Third World Quarterly, Vol. 27, No. 7, pp 1299–1312, 2006

Routledge
Taylor & Francis Group

Revisiting Equality as a Right: the Minimum Age of Marriage clause in the Nigerian Child Rights Act, 2003

NKOYO TOYO

ABSTRACT *This article takes the Minimum Age of Marriage clause of the Nigerian Child Rights Act (CRA) of 2003 as an entry point through which to analyse the politics of women's rights in Nigeria. It explores some of the challenges of domesticating international human rights conventions in a context where plural legal systems and entrenched cultural norms complicate attempts to redress gender inequalities. It reviews the introduction of this legislation, the reaction of different stakeholders to it and the ways in which different women's groups and programmes have engaged with the emerging controversy over the age of marriage. Ultimately the lesson that emerges from this case is that, for international human rights treaties to make a difference for vulnerable groups such as children, they have to go beyond being evoked and advocated by groups to become tools for political action, which also means the creation of mechanisms that challenge powerful agents in society and compel accountability.*

The UN Convention on the Rights of the Child (CRC) was ratified by Nigeria in 1991. In 2003 it was domesticated in the Child Rights Act (CRA).[1] Since the Constitution of Nigeria does not put the matter of child protection under the exclusive or concurrent jurisdiction of the national government, states which are sub-units of the federal government are obliged to apply the act as it is, or pass it as a state law. Some states of the Nigerian Federation—particularly in northern Nigeria—came to oppose the provisions of the CRA, claiming that it contravenes religious and cultural norms and practices. The clause in the CRA that stipulates a minimum age of marriage came to be the focal point for an emergent controversy, eliciting divergent reactions from various groups. The ensuing debate revolved around whose interpretation, knowledge and values matter in situations where practices embedded in cultural traditions define social realities. It also raised questions about how those who advocate women's rights come to present related issues of gender equality and women's empowerment.

The normative assumption that flows from the adoption of any international human rights treaty is that it will guarantee rights for people alike. As a result, its domestication into national law is believed to be more

Nkoyo Toyo is Director of Gender and Development Action, Nigeria. Email: nkoyo_toyo@yahoo.com.

ISSN 0143-6597 print/ISSN 1360-2241 online/06/071299–14 © 2006 *Third World Quarterly*
DOI: 10.1080/01436590600933677

than a statement of intention; it is also a guarantee that citizens will be able to access such rights. But this assumption often overlooks locally existing cultural–religious norms and the infused relations of power which hollow out the real value of legal provisions. These cultural norms exist in and are asserted by groups with an interest to secure some advantage and/or to capture spaces which would otherwise be open to deliberative responses. Opposition to the CRA has largely occurred at the point of incorporation into sub-national legislation as, at this level, culture or religion can be easily evoked and claimed by or on behalf of populations whose interests are perceived to be threatened.

This type of opposition is not new to the struggles for rights by women nor is it lost on Nigerian feminists. Commenting on a similar development which canvassed for respect for international human rights standards within the context of the *shar'ia* penal code in northern Nigeria, Ayesha Iman, a leading feminist and Muslim scholar, argued that:

> Nigeria is in fact a state party to several international human rights covenants. However, although such agreements may give rise to obligations under international law, unless they have been specifically incorporated into domestic law, they give no basis for claims in national courts. The interplay between domestic Nigerian multiple and parallel legal systems of secular, Muslim and customary laws is also problematic as they give differential rights on different issues, and jurisdiction can be contentious.[2]

In addition to the legal dilemma presented by Iman, there is the politics of who and what determines the applicable legal regime in a given state and in whose interest such a decision is made. In a situation where the constitution recognises cultural and religious rights alongside what are referred to as 'fundamental human rights', there are bound to be conflicts. Although the Nigeria Constitution prohibits discrimination on the grounds of sex, it fails to extend the same clear standards of non-discrimination to issues of marriage, inheritance, divorce and other aspects of family life, which are consigned to the domain of personal law.

