arrangements fuelling the practice of child marriage in Northern Nigeria are necessary or inescapable.

### **1. Child Marriage as Religion: An ideological Project**

Discourse on child marriage in Nigeria is prompted by discussions on whether it could be safely prohibited through legislation and concerns that intrusion in a religious matter might incite public outrage. At the beginning of this dissertation, I provided my definition of culture in Nigeria. I asserted that because of the ethno-religious nature of child marriage, in the sense that it has a religious basis but also intermingles with the Hausa/Fulani tradition, I decided to place child marriage under the broad umbrella of ‘culture’. My reasons are enumerated in chapter 1 and 3. However, in this section, I recognise that discourse in pluralistic societies like Nigeria often require a specific identification of the type of problem being disputed. Benhabib asserts the kind of practice we believe a practice is, whether religious, legal, or moral, will influence which norms we think should apply to it.<sup>1343</sup> I do not wish to challenge or discuss these distinctions. I recognize that most

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“Expanding Nigerian Democratic Space” in J Ibrahim, ed, *Expanding Democratic Space in Nigeria* (Dakar: CODESRIA, 1997).

<sup>1339</sup> Pereira, *supra* note 694 at 81.

<sup>1340</sup> Pereira, *supra* note 694 at 80.

<sup>1341</sup> Yusuf Bilkisu, “Hausa-Fulani Women: The State of Struggle” in Catherine Coles & Beverly Mack, eds, *Hausa Women in the Twentieth Century* (Wisconsin: University of Wisconsin Press, 1991) at 92.

<sup>1342</sup> Imam, *supra* note 1324 at 4-18.

<sup>1343</sup> Benhabib, *supra* note 1177 at 12.



times we do not know what type of practice is in question because we do not share a mutual understanding of the disputed practice itself.<sup>1344</sup> Is it ethnic, religious, or moral? What if its value and significance shift and vary with socio-cultural interactions, over time and within a shared space?<sup>1345</sup> This is among the interesting problems marking the debate around child marriage in Nigeria. The exploration in this section explains why child marriage is still such a prevailing symbol for present-day Islamic fundamentalists in Northern Nigeria.

Research on child marriage in Islamic communities suggests that child marriages' status as a fundamental aspect of Islamic tradition is a far more complicated matter than debates in Northern Nigeria suggests. In this section, I do not intend to give a comprehensive analysis of the historical constitution of child marriage as an Islamic religious tradition. Also, I do not claim to have adequate understanding of Islamic tradition, as such, I use aspects of various Islamic authors' analysis in ways that serve my purpose.<sup>1346</sup> These authors highlight the limitations of certain portrayals of child marriage that simply accept it as a pre-existing and widely shared Islamic tradition or as a religious rite, by exposing the multifaceted processes by which child marriage came to acquire that status.<sup>1347</sup> While some authors and religious leaders read scriptural texts to argue that child marriage is scripturally sanctioned, others interpret the very same passages and several other scriptural texts, to argue against a scriptural basis for child marriage. Smith asserts that the world is not constructed for women, therefore, knowledge practices must be interrogated if they are to include the experiences of women.<sup>1348</sup> Using Smith's feminist textuality, in this section, I explore religious texts to show that using the Quran or Islamic law in general as a reference point to legitimise child marriage is highly flawed. When one cites, quotes, or otherwise refers to a practice as emanating from the Quran, what is one referring to exactly? We will see that reliance on religion by the ruling class in Northern Nigeria is one dimensional. The

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<sup>1344</sup> *Ibid.*

<sup>1345</sup> Benhabib, *supra* note 1177 at 13.

<sup>1346</sup> I would like to assert I am not Muslim and thus not part of the Islamic discourse on human rights. Also, I am lacking the language skills needed to explore the sources written in Arabic. As such, I limit my research to sources available in English and I center on sources written by Islamic scholars.

<sup>1347</sup> For example, see Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder: Westview Press, 1995); Khaled El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: One-World Publications, 2008) at 2; Justice Hussain, *Status of Women in Islam* (Pakistan: Law Publishing Co., 1987) at 369; Mohammed Arkoun, *Rethinking Islam: Common Questions, Uncommon Answers* (Michigan: Westview Press, 1994).

<sup>1348</sup> Smith, *supra* note 237 at 11.

authoritativeness they rely on has been produced and is maintained within a system designed to speak on behalf of women, in a communal manner that excludes others.

Sacred texts are a significant foundation of harmful constructions of masculinity shaping the patriarchal power recognized as a key driver of child marriage.<sup>1349</sup> What counts as scriptural texts for this purpose includes the Quran and its commentaries.<sup>1350</sup> In Northern Nigeria, discriminatory practices are often validated by appeals to the Quran and to the *sunnah* attributed to the Prophet.<sup>1351</sup> The way that the prophet lived is known as the *sunnah*, which is the second source of Islamic jurisprudence.<sup>1352</sup> Where a Quranic verse can be interpreted in multiple ways, the *sunnah* is usually consulted to provide clarity on the proper interpretation of the verse.<sup>1353</sup> As shown below, the appearance of a logical basis for gender inequality in Islam depends upon presenting evidence either from the sunnah or the Quran to demonstrate that one gender fails to possess those qualities which could, for instance, support gender equality.<sup>1354</sup>

It is often believed that Islamic jurisprudence is the “heart and kernel of the Islamic religion”.<sup>1355</sup> This is so because, traditionally, Islamic jurisprudence is the ground in which the conditions, dynamics, and meanings of the relationships between God and human beings were discovered.<sup>1356</sup> It is certainly true, as with most religions, that modern Islamic jurisprudence is not devoid of

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<sup>1349</sup> See Asma Barlas & David Finn, *Believing Women in Islam: A Brief Introduction* (Austin: University of Texas Press, 2019) at 3.

<sup>1350</sup> In the broadest sense, it is believed that God’s message was first revealed to the Prophet, who reported it to his Companions. Collectively, his words and deeds became the Prophet’s Sunnah, or to be precise, reports about the Prophet’s words and deeds became his *sunnah*. Those stories are called *ahadith*. Understandably perhaps, some *ahadith* were made up or wildly inaccurate, and some were not. See Barlas & Finn, *supra* note 1349 at 3.

<sup>1351</sup> My reference to the Quran in this paper is taken from the English version.

<sup>1352</sup> See Barlas & Finn, *supra* note 1349 at 3.

<sup>1353</sup> What came to be known among Muslims as Sharia was in fact the product of a very slow, gradual and spontaneous process of interpretation of the Quran, and a collection, verification, and interpretation of Sunna during the first three centuries of Islam (the seventh to the ninth centuries AD). This process took place among scholars and jurists who developed their own methodology for the classification of sources, derivation of specific rules from general principles, and so forth. That technical aspect of their work came to be known as the “science of the foundations” or the “principles of human understanding of divine sources (usul al-fiqh). See Abdullahi An-Na’im, “Sharia and Positive Legislation: Is an Islamic State Possible or Viable?” (1998) 5 Yearbook of Islamic & Middle Eastern Law 29; Abdullahi An-Na’im, “Complementary, not Competing, Claims of Law and Religion: An Islamic Perspective” (2013) 39 Pepp. L. Rev. at 1242; Barlas & Finn, *supra* note 1349 at 37.

<sup>1354</sup> Barlas & Finn, *supra* note 1349 at 37.

<sup>1355</sup> El Fadl, *supra* note 1347 at 2.

<sup>1356</sup> *Ibid.*

authoritarian misuse and misrepresentation in modern times.<sup>1357</sup> Islamic rationalization for child marriage is highly debated and accordingly must be understood as a narrative open to many, even conflicting, interpretations. There are some references to marriage in the Holy Quran. In looking at Quran, *Surah An-Nisa* 4:6 which equates marriageable age to a mature and sound judgment, I note that this section of the Quran is saturated with certain abstract underpinnings that can be subjected to numerous interpretations.<sup>1358</sup> The concept ‘maturity’ has a long history in psychology and educational literature; what ‘maturity’ means remains unclear”.<sup>1359</sup> For some, a child’s maturity is established by signs of puberty such as menstruation, the growth of breasts and pubic hair; for others, children mature over time as they learn skills and develop the capacity to deal with the complexities of life”.<sup>1360</sup> Fadl suggests that open texts tend to operate at a level of suggestion that simulates constructive interpretive activity, while in contrast, closed texts aim at defining and restricting the interpretive activity of the reader.<sup>1361</sup> The use of the term ‘mature and sound judgment’ creates an ambiguity as to the meaning of the statement. Does this text prescribe a specific way of determining maturity and sound judgment of a girl? Another verse in the Quran that is claimed to indicate the age of marriage is *Surat* 65:4.<sup>1362</sup> Some have interpreted this verse to show that marriage can take place for girls who have not commenced menstruation and have not attained puberty.<sup>1363</sup> There is a lack of consensus amongst Islamic jurists on whether the above passages in fact condone the marriage of minor girls.<sup>1364</sup> The text of the Quran is not clear on this issue and depending on the interpretation and what school of thought is relied on, diverse outcomes can be reached.

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<sup>1357</sup> *Ibid.*

<sup>1358</sup> The Holy Quran, *Surat An-Nisā’, 4:6* (Istanbul: Ilmi Nesriyat, 1996) states “and test the orphans [in their abilities] until they reach marriageable age then, if you find them to be mature of mind/sound in judgment, hand over to them their possessions”.

<sup>1359</sup> Elizabeth Hyde, “A Behavioral Study of Maturity in Children of Elementary-School Age” (1976) 77:2 The Elementary School Journal 140.

<sup>1360</sup> *Ibid.*

<sup>1361</sup> El Fadl, *supra* note 1347 at 4.

<sup>1362</sup> The Holy Quran, *Surat At-Ṭalāq 65:4* (Istanbul: Ilmi Nesriyat, 1996) states “and those who no longer expect menstruation among your women – if you doubt, then their period is three months, and [also for] those who have not menstruated...And for those who are pregnant, their term is until they give birth”.

<sup>1363</sup> Tafseer al-Tabari, 14/142, online: <http://albasairislamicmedia.files.wordpress.com/2013/03/tafsir-altabari-english-vol-1.pdf>.

<sup>1364</sup> Hussain, *supra* note 1347 at 369.

The Islamic basis for legitimating child marriage in Northern Nigeria rests on shaky foundations. I believe the function and goal of ambiguity in the Islamic texts are of great significance but deciding on the meaning of these ambiguous terms becomes a tricky exercise. Who determines the meaning? Letters, words, phrases, sentences have agreed upon usages and meanings but also suggest specific associations and emotions that may change over time.<sup>1365</sup> The project of determining the scriptural authority for child marriage, turns out, on closer examination, to centre on the authority given to Islamic commentaries. Since the Quran does not stipulate a firm age for marriage, I looked at a few commentaries used in interpreting certain verses of the Quran.<sup>1366</sup> For example in interpreting a chapter of the Quran titled *Surah Maryam*, in *Tafsir al-Jalalayn*, it is believed that Mariam the mother of Isa, one of the four women revered in Islam gave birth to Isa at age thirteen.<sup>1367</sup> There are also other accounts putting A'isha, the wife of prophet Muhammad, at age nine or ten years when she was married but several liberal Islamic scholars, including Massoud Oredola in Nigeria, argue that "A'isha was in her twenties when she moved to the Prophet's house".<sup>1368</sup> There is substantial literature written by prominent Muslim scholars criticizing the origins, history, and content of these commentaries.<sup>1369</sup> It is important to consider how this matters on the issue of child marriage in Northern Nigeria.

As detailed in chapter 3, religious community leaders and parents tell women and girls that the Quran instructs them to be married and according to Islam it is at twelve years old. Girls are led to believe that marriage at an early age is the will of Allah and a dictate of Islam. In promoting child marriage, parents, religious leaders, and elites in Northern Nigeria rely on strained readings of the

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<sup>1365</sup> El Fadl, *supra* note 1347 at 12.

