

# Ending the harmful practice of child marriage in Nigeria: challenges, task, commitment and opportunities

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## Abstract

The primary purpose of this paper is to examine the issue of child marriage in Nigeria. A human rights-based framework is used, to analyse and develop a conceptual understanding of child marriage, and the international conventions prohibiting the practice are examined. The paper outlines this national problem and the reasons why child marriage persists, assesses how it contravenes many international human rights standards, and then provides policy and programmatic recommendations. The paper seeks to determine the nature of child marriage shedding light specifically on reasons behind its perpetuation and its harmful consequences. The findings reveal that child marriage is due to various factors including among others, poverty and the search for economic survival, wars, conflicts and displacements, socio-cultural and religious values. The paper explores the concept of coercion and exploitation and how this relates to the experience of young girls forced into child marriage. This paper examines the adequacy of measures taken by the State to prevent and eliminate the harmful traditional practice of child marriage. Having ratified various international human rights laws that prohibit such practice, State has a duty to “respect, protect, and fulfil” rights that are recognised under international laws. The paper recommends that the government needs to work to ameliorate the plight of millions of Nigerian girls who have been abused, socially disadvantaged and the sexually exploited as a result of child marriage and that there should be special protection for the victims. It concludes that an effective government response includes creating and implementing laws and policies that enable girl-child to flourish and achieve her full potentials.

## Key words

Child marriage, girl-child, child’s rights, forced marriage, marriageable age, culture, religion, gender inequality.

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## I. Introduction

Children are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their lives should be one of joy and peace, of playing, learning and growing.<sup>1</sup> Their future should be shaped in harmony and co-operation.<sup>2</sup> Their lives should mature, as they broaden their perspectives and gain new experiences.<sup>3</sup> Sadly, for many African children, the reality of childhood is altogether different. These children are exposed to dangers that hinder their growth and development. They suffer as casualties of war, conflicts, internal displacement and violence; as displaced children they are forced to abandon their homes, and are victims of neglect, cruelty and exploitation.<sup>4</sup> They suffer from the scourges of poverty and economic crisis - from hunger and homelessness, from epidemics and illiteracy.<sup>5</sup> In some cases, they are victims of traditional practices especially the girl-child in the African region. Child marriage and female genital mutilation harmful practices, girls are subjected to in Africa. These practices are serious violations of a child’s rights. But across Africa, girls and women continue to experience these harmful practices with alarming regularity. The continent is home to 130 million child brides and nearly 140 million girls and women who have undergone female genital mutilation (FGM).<sup>6</sup> Over 40 million girls and women in Africa have experienced both harmful practices.<sup>7</sup>

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<sup>1</sup> UN Documents, World Declaration on the Survival, Protection and Development of Children Agreed to at the World Summit for Children on 30 September 1990 <http://www.congo-education.net/> accessed March 16, 2022

<sup>2</sup> Ibid

<sup>3</sup> UNICEF Innocenti Research Centre. (2001) Early Marriage: Child Spouses. accessed March 16, 2022, from <http://www.unicef-irc.org/publications/pdf/digest7e.pdf>

<sup>4</sup> ibid

<sup>5</sup> Supra note 1

<sup>6</sup> UNICEF (2022), *Towards Ending Harmful Practices in Africa: A statistical overview of child marriage and female genital mutilation*. United Nations Children’s Fund (UNICEF), June 2022

Globally, Africa has the highest levels of both practices.<sup>8</sup> Child marriage is one of the risks in social relationships which the girl-child has to really contend with for a long time in her life. In wars and civil conflicts parents or careers resort to child marriage as a protective mechanism or survival strategy. Displaced populations living in refugee camps may feel unable to protect their daughters from rape, and so marriage to a warlord or other authority figure may provide improved protection. For the young girls orphans or separated from their parents or relatives the only way to survive and to get protection is to get married.<sup>9</sup>