Tensions inherent in the process of negotiating between plural legal possibilities have had a long and complex history in Nigeria. An important question raised by the CRA controversy is why the present attempt to make laws on rights based on international influences is being 'reversed' and whether the dispute represents a step backwards. Furthermore, what are the implications of these contests over rights for women, especially in relation to prevailing cultural and religious norms and traditions?

This article takes up these questions, analysing how different women's groups and programmes have reacted to these challenges and the broader implications of the controversy that surround the 'age of marriage' debate for women's rights and gender equality. It begins with an account of the background to and content of the CRA and explores the different positions taken up by advocates and opponents of the provisions of the act. It goes on to reflect on how far state 'complicity' with those opposed to the act reveals

shortcomings in its commitment and capacity to fulfil obligations to promoting equal rights for boys and girls.

Background to the Child Rights Act of 2003

The CRA was ratified by Nigeria on 16 April 1991 and the African Charter on the Rights and Welfare of the Child was subsequently adopted. In order to make the convention applicable within Nigeria, various stakeholders engaged in advocacy and awareness programmes to press home the importance of translating its aspirations into national and sub-national legal frameworks. The CRA was eventually passed as national law in 2003, but this was after a long and tedious struggle. The history of the Act began with the first bill on Children's Rights of 1993, which suffered a setback from groups who claimed that it contained provisions contrary to Christian and/or Islamic values. Muslim opponents at the time particularly objected to the provision setting 18 years as the minimum age for marriage. They claimed that this was incompatible with Islamic precepts, where girls were given into marriage at a much younger age.[3]

With the return of the country to civil rule in 1999, it was possible to re-present the issue, resulting in its passage as an Act in September 2003 by a majority in the National Assembly. The success was challenged by a powerful and vocal minority, whose public declarations were clearly linked to what one critic termed the 'neo-fundamentalist project',[4] a project intent on advancing a certain application of the new *shar'ia*-based penal code following its introduction into a number of northern States of Nigeria in 2000. Their continued dispute over the minimum age for marriage section of the Act raised questions about the fundamental rationale behind it and the possibility of equality of the sexes being addressed. For instance, following a meeting of the Supreme Council for Shar'ia in Nigeria (SCSN), one of its leaders captured the mood of others when he reported that:

> SCSN observed that this law (CRA 2003), if allowed to be passed by our state assemblies, will demolish the very basis and essence of the Shar'ia and our Islamic culture, and accordingly called on all Muslims and Islamic organisations to take appropriate steps in their States to prevent this from happening.[5]

Reviewing this challenge, the arguments on the efficacy of the CRA can best be situated within the domain of Nigeria's tripartite legal system, the political capacities of groups that are socially and culturally excluded from claiming rights, the positionality of those who speak for them, and interactions with those who oppose the CRA. By subjecting the analysis of the CRA processes to these variables, it becomes evident that a real constraint on implementation is the weakness of agency on the part of those who support it. As groups they have weak links to one another—both vertical and horizontal—and therefore little inter-group accountability. These weak linkages undermine the pursuit of rights-based approaches and compel advocates to seek alternatives,

including adopting forms of political accommodation that contradict the very basis of their action.

The rights scenario

Rights frameworks have exposed poor indicators of development and the low socioeconomic status of girls and women in parts of Nigeria, and yet opposition groups continue to deny the connection between these and the withholding of rights such as those enshrined in the CRA. Yet the logic of rights can and has helped feminists make effective conjectures on how they can promote the ideals of international human rights treaties and their underlying principle of equality.[6]

Some of the situations considered in this paper show that those campaigning for rights enter the rights sphere with competing approaches which can capture solidarity across various constituencies. But competing notions and interventions can also undermine efforts to achieve certain principles. For instance, those who have carried out rights advocacy by de-linking it from the principle of equality have tended to jeopardise arguments against discrimination. Although these strategies have enabled access to certain constituencies, they have only partially succeeded in presenting the 'rights' arguments and so are unlikely to achieve social change. Expectations that rights-based approaches will be nurtured over time are continuously challenged by a host of contextual factors, including the fact that those promoting them are themselves immersed in patriarchal gender relations, producing a variety of localised interpretations of their meaning.