<sup>1366</sup> A Quranic tafsir is a body of commentary aimed at explaining, interpreting, and providing context or commentary for clear understanding and conviction of God's will. According to Sunni Islamic scholar Al-Suyuti, mufassirs are required to master 15 fields from different disciplines such as linguistics, rhetoric, theology, and jurisprudence before one can authoritatively interpret the Quran. See John Esposito, *The Oxford Encyclopedia of the Modern Islamic World* (Oxford: Oxford University Press, 1995). Tafsirs are some of the best sources for Islamic history. They are significant to interpret verses according to how the Quran was revealed, when and under which circumstances. A summary of the earlier interpretation by al-Tabari is available online at <https://muflihun.com/1?tafid=1592>. Translated versions can be accessed online at <https://archive.org/details/TheEnglishTranslationtheCommentariesoftheHolyQuraan>

<sup>1367</sup> Tafsir al-Jalalayn is one of the most significant tafsirs for the study of the Quran. Composed by the two Jalals: Jalal al-Din al-Mahalli (d. 864 ah / 1459 ce), and his pupil Jalal al-Din al-Suyuti (d. 911 ah / 1505 ce) online: <http://www.altafsir.com/Al-Jalalayn.asp>.

<sup>1368</sup> Hussain, *supra* note 1347 at 369.

<sup>1369</sup> Ahmed Hassan, *The Early Development of Islamic Jurisprudence* (Michigan: Islamic Research Institute, 1970) 85.

Quran to establish the validity of child marriage, overlooking the reality of Muslims' disagreements about what Islamic sources mean.<sup>1370</sup> Islamic doctrine does not declare that supplementary sources are unalterable or divinely protected from the possibility of change.<sup>1371</sup> An-Na'im asserts that although founding scholars are generally believed to have been acting independent of the political authorities of the time, their work could not have been totally separate from the prevalent conditions of their communities, in local as well as broader regional contexts.<sup>1372</sup> These factors must have contributed to the disagreements among jurists and to the differences in the views articulated by the same jurist from one time to another.<sup>1373</sup> Founding scholars provided explanations (*tafsir*) of the chapters and verses of the Quran, occasionally appealing to *ahadith* for support.<sup>1374</sup> Some scholars could write for instance, "the Quran says" without stating that it was, in fact, only their opinion about how a verse could be understood.<sup>1375</sup> Gradually, nearly undetected, the importance once reserved for the Quran was given to *tafsir* that contained *ahadith*.<sup>1376</sup> As Islam's reach spread into the domains of diverse religions and cultures, variations of the *ahadith* thrived.<sup>1377</sup> Barlas and Raeburn assert that *ahadith*, accounts and stories, were treated as holding spiritual authority more important than that of the Quran.<sup>1378</sup> Privileging *tafsir* and *ahadith* implied empowering not the Quran, but explanations of it by possibly a "dozen men of Islam's second century".<sup>1379</sup> These few men's explanations, not the complete reading of the Quran, were then taken as the decisive measure of the Quran's meaning.<sup>1380</sup> As experienced in Northern Nigeria, the *ahadith*, could now be cited to validate the oppression of women and girls. Based on the above, it becomes easy to say that neither the Prophet nor the Quran had a role in the production of the practice of child marriages, instead, religion has, through generations, been manipulated to the political advantage of the dominant class in each context.

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<sup>1370</sup> Mayer, *supra* note 1347 at 60.

<sup>1371</sup> El Fadl, *supra* note 1347 at 4.

<sup>1372</sup> An-Na'im, *supra* note 1353 at 1243.

<sup>1373</sup> Even after those disagreements finally evolved into individual schools of thought (*madhahib*), differences of opinion continued among scholars of similar schools, as well as between dissimilar schools. See Abdullahi An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, And International Law* (New York: Syracuse University Press, 1996); An-Na'im, *supra* note 1353 at 1243.

<sup>1374</sup> See footnote 1345 for definition. Barlas & Finn, *supra* note 1349 at 18.

<sup>1375</sup> Barlas & Finn, *supra* note 1349 at 18.

<sup>1376</sup> *Ibid.*

<sup>1377</sup> *Ibid.*

<sup>1378</sup> Barlas & Finn, *supra* note 1349 at 19.

<sup>1379</sup> See Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder: Westview Press, 1995); Barlas & Finn, *supra* note 1349 at 19.

<sup>1380</sup> Barlas & Finn, *supra* note 1349 at 20.

## 2. Equality in the Islamic Legal Tradition

Despite the ambiguities in Islamic jurisprudence discussed in the preceding section, I believe it would be a misstep to ignore Northern Nigeria's interpretations of Muslim law and doctrine. For one thing, the region accounts for almost half of Nigeria's population. So, not engaging seriously with its perspective risks broadening misinterpretations and setting the stage for conflicts that could be avoided. Due to space limitations, in this section, I focus on highlighting certain basic Islamic rules and doctrine regarding women and girls. Throughout this section, some generalisations are made, but it should be recalled that due to the plurality of Muslim voices in human rights and even in schools of Islamic law, differences in interpretations are common.

Quraishi observes that often, when Sharia-based legislation is deemed contrary to human rights norms, such opposition usually generates a response among many Muslims to sternly protect these laws as if they were protecting their religion itself against attack.<sup>1381</sup> This reaction could also occur even when the laws themselves contravene traditional Islamic legal doctrine.<sup>1382</sup> The same applies to feminist strategies opposing Sharia laws; as evidenced in Northern Nigeria, it creates a false dichotomy between women's rights and Islam.<sup>1383</sup> Nonetheless, opposition to Western human rights values in Northern Nigeria has not provided much of a challenge to Muslim perspective on gender equality. One significant problem is that this opposition is led by Northern leaders who seem more motivated by political control, rather than by a genuine desire to make a productive contribution to the cross-cultural dialogue on ethno-religious values. In this way, it is easy to dismiss their Islamic value challenge as a self-serving strategy used to validate discriminatory acts in the face of increasing demands for effective rights protection for women and girls in Northern Nigeria. Their approach is not only unnecessary but counterproductive. The task would then be to present a convincing case for gender equality based on Islamic jurisprudence.

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<sup>1381</sup> Quraishi, *supra* note 1022 at 175.

<sup>1382</sup> See Asifa Quraishi, "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective" (1997) 18 Mich. J. Int'l L. 287.

<sup>1383</sup> See for example, in the *zina* (extra-marital sex) trial of a girl, Bariya Ibrahim Magazu, sentenced to be lashed for the Quranically defined crime. Governor Sani Yerima declared that he would ignore all human rights-based appeals for clemency yet would be "willing to consider arguments made from the point of [view of] Muslim laws". See Quraishi, *supra* note 1022 at 186.

Mayer asserts that for centuries, juristic treatises were regarded as authoritative statements of Islamic doctrine and pre-modern jurists commonly treated women as requiring male guidance and control, placing numerous limitations on women, positioning them in a markedly subordinate role within the family, and mainly imagining them to be “enclosed in secluded domesticity”.<sup>1384</sup> These jurists condoned the practice of young girls being married off by their guardians and women had to be monogamous, while men were permitted to have up to four wives at a time.<sup>1385</sup> Women owed obedience to their spouses, who were permitted to keep them at home, to beat them and “withhold maintenance for disobedience”.<sup>1386</sup> While few passages in Islamic sources can justify this privilege and discrimination, as discussed below, there is much in the foundations of Islamic law that suggests a fundamentally egalitarian philosophy.<sup>1387</sup>

Over the last decades, a remarkable development in Islamic thought is the production of criticisms of premodern jurists’ interpretations on the position of women, moving away from them in favour of analysing the original sources of Islam for understandings into what Islam initially envisioned as women’s role.<sup>1388</sup> As Barlas and Raeburn demonstrate in their book, there is little disagreement that far larger numbers of the Quran’s verses emphasise the equality of men and women.<sup>1389</sup> Sheikh Nadwi asserts that there is “no other religion in which women were so central in its formative history”.<sup>1390</sup> In a historic setting where women were so undervalued that female infanticide was a shared and accepted practice, the Quran initiated transformations that proscribed female infanticide, allowed women to inherit, limited the tradition of polygamy, curtailed abuses of divorce by husbands, and provided women the “ownership of the dower, the bride price that had previously been paid to the bride’s father”.<sup>1391</sup> The primary aim of the Quran was the elimination

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<sup>1384</sup> Mayer, *supra* note 1347 at 100.

<sup>1385</sup> *Ibid.*

<sup>1386</sup> Introductions to aspects of women’s status in the sharia can be found in Joseph Schacht, *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964) at 126; Yves de Bellefonds, *Traité de droit musulman compare* (Paris: Mouton, 1965); Noel Coulson, *Succession in the Muslim Family* (Cambridge: Cambridge University Press, 1971); Ghassan Ascha, *Du statut inférieure de la femme en Islam* (Paris: L’Harmattan, 1987).

<sup>1387</sup> Mayer, *supra* note 1347 at 85.

<sup>1388</sup> Mayer, *supra* note 1347 at 99.

<sup>1389</sup> For example, Ṣaḥīḥ Muslim 2631 states “whosoever supports two daughters until they mature, he and I will be on the day of judgment as this (and he pointed with his two fingers held together)”; Barlas & Finn, *supra* note 1304 at 73.

<sup>1390</sup> Mohammad Nadwi, *Al-Muhaddithat: The Women Scholars in Islam* (Oxford: Interface Publications, 2007).

<sup>1391</sup> The reforms made by the Quran are presented schematically in a volume produced under the auspices of the Giant Forum and Global Issues Awareness for National Trust in collaboration with the Women’s Development Fund, Canadian International Development Agency (CIDA), Islamabad, Pakistan; Mayer, *supra* note 1347 at 100.

of exploitations to which women were exposed.<sup>1392</sup> Many scholars definitely agree that the Quran greatly enhanced women's positions in numerous ways.<sup>1393</sup> Muslim advocates of women's rights continue to criticize premodern jurists who advanced elaborate rules severely restricting women's rights, condemning misrepresentations of the original Islamic message and other influences from local custom that gradually obscured Quranic ideals.<sup>1394</sup>

In the Northern Nigerian case of *Wapanda v Abubakar*, the court outlined some fundamental features of Islamic law and observed that:

Islamic law is a reasonable and rational law. It is organic and developmental. It grows with the society. It is humane and comprehensive. It outlaws high handedness and oppression. It establishes justice and peace in society. It sets out rules for a harmonious coexistence between people and especially between spouses such that one does not oppress the other.<sup>1395</sup>

If we adhere to the court's approach in the *Wapanda* case, then using Islamic law to legitimise child marriage is problematic. If Islamic law is rational, humane and outlaw's oppression, then it can be argued that child marriage does not conform to Quranic ideals but instead to prevailing patriarchal cultural norms. Improvement of women and girl's status in Northern Nigeria should be prioritised and legal and social restrictions on women and girls, especially in education and marriage should be questioned. Religion should no longer be used to justify discrimination against women and girls.

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<sup>1392</sup> Fatima Mernissi, a Moroccan sociology professor who was one of the founding members of the Moroccan Organization for Human Rights, offers a prominent example of a feminist who has re-examined the original sources and concluded that Islam calls for women's equality". See Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Massachusetts: Addison-Wesley, 1991); Fazlur Rahman, "The Status of Women in the Quran" in Guity Nashat, ed, *Women and Revolution in Iran* (Boulder: Westview Press, 1983) 38.

<sup>1393</sup> Fazlur Rahman, *Islam* (Chicago: The University of Chicago, 1979) 38. Several Islamic feminists are challenging the theological justifications that have been offered for denying Muslim women rights. For example, Riffat Hassan, "Feminist Theology: The Challenges for Muslim Women" (1996) 5:9 Critique: Journal for Critical Studies of the Middle East 53; Mahnaz Afkhami & Erika Friedl, *Muslim Women and the Politics of Participation: Implementing the Beijing Platform* (Syracuse: Syracuse University Press, 1997); Khaled El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: One-World Publications, 2008); Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law* (The Hague: KluwerLaw International, 2000).

<sup>1394</sup> See the examination of disparities between the original sources and later interpretations in Barbara Stowasser, "The Status of Women in Early Islam" in Freda Hussain, ed, *Muslim Women* (New York: St. Martin's Press, 1984); Asma Barlas & David Finn, *Believing Women in Islam: A Brief Introduction* (Austin: University of Texas Press, 2019); Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Massachusetts: Addison-Wesley, 1991).

<sup>1395</sup> *Salamatu Wapanda v Abubakar Suleiman Wapanda* (2008) 1 NWLR (Pt 1068) 364.