Throughout the world, marriage is regarded as a moment of celebration and a milestone in adult life. Unfortunately, the practice of child marriage gives no such cause for celebration.<sup>10</sup> In the latter situation, it is imposition of a marriage partner upon the bride; a girl-child. The bride is being forced into a marriage, in which her right to free and informed consent in marriage is violated. The girl's childhood is cut short and her fundamental rights are compromised.<sup>11</sup> Young girls are robbed of their youth and required to take on roles for which they are not psychologically or physically prepared.<sup>12</sup> Many have no choice about the timing of marriage or their partner. Some are coerced into marriage, while others are too young to make an informed decision.<sup>13</sup> Nowadays, the devastating impact of child marriage continues to be ignored in the developing world.<sup>14</sup> Millions of child brides, some only just past puberty, are denied access to health, education and economic opportunities. The majority of them are burdened with the roles and responsibilities of wives and mothers without adequate support, resources or capabilities.<sup>15</sup> This is despite the existence of numerous international and regional human rights laws and conventions against the practice. It is clear that international human rights instruments relating to child marriage remain, at best, rhetoric, or general declarations of principles, without effective national policies and mechanisms to implement and enforce them.<sup>16</sup> Governments are often either unable to enforce existing laws, or rectify discrepancies between national laws on marriage age and entrenched customary and religious laws. This is due to official tolerance of cultural, societal and customary norms that shape and govern the institution of marriage and family life.<sup>17</sup>

A combination of cultural, traditional and religious arguments also justifies child marriage. The fear and stigma attached to premarital sex and bearing children outside marriage, and the associated family honour, are often seen as valid reasons for the actions that families take.<sup>18</sup> In the communal organisation of the traditional societies, children are expected to obey the decisions of their parents and other elders. A child who refuses to submit to such requirements is bound to face the wrath of society and would be ostracised by others especially in societies where children do not question their parents' decisions.<sup>19</sup> In communities where child marriage is prevalent there is strong social pressure on families to conform. Failure to conform can often result in ridicule, disapproval or family shame.<sup>20</sup> Local myths encourage earlier marriage of girls – such as in the Northern part of Nigeria where people perceive menstruation to be induced by intercourse – and such myths encourage earlier marriage of girls. Invariably, local perceptions on the ideal age for marriage, the desire for submissive wives, extended family patterns and other customary requirements (e.g., dowries or bride price), are all enshrined in local customs or religious norms. In many contexts child marriage is legitimised by patriarchy, and related family structures, which ensure that marriage transfers a father's role over his girl child to her future spouse. This is often encouraged to take place before a girl reaches the age when she might question it. The reality for many women and girls in rural areas is that their daily lives are more often dictated by customary

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<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> De Smedt, J. (1998). "Child marriage in Rwanda Refugee Camps", *Journal of the International African Institute*: vol.68, No 2, Edinburg University Press.

<sup>10</sup> Bayisenge, Jeannette (2010) Early Marriage as a Barrier to Girl's Education: A Developmental Challenge in Africa, In: *Girl-Child Education in Africa*, ed C. Ikekeonwu, CIDJAP Press, pp43-66.

<sup>11</sup> Le Fevre, J., Quiroga, R. and Murphy E. (2004). *Future Options Foreclosed: Girls Who Marry Early* Drawn in part from the (UNICEF, 2001).

<sup>12</sup> *Supra*, note 10

<sup>13</sup> *ibid*

<sup>14</sup> UNICEF, (2005), Early Marriage: A Harmful Traditional Practice

<sup>15</sup> UNFPA, (2005), Child Marriage Fact Sheet

<sup>16</sup> UNICEF, (2001), Early Marriage: Child Spouses

<sup>17</sup> Jenson, R. and R. Thornton, (2003), 'Early female marriage in the developing world', *Gender and Development*, vol. 11, no. 2, 2003, pp. 9-19.

<sup>18</sup> The Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children. (2003) Newsletter, December 2003

<sup>19</sup> Bayisenge Jeannette, *supra* note 10

<sup>20</sup> *ibid*

laws than by national laws.<sup>21</sup> The girl- child therefore has an obligation to respect and obey her parents. Finally, many parents tend to curtail the education of their girls and marry them off, due to fear of the high level of sexual violence and abuse encountered en route to, and even at, school.<sup>22</sup> Premature marriage deprives them of the opportunity for personal development as well as their rights to full reproductive health and wellbeing, education, and participation in civic life. Child marriage remains a widely ignored violation of the health and development rights of girls and young women. Child marriage is culturally packaged as a social necessity, but in many cases this amounts to “socially licensed sexual abuse and exploitation of a child.”<sup>23</sup> It is one of the most persistent forms of sanctioned sexual abuse of girls and young women. The fact that the arrangement is socially accepted does not diminish the reality that a girl is deliberately exposed to sexual abuse and exploitation, usually by her parents and family.<sup>24</sup> The young age of child brides, their limited power in sexual decision making and reduced economic opportunities compound their vulnerability to multiple health risks. Child marriage is a violation of human rights. Every child has the right to be protected from this harmful practice, which has devastating consequences for individuals and for society. Child marriage is now firmly on the global development agenda, most prominently through its inclusion in Sustainable Development Goal (SDG) target 5.3, which calls for the elimination of the practice by 2030. SDG 5- Achieve gender equality and empower all women and girls. TARGET 5.3- Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation. SDG aims to ensure that, by 2030, women and girls everywhere, will no longer be subjected to harmful practices of early and forced marriage and female genital mutilation.