The Child Rights Act, 2003

The Child Rights Act of 2003 is divided into 24 parts with 275 sections. These sections seek to protect the child from all forms of abuses and discrimination. Rights covered in the Act include: the right to survival and development, the right to name (identity), freedom of association and peaceful assembly, freedom of thought, conscience and religion, the right to privacy, the right to freedom of movement and the right to freedom from discrimination. Others are: the right to dignity, the right to health and health services, the right to parental care, protection and maintenance, the right to free, compulsory and universal primary education, the right of a child in need to special protection measures, the right of the unborn child to protection against harm and the contractual right of the child. In addition to the list of rights, the Act sets out the responsibilities of government and parents to provide structures and facilities, homes and a conducive environment for the full development of children. It empowers the court to make protection and supervision orders in respect of children in need of care and protection, as well as to establish a child justice system for the protection of children in court. The Act makes special provisions for the care of children with disabilities and gives courts the power to arrest, summon, search and order forfeiture and then impose penalties.[7]

Under Sections 21 and 23 of the CRA it is illegal for a parent to marry off his or her daughter if she is below 18 years old. The sections provide for a fine of N500 000 (or US$7000) or a jail term of five years. In addition, it is an offence punishable by imprisonment for a husband to consummate a marriage with a child under 18 years. He is considered to have raped the girl, who is illegally his wife under the provisions of the Act. The CRA provides that adoption of children who are non-biological relations is permitted but that to marry an adopted son or daughter is null and void, with punishment of up to 14 years imprisonment (Sections 141 and 147). The Act further makes for equal inheritance between male and female children (Sections 10 and 12). The contention around Sections 10, 12, 21, 23, 141 and 147 of the Act are particularly crucial, because they not only challenge notions of rights under Muslim law, they also challenge existing case law under *shar'ia*.

For instance, with the introduction of *shar'ia* law, the age of criminal responsibility became an issue and was variedly interpreted. Some groups decreed it to be 18 years, others decided on puberty and, in cases involving fornication or adultery, which can attract flogging or the death penalty, respectively, the age of responsibility was set at 15. This implies that, in cases where children reach puberty earlier than 18 years, no distinction is made between them and adults in dispensing *shar'ia* punishments. In January 2001 a young girl, Bariya Ibrahim Magazu, whose age was variously put at between 13 and 17 years, was subjected to 100 strokes of the cane in public in Zamfara State, after she gave birth to a child without being married.[8] This sentence raised several legal issues, including under *shar'ia* law. Advocates of rights under *shar'ia* law argued that changes in the way Muslim law was being applied had to be made known to people if they were to be punished meaningfully and if respect for legal procedures was to be established.

The 'Minimum Age of Marriage' and the related issues of gender equality

The CRA tried to resolve some of the legal and practical difficulties associated with the differential use of age of marriage and related punishments. It defined a child as a person who has not attained the age of 18 years and consequently is not in a position to fully enter into a contract of marriage. However, other pieces of legislation have created definitional confusion, making the relevant age uncertain. For instance, Section 2 of the Children and Young Persons Act (CYPA), states that 'a child' means a person under the age of 14 years, while 'a young person' means a person who has attained the age of 14 years and is under the age of 17 years. The Immigration Act stipulates that any person below 16 years is a minor, whereas the Matrimonial Causes Act puts the age of maturity at 21. What is evident from the Bariya Ibrahim Magazu case is that, while the legal question of the age of a child remains unsettled, the contention is mainly about when a child is no longer a child for the purpose of marriage or punishment.