Many questions about the rights and freedoms of women and girls are hard for Northern Nigerian religious leaders and elites to answer conclusively by reference to the Quran. Faced with contestation, religious groups in Northern Nigeria use Islam to restrict women and girls' rights, sanctioning views that echo ancient sociocultural settings that were filled with patriarchal values.<sup>1396</sup> Even though the very few male privileging verses are incompatible with the larger part of the Quran, fundamentalists still rely on them to refuse equality to women and girls.<sup>1397</sup> Indeed in their interpretations, these leaders have often inflated Islamic rationales for depriving women and girls of rights.<sup>1398</sup> Meanwhile, other Muslims in other settings have critically reassessed the foundation for policies limiting women and determined that true Islam favours transformations designed to ensure women and girls' equality.<sup>1399</sup> Empirical research in Northern Nigeria also shows that young people are very open to interpreting religious texts differently "through the lens of transformational masculinity".<sup>1400</sup> But the ideologies still pushed forward by Islamic leaders reveals that they simply want to preserve discriminatory rules; and so, they continue to formulate interpretations that minimize women's equality.<sup>1401</sup>

A significant portion of different Muslim communities seem to embrace views on women's status that comprise of a "middle-ground position".<sup>1402</sup> Some Middle Eastern states have initiated

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<sup>1396</sup> Voices4Change in Nigeria carried out empirical research in 2015 to better understand these specific connections between masculinity and religion. It highlighted the power of religious imagination and the use of sacred texts to endorse patriarchy". See P Ekeoba & T Fashola, "Masculinities and Religion in Nigeria" (November 2015), online (pdf): <https://www.christianaid.ie/sites/default/files/2017-01/Masculinity-and-Religion-Nigeria-Dec-2015.pdf>

<sup>1397</sup> Barlas & Finn, *supra* note 1349 at 73.

<sup>1398</sup> See Elisabeth Le Roux & Selina Palm, "What Lies Beneath? Tackling the Roots of Religious Resistance to Ending Child Marriage" (2018) online (pdf): <https://www.girlsnotbrides.org/wp-content/uploads/2018/11/FINAL-Religious-leaders-report-High-Res.pdf>

<sup>1399</sup> See Abdullahi An-Na'im, "A Modern Approach to Human Rights in Islam: Foundations and Implications for Africa" in Claude Welch & Ronald Meltzer, eds, *Human Rights and Development in Africa* (Albany: State University of New York Press, 1984).

<sup>1400</sup> P Ekeoba & T Fashola, "Masculinities and Religion in Nigeria" (November 2015), online (pdf): <https://www.christianaid.ie/sites/default/files/2017-01/Masculinity-and-Religion-Nigeria-Dec-2015.pdf>

<sup>1401</sup> Ekeoba, P., and Fashola, T. 2015. Masculinities and Religion in Nigeria. Voices4Change Report. Available: <http://www.v4cnigeria.com/resources/researchreports/> [2018, 22 May].

<sup>1402</sup> In most Muslim countries, the choice has been to compromise, keeping some sharia rules but including many reforms improving the rights of women. See Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007).

reforms to advance women's status and to eliminate historic barriers imposed under Sharia.<sup>1403</sup> Islamic family law jurisprudence in Northern Nigeria has provisions protecting women and girls;<sup>1404</sup> all that is required is a political will and a governing discourse that rejects subjugation and discrimination on account of gender. I maintain that in societies like Northern Nigeria, where religion is a significant force, unless sustained changes are effected, prevalent cultural practices will continue to be presented and recognized as fundamentally religious even if, in fact, they are not completely aligned with Islamic doctrine.<sup>1405</sup>

Based on the analysis above, religious opposition to child marriage in Nigeria seems unguided and political; it ignores what Islamic law and doctrine demands and sacrifices the fundamental rights and protection of women and girls for the sake of avoiding cultural conflict. The desire to eliminate conflict, and violent political instability, as evidenced in Nigeria's history, are serious concerns that should be considered to ensure the proper functioning of a constitutional society.<sup>1406</sup> However, this desire should not quiet calls for the protection of women and girls.

## **Part IV**

### **(1) Managing Pluralism in Nigeria**

As already highlighted in preceding sections, one of the touchiest points of contention remains the question of what should be the proper focus for analysis in pluralistic societies: individuals or groups? Legal mechanisms can facilitate coexistence among conflicting ways of life by adopting tools for regulating divergence. When compromise is possible, there are certain governance devices for pluralism used in Nigeria. In Nigeria, these devices include federalism, with regional authorities authorised to make parallel and contradictory decisions. In chapter 5, I emphasised that

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<sup>1403</sup> A summary of these changes can be found in JND Anderson, *Law Reform in the Muslim World* (London: Athlone, 1976). See also Tahir Mahmood, *Personal Law in Islamic Countries* (New Delhi: Academy of Law and Religions, 1987).

<sup>1404</sup> For example, although fathers generally assume the right to give their virgin daughters away in marriage without the latter's consent under the principle of *Ijbar* (compulsion), a court in Northern Nigeria annulled a marriage in 1991 because the girl in question had not consented to it. In fact, a Sokoto court in 1988 annulled a marriage on account of lack of maintenance; also, a Maiduguri court dissolved a marriage on account of repeated wife battery in 1993. See Sanusi Lamido Sanusi, "The Politicisation of Ontological Questions: Discourses, Subjectivities and Muslim Family Law in Nigeria" (2008), online (pdf): [http://www.nigerdeltapeoplesworldcongress.org/articles/politicisation\\_of\\_o.pdf](http://www.nigerdeltapeoplesworldcongress.org/articles/politicisation_of_o.pdf)

<sup>1405</sup> Shaheed, *supra* note 867 at 67.

<sup>1406</sup> These conflicts are generally premised on assertions of religious 'ownership' over the North, grievances over the distribution of federal resources, and the failure of Northern political and religious elites to sufficiently defend Muslim interests. Kendhammer, *supra* note 1225 at 296.

in the face of contradictory values, shifting the decision making and conferring power on state and local levels of government to govern their own affairs is not necessarily helpful to women and girls. Another legal construct used in Nigeria to create space but also regulate pluralism within ethno-religious groups is the doctrine of ‘repugnancy and incompatibility’. This doctrine provides that tribal law and custom of ethnic groups should be recognized and enforced as law governing such disputes, in so far as such custom is not contrary to standards of ‘natural justice, equity and good conscience’ and is not ‘incompatible with any law’ adopted by legislation.<sup>1407</sup> The doctrine basically supervises cultural pluralism in Nigeria. It has permitted, managed, and at times limited pluralism. It is used to adjust culture’s power while influencing public norms applicable to cultural groups.

As highlighted in chapter 5, the Nigerian constitution recognises plurality and sets the limits for human rights protection. In fact, constitutional provisions are now used to claim ethnic and religious privileges.<sup>1408</sup> The 1999 constitution does not explicitly declare Nigeria as a secular state. It only prohibits both states and the federal government from endorsing any religion as state religion.<sup>1409</sup> Nonetheless, the Sharia as adopted by Northern states extended the jurisdiction of Islamic civil law courts into criminal matters, created Islamic criminal codes, and affected a wide-ranging set of Islamic social policies intended to manage the socio-economic lives of Muslims.<sup>1410</sup> Disagreement over secularism in Nigeria takes place within an enduring debate over how the state might balance the recognition of the country's ethnic and religious pluralism with the desire to reduce regional conflict.<sup>1411</sup> Despite an insistence on separation of religion and state, to the extent that Nigeria constitutionally identified itself as part Islamic, the state at times allowed a special role for Islam. As a result, religious groups, specifically Christians and Muslims, tend to view

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<sup>1407</sup> See Charles Mwalimu, *The Nigerian Legal System* (New York: Peter Lang, 2005).

<sup>1408</sup> In chapter II under the fundamental objectives and directive principles of state policy, enjoins the state to provide facilities for, among other things, religious life. See section 17(3) of the 1999 Constitution; The Supreme Court of Nigeria held in *A.G. Ondo State v A.G. Federation & 35 Ors* [2002] 9 NWLR (Pt.772) 222 that the word “state” in the “context of the fundamental objectives and directive principles of state policy includes the Federal, State and Local Governments, as the case may be”.

<sup>1409</sup> Section 10 of the 1999 Constitution.

<sup>1410</sup> John Paden, *Muslim Civic Cultures and Conflict Resolution: The Challenge of Democratic Federalism in Nigeria* (Washington: Brookings Institution Press, 2005).

<sup>1411</sup> Kendhammer, *supra* note 1269 at 296.

themselves as a source of authority at least equal to the state, and they perceive issues of religion and state as issues involving competing systems of law or sovereignties.<sup>1412</sup>

Generally, cultural practices in customary law are legally enforceable in Nigeria.<sup>1413</sup> The term customary law refers to ethnic customary practices and Islamic law of the Maliki school.<sup>1414</sup> In colonial Nigeria, several provisions directed courts to apply customary law only if the specific rule was not “repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force”.<sup>1415</sup> These provisions were retained by post-colonial Nigeria and can be found in the current laws of various states.<sup>1416</sup> More importantly, the *Evidence Act*, as well as the various evidence laws of states embody the repugnancy clause and an additional provision against the application of any customary law that is contrary to public policy.<sup>1417</sup> The idea is that the specific customary rule being applied to a dispute should not offend the “sensibilities of the society”.<sup>1418</sup> In *Laoye v Oyetunde*, the court stated that the “repugnancy clause was intended to invalidate barbarous customs”.<sup>1419</sup> If Islamic law is deemed as ‘customary law’ in Nigeria, then the practice of child marriage could be subject to the judicial validity test for customary law. The repugnancy clause could then be invoked to invalidate child marriage as a practice contrary to public policy, natural justice, equity, and good conscience.

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<sup>1412</sup> *Ibid.*

<sup>1413</sup> In Nigeria, customary law may be divided in terms of nature into two classes, namely, ethnic or non-Muslim customary law and Muslim law. See AO Obilade, *The Nigerian legal system* (Ibadan: Spectrum Law Publishing, 1990); The Supreme Court of Nigeria also held that Muslim law, as customary law, was applicable in a case litigated in a Nigerian court between Muslim Lebanese nationals, domiciled in Lebanon, and concerning property in Nigeria. See *Kharie Zaidan v Mohsse* [1973] 1 ALL N.L.R. [Pt. 11] (S.C. Nigeria) at 86.

<sup>1414</sup> When we talk about customary law, we are referring to a body of customs, practices and mores which are largely unwritten, and handed down from generation to generation by oral tradition. See Derek Asiedu-Akrofi, “Judicial Recognition and Adoption of Customary Law in Nigeria” (1989) 37:3 *The American Journal of Comparative Law* at 572.

<sup>1415</sup> See for example section 19 of the *Supreme Court Ordinance* No. 4 of 1876; section 13 of the *Supreme Court Ordinance* No. 6 of 1900; The *Native Courts Proclamation* No. 9 of 1900; section 8 of the *Native Courts Ordinance* No. 3 of 1914; section 10 of the *Native Courts Ordinance* Cap. 142 Laws of Nigeria, 1948.

<sup>1416</sup> See for example section 26(1) of the *High Court Law of Lagos State* Cap. 52 (1973); section 13(1) of the *High Court Law of Bendel State* Cap. 65 (1976); section 34(1) of the *High Court Law of Kano State* Cap. 57 (1991 Rev. Ed.); section 13(1) of the *High Court Law of Ogun State* Cap. 44 (1978) and section 13 of the *High Court Law of Oyo State* Cap. 46 (1978).

<sup>1417</sup> See section 18(3) of the *Evidence Act*, 2011.

<sup>1418</sup> Asiedu-Akrofi, *supra* note 1409 at 581.

<sup>1419</sup> *Laoye v Oyetunde* A.C. 170 (1944).

The repugnancy and incompatibility doctrine is highly contested due to its colonial origin and its implication for culture. In essence, courts frequently find themselves bound to conclude in accordance with existing legislation or other principles, that certain age-old traditions and institutions are uncivilized and hence inapplicable.<sup>1420</sup> Since repugnancy clauses primarily served as vehicles by which the colonial system condemned and rejected African norms, nationalist ideology and cultural movements in Nigeria looking to purge culture of its external or foreign elements argue that such rules should have been repealed promptly upon attaining independence. Nonetheless, despite the extensive criticism against the continuous use of the repugnancy doctrine, the doctrine has had considerable effect and impact on the development of customary law jurisprudence in Nigeria. The court in *Omaye v Omagu*<sup>1421</sup> held that “no custom relied upon in judicial proceedings shall be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience”. In *Mojekwu v Iwuchukwu*<sup>1422</sup> the court held that in finding whether a custom is repugnant to natural justice, equity, and good conscience, the “effects and circumstances of the practice must be properly considered”. In the case of *Okonkwo v Okagbue*, “the court described the standards and essence of the test as follows:

A conduct that might be acceptable a hundred years ago maybe heresy these days and vice versa. The notion of public policy ought to reflect the change. That a local custom is contrary to public policy and repugnant to natural justice, equity and good conscience necessarily involves a value judgment by the court. But this must objectively relate to contemporary mores, aspirations, expectations, and sensitivities of the people of this country and to consensus values in the civilized international community which we are a part of that community and cannot isolate ourselves from its values. Full cognizance ought to be taken of the current social conditions, experiences, and beliefs of the people. Afterall, custom is not static.<sup>1423</sup>

Colonial authorities decreed that customary law includes Islamic law. Judge Ames explains this position clearly in *Bornu Native Authority v Magudama*. The court stated that “Muhammadan Law has no privileged position [in Nigeria]: it prevails, where it does prevail, because it is there the local law and custom”.<sup>1424</sup> There are legislative provisions in northern Nigeria that state that

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<sup>1420</sup> J Bekker & I Van der Merwe, “Proof and Ascertainment of Customary Law” (2011) 26 SAPL at 116.