## **II. Defining Concepts**

The concepts of ‘child marriage’, ‘early marriage’, ‘forced marriage’ and ‘arranged marriage’ need further discussions and definitions, as there is the need to define these various concepts of marriage in order to ascertain and understand fully ‘child marriage’ in this paper. There the need to clarify what is meant by ‘child marriage’ and distinguish it from similar terms.

*Childmarriage* (at times used interchangeably with early marriage).

Child marriage refers to any marriage of a child younger than 18 years old, in accordance to Article 1 of the Convention on the Right of the Child.<sup>25</sup> While child marriage affects both sexes, girls are disproportionately affected as they are the majority of the victims. Their overall development is compromised, leaving them socially isolated with little education, skills and opportunities for employment and self-realisation.<sup>26</sup> This leaves child brides more vulnerable to poverty, a consequence of child marriage as well as a cause. Child marriage is now widely recognised as a violation of children's rights, a direct form of discrimination against the girl child who as a result of the practice is often deprived of her basic rights to health, education, development and equality. Tradition, religion and poverty continue to fuel the practice of child marriage, despite its strong association with adverse reproductive health outcomes and the lack of education of girls.

*Early marriage*

The term early marriage is used to refer to both formal marriages and informal unions in which a girl lives with a partner as if married before age of 18.<sup>27</sup> Early marriage, also known as Child marriage, is defined as any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing.<sup>28</sup> Child marriage, on the

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<sup>21</sup>Locoh Therese. (2008). Early marriage and motherhood in sub-Saharan Africa - brief article 'African environment - woman and African: cutting both ways' editions, P.O. box 3370, Dakar, Senegal [http://findarticles.com/p/articles/mi\\_m2872/is\\_1\\_26/ai\\_62793785](http://findarticles.com/p/articles/mi_m2872/is_1_26/ai_62793785) accessed 13 May 2022

<sup>22</sup>Forum on Marriage and the Rights of Women and Girls and Forward. (2003) The Ouagadougou Technical Consultation on Early and Forced Marriage and the Rights of Women and Girls: Summary Report. London: Foundation for Women's Health Research and Development

<sup>23</sup> Forum on Marriage and the Rights of Women and Girls. (2001) Early Marriage: Sexual Exploitation and the Human Rights of Girls. London

<sup>24</sup> ibid

<sup>25</sup> Convention on the Rights of the Child (CRC), adopted 20 November 1989 (entered into force 2 September 1990) GA Res. 44/25 (1989), UN Doc A/RES/44/25 (1989), UNTS 1577.

<sup>26</sup>Farhat Bokhari ECPAT UK (2009), Stolen Futures: Trafficking for Forced Child Marriage in the UK, WISE, University of Hull, [www.hull.ac.uk/WISE](http://www.hull.ac.uk/WISE) accessed 21 May 2022

<sup>27</sup> (UNICEF 2005; Forum on Marriage and the rights of women and girls 2001).

<sup>28</sup> UNFPA (2006)

other hand, involves either one or both spouses being children and may take place with or without formal registration, and under civil, religious or customary laws.<sup>29</sup>

#### *Forced marriage*

A forced marriage is defined as a marriage conducted without the valid consent of one or both parties and is a marriage in which duress whether physical or emotional is a factor. There is no internationally agreed definition of forced marriage. However, in the UK the Forced Marriage (Civil Protection) Act 2007 (hereafter FMA) has amended the Family Law Act 1996 and defines a forced marriage as: A person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent.<sup>30</sup> Force is defined to include coercion by threats or other psychological means.<sup>31</sup> In its statutory guidance the UK government states that forced marriage is “an abuse of human rights and a form of domestic abuse and, where it affects children and young people, child abuse”.<sup>32</sup> Any child marriage constitutes a forced marriage, in recognition that even if a child appears to give their consent, anyone under the age of 18 is not able to make a fully informed choice whether or not to marry.<sup>33</sup> Child marriages must be viewed within a context of force and coercion, involving pressure and emotional blackmail and children that lack the choice or capacity to give their full consent.<sup>34</sup> In sum, child marriage is a forced marriage.