The politics of the private sphere

A minimum age of marriage has an impact on state as well as Muslim personal law, and is seen as controversial partly because the conception of minimum age emanates not from national law but from the international arena of the CRA. This is viewed by some Muslim critics as an international imposition which is also an invasion of what is basically a private sphere. Such is the importance people place on the private sphere that all constitutions of Nigeria have embodied respect for the divergent forms of identities, expressions and values. For instance, in the 1999 constitution there are provisions in Sections 275–279 for the Shar'ia Court of Appeal and in Sections 280–284 for the Customary Court of Appeal.[9]

In much of the public sphere the discourse about the nature of the private sphere has been muted. Dominant thinking seems to be that 'private' spaces should be protected as spaces for the alternative ethnic, religious and social norms which inform the daily lives of people in Nigeria. The dispute over the minimum age of marriage reveals a classic example of how the imposition of certain interpretations of marriage is actually a function of dominant influences within the private sphere—a sphere whose regulation is nevertheless contested by a variety of forces. In this case, however, the myth of an absence of politics in the private sphere has bolstered conservative interpretations of *shar'ia* law by the Muslim right wing. As Iman comments:

> the myth of a single uniform (conservative) Shar'ia, has enabled the Muslim religious rightwing to prevent progressive Muslim scholars and rights' activists from establishing the legitimacy of their positions in fiqh (jurisprudence), Shar'ia, or non-religious laws.[10]

Advocates of the CRA point to how child marriages limit opportunities for girls in education and account for many of the 36 million Nigerian women and girls said to be without education.[11] They highlight the physical, mental and emotional health impact of early marriage on girls and the fact that girls engaged in child marriages are deprived of the right to control their bodies and reproductive health.

Reproductive health issues form a major part of the CRA and the African Protocol, and both they and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) protect against child marriage. It seems that, while there is broad international agreement in favour of a minimum age for marriage of 18 years, the practice of forced and arranged early marriages continues unabated and seems to be the norm in some parts of the country.

Obstacles to implementation

The tripartite legal system

In setting out the functions of the various tiers of government—national, state and local—the 1999 constitution empowers the federal legislative to

make laws for the country but also requires that State Houses of Assembly should pass similar laws at state level. In addition to this legislative requirement, the constitution recognises three distinct traditions of law: the English common law, the Islamic *shar'ia* law (religious law) and the customary law (based on communal traditions). In Section 4 of the 1999 constitution, there is provision for the judiciary to be fair in the determination of any question of civil rights and obligations. Notwithstanding the existence of this formal arm of government, the same constitution allows other legal systems to run concurrently with it. Taking advantage of the gaps created by this complex web of legal systems, some states have passed laws and pronounced judgements which challenge the constitution and put principles of human rights to the test.[12]

Observing the challenges this tripartite legal arrangement has presented to the dispensation of justice, some members of the Expert Committee set up by the UN Commission on the Status of Women to monitor compliance with the CEDAW (ratified by Nigeria in 1985) have expressed concerns about the contradictions and inconsistencies created by the application of Nigeria's three legal systems. They cautioned against the perpetuation of customary and religious practices which negatively affect the situation of Nigerian women and emphasised the need for the government to take urgent action to harmonise its legal framework to ensure the uniformity of human rights protections.[13] The conflict of laws is particularly visible at the state level, where laws are passed and interpreted with little regard for the constitution and national acts, and where by 2005 only four states had passed a child rights law.

Mobilisation by the opposition

The CRA has suffered the additional obstacle that advocacy groups have been less successful than opponents in mobilising support and steering the discourse around rights, with the result that alternative discourses are lacking. Opposing groups not only stated their objection, but mobilised clerics, visited legislatures in the *shar'ia* states of the north and confronted members of the National Assembly on their adoption of the CRA. In addition, they engaged in a widespread media campaign including naming those that were working against the interests of Islam.

States such as Kaduna, with a mixed Muslim and Christian population, instead of responding to opposition challenges, have chosen to reword their version of the CRA in order to make it more acceptable. In the predominantly Muslim state of Bauchi, rather than engage in the controversy over the CRA, the state legislature opted for and passed the Girl Child Education Law, which prohibits the withdrawal of girls from school (ostensibly for marriage) before they have finished their secondary education (usually at about the age of 18). The law also guarantees free schooling for girls, as well as payment of national examination fees. The manner in which the legislature de-linked education from rights in this case raises questions about the extent to which gender equality and women's empowerment is being addressed.[14] It also

draws attention to the failure of many of the strategies that have been used to domesticate international human rights.