<sup>1421</sup> *Omaye v Omagu* (2008) 7 NWLR (Pt. 1087) 477 at 507.

<sup>1422</sup> *Mojekwu v Iwuchukwu* (2004) 11 NWLR (Pt. 883) 196.

<sup>1423</sup> *Okonkwo v Okagbue* (1994) 9 NWLR (pt. 368) 301.

<sup>1424</sup> *Bornu Native Authority v Magudama* (unreported), in the West African Court of Appeal. See discussion in Oba, *supra* note 93 at 887.

customary law includes Islamic law. Section 2 of the *High Court Law* provides that the term “native law and custom” includes Islamic law.<sup>1425</sup> This definition was also adopted in the northern region’s *Native Courts Law* and is now found in the High Courts Law of some northern states.<sup>1426</sup> This definition continued in all the northern states until 1999 when some states repealed all the laws that made Islamic law part of customary law in their states.<sup>1427</sup> Several scholars also argue against classifying Islamic law as customary law.<sup>1428</sup> They state that Islamic law in Nigeria should not be subjected to the repugnancy test because Islamic law is not customary law.<sup>1429</sup> For example, *the Plateau State Customary Court of Appeal Law* defines “customary law” as:

the rule of conduct which governs legal relationships as established by custom and usage and not forming part of the common law of England nor formally enacted by the Plateau State House of Assembly but includes any declaration or modification of customary law but does not include Islamic personal law.<sup>1430</sup>

The court in *Alkamawa v Bello* reaffirmed this by asserting:

Islamic law is not customary law as it does not belong to any tribe. It is a complete system of universal law, more certain and permanent and more universal than the English Common Law.<sup>1431</sup>

As a result, there is a dearth of cases on the application of the repugnancy and incompatibility tests to Islamic law. There are no known cases of litigation in the context of child marriage. As Nigeria tries to find a path between Islamic fundamentalism and the protection of women and girls, Nigeria’s process of accommodation and balancing does not effectively help women and girls in navigating power structures within culture.

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<sup>1425</sup> Laws of Northern Nigeria, High Court Law (1963) Cap. (49), section 34.

<sup>1426</sup> Laws of Northern Nigeria, Native Courts Law (1963) Cap. (78), section 2; e.g., Laws of Kwara State, High Court Law (2007) Cap. (H2), section 2.

<sup>1427</sup> For example, Kano State Sharia Courts Law, § 29(2), (4) (2000).

<sup>1428</sup> See generally, AA Oba, “Islamic Law as Customary Law: The Changing Perspective in Nigeria” (2002) 51 INT’L & COMP. L.Q. 817.

<sup>1429</sup> See the following academic writers point to the difference between Islamic law and customary law. AG Karibi-Whyte, *The History and Sources of Nigerian Criminal Law* (Ibadan: Spectrum Law Publishing, 1993) at 260; JM Elegido, *Jurisprudence* (Ibadan: Spectrum Law Publishing, 1994) 137-8; IO Agbede “Legal Pluralism: The Symbiosis of Imported, Customary and Religious Laws- Problems and Prospects” in Ayo Ajomo, ed, *Fundamentals of Nigerian Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 1989); YK Saadu, “Islamic Law is NOT Customary Law” (1997) 6 Kwara Law Review 136.

<sup>1430</sup> Section 2 of Plateau State Customary Court of Appeal Law, 1979.

<sup>1431</sup> *Alkamawa v Bello* [1998] 6 SCNJ 127 at 136.

## 1. Redefining Culture and Identity

Since the maintenance of relations of power hangs on preserving specific cultural meanings, resistance must include a redefinition of culture. A definition that satisfies ethno-religious groups and human rights advocates is a meaningful approach. Early anthropological work on law developed an idea of culture as a cohesive, unchanging, bounded, and unique institution shared by a group of people.<sup>1432</sup> However, over the last few years, the meaning of culture has come under intense examination. Instead of a reified concept of a fixed set of values, and institutions, culture is now understood as a flexible collection of practices and discourses produced through “historical processes of contestation over signs and meanings”.<sup>1433</sup>

To possess culture implies being an insider; not to be acculturated in the proper way is to be an outsider.<sup>1434</sup> Hence the boundaries of cultures in Nigeria are still firmly defended, their “narratives purified, their rituals carefully monitored”.<sup>1435</sup> As reflected in preceding sections these boundaries continue to confine power in that they legitimize its use within the group. I do not believe that we should take groups and individuals’ cultural descriptions at face value. Cultural symbols and representations can be reordered, and cultural narratives change.<sup>1436</sup> It is important to understand the totality of circumstances of which culture is an aspect.

The way culture is defined governs how social change ensues.<sup>1437</sup> If culture is static and invariable, it could simply be a barrier that could be eliminated through education.<sup>1438</sup> If culture is recognized as values and practices shaped by institutional contexts, it is both flexible and entrenched in structures of power.<sup>1439</sup> These different definitions of culture could affect policies regarding women and girls. For example, in Nigeria’s country report to Committee on the Elimination of Discrimination against Women, Nigeria cites patriarchy, reproductive roles, ingrained customary

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<sup>1432</sup> Sally Engle Merry, “Law, Culture, and Cultural Appropriation” (1998) 10:2 Yale Journal of Law & the Humanities at 576.

<sup>1433</sup> James Clifford, *The Predicament of Culture: Twentieth-century Ethnography, Literature, and Art* (Cambridge, Mass.: Harvard University Press, 2002); James Clifford & George Marcus, *Writing Culture: The Poetics and Politics of Ethnography* (Berkeley: University of California Press, 1986).

<sup>1434</sup> Benhabib, *supra* note 1177 at 7.

<sup>1435</sup> *Ibid.*

<sup>1436</sup> Benhabib, *supra* note 1177 at 8.

<sup>1437</sup> Sally Engle Merry, “Human Rights and Transnational Culture: Regulating Gender Violence through Global Law” (2006) 44:1 Osgoode Hall Law Journal at 64.

<sup>1438</sup> *Ibid.*

<sup>1439</sup> *Ibid.*

practices as challenges that need to be tackled to increase women's participation in politics.<sup>1440</sup> In contrast, facing similar challenges with regard to the absence of women in politics, Denmark proposed funds to counterbalance babysitting costs when women attended meetings.<sup>1441</sup> In Nigeria's case, the hindrance to change is conceived as cultural tradition; in Denmark's case, it is conceived as institutional provisions of child care. The first example perceives culture as fixed; the second presumes that gendered meanings could be altered as institutional and legal measures change.<sup>1442</sup>

I find it unreasonable to describe the traditional way of life of northern Nigerians without seeing change as an integral component resulting in sustainable transformations. Through individual activities and larger social interactions, culture is historically constructed and reconstructed over time in specific contexts positioned within world-wide "movements of people and capital".<sup>1443</sup> And so, cultural systems and practices are simply local expressions that are connected to global systems of meaning, economic exchange, and power relations.

## 2. Cultural Identity

It is a necessary truth that, if a certain practice were part of a culture, a prohibition of that practice would entail some change in culture. But this should not in itself make the change a threat to cultural identity, unless cultural identity is defined in a way that is easily destroyed by any change in culture.<sup>1444</sup> That is no more reasonable than it would be to define individual identity so that it is destroyed by any variation in circumstances, for example, changing houses, taking a new job, getting married, and so on.<sup>1445</sup> Culture has always been a sign of social difference and is now an "identity marker and differentiator".<sup>1446</sup>

For women and girls, who are often made the "repositories of culture", the issue of identity is vital.<sup>1447</sup> Women's liberation confronts and is confronted by cultural and political problems of

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<sup>1440</sup> UN, Convention on the Elimination of All Forms of Discrimination Against Women, C/NGA/7-8 January 2016 at 15, 36.

<sup>1441</sup> UN, Convention on the Elimination of All Forms of Discrimination Against Women, C/DEN/5, 3 July 2000:16.

<sup>1442</sup> Merry, *supra* note 1432 at 64.

<sup>1443</sup> Merry, *supra* note 1427 at 578.

<sup>1444</sup> Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge: Polity Press, 2013).

<sup>1445</sup> *Ibid.*

<sup>1446</sup> Benhabib, *supra* note 1177 at 1.

<sup>1447</sup> Shaheed, *supra* note 867 at 63.



identity. How identity is produced, who defines it, how gender fits into these definitions, and the interaction between these definitions at the local, regional and international levels are direct effects of women wanting to redefine the boundaries of their lives.<sup>1448</sup> We cannot continue to speak, with certainty, about one cultural experience, one cultural identity, without recognizing the “ruptures and discontinuities” in history.<sup>1449</sup> Cultural identity is not something fixed in an essentialized past, it is subject to history, culture and power.<sup>1450</sup> It is an issue of “becoming as well as of being; it belongs to the future as much as to the past”.<sup>1451</sup> And so, like all that is historical, I believe identity experiences continuous transformation. This demonstrates that the continuous appeal to culture, establishes nothing. Some cultural practices are admirable, others are not. The reasons advanced for doing things within admirable cultures may be good, and reasons for doing things within the latter tend to be bad.<sup>1452</sup> Nonetheless, in neither case should something being part of the culture itself be a motive for doing anything.<sup>1453</sup>

## Conclusion

This chapter called attention to the facts of change in northern Nigeria so that my reform agenda is not delegitimised by pleas to unchanging traditions. I argued that religious and political actors are strongly involved in local transformative processes defining cultural practices as sacred and longstanding traditions. I highlighted how requests to be respectful to ‘our’ tradition, culture and nation have often amounted to demands that we repeatedly defer the articulation of issues affecting women and girls.

Based on the analysis done in this chapter, I believe child marriage and other HTPs are as antithetical to religious traditions as they are to Western human rights notions. There are fundamental cultural limits on even seemingly deeply entrenched cultural practices however difficult it maybe to publicly articulate, specify and reject dominant accounts of what these practices are. Racial, sexual, and religious discrimination were widely practiced in most communities, but in most societies, they are indefensible today. As such, I still insist that culture

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<sup>1448</sup> Shaheed, *supra* note 867 at 63.

<sup>1449</sup> Stuart Hall, “Cultural Identity and Diaspora” in Jonathan Rutherford, ed, *Identity: Community, Culture, Difference* (London: Lawrence & Wishart, 1998) 225.

<sup>1450</sup> *Ibid.*

<sup>1451</sup> *Ibid.*

<sup>1452</sup> Barry, *supra* note 1444 at 3.

<sup>1453</sup> *Ibid.*

is not the problem, and neither is it the solution. I came to this conclusion because I refuse to see the practice of child marriage in isolation from much more systematic practices of oppression affecting Nigerian women and girls.

The question of whether northern Nigeria has room for or could be amenable to, thinking in terms of rights of women and girls remains open. However, focusing on pluralism alone rather than structural obstacles may be harmful. I believe the task of democratic equality is to establish neutral public institutions in society where the struggle for cultural legitimacy, appreciation of cultural disparities and the contention for cultural narratives can occur without domination.<sup>1454</sup> I do not think that Nigeria needs a common religion, a common moral perspective, a common understanding of childhood, or anything like that. At the same time, it needs to have something normative that holds its plurality together.

After my analysis in this chapter, I am concerned with how receptive this region would be to seeing rights as a valuable normative framework for safeguarding, at least, a minimum of justice for women and girls. I believe questioning the legitimacy of child marriage can be politically facilitated if the history and politics of child marriages' unconfirmed significance as an Islamic tradition can be publicly expressed and extensively communicated. Nonetheless, I acknowledge that getting individuals to critically reflect about the history of beliefs and practices they take to be fundamental to their traditions and about the political purposes of desirable ideas such as culture, nation, and standards of womanhood, is not an effortless undertaking in any national context. And so, turning to the legal system for help is an important and possibly the most effective way to address the problem of child marriage in northern Nigeria.