*Distinction between arranged and forced marriage*<sup>35</sup> In an arranged marriage, the families of both spouses take a leading role in arranging the marriage. The spouses have the right to choose – to say no – at any time. In forced marriage, there is no choice. However, this distinction is not so clear-cut and that victims themselves sometimes see their marriages as arranged and later some element of force, previously taken for granted as socially acceptable, may be acknowledged, leading to a redefinition of the marriage as forced.<sup>36</sup> In the case of children between the minimum age of marriage and 18 years of age the distinction between an arranged and forced marriage becomes problematic because children at these ages are emotionally, physically and financially dependent on their parents/guardians and are highly susceptible to emotional and other forms of manipulation.<sup>37</sup> A forced marriage is one lacking free and informed consent with an element of physical force or psychological pressure. In an arranged marriage families take a leading role in arranging the marriage with the intending spouses free to choose or to refuse. A marriage that lacks the free and valid consent of at least one of the parties involved is a forced marriage. In its most severe form, forced marriage may involve threats, abduction, imprisonment, physical violence, rape and, in some cases, murder. The parties involved in a forced marriage may be adults or children.

### **III. Forms and causes of child marriage**

#### *3.1 Forms of child marriage*

Child marriage, involves either one or both spouses being children and may take place with or without formal registration, and under civil, religious or customary laws.<sup>38</sup> In most cases, the marriage to a much older sometimes even elderly man is the practice, common in some societies especially in Northern part of Nigeria. The marriage is performed within the community and usually not legally registered. In some regions and countries this may include the betrothals of young children and even babies. In some regions marriage and kinship systems involve the practice of giving girls and women as gifts and this is widely accepted.<sup>39</sup> In these situations, families may be marrying their children in the hope that the marriage will benefit them financially and socially. The marriage or betrothal of children in parts of Africa and Asian is valued as a means of

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<sup>29</sup> Forward and the Forum on Marriage and the Rights of Women and Girls (1998), ‘Safeguarding rights and dignity’

<sup>30</sup> Forced Marriage (Civil Protection) Act 2007 (hereafter FMA) has amended the Family Law Act 1996

<sup>31</sup> Farhat Bokhari ECPAT UK (2009), *Stolen Futures*, supra note 26

<sup>32</sup> HM Government (2008) *The Right to Choose: Multi-agency Statutory Guidance for Dealing with Forced Marriage*, London: HM Government

<sup>33</sup> Forward (1998) *Child Marriage and Forced Marriage*

<sup>34</sup> *ibid*

<sup>35</sup> UK- The government makes a distinction between forced and arranged marriage on the basis of consent.

<sup>36</sup> A. Phillips, M. Dustin (2004) *UK Initiatives on Forced Marriage: Regulation, Dialogue and Exit*. LSE Research Online: London. Available at: <http://eprints.lse.ac.uk/546/> accessed 13 April 2022.

<sup>37</sup> Moschetti, C.O. (2006). *Conjugal Wrongs Don’t Make Rights: International Feminist Activism, Child Marriage And Sexual Relativism*, Ph.D. Thesis, University of Melbourne, Political Science Dept., Faculty of Arts. Cited in A/HRC/4/23.

<sup>38</sup> Bayisenge Jeanette, supra note 10, p.4

<sup>39</sup> Jenson, R. and R. Thornton, (2003), ‘Early female marriage in the developing world’, *Gender and Development*, vol. 11, no. 2, 2003, pp. 9-19.

consolidating powerful relations between families, for sealing deals over land or other property, or even for settling disputes.<sup>40</sup> Betrothals are traditionally not supposed to involve sexual relations until the girl reaches adolescence, but in reality, husbands are rarely restrained. Young girls may be forced or coerced to initiate sex even before it is traditionally permitted. In Africa the monetary value of bride price, or bride wealth, also called dowry in Nigeria, is linked with marriage. Bride price is a sum, either in cash or kind, used to purchase a bride for her labour and fertility. Bride wealth or dowry as it is sometimes called, serves to promote child marriage. Parents encourage the marriage of their daughters while they are still children in hope that the marriage will benefit them both financially and socially, while also relieving financial burdens on the family. In traditional societies in Sub-Saharan Africa, the bride's family may receive even cattle from the groom, or the groom's family, as the bride price for their daughter.<sup>41</sup>