Women's organisational development and the challenge of strategies for the domestication of human rights in Nigeria

After many years of heightened national involvement with international conferences and events there has been an exponential growth in the number of women's groups working for greater recognition of rights and empowerment for women. Notwithstanding this development, there remains a wide gap between activism and practice that can bring about change. The delay in achieving rights as enshrined in and protected by international instruments such as the CRA remains a huge concern. NGO accounts of rights practices show that they often do not address how women relate to laws and the effect these laws have on their perception of rights. Furthermore, not enough is even known about the notions of rights being used by NGOs.

The international and the internal

Different groups also take different positions on the extent to which the establishment of rights must be an internal, organic process, and on the forms that such a process should take. Bilkisu Yusuf, President of the Federation of Muslim Women Associations of Nigeria (FOMWAN) argues that, in Islamic family law as historically constructed and constituted, there are well defined notions of rights which are different from rights that are stated in the constitution. These rights are 'reformable' but such reforms can only come from within the Islamic legal system.[15] Her view is supported by Iman, who disagrees with some of the ways in which the role of international solidarity around women's rights have been portrayed. She states that:

> While international solidarity is important to local rights struggles, and campaigns ... the international media and protests have largely ignored the existence of dissent among Muslims, and have downplayed the existence of protests and campaigns enacted within Nigeria.

Pereira also argues that there has been an oppressive denial of the diversity of thought in the development of Muslim laws.[16] She recounts the ways in which the penal code for northern Nigeria was passed after much consultation with diverse ethnic and religious groups in the region, an important departure from the way in which the expansion of the jurisdiction of the Shar'ia Court of Appeal beyond family and personal status law has been achieved. The penal code process was also open to international influences, and many aspects were adopted from similar legislation in India and Pakistan. This process suggests that there is indeed scope for what Iman terms the constant reconstruction of international treaty rights to enable local people to claim them and/or have them respected by their local culture.[17]

Many interest groups and actors involved in rights advocacy come from being leaders of NGOs or bureaucrats committed to the pursuit of rights. Within this group of leaders some operate at the international level, while most remain at the national/local level or both. Wherever they find themselves, there remains a spatial distance between the international actors and the local, with each unable to fully respond to the other. This separation gives scope for divergence in action and views which creates space for the kind of opposition associated with the CRA to materialise. At the same time people working on the same issues find themselves positioned on different sides of an argument.

For negotiations at the international level to be useful and able to influence the reform of state laws, better ways of reaching agreement have to be worked out. For instance, many intermediary organisations working on Muslim laws responded differently to the Amina Lawal case and it took a lot of time before any of them worked together. Even then, groups such as Baobab for Women Rights and Women's Rights and Protection Alternative (WRAPA) had a different approach from that of FOMWAN or the Muslim Sisters Organisation. Amnesty International (AI) had a different approach again: when Amina Lawal was convicted of adultery in March 2002, AI made a statement describing the punishment as cruel, inhuman and degrading—a statement that FOMWAN, for example, could not have made.

Such have been the differences in strategy and in the organisations' conversation around rights and power. Some agreements were also reached, however, between faith-based organisations such as FOMWAN, on the one side, and women's rights groups such as Baobab and WRAPA, on the other, to work together in prosecuting some cases in court. As a minimum basis for action, both groups agreed that international instruments were important and should be adhered to. Baobab was less supportive of using state-centred approaches, working more to animate reactions from the public sphere where NGOs and other interested constituencies could act. Nevertheless, Baobab and Amnesty International signed a statement in 2002 stating that:

> By ratifying the Convention Against Torture in June 2001, the Federal Republic of Nigeria has decided to bind itself not to apply such punishments. Since 2000, amputation and flogging have been carried out in several states of northern Nigeria ...