However, as previously highlighted, there is currently no firmness of conviction over the minimum age of marriage issue in Nigeria because of the need to protect the pluralistic nature of the state. The historical friction around national and local level politics, in addition to the perceived westernisation of northern Nigeria's value framework, has limited state involvement in matters of a cultural nature, making it even more difficult to reconstruct areas of law affecting women and girls. Despite the blatant harmful effects of child marriage, the practice persists. It is a necessary

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<sup>1454</sup> Benhabib, *supra* note 1177 at 8.

institution that guarantees specific forms of control and order designed by prevailing patriarchal ideologies. And so, my appeal to law in Nigeria, is no less than an appeal to the state to re-order power relations. This is a difficult undertaking. It can by no means be assumed that the men in power in Nigeria will freely give women and girls equal rights. As we have seen, in the culturally sacred family, men maintain a sexual, marital, and moral dominance which many will be reluctant to abandon. I discuss legal reform strategies in the next chapter.

## Chapter 7

### Conclusion and Recommendations

This thesis explores the challenges faced by girls subjected to harmful traditional practices (HTP) in Nigeria. I paid special attention to a single region, northern Nigeria, and to one form of HTP, child marriage. The significance of zoning in on a single practice was to construct my analysis around the political and ideological shifts, tensions, and changes in Nigeria. I contended that the conflicting discourse around child marriage regulation affects the way this problem is understood and addressed. As I prefaced in the introduction, the goal of my research was not just to provide a descriptive analysis of the problem of child marriage in Nigeria. Rather, I explored the numerous contradictions and tensions around national and local politics, the westernisation of sharia, the universalizing strategies of the human rights framework and how they exclude the lived experiences of girls in northern Nigeria. In pursuing this goal, I discovered that girls' experiences do not occupy center stage in national debates, instead their voices are lost within efforts to negotiate these conflicts at various levels. These negotiations blur the actual consequences of child marriage and similar practices on girl-children.

The kind of rigorous analysis adopted in this dissertation allowed for a discussion and reassessment of certain salient factors. By displaying child marriage as a prolific site of historical, religious, and political struggle, the thesis drew attention to the shifting national and local politics of regulating this practice. The aim was to dismantle certain constructs veiled by normalised views and uncover the deep link between HTPs and ethno-religious conflicts. In chapter 3, we saw that married girls, as young as 9 years old, face many challenges associated with early pregnancy, child rearing, male sexual violence, abuse, and servitude that puts them at a permanent disadvantage. Despite these obvious effects on girls, because of constitutional provisions, religious and customary marriages are almost entirely unregulated. States that have not ratified the *Child Rights Act (CRA)*, need not comply with any regulations whatsoever. Even states that ratified the CRA can alter the marriageable age provision of the CRA. And so, despite the growing pressure from the international community, resistance to abolition of child marriage is strong. Its compatibility with ethno-religious ideals means that associated health problems are essentially ignored or deemed an insufficient reason to abandon them.

In this final chapter, I suggest a strategy of compromise. I argue for a blend of practical and moral grounds to ensure an eradication of child marriage in Nigeria. I draw together some key findings emerging from the preceding chapters to highlight how child protection strategies and human rights ideas can become part of the local legal consciousness of northern Nigerians. I show how the law reform process can happen, what actors need to be involved and what the law reform outcome might be. I argue that, to effectively address the issue of child marriage, Nigeria must combine social service initiatives that improve women and girls' safety, in addition to a strong emphasis on punishing the offender.

My reform proposal has three dimensions. First, the 'framing' of the problem of child marriage. In this section, I discuss ways in which the dialogue between religion and marriage can be reframed, packaged differently, and presented to cultural communities. It is an "interpretive package"<sup>1455</sup> that can have powerful consequences on the way child marriage is understood. This 'framing' will generate collective belief in Nigeria as a whole, encourage group action and define suitable plans of action in northern Nigeria. In 'framing' the problem of child marriage, I am not looking to translate human rights protection of women and girls in a way that is compatible with existing ways of thinking in northern Nigeria. I maintain my underlying emphasis on women and girls' fundamental rights to protection of their body, along with choice and equality. Second, I show how human rights and child protection strategies led by lawyers and political elites can be an effective mechanism in eradicating the practice of child marriage. Both groups will focus on changing national and regional laws and institutions. The third dimension of legal reform is creating programs that fit the structural conditions in which they operate. I am committed to developing models suited to northern Nigeria's distinct history and social conditions. I argue that law reform, safety systems and research are essential strategies for eradicating violence against women and girls.

### **(1) Framing: Limiting the on-going identity dialogue between religion and marriage**

While there has been a development of the law in Nigeria, by enacting the *Child Rights Act* (CRA), my critical lens revealed that the implementation of this legislation prioritizes a specific framing of the problem of violence against girls. A significant aspect of this framing was the centrality of

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<sup>1455</sup> Merry, *supra* note 1186 at 136.

‘culture’ as an explanatory tool used by the government and political elite to limit the legal protections afforded to women and girls.<sup>1456</sup> Despite the multidimensional and fluid nature of culture in northern Nigeria, in chapter 6, we saw that the voices of these elites overwhelm others. States are manifesting less and less willingness to protect the interests of girls, thereby increasing the likelihood that many girls will fail to flourish and will instead become perpetual members of an isolated lower class. Child marriage is clearly not perceived as a problem of equal protection for all children in Nigeria, and so, girls in northern Nigeria constitute a minority whom the legal process protects less than possibly any other group in society. My discussion in this section provides compelling practical legal tools against ethno-religious exemptions to child protection strategies.

### **1. Free Choice in Religion and Equal Protection**

As already discussed in previous chapters, one of the most controversial points of contention in Nigeria involves determining whether individuals or groups are the primary unit of analysis for human rights protection. As we have seen, the difficulty in Nigeria is that for many ethno-religious communities, the strength of the group matters enormously. It is therefore of concern to both individuals and groups whether and when violence experienced by individual members of a group should rise to the level of harm deserving protection. And so, it remains uncertain how the conflict between religion and equal protection claims on behalf of girls can be resolved in Nigeria. In this section, I consider whether a state purpose to accommodate ethno-religious group preferences is reasonable for the equal protection of girl-children. My final answer to this question is plainly ‘no’.

As discussed in chapters 5 and 6, a rationalization that Nigeria offers for religious exemptions is that they protect minority groups’ ethno-religious interests. I argued that before accepting the legitimacy of this hypothetical purpose, we must identify clearly what the nature of those interests might be, if any such interests in fact exist. In chapter 6, we discussed how interests are articulated in northern Nigeria. We saw that the power to structure public disputes and define reality for community members rests on male elites who wish to carry on their own economic and political agendas. My analysis of childhood in chapter 3 revealed that girls are passive participants in family life, and they have no control over their parents’ ethno-religious beliefs. We also observed that

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<sup>1456</sup> See discussion in chapter 5.

women in northern Nigeria are conditioned to be compliant, dependent and with secondary status to men in the home and in society. And so, attributing an interest in religious liberty to very young children who have not reached a stage of development at which they are able to exercise independent decisions is inappropriate, especially when the expressed preferences of women and children in relation to some religious matters are simply privileged male interests.<sup>1457</sup> Ethno-religious exemption to child-related issues effectively plays into the political agenda of privileged groups and has never been in the interests of women and girls. Therefore, to ever predicate denial of statutory benefits to girls on their parents' or community's ethno-religious beliefs simply raises concerns about fundamental fairness. An exemption from child protection provisions in the CRA for states with certain ethno-religious beliefs should not permissibly be grounded simply in a preference for the interests of groups over the interests of children. If a state denies only to girl-children certain statutory protections against harmful conduct by others, such as child marriage, based on a legislative choice to favour and exempt persons within ethno-religious groups who want to marry underage girls, this in effect makes the group's preferences the preferences of the Nigerian state. According to section 10 of the Constitution,<sup>1458</sup> the state should not have religiously grounded preferences of any kind regarding the upbringing of children, let alone religiously grounded preferences to give some children lesser protection from harm than other children receive.

Throughout this dissertation, I highlighted that very few women in Nigeria participate in local and national politics and enter professional and public spheres of activity initially designated to be exclusively male. We also saw that the political elite of ethno-religious groups, consisting primarily of men, lobby government officials demanding as a matter of religious authority that they not be required to comply with one or another statutory obligation that they find offensive because of religion. Legislators concede to this political pressure and justify their actions, as appropriate constitutional deference to the religious interests and group rights. I argue that this reflects widespread self-centeredness and indifference to the plight of other people's children. In

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<sup>1457</sup> See similar discussion in James Dwyer, "The Children we Abandon: Religious Exemptions to Child Welfare and Education Law as Denials of Equal Protection to Children of Religious Objectors" (1996) 74 North Carolina Law Review at 1420.

<sup>1458</sup> Section 10 of the Nigerian Constitution provides that "the Government of the Federation or of a State shall not adopt any religion as State Religion".

addition, probably very few federal legislators were once girl-children of religious parents who married them off at young ages. They can thus casually legislate away benefits for girls who are in such families without worry, perhaps even believing that they are doing a good thing by remaining neutral on ethno-religious issues. Or they may think they are accommodating religious diversity, which could be considered progressive in multicultural environments. Those of us in mainstream Nigerian societies tend to forget these children and never come to understand their suffering. The harms experienced by child brides are real and well documented and should weigh heavily in the balance. My analysis in this dissertation inevitably yields the conclusion that religious pluralism is not a sufficiently significant state interest to justify a denial of protection to girls.

Ethno-religious exemptions, specifically around marriage and education, increase the physical and emotional harm experienced by girls and will effectively prevent many girls from developing abilities that would allow them to think freely and independently. Moreover, since what is at stake in the context of child marriage is a child's physical and emotional development, I find it particularly improper to presume that ethno-religious groups have interests that conflict with measures designed to further children's intellectual and physical growth. It is hard to imagine the need to foster cultural diversity in Nigeria as a legitimate reason for imposing the costs of physical and mental deprivation on children in order to pursue such an elusive public benefit. Given the absence of meaningful state regulation of child marriage, as discussed in chapter 3, girls in northern Nigeria also continue to suffer the greatest educational deprivation. From my analysis in this dissertation, I believe girls in northern Nigeria, more than any other children, need an education that emphasizes their equal personhood and makes a special effort to urge them toward self-fulfilling lives, in order to counter the oppressive influences in their communities. Instead, the very few that attend school receive education that strengthens oppressive practices, increasing the likelihood that girls will come to form a distinct and permanent lower class of persons unable to participate in and contribute to society, reduced to second-class social status.<sup>1459</sup>

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<sup>1459</sup> Dwyer, *supra* note 1457 at 1420.



To argue along these lines does not at all imply wiping individual lives clean of ethno-religious influences. It simply means not allowing ethno-religious groups mandatory powers even when the girl-child suffers. Eisgruber and Sager argue that:

[w]e need to abandon the idea that it is the unique value of religious practices that sometimes entitle them to constitutional attention. What properly motivates constitutional solicitude for religious practices is their distinct vulnerability to discrimination, not their distinct value; and what is called for, in turn, is protection against discrimination, not privilege against legitimate governmental concerns. When we have replaced value with vulnerability and the paradigm of privilege with that of protection, then it will be possible both to make sense of our constitutional past in this area and to chart an appealing constitutional future.<sup>1460</sup>

Like Eisgruber and Sager, my position is that religious states in Nigeria have alternative means available to them for exercising their religious freedom without adverse implications for girls. In chapter 6, I argued that cultures change, and groups can learn to develop an identity through new ways. Changes in one custom can be compensated for by adjustments in another; an ethno-religious group can “identify itself by its language or its territory, rather than by its ritual”.<sup>1461</sup> And so, whatever gain might flow from the richness of Nigeria’s social-cultural environment because of ethno-religious exemptions to marriage laws, it absolutely cannot be sufficiently significant to outweigh the resultant harms experienced by innocent children. Because individuals, especially women and girls, are often oppressed within protected minority groups, and because the “individual is the lowest common denominator of both individual and group rights”, there is a greater imperative to protect women and girls.<sup>1462</sup> Therefore, when fundamental rights collide, the equality of women and girls in Nigeria must take precedence. The Nigerian state should strike down all ethno-religious exemptions pertaining to child marriage and require that states extend all important child welfare and education laws universally to all children.