### *3.2 Causes of child marriage*

#### *Poverty and economic transactions*

Poverty is a critical factor contributing to child marriage and a common reason why parents may encourage a child to marry. Where poverty is acute, a young girl may be regarded as an economic burden and her marriage to a much older - sometimes even elderly - man is believed to benefit the child and her family both financially and socially. In communities where child marriage is practiced marriage is regarded as a transaction, often representing a significant economic activity for a family. A daughter may be the only commodity a family has left to be traded and sometimes girls can be used as currency or to settle debts. A girl's marriage may also take place as a perceived means of creating stability. In uncertain times, poor harvest conditions or war, a family may believe it is necessary to ensure the economical 'safety' of their daughter and family, through marriage. Poor families, especially during periods of drought and famine could trade off their girls for bride wealth to enable them survive. In the context of poverty, the practice of paying bride price can encourage early marriage. Young girls, a resource with which their parents can attain greater wealth, are married off at a young age, for the bride price and also as a way for parents to lessen their economic burdens. Where poverty is acute, a young girl may be regarded as an economic burden where one less daughter is one less mouth to feed.<sup>42</sup> Another common reason is to enable a family acquire bride wealth so that the boys can use it to marry as well. In some communities bride wealth is used by girl's brothers to pay the same for their wives. Economic reasons often underpin these decisions which are directly linked to poverty and the lack of economic opportunities for girls in rural areas. This is one of the valid reasons given by parents and guardians to justify child marriage. Girls are either seen as an economic burden or valued as capital for their exchange value in terms of goods, money or livestock.<sup>43</sup> In sum, girls are being forced into marriages to maintain family ties and improve a family's economic position,

#### *Socio-cultural and religious values*

In communities where child marriage is prevalent, there is strong social pressure on families to conform. Failure to conform can often result in ridicule, disapproval or family shame. Invariably, local perceptions on the ideal age for marriage, the desire for submissive wives, extended family patterns and other customary requirements, are all enshrined in local customs or religious norms. In many contexts child marriage is legitimised by patriarchy, and related family structures, which ensure that marriage transfers a father's role over his girl child to her future spouse.

#### *Notions of morality and honour*

Dominant notions of morality and honour are important factors encouraging the practice of child marriage. These are influenced greatly by the importance placed on maintaining 'family honour' and the high value placed on a girl's virginity. It is considered that shame would be cast on a family if a girl was not a virgin when she marries. Virginity is a reason advanced frequently for child marriage because of the high premium placed on virginity at marriage. Virginity of a bride at marriage was highly valued and could earn her family more bride wealth and honor. In order to earn more bride wealth and honor, families would marry off the girls for fear that when she grows up, she can easily mess around and lose her virginity. Therefore, in order to ensure that a girl's virtue remains intact, girls may be married earlier, in order to ensure their virginity. Young girls may also be encouraged to marry older men, due to the perception that an older husband will be able to act as a guardian against behaviour deemed immoral and inappropriate. Early marriage is one way to ensure that a wife is protected, or placed firmly under male control; that she is submissive to her husband and works hard for her

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<sup>40</sup> UNFPA (2006).

<sup>41</sup> Locoh Therese. (2008). Early marriage and motherhood in sub-Saharan Africa, supra note 21

<sup>42</sup> (UNICEF 2001, Forum on marriage and the rights of women and Girls 2001; Mathur 2003 and Nour 2006).

<sup>43</sup> Jenson, R. and R. Thornton, (2003), 'Early female marriage in the developing world', supra note 39

in-laws' household; that the children she bears are legitimate.<sup>44</sup> On the other hand, for many societies that prize virginity before marriage, early marriage can manifest itself in a number of practices designed to 'protect' a girl from unsanctioned sexual activity. In some parts of Africa, control may also include the practice of female genital mutilation (FGM) to restrict sexual pleasure and temptation. Some parents withdraw their girls from school as soon as they begin to menstruate; fearing that exposure to male pupils or teachers puts them at risk. This was also done to avoid premarital sex.<sup>45</sup> These practices are all intended to shield the girl from male sexual attention, in the eyes of concerned parents, early marriage is seen to offer the ultimate protection measure. It is noteworthy that child/early marriage includes a range of human rights abuses against children including rape and sexual assault, emotional and psychological abuse, enforced pregnancy and domestic violence and domestic servitude, denial of education, isolation and restrictions on freedom of movement. In essence, it is considered as child abuse.