The way groups have reacted to the CRA can usefully be traced to their histories and origins. The UN Decade for Women (1975–85) and the period thereafter produced a lot of issues which are important in describing the positionality of groups today. For instance, under the military, elite women and wives of military leaders 'working' for the advancement of women adopted a style which allowed them to access the resources of the state. Some of their notions conflicted with more populist views of rights but, through their proximity to the state, they were able to undervalue other forms of agitation for substantive rights. One of the programmes of a first lady, the Family Advancement and Empowerment Programme (FEAP), promoted

women's empowerment only where it was linked to the advancement of families (in this case the family support was determined by the husband). Feminists' organisations such as Women in Nigeria (WIN) rejected this approach, and turned to developing and canvassing their own notions of rights.

As a result, by the end of military rule in 1999, competing meanings and notions of rights had emerged, many of which, including WIN's, did incorporate the issue of equality. For some other groups equality was less fundamental and not necessarily a requirement for the achievement of development opportunities for girls and boys. Reform from within the *shar'ia* was also emphasised in rights language: Bilikisu Yusuf, the Amira of FOMWAN stated that:

> The various Islamic groups should organise seminars, workshop etc to educate the people so that they know their rights and are capable of analysing issues and making balanced judgement on Shar'ia. The SCSN should work with the Federation of Muslim Women's Associations in Nigeria FOMWAN and its over 500 affiliates nationwide and other civil society organisations to build awareness of Muslim women on their rights under the Shar'ia.

Disagreements amongst women's groups around the nature and content of rights should not exclusively be framed as obstacles, however, for they have allowed the varying discourses and strategies for the realisation of rights to emerge. The challenge now is how to move forward on the implementation of rights; how to struggle for rights in ways that encompass and stimulate social action; and how to use the logic of rights-based approaches to respond to different interpretations. In other words, the challenge for the domestication and effectiveness of the CRC lies in finding strategies that work.

Strategies for realising rights and working on equality

Legal options

Resort to legal action can be useful but slow and time consuming. In January 2005 the official interaction with the 38th Session of the Committee on the Rights of the Child reported that only four out of 36 states had passed the Child Rights law, and another 20 were in the process of enacting it. They noted that the remaining 12 were yet to indicate when they would address the law. These figures show some level of acceptance of the Act but also foretell the need to pressurise others to act. Action is particularly needed in the light of the alternative report to the committee, which states that

> OMCT and CLEEN are deeply concerned about the situation of children in Nigeria, in particular, that children are at a high risk to be subject to various forms of abuse and cruel, inhuman, or degrading treatment and punishment.[18]

The implementation of the CRA,[19] where it has been enacted, has also been largely ineffectual. Apart from work by NGOs in the area of child education, not much else has happened. Nevertheless, courts and judges have an important role to play in implementation, by providing and compelling certain unambiguous interpretations of actions and/or laws in order to settle the messy business of multiple legal systems.

Within the *shar'ia* legal system, both better information and reform remain important strategies. Clear accounts of the meaning of *shar'ia* law are sometimes elusive: Pereira analyses the offence of *Zina* in the Amina Lawal case and notes that there is a distance between the legal view of the offence and the common sense understanding of *Zina*. Consequently, she makes a case for people to be properly informed about the transgressive nature of laws. Reform of *shar'ia* also has many proponents: the Honourable Saudatu Sani (Chair of the House of Representatives Committee on Women Affairs and Youth Development) argues for legislative solutions that are accommodative of other legal systems. She said:

> I am a Muslim and I will never be a party to anything that will allow the Islamic legal System to be abused. I agree that the Islamic legal system is protective of the child: it supports the family system. But I will not allow myself to use culture to dehumanize the child.[20]

As a result, she thinks that the passage of the Act in northern states should be 'subject to the provisions of Shar'ia law which not being fully settled in terms of case law is reformable'. Proponents of *shar'ia* law reform will have to make their case loudly and clearly, though, in the face of strong opposition like that expressed by Dr Ibrahim Datti Ahmed (President of the Supreme Council of Shar'ia in Nigeria). He sees the CRA as 'a conspiracy against Islam . . . and a direct attack on Islam and . . . no Muslim will obey this law. It doesn't matter who passes it'.[21]

With this in mind it seems likely that proponents of reform will need to take into account ways of linking or referencing it to international human rights laws. It remains difficult to see how this can be achieved if the reform is completely alienated from human right treaties.