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<sup>1460</sup> CL Eisgruber & LG Sager, “Mediating Institutions beyond the Public/Private Distinction: The Vulnerability of Conscience: The Constitutional Basis for Protecting Religious Conduct” (1994) 61 *University of Chicago Law Review* 1248.

<sup>1461</sup> See discussion in chapter 6. Also see Scilla McLean et al, *Female Circumcision, Excision and Infibulation: The Facts and Proposals for Change* (London: Minority Rights Groups, 1980) at 3.

<sup>1462</sup> Rashida Manjoo, “Muslim Family Law in South Africa Conflating the Right to Religion with the Privileging of Religion?” in Lisa Fishbayn Joffe & Sylvia Neil, eds, *Gender, Religion, and Family Law: Theorizing Conflicts between Women’s Rights and Cultural Traditions* (Massachusetts: Brandeis University Press, 2012) at 185.

## 2. Free Choice in Marriage

How should legislature and courts in northern Nigeria respond to the fact that some women and girls may choose to exercise their individual autonomy to comply with ethno-religious rules that others might find limiting and even degrading? In chapter 5, we saw that women and girls' choices are limited by their circumstances and conflicting obligations; they are also constrained in ways that are distinctly unfair. In chapter 3, we saw that girls at very young ages are educated to believe that they are inferior, with very few choices open to them. We also saw that women and girls are prevented from pursuing certain objectives, like attending school or pursuing certain professional opportunities. In chapter 5, we saw that the guarantee of rights for women and girls in this most personal sphere is a complex matter. In northern Nigeria where extended families dominate and marriages are usually a matter of kinship concern, the people who arrange the marriages are sometimes attempting to obtain a suitable outcome both for the girls concerned, and for the families which are allied by the particular marriage. And so, recognizing women and girls' agency also entails recognizing the ways in which their agency is influenced by their socio-cultural environment.

I am by no means suggesting that women and girls in Nigeria abandon the integrity and cohesion of their culture, what I suggest is an approach that secures their identity and human dignity. The rights of women and girls in cultural and family matters are essential. Women and girls in northern Nigeria, like women everywhere, must be guaranteed their individual rights. Women and girls above the minimum age of marriage<sup>1463</sup> may choose, as individuals, to remain within their culture and to fulfil cultural norms, or they may choose to 'opt out' of some cultural practices. And so, acknowledging that some women and girls may still desire to adhere to cultural practices with which they are most familiar, legislation in Nigeria should explicitly require that they be able to remove themselves from the control of these customs should they so desire. The Nigerian government should therefore uphold the rights of women and girls to refuse to subject themselves to harmful traditional practices.

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<sup>1463</sup> See discussion in section (iii) below.

### 3. A Minimum age

As we have seen in preceding chapters, in Nigeria, the problem of child marriage is positioned within a disputed legal terrain since the age of marriage has strong ties to the ethno-religious nature of the state. In chapter 4, we saw that girlhood attracted colonial attention in most regions in Nigeria. The norms and standards upon which the model of a vulnerable and protected child is built is historically tied to Western societies' "social preoccupations and priorities".<sup>1464</sup> In colonial Nigeria, this model of childhood was rendered complete through the introduction of welfare practices, legislation and a multitude of enforcement agencies that attempted to standardize the experience of childhood. We also saw that in northern Nigeria, instead of the conventional emphasis on vulnerability, growing up, for girls in northern Nigeria is measured in terms of autonomy and responsibility. Girls are expected and raised to be knowledgeable, independent, reliable, and mature at incredibly young ages. The socio-cultural realities of girls in northern Nigeria are a critical determinant for the development of legislation and social policy. However, emancipating girlhood from the bindings of culture brings with it an imbalance between what is culturally desirable over what is necessary to foster the healthy development of girls. Protecting girls' physical and psychological welfare in Nigeria outweighs their ethno-religious beliefs.<sup>1465</sup> Throughout this dissertation, I engaged seriously with Northern Nigeria's perspective and interpretations of Muslim law and doctrine. My findings on gender equality based on Islamic jurisprudence<sup>1466</sup> permits me to dismiss Northern Nigeria's interpretation of Muslim doctrine as a self-serving strategy used to justify male dominance in the face of increasing demands for effective rights protection for women and girls.

Reform of legislation involving child marriage implies unification of the law on the minimum age of marriage in Nigeria. To secure the dignity and equality of girls, the government should remove the inconsistencies in the minimum age of marriage and make it culture/religion-neutral and uniform for all citizens. As discussed in chapter 5, each regional government's concept of and attitude towards rights profoundly shapes the capacity of law to be used to change gender-based inequality in Nigeria. And so, Nigeria must acknowledge that there are severe limits and resistance to implementing formal laws within the society and that there are spaces where its authority is not

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<sup>1464</sup> Kaime, *supra* note 629 at 19.

<sup>1465</sup> See discussion in section (i) of this chapter titled "Free Choice in Religion and Equal Protection".

<sup>1466</sup> See discussion in section 1 of chapter 6 at 214 and section 2 of chapter 6 at 220.

absolute. However, instituting a uniform minimum marriageable age is an essential step in reasserting this authority.

Legislation alone cannot control how a girl's decision to marry is made, especially with parental pressure, but it can provide a means by which a girl who wishes to break away from culture and parental controls can do so. I acknowledge that the problem of child marriage may not be resolved by adopting simplistic solutions such as prohibiting all marriages concluded below a minimum age, but I argue that this is a necessary step. Section 21 of the CRA sets the minimum age of marriage at 18 years.<sup>1467</sup> But given the social context of girls in northern Nigeria, I believe the sensible legal course would be to reduce the minimum age of marriage to 16 years. This will be an absolute minimum age below which a person cannot marry; girls who are younger than 16 years should not marry in any circumstance. Registration of all marriages should also be required.

## **(2) Law Reform in Support of Child Rights Development**

I have argued that child marriage is an area in which cultural beliefs require legislation. This level of reform is necessary because, legislative interest in protecting girls from violence creates room for rights-based social service programs at the grassroots. As local social service programs encourage girls to frame their grievances in terms of rights violations, they cultivate a "rights-conscious local constituency" that pushes the government to abide by the standards established in national legislation.<sup>1468</sup> Thus local NGOs<sup>1469</sup> and other community level reforms discussed below benefit from the state adopting a national standard that protects women and girls.

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<sup>1467</sup> Section 21 of the *Child Rights Act* prohibits child marriage by stating 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 of no effect whatsoever".

<sup>1468</sup> Merry, *supra* note 1186 at 138.

<sup>1469</sup> There are several small grassroots and international organization in Northern Nigeria working to improve the lives of women and girls across sectors, including health, human rights and education. Some are program implementers and service providers; for example, the Population Council is an international, non-profit organization located in Adamawa state, in Northern Nigeria. Other organisations focus on research and advocacy. For example, Adolescent Health and Information Projects (AHIP) is a youth focussed Non-Governmental Organization that has three branches in Northern Nigeria- specifically, Kano, Bauchi and Jigawa, with partners and staff in 12 Northern states. The major focus areas are sexuality and reproductive health, social and economic issues as they relate to young people and women in Northern Nigeria. This organisation has been active in advocating for the freedom of girls in Northern Nigeria and proactively seeks an end to child marriage.

## 1. Constitutional Amendment

Inferring from section 10<sup>1470</sup> and the equality provisions of Chapter II of the Nigerian Constitution,<sup>1471</sup> discussed in chapter 5, the state should not have religiously grounded preferences of any kind regarding the minimum age of marriage. Regional legislatures may set a minimum age higher than 16 years, but federal law needs to establish an absolute minimum age of marriage. Given the jurisdictional issues discussed in chapter 5,<sup>1472</sup> part 1 Section 61 of the 1999 Constitution needs to be amended to provide the federal government with exclusive legislative authority over the formation, annulment, and dissolution of all marriages, including customary and Islamic marriages.

## 2. Legislation

As already highlighted, with a turn toward greater reliance on law to implement the *Convention on the Rights of the Child* and the *African Charter on the Rights and Welfare of the Child* in Nigeria, the *Child Rights Act* (CRA) was enacted in 2003. The CRA is extremely comprehensive.<sup>1473</sup> It significantly expands the limited human rights provisions in Nigeria's 1999 constitution and sets the minimum age of marriage at 18 years. However, as previously discussed, to reflect the socio-cultural realities of girls in northern Nigeria, setting the minimum age at 16 years will be more reasonable because it is more likely to be adhered to. I also find the varied nature of the sanctions imposed for the practice of child marriage in the CRA to be problematic. An analysis of section 23<sup>1474</sup> shows that using the word 'or' could be an indication that those who violate the CRA by marrying underaged girls could avoid jail time by paying the stipulated fine. This section should be amended to stipulate imprisonment without the option of a fine for those

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<sup>1470</sup> Section 10 of the Nigerian Constitution provides that "the Government of the Federation or of a State shall not adopt any religion as State Religion".

<sup>1471</sup> Part II: Fundamental Objectives and directive Principles of State Policy of the 1999 Constitution. See discussion in chapter 5.

<sup>1472</sup> See discussion in chapter 5. According to the Constitution, customary and Islamic marriages and child rights matters are residual matters within the exclusive legislative powers of states. And so, before the Child Rights Act becomes applicable within states, it must be adopted by them. States are not under an obligation to adopt the CRA.

<sup>1473</sup> Notable sections include: Part I which mandates the application of the best interests principle and emphasises basic child protection obligations for parents; Part II specifies that the Article IV of Nigeria's 1999 constitution and any other federal law which details fundamental rights should be seen as being part of the act. It goes on to state specific rights for children including the right to: survival, a name, family life, private life, dignity, recreation, cultural activities, health services, and education.

<sup>1474</sup> Section 23 of the CRA criminalises the practice by stating that "A person – (a) who married a child; (b) to whom a child is betrothed; (c) who promotes the marriage of a child; or (d) who betroths a child, commits an offence and is liable on conviction of a fine of 500,000 (five hundred thousand) Naira or imprisonment for a term of five years or both such fine and imprisonment".

who marry underaged children. I am not recommending the imprisonment of family members who pressure girls into marriage. Sending parents, siblings, extended family or grandparents who encourage child marriage to prison may drive the practice underground and beyond the reach of law. Girls may also want to protect their family members and not seek assistance if this would result in criminal consequences. As such, considering the social impacts on families and children, I am only advocating for the prosecution of men who marry children. I strongly believe that a law that criminalizes child marriage embodies an important “symbolic and deterrent power” and sends a powerful signal that child marriage is a crime and will not be tolerated.<sup>1475</sup> The state will however need to ensure that criminal prosecution and punishment support rather than undermine other evidence-based efforts, discussed below, to end child marriage. The CRA should also be amended to allow for the avoidance of such marriages involving children.

Beyond amending the CRA to reflect the changes suggested above, there is a need to examine women and girls’ rights interest in legal frameworks more broadly. Women and girl related issues may crop up in relation to a vast array of laws and policies, outside of legislation developed specifically for women and children’s protection. For example, reform of the penal code applicable in the northern states to include provisions protecting women and girls from sexual violence and recognizing marital rape as a crime. More generally, for other HTPs affecting women and girls, I argue strongly for national legislation that permits women and girls to opt out of traditional practices. Guaranteeing a right to opt out of traditional practices in favour of rights protection is ideal. It permits women and girls to choose their culture, or the terms on which they will participate in cultural practices.

Regarding mothers who support and participate in perpetuating HTPs, a contextualized analysis in chapter 5 leads me away from the tendency to prosecute criminally. My final position is that section 23(c) of the CRA<sup>1476</sup> should be interpreted to exclude women who promote child marriages. We need to refocus attention onto the men responsible for child marriage, instead of blaming women, whose lives are deeply constrained, for encouraging this practice. I do not

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<sup>1475</sup> UNICEF, “Child Marriage and The Law: Technical Note for the Global Programme to End Child Marriage” (November 2020) at 3, online (pdf): <https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf>

<sup>1476</sup> *Ibid.*

consider these mothers to be fully responsible and autonomous actors; they are unknowing conduits of patriarchy and male exertion of power. And so, bringing child abuse charges against these mothers or viewing them as criminals who victimize children, rather than as victims themselves erases their history and experiences of violence. Emphasis should instead be placed on creating programs for these women. I discuss this in the next section.