### *3.3 Consequences of child marriage*

There are numerous detrimental consequences associated with child marriage, which are; physical and health related, developmental, psychological and social implications.

#### *Physical consequences (health and related outcomes)*

Young girls who get married will most likely be forced into having sexual intercourse with their, usually much older, husbands. This has severe negative health consequences as the girl is often not psychologically, physically and sexually mature. When a child bride is married, she is likely to be forced into sexual activity with her husband, and at an age where the bride is not matured bodily and involvement in sexual activity, so she is prone to early child bearing and unwanted pregnancies, these have severe health consequences for her.<sup>46</sup> Among the numerous implications of early child marriage is the increase in early pregnancies with their attendant maternal mortality and morbidity risks. Young mothers face higher risks during pregnancies including complications such as heavy bleeding, fistula, infection, anaemia, and eclampsia which contribute to higher mortality rates of both mother and child. At a young age a girl has not developed fully and her body may strain under the effort of child birth, which can result in obstructed labour and obstetric fistula. Obstetric fistula is usually caused by the early sexual relations associated with child marriage. Moreover, this practice has given rise to the prevalent cases of vagina vesicular fistula (VVF), which creates a continual leakage of urine and faeces, thereby causing holes between the bladder and the vagina. As a result, she is socially ostracised by her husbands and those she lives together with. Anyone she comes in contact with would prefer to maintain a far distant approach.

Young married girls are under tremendous pressure to prove their fertility in the first year of marriage. Girls, who marry young, inevitably have children early, and have many children, because their knowledge of contraception is poor and their power to negotiate its use is weak. There is high maternal mortality and morbidity rate among girl brides. The World Health Organization estimates that the risk of death following pregnancy is twice as great for women between 15 and 19 years than for those between the ages of 20 and 24.<sup>47</sup> The maternal mortality rate can be up to five times higher for girls aged between 10 and 14 than for women of about twenty years of age. Pregnant girls face far more health problems than older women, particularly girls from rural areas who often receive less antenatal care. They are equally more at risk of malnutrition, high blood pressure linked to pregnancy and eclampsia than women who are over 20.<sup>48</sup> In addition to pregnancy-related complications, young married girls are also at high risk of contracting sexually transmitted diseases and HIV/AIDS. Young married girls are even at higher risk because their older husbands may already be infected in previous sexual relationships.<sup>49</sup> Furthermore, because of the age difference between the girl and the husband and her low economic status, and the polygamous marriage, it exacerbates the abilities of girls and women to make and negotiate sexual decisions, including engaging in sexual activity, issues relating to the use of contraception and condoms for protecting against HIV infection. They dare not demand fidelity from their husbands. The health problems linked to early marriage not only affect the pregnant mother and the fetus, but also continue after child birth. The consequences reach beyond the lives of young married girls themselves to the next generation. The immaturity and lack of education of a young mother undermines her capacity for nurture, evidence shows that infant mortality among the children of very young mothers is higher – sometimes two times

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<sup>44</sup> (UNICEF (2001), supra, note 42

<sup>45</sup> Bayisenge, Jeanette, supra note 10

<sup>46</sup> UNICEF (2007), *The State of the World's Children: Women and Children – The Double Dividend of Gender Equality* 4

<sup>47</sup> WHO (2013)

<sup>48</sup> (Women's International Network 2000 and IHEU 2006)

<sup>49</sup> UNFPA, UNAIDS, United Nations Development Fund for Women (UNIFEM), *Women and HIV/AIDS: Confronting the Crisis* 39-43, available at <http://www.unfpa.org/hiv/women/report/index.html>

higher – than among those of older peers.<sup>50</sup> Good antenatal care reduces the risk of childbirth complications, but in many instances, due to the limited autonomy or freedom of movement, young wives are not able to negotiate access to health care. They may be unable to access health services because of distance, fear, expense or the need for permission from a spouse or in-laws. These barriers aggravate the risks of maternal complications and mortality for pregnant young girls. There is also a clear link between female genital mutilation (FGM) and child and early marriages. Communities who practice FGM are also more likely to practice child marriages and in some FGM practicing communities FGM is carried out at puberty and then marriages are arranged immediately afterwards. It is also common in FGM practicing communities for a man to refuse to marry a girl or woman who has not undergone FGM, or to demand that FGM is carried out before marriage. In sum, early marriage usually means that young girls enter marriage without adequate information about critical sexual intercourse, contraception, sexually transmitted diseases, pregnancy and childbirth.