Public institutions and deliberation

There is also a need to look beyond the law and its implementation to the role of public sphere institutions in transforming and diffusing public opinion, and creating spaces in which public deliberation can contribute to administrative decision making. Building local institutions that provide counter discourses on issues of rights, and can generate debates within local communities, may be key to addressing local power structures. According to Iman:

> using local structures and mechanisms (as a means of resisting retrogressive laws or interpretations of laws and the forces behind them) is the priority. It strengthens local counter-discourses and often carries greater legitimacy than

'outside' pressure. Further, it can really address the local political power struggles that are behind the political use of religions and ethnicities in Nigeria.[22]

Politicising the private sphere

Meanwhile, mutual rights and obligations between husband and wife in particular, and family members in general, cannot be treated as mere private concerns of individual marriage partners but are ones which the Islamic and other communities have vested interests in. Many sections of the Islamic community recognise their interest in reviewing and building upon these relations.[23] This recognition means that, while the context of human rights can be challenged by those who claim to speak for Islam, there are alternative ways of pushing for change.

Research

Making the Act effective and accepted calls for a lot more research into understanding the various actors and locations, their religious and cultural contexts and identifying approaches for domesticating rights which will work in these different contexts. Where there continues to be resistance, new approaches are required which can only come from new knowledge along with the application of progressive interpretations of religion and culture.

Resolving conflict

The Nigerian Constitution places an obligation on the state to protect cultural and religious rights, but this does not mean that all practices associated with culture and religion should be protected as rights. Even in the present instance where the constitution has created courts for customary and religious norms, what amounts to a right under these varying contexts can be contested. For example, although there is a religion or culture which permits child marriages, there is nevertheless a legitimate need to question how this affects the child and to investigate whether gender gaps are being reinforced. If they are, the two interpretations of the law are in contention and determining whether to allow or disallow a particular cultural or religious norm will be the subject of inquiry and legal test. Questions of the proper limitations that must be placed on the exercise of cultural and religious rights when they conflict with other human rights will inevitably arise. In the presence of some demonstrable harm, individuals and groups are entitled to demand that cultural or religious practices are set aside and interventions to protect the affected initiated.

Remaining questions

The CRA case study shows that, although supportive legislation can achieve the promotion of rights, it can also lead to a disconnection between the exercise of rights, their realisation and the promotion of greater gender

justice based on the notion of equality. While international instruments such as the CRC provide a rigorous process for ascertaining rights and a framework for applying them, within the plural legal system that exists in Nigeria their progress cannot be straightforward. As a result, the domestication of the CRC has raised many issues and presented huge challenges for those working to make rights realisable. The intervention of NGOs, activists, advocates and others has created space for active discussion and for society at large to be heard. This will probably influence how decisions are made and enable the public sphere to become the arena for resolving the contested definition of rights.

Within Nigeria the choices for feminists and rights-based advocates are several but the outcomes remain largely uncertain. Many questions remain unanswered and unexplored: what are good rights-based practices arising from the domestication of an international human rights framework? What are the criteria for assessing the success of such approaches in the future? Put another way, what will be the value of promoting international human rights for boys and girls if this will not result in equality? Since the CRC aims to achieve equality, should it omit to canvass equality or will this have consequences for the ultimate realisation of the CRC itself? In assessing rights-based approaches under the CRA is there a balance between cultural and religious relativism and human rights effectiveness?

Ultimately the lesson that emerges from this case is that, for international human rights treaties to make a difference to vulnerable groups such as children, they have to go beyond being evoked and advocated by groups to become tools for political action, which also means the creation of mechanisms that challenge powerful agents in society and compel accountability by states.