### **(3) Social Services and Violence Control Training**

I argue that setting a minimum age of marriage applying to all regions in Nigeria may positively reduce the prevalence of child marriages. However, merely setting a minimum is unlikely to result in the eradication of child marriage. We cannot assume that girls in Northern Nigeria will be protected simply because there is a law affirming their rights, or because a few cases have been won against perpetrators.<sup>1477</sup> We need to consider what could happen to women and girls who ‘win’ when they return to the privacy of their families and communities.<sup>1478</sup> In Northern Nigeria in particular, state courts may do more harm to girls than good. Women and girls are unlikely to seek protection from the court against their own families and communities, and witnesses are unlikely to assist with the prosecution in criminal cases. The exceptional few complainants who resort to state protection could be punished by their families and communities and may struggle for survival because they are often reliant on their families and communities.<sup>1479</sup> I concede that by implementing a minimum marriageable age, some parents may become alienated from their children, viewing their children as morally tainted and girls may also not be treated the same by the community. In my final analysis, I would rather see a steady change in ethno-religious practices than a rhetorical appearance of protection by the state that is neither accessible to potential victims nor effective or sustainable in the society at large. I find this to be more consistent with a commitment to equal rights protection than with legal protection that is observed by the victims themselves to be competing with their loyalty to their families and communities. And so, in this section, I focus on community level services and support groups for women and girls.

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<sup>1477</sup> An-Na’im, *supra* note 1353 at 1254.

<sup>1478</sup> *Ibid.* Also see Abdullahi An-Na’im, *Human Rights Under African Constitutions: Realizing the Promise for Ourselves* (Philadelphia: University of Pennsylvania Press, 2003).

<sup>1479</sup> An-Na’im, *supra* note 1353 at 1254.

### **i. Gender-Responsive Policing: Specialised Units**

Given the context analysed, I foresee that implementing law will lag behind the amendments to the CRA; and so, emphasis should be placed on implementation strategies. To confront the possible failure to enforce laws by the police, prosecutors, and judges, I argue that the state must also invest heavily in training programs and mechanisms for responding to child marriage violations at the local level. Child marriage and domestic violence provisions in the CRA should be handled by a special marriage-focused police station in the different states in northern Nigeria. This station will include a victim support unit comprising of social workers working with the police and members of the community to ensure that victims of child marriage are provided with supports and services in a timely manner. Social workers will work directly with the child, assess her needs and provide her with information regarding services available to her. More importantly, access to support should not depend on whether the victim decides to formally report or pursue a criminal conviction. Social workers will assist each girl in developing an individual safety plan that includes information regarding financial assistance that may be available to her and connect her with community-based programs for long-term supports and resources.<sup>1480</sup> The same prototype will be translated in all northern states in Nigeria, since each state has a similar set of government and private services, laws, courts, police systems and political institutions.

An important aspect of any reform strategy in northern Nigeria must focus on ensuring that the security needs of women and girls are properly incorporated into the structure and operations of the police. A special marriage-focused police station will empower women and girls to break the recurring cycle of violence. Incorporating social workers within this unit will ensure more effective responses to HTPs. It creates a referral system that could also lead to multi-sector collaborations with other actors in health, justice and civil society. Women's police stations and police stations with specialised unit have been successfully implemented in a number of countries including

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<sup>1480</sup> There are several local NGOs in Northern Nigeria providing support to women and girls. For example, Future Prowess Islamic Foundation (FPIF), Isa Wali Empowerment Initiative (IWEI), Women & Girls Capabilities & Empowerment Organization (WGCEO), Child Shield Initiative (CSI), International Center for Accelerated Development (ICAD) and Sexual Offences Awareness & Victims Rehabilitation Initiative (SOAR Initiative).



Liberia, South Africa, India, Argentina,<sup>1481</sup> Peru, Colombia, Sierra Leone,<sup>1482</sup> and Ecuador.<sup>1483</sup> These stations combine police officers with health workers, social workers, and legal and other specialists to form a team that can respond to GBV cases. When compared to traditional policing models, these specialist police stations reveal some similarities, but also unique differences, in protocols, appearance, policies and methods of responding to and preventing gender violence.<sup>1484</sup> In Argentina, the women's police stations also facilitate women's support groups where participants can overcome "complex and ambiguous emotions of guilt and shame".<sup>1485</sup> The stations also engage with several communities and organisations in their prevention work to fulfil their obligations, such as with religious organisations, hospitals, women's groups, schools, and neighbourhood and community groups.<sup>1486</sup>

Creating similar specialised units in Northern Nigeria is about change and ultimately about making police organisation more operationally effective in responding to violence against women and girls. It will also increase women and girls' confidence in policing services. Additional structural and programmatic initiatives that could further assist with the proper functioning of the marriage-focused police stations include: integrating gender issues into basic training given to police officers; offering in-depth training on the specific issue of child marriage; creating a permanent committee whose role is to ensure that gender is an integral aspect of police policies and practices; and developing effective tracking systems for child marriage complaints and databases for data collection.<sup>1487</sup> The work performed by police officers, health workers, social workers and other

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<sup>1481</sup> The specialist stations in Argentina are deliberately designed to receive victims, not offenders, and they do not have holding cells, making them significantly less costly. The distinctive and bright colorful appearances of their stations' patrol cars and buildings are also deliberately designed to encourage visibility and enhance reporting. See discussion in Kerry Carrington et al, "How Women's Police Stations Empower Women, Widen Access to Justice and Prevent Gender Violence" (2020) 9:1 International Journal for Crime, Justice & Social Democracy at 48.

<sup>1482</sup> In Sierra Leone, Family Support Units were established in 2001. Since then, increased numbers of complaints and arrests have been reported. In India, between 1992 and 1994, 188 WPS were established. It has been reported that this resulted in a 23% increase in the reporting of crimes against women and children, and a higher conviction rate. See discussion in Tara Denham, "Police Reform and Gender" in Megan Bastick & Kristin Valasek, eds, *Gender and Security Sector Reform Toolkit* (Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008) at 9.

<sup>1483</sup> The first specialist police station designed to respond specifically to violence against women emerged in Latin America in São Paulo, Brazil, in 1985. Variations of the model have since spread across other parts of the global south-in Bolivia, Ecuador, Nicaragua, Peru, Uruguay and, more recently, in Sierra Leone, India, Ghana, Kosovo, Liberia, the Philippines, South Africa and Uganda. See N Jubb et al., *Women's Police Stations in Latin America: An Entry Point for Stopping Violence and Gaining Access to Justice* (Quito: CEPLAES, IDRC, 2010).

<sup>1484</sup> Carrington, *supra* note 1481 at 54.

<sup>1485</sup> *Ibid.*

<sup>1486</sup> *Ibid.*

<sup>1487</sup> *Ibid* at 7.

specialists should be informed not just by gender but also a nuanced intersectional understanding of religion and culture such that girls who are attempting to escape or avoid child marriage are not left feeling they must forgo an important aspect of their identity. More importantly, as police organisations try to enhance their response to and protection of women and girls, they will also be participating in a process of reforming policies and practices in Northern Nigeria.<sup>1488</sup> The capacity to undertake prevention work through specialised victim support units in police stations will largely depend on the government's financial support.

## ii. Social Service Initiatives

To implement the reform strategies discussed in this thesis, it is essential to persuade key stakeholders, whether they work in government, in administration, or as providers of the necessary funding. It is also important to ensure that community members understand and support the changes to be made. NGOs in Northern Nigeria are well placed to promote and encourage sustainable cultural transformation designed to protect girls from HTPs. There are several NGOs in Northern Nigeria doing long-standing work with communities and girl victims of child marriage. These NGOs have been at the forefront of advocating new ideas, promoting the needs of the girl-child, developing community-based approaches to rights protection and urging states to promote and protect the rights of women and girls.<sup>1489</sup> NGOs take on roles such as education, training and advocacy; they also actively monitor what has, or has not, been achieved.<sup>1490</sup> They have been active in identifying key decision-makers, preparing position papers and lobbying documents and are increasingly effective as advocates at the local, national and international level.<sup>1491</sup>

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<sup>1488</sup> Jubb, *supra* note 1483 at 2.

<sup>1489</sup> See note 1469 and 1480 for examples.

<sup>1490</sup> See for example, Isa Wali Empowerment Initiative, "Reducing Vulnerability to Child Marriage through Economic Support for Girls in Secondary School", online: <https://iwei-ng.org/reducing-vulnerability-to-child-marriage-through-economic-support-for-girls-in-secondary-school/>.

<sup>1491</sup> For example, The Maryam Babangida National Centre for Women Development based in Abuja was established in 1993 for research, training and to mobilize women towards self-emancipation. Other organisations in Northern Nigeria include: the Society for Women and AIDS in Africa in Kano; the Muslim Sisters Organization in Kano; the Federation of Muslim Women's Association of Nigeria (FOMWAN) in Kebbi; the International Federation of Women Lawyers (FIDA) in Abuja; the National Council of Women's Societies (NCWS) in Abuja; the United Women Association in Kano; the Catholic Women Association (CWU) in Nassarawa; the Nigerian Association of Women Journalists (NAWOJ) in Bauchi, Abuja, Nassarawa, Kaduna, Kano and Sokoto; the Planned Parenthood Federation of Nigeria (PPFN) in Kano.

A particularly important initiative against HTPs is community education. This includes placing emphasis on girl-child education, public awareness campaigns in the media, curriculum development in schools, gender training, and public events such as campaigns and protests. Local adaptation is vital since messages must be framed and presented in ways that are understood and generate shared belief and collective action, in mediums that are heard, and in places where people will notice; for example, through television or radio, t-shirts, brochures with local designs, or community meetings. The method and the message should be tailored to the specific community. The fundamental message is that the minimum age of marriage is set at 16 years and under no circumstance should a child below that age be allowed to marry. Many NGOs in Nigeria have already developed educational programmes relating to HTPs. They raise public awareness of the harmful impacts of traditional practices and provide information and tailored services designed to empower women and girls within local communities.<sup>1492</sup> For example, Adolescent Health and Information Projects (AHIP) is a local NGO that produces a television series with a distinct focus on social issues affecting women and girls in Northern Nigeria.<sup>1493</sup> The drama series is aired on seven state television stations that covers fifteen Northern states. Each television station is estimated to reach at least 2,000,000 viewers each week and there are real life testimonies of gradual social transformation.<sup>1494</sup> Isa Wali is another local NGO in Kano taking steps to transform the lives of women and girls in Northern Nigeria. To improve the economic empowerment of vulnerable girls, Isa Wali trained 40 secondary school girls from JS3 and SS1 as peer educators.<sup>1495</sup> With improved capabilities on leadership and accountability, these girls in turn set up “peer

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<sup>1492</sup> For example, AHIP is committed to providing young people and women in Northern Nigeria with information, knowledge and life skills to enable them to make responsible decision on their health and well-being. They work and partner with other stakeholders.

<sup>1493</sup> The television series addresses issues around harmful effects of substance misuse; gender; STIs, HIV/AIDS and reproductive health; family health; societal and personal values; violence against women; women empowerment; nutrition, and male violence. Adolescent Health and Information Projects, online: <http://www.ahipnig.com/>

<sup>1494</sup> For example, Mohammed Ado Garko has three wives and 26 children in real life. He was cast in the role of a man with three wives and 25 children without the director knowing his real family life. After 6 seasons, he revealed that the scenes he acted were a true reflection of his family life. He now uses the knowledge acquired from the drama to solve some issues at his home. He is now discouraging marriage to many wives and encouraging girls to attend school and have careers. Just like in the drama, he has encouraged one of his sons to acquire a degree from a higher institution. See Adolescent Health and Information Projects, “AHIP Edutainment and Drama Series”, online: <http://www.ahipnig.com/wp-content/uploads/2018/03/AHIP-Edutainment-and-Drama-Series.pdf>

<sup>1495</sup> Isa Wali Empowerment Initiative, “Reducing Vulnerability to Child Marriage through Economic Support for Girls in Secondary School”, online: <https://iwei-ng.org/reducing-vulnerability-to-child-marriage-through-economic-support-for-girls-in-secondary-school/>.

learning safe spaces” of 20 girls each in their local communities.<sup>1496</sup> The sessions are avenues for girls to discuss their challenges and transfer knowledge acquired from the training to their peers.

Other mechanisms that address the familial conditions affecting patterns of violence and forms of intervention also need to be implemented. The most important of these initiatives are shelters or refuges for girls fleeing from their marriage. Establishing shelters in Northern Nigeria should not be a difficult undertaking for the government because Nigeria has a civil society with NGOs who might be able to develop and run these shelters. As we have seen, in Northern Nigeria, the husband’s family is very important, and if a woman or girl files a complaint against her husband, she may be physically abused by her family, they may hate her and refuse to provide shelter and support. By reporting, a girl may lose ties with her natal family and will have no place to go if she leaves her husband’s family. This makes recourse to the law very difficult. A woman or girl who leaves her abusive marriage should have housing options and services available to her that will limit the likelihood of her returning to her abusive husband. And so, ending the cycle of violence and control for women and girls in northern Nigeria requires changes in many areas, including better safety nets for abused girls, women and their children, long-term housing, and services for abusers to change their patterns of intimate interaction. Other services like hotlines to receive emergency calls, counseling, legal aid if they decide to go to court or pursue a divorce, and supportive discussion groups to help women and girls talk about their experiences are also needed.

Implementing the social services discussed above can be time-bound, specifically in a setting like Northern Nigeria, where there is strong political resistance and the local capacity for implementing immediate reform may be limited. Therefore, the timing of my reform strategy must be thoroughly considered to ensure that my plan for reform is realistic and attainable. Although there are NGOs presently doing excellent work locally, more community level resources will need to be established. From a harm reduction perspective, the prosecution of men who marry children may need to be stalled until the community discourse has begun to shift, and the resources for girls are

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<sup>1496</sup> *Ibid.* They also advocated for girls’ education in their communities during a community forum that they organized.

established in the community.<sup>1497</sup> To do otherwise may create more violence and abuse for girls who take action or speak up.

Finally, there is a need for further research in specialised sectors to assess where opportunities and gaps exist for ensuring that the rights of women and girls are included. Education and health service issues come to mind, as do country strategies affecting food security and economic development in Northern Nigeria. This research should aim to identify how linkages between the women's rights sector and others outside that sector can be fostered to mainstream women's rights perspectives in law and policy initiatives outside of dedicated law reform efforts affecting women.

#### **(4) Continuing the conversation: final reflections and future directions**

When I commenced writing this dissertation, my ambitious goal was to go beyond incremental law reform to identifying legal mechanisms to be used in ensuring a gradual transformation of society in northern Nigeria. I began by first understanding the context, regionally, politically, and socially. This was evident in chapters 3 and 4. In chapter 5, I focused on institutional structures contributing to the legitimation of oppression in Nigeria. Chapters 5 and 6 showed how legal and political ideologies represent and protect specific interests in Nigeria. I realize many tensions within my thesis and analysis are not resolved, and indeed, may not be possible to resolve through any theoretical discussion, however developed or elaborate it may be. I am therefore terribly aware of the limitations of the scope of this dissertation, and of the approach I am proposing to the promotion and protection of women and girls' rights in Nigeria. Yet, I do believe that this dissertation can make a valuable contribution to the field on which others can build.

I hope that this work serves as part of a larger, continuing conversation about eradicating harmful traditional practices. As I acknowledged in the introduction, while there are several valuable studies on various aspects of cultural violence against women and girls, there remain opportunities for critical legal scholarship that employs CLS and a feminist method to shed light on the ideological foundations for the production and reproduction of HTPs. My dissertation both considers and confronts problematic constructs, contexts and contradictions related to gender and age through critiques of colonization, institutionalization, politicization, westernization, and

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<sup>1497</sup> Thankful to Prof. Cameron for pointing this out to me.

cultural continuity, among other constraining conditions, whose simultaneous competition, co-existence and coalescence are shown to have shaped, and still shape the practice of child marriages in Northern Nigeria.<sup>1498</sup> The emphases and analyses in this dissertation could serve as exemplary models through which other harmful traditional practices and gender-based violence could be examined.

While my research primarily adopts a feminist perspective, my dissertation also contributes to, and draws from children's rights scholarship. The sociology of childhood contributed much to my thinking about girlhood in Northern Nigeria, including, understanding the social construction of childhood and the diversity of childhoods in Nigeria. However, while researching, I noticed that although the sociology of childhood significantly contributes to understanding childhood as a social construction and acknowledges the diversity of childhood, age and generation remained the primary focus of child rights research.<sup>1499</sup> And so, while diversity is mentioned, attention to gender in issues affecting children was very rare in the sociology of childhood. My research demonstrates that child rights and feminist scholarship can intersect and complement each other. My consideration of gender, drawing on feminist theorizing has much to offer the sociology of childhood. Adopting a feminist approach in my dissertation provided an opportunity to examine the gendered aspect of childhood; girls' marginalised gender reinforced the prejudice and powerlessness they experience as children. The same can be said of feminist scholarship. Within feminist studies, children have also been historically ignored or not included as participants.<sup>1500</sup> And so, despite the growth of research about gender and children, many feminist studies also do not specifically consider the implications of socially constructed age for gender. My way of thinking of girlhood in this dissertation created a dialogue between feminist studies and the

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<sup>1498</sup> Thankful to Prof. Gervais for pointing this out to me.

<sup>1499</sup> See discussion in Clare Bartholomaeus & Adriano Souza Senkevics, "Accounting for Gender in the Sociology of Childhood: Reflections from Research in Australia and Brazil" (2015) *SAGE Open* 1-9; Nura Taefi, "The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalization of the Girl-Child" (2009) 17(3) *International Journal of Children's Rights* 345-376; Jane Helleiner, "Toward a Feminist Anthropology of Childhood" (1999) 24(1) *Atlantis* 27-38.

<sup>1500</sup> This absence is likely related to wanting to break the link between women and children, where women and children were viewed as having the same interests and a 'natural connection', as women tried to separate themselves from maternal responsibilities. See discussion in E Burman & J Stacey, "The Child and Childhood in Feminist Theory" (2010) 11 *Feminist Theory* 227-240.

sociology of childhood; it provided a way to explore gender and age together and to show how gender is pertinent to children's lives in Northern Nigeria.

Although my dissertation considered the intersecting identities of the girl child, and the cultural context in which girls live in Northern Nigeria, the practical limitations of this dissertation prevented an exploration of girlhood through an intersectional feminist lens. And so, there remain opportunities for further research in this area that might include an analysis of harmful traditional practices using intersectional feminist theory. This is another way that child rights research can account for the gendered nature of childhood. For example, Amoah adopts this approach in her discussion on Trokosi, a cultural practice prevalent in Ghana. She adopts an intersectional feminist framework (via her GRACE model) that considered the interplay of gender, race, age and culture.<sup>1501</sup> In addition, while my dissertation recognized the unique experiences of girls based on the intersection of several factors, including gender, ethnicity, age and religion, it is important to note that the experiences of girls stretch beyond these indices. There are additional intersections of discrimination that girls experience, such as race, disability and poverty, which exacerbate the disparities already experienced as a result of age, gender, religion and ethnicity. There remain valuable opportunities to explore these additional intersections.

Some other opportunities for further research in this area might include considering the ways in which other child rights dimensions, like the best interests principle, could be explored in future studies on child marriage or other harmful traditional practices. In a few places throughout my dissertation, I referred generally to the best interest of the child, including women's complex decisions and rationales related to it. However, I did not engage in a discussion of those examples in order to problematize the 'best interests' principle from the *Convention on the Rights of the Child*. The wealth of scholarship on the best interests principle emphasises its highly undetermined

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<sup>1501</sup> Helpful publications on intersectional feminist theory and girl children in the African context include Jewel Amoah's scholarly contributions on girl-child identities and experiences (especially at the intersections of gender, age and culture). See Jewel Amoah, "The World on her Shoulders: The Rights of the Girl-Child in the Context of Culture and Identity" (2007) 4(2) Essex Human Rights Review 1-23; Jewel Amoah, "Watch GRACE Grow: African Customary Law and Constitutional Law in the Garden of Equality" in Baines et al, eds, *Feminist Constitutionalism: Global Perspectives* (New York: Cambridge University Press, 2012) at 357-376; Jewel Amoah, "At the Crossroads of Equality: The Convention on the Rights of the Child and the Intersecting Identities of GRACE, An African Girl Child" in Collins et al, eds, *Proceedings of the Conference on the International Rights of the Child* (Montreal: Wilson & Lafleur, 2008) at 313-337.

nature at the international, national and local level. And so, it could be challenging to apply the best interests principle in a deeply pluralistic society like Nigeria. Alston provides a special contribution to the study of the ‘best interests’ principle.<sup>1502</sup> The essays in his book approach the ‘best interests’ principle from various intellectual perspectives, including applying the principle in national contexts.<sup>1503</sup> Country specific analysis in this book include Sri Lanka, India, Pakistan, Burkina Faso, Egypt, Japan, France and Zimbabwe; a similar analysis that explains the tensions between local custom and formal law can be done in the Northern Nigerian context. I believe we can learn something meaningful by ascertaining what the ‘best interests’ principle means in Nigeria and how it can be used in the context of harmful traditional practices. Doing this will enhance future research on harmful traditional practices and children’s rights. However, in analysing practices detrimental to the well-being of girls, I suggest that a gender-neutral approach to the best interests principle should be avoided. A key concern for girls is that applying the best interests principle to harmful traditional practices may conceal prejudicial attitudes within public institutions and other decision-making bodies.<sup>1504</sup> And so, because of the indeterminacy of this principle, sexist attitudes may inform the concept of best interests in Nigeria and further endanger girl’s full enjoyment of their rights.

Future research can also explore ways in which men and boys can be engaged as potential allies and proponents for gender transformation in Northern Nigeria. For example, implementing and evaluating educational rights-based workshops or programs in which both girls and boys, from very young ages, can learn about gender equality. Such early proactive interventions prioritizing gender equality could encourage and monitor how future generations of both girls and boys may be engaged in requisite social and legal changes.<sup>1505</sup> A particular focus on the role of young boys is warranted given that girls and women should not be shouldering the burden of campaigns and interventions for a number of obvious reasons, and that rights-informed boys and men can and

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<sup>1502</sup> Philip Alston, *The Best Interests of the Child: Reconciling Culture and Human Rights* (Oxford: Clarendon Press, 1994).

<sup>1503</sup> See discussion in Akila Belembaogo, “Modalities of the Best Interests Principle in Education” in Philip Alston, ed, *The Best Interests of the Child: Reconciling Culture and Human Rights* (Oxford: Clarendon Press, 1994); Fareda Banda, “The Best Interests of the Child: The Case of Burkina Faso” in Philip Alston, ed, *The Best Interests of the Child: Reconciling Culture and Human Rights* (Oxford: Clarendon Press, 1994).

<sup>1504</sup> Nura Taefi, “The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalization of the Girl-Child” (2009) 17(3) *International Journal of Children’s Rights* at 358.

<sup>1505</sup> Thankful to Prof. Gervais for pointing this out to me.



must serve as models of gender equality and parity from whom other boys and men can be inspired.<sup>1506</sup> However, such research will need to be contextually specific and be informed by very clear set of principles that strongly considers the fact that the social realities of women and girls in Northern Nigeria are organized around male needs and male perspectives. And so, care must be taken to ensure that engaging boys and men for gender equality does not detract from efforts to empower women and girls and is supportive of and furthers progress toward strengthening the commitment of national justice systems to end gender-based violence.

Finally, my dissertation used institutional ethnography; a socio-legal feminist methodology adopted by Dorothy Smith, more specifically, I used textuality as a method. I did not engage in a full institutional ethnographic research which typically includes conducting empirical research; and so, my work was only a partial representation of Smith's methodology. I recognized that there are limitations to solely using the method of textuality as a means of understanding the problem of child marriage in Northern Nigeria. There are valuable opportunities for ethnographic considerations of girls' own voices and experiences. Engaging in ethnographic research will allow researchers to identify additional institutional practices and discourses in Northern Nigeria that influences women and girl's experiences of violence. It will also provide an opportunity, through interviews, to ask about texts or listen to accounts of how texts are activated through institutional work practices in Northern Nigeria, for example, in police stations. And so, conducting interviews and asking questions will be of great relevance to obtaining additional meaningful information on the social realities of women and girls.

## **Conclusion**

In conclusion, I emphasize that women and girls in Nigeria have a right to physical integrity and to choose their culture, or the terms on which they will participate in cultural practices. Women have a right to demand political participation and minimal economic security. To put into effect such rights, girls need education, and they need their health. They also need time. This implies that girls must be released from the burdens of early childbearing and the responsibilities of mothering at young ages. Girls need to be able to behave in ways which their families and communities might

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<sup>1506</sup> *Ibid.*

find offensive to culture; they need to live happy and healthy lives. The rights of women and girls in the personal sphere are essential to their rights in the political, legal, and economic sphere in Nigeria, and by extension, to an equitable and democratic development of Africa as a whole.

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