Notes

1 UNICEF/Federal Government of Nigeria, *Children's and Women's Rights in Nigeria: A Wake-up Call—A Situation Assessment and Analysis*, 2001. This analysis is in keeping with the historical context of gender inequality across all sections of the Nigerian population.
2 A Iman, *Northern Nigeria Women's Reproductive and Sexual Rights and the Offence of Zina in Muslim Laws in Nigeria*, 2006, at www.pambazuka.org.
3 UNICEF, quoted in Integrated Regional Information Networks (IRIN), *Nigeria: Focus on the Challenge of Enforcing Children's Rights,* November 2002, at http://www.irinnews.org/.
4 SL Sanusi, 'Discourses, subjectivities and family law in Nigeria', paper presented at the International Conference on Muslim Family Law in sub-Saharan Africa, Centre for Contemporary Islam, University of Cape Town, 11–14 March 2002, argues that the radical departure in the implementation of *shar'ia* in parts of northern Nigeria is the latest manifestation of the neo-fundamentalist project. The project has an overt political religious agenda of a 'return to Islam'.
5 Reported in *This Day* newspaper as 'Nigeria: Shar'ia Council against Child Rights Act', 21 August 2005.
6 Ideals of the indivisibility and universality of rights.
7 Report of a two-day workshop on Child's Rights Act Advocacy and the Nigeria Movement for Children organised by the Akwa Ibom State Social Mobilization and Technical Committee, at http://www.akwaibomstategov.com/edit2-2.asp?ID = 1106.
8 IRIN, 26 August 2002. Also in F:\ecoi_net - Focus countries » Nigeria » Current Issues (Shar'ia).txt.
9 OMCT–CLEEN Foundation, 'Report on the implementation of the Convention on the Rights of the Child by Nigeria', prepared for the Committee on the Rights of the Child, 38th Session, Geneva, January 2005.
10 Iman, *Northern Nigeria Women's Reproductive and Sexual Rights*.
11 OMCT–CLEEN Foundation, 'Report on the implementation of the Convention'.

12 The rights guaranteed include the right to life (Sec 33); the right to personal liberty (Sec 35); the right to a fair hearing (Sec 36) and the right to freedom of movement (Sec 41). Section 42 prohibits unjustifiable discrimination on the basis of 'ethnic group, place of origin, sex, religion or political opinion'.
13 Press release of the Committee on the Elimination of All Forms of Discrimination against Women following its 637th and 638th meetings.
14 There is a lot of justification for this law but its attempt to keep girls in school for as long as possible subtly supports the views expressed. There is wide gender disparity in Nigeria's literacy rate, with the UNDP *Human Development Report* reporting literacy rates of 62.5% for men and 37.5% for women. J Suara, 'Gendered minorities in Nigeria: a review of the educational status of women', in M Abba & M Kanu (eds), *Education of the Disadvantaged Groups in Nigeria: Challenges for Universal Basic Education*, Conference Proceedings, Yola, 2000, p 25.
15 B Yusuf, 'Women and empowerment in Islam', *Weekly Trust*, 13 December 2002.
16 Pereira is the National Co-ordinator of the Network for Women's Studies in Nigeria. C Pereira, 'Zina and transgressive heterosexuality in northern Nigeria', *Feminist Africa, Sexual Culture*, 5, 2005, at http://www.pambazuka.org.
17 Iman, *Northern Nigeria Women's Reproductive and Sexual Rights*.
18 OMCT–CLEEN Foundation, 'Report on the implementation of the convention'.
19 Some states, particularly in the southern parts of the country, have gone ahead with integrating the CRA into their state laws but, with the obstacles listed, their application is nominal and therefore unable to make a significant impact on the other parts of the country.
20 *Weekly Trust*, 10–16 September 2005.
21 *Ibid.*
22 Letter circulated by Baobab for Women's Rights, an NGO, calling for caution by international rights groups and sympathisers campaigning against a sentence of death by stoning on a woman found to have committed adultery by a *shar'ia* court in northern Nigeria.
23 Centre for Islamic Legal Studies, Ahmadu Bello University and DFID, 'Nigeria's security, justice and growth programme: promoting women's rights through Shar'ia in northern Nigeria', mimeo, 2005.

Copyright of Third World Quarterly is the property of Routledge and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.