#### *Developmental consequences*

Child marriage also has considerable implications for the social development of child brides, in terms of low levels of education, poor health and lack of agency and personal autonomy. The Forum on Marriage and the Rights of Women and Girls explains that 'where these elements are linked with gender inequities and biases for the majority of young girls... their socialisation which grooms them to be mothers and submissive wives, limits their development to only reproductive roles'.<sup>51</sup> Whilst girls in Nigeria are already less likely to attend school than boys, particularly in poorer households, the non-education of the girl child is a problem compounded by child marriage, with studies showing a strong correlation between a woman's age at marriage and the level of education she achieves.<sup>52</sup> Large numbers of the girls who drop out of school do so because of early marriage, leaving many women who married early illiterate. Early marriage plans can also discourage a girl's parents from educating their daughter because they believe that a formal education will only benefit her future family in law. A lack of education also means that young brides often lack knowledge about sexual relations, their bodies and reproduction, exacerbated by the cultural silence surrounding these subjects. This denies the girl the ability to make informed decisions about sexual relations, planning a family, and her health. The recurring nature of early marriage results in a low level of education and life skills, increased vulnerability to abuse and poor health, and therefore acute cycle of poverty.<sup>53</sup> The girl-child development is compromised, often resulting in early pregnancy, social isolation, denial of education and skills.

#### *Psychological and social consequences*

It is a huge responsibility for a young girl to become a wife and mother and because girls are not adequately prepared for these roles this heavy burden has a serious impact on their psychological welfare, their perceptions of themselves and also their relationship. Domestic violence and sexual abuse are common among young married girls. As young girls are often married to men who are much older than themselves, the age difference tends to reinforce the powerlessness of the girl, who is thus at greater risk of abuse and less likely to assert herself.<sup>54</sup> Young married girls are more likely to be beaten or threatened and more likely to believe that it is acceptable for a husband to beat his wife, and are therefore more likely to experience domestic violence. Women who believe that, are more likely to have been married before age 18 than those who believe that there is never justification. Child brides are often more susceptible to domestic violence.<sup>55</sup> It is also culturally acceptable that a husband might sometimes be justified in beating his wife. As victims of forced marriage, married children are likely to suffer physical and/or sexual abuse and emotional abuse. They are beaten, raped and in extreme cases murdered. Women who marry early are more likely to suffer abuse and violence, with inevitable psychological as well as physical consequences. Violent behaviour can take the form of physical harm, psychological attacks, threatening behaviour and forced sexual acts including rape. Abuse is sometimes perpetrated by the husband's family as well as the husband himself, and girls that enter families as a bride often become domestic slaves for the in-laws. Child brides also face the risk of being widowed by their husbands who are often considerably older. In these instances, the wife is likely to suffer additional discrimination, as in many

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<sup>50</sup>UNICEF (2001) Early marriages, Child spouses

<sup>51</sup> FORWARD. (2003) *The Forum on Marriage and the Rights of Women and Girls, Early marriage and Poverty - Exploring links for policy and programme development*, Forward.

<sup>52</sup> UNICEF, (2001), Early marriages, Child spouses

<sup>53</sup> UNICEF, (2005). Early Marriage: A Harmful Traditional Practice: A Statistical Exploration 5-6.

<sup>54</sup> K.G. Santhya, et al., *She Knew Only When the Garland Was Put Around Her Neck: Findings From an Exploratory Study on Early Marriage in Rajasthan 11-12* (Population Council 2006), available at <http://www.popcouncil.org/pdfs/Garland.pdf> accessed 11 June 2022.

<sup>55</sup>USAID Gender Assessment, 2003-2005.

cultures divorced, abandoned or widowed women suffer a loss of status, and may be ostracized by society and denied property rights.

#### **IV. Legal framework on child marriage**

##### *International human rights instruments and child marriage*

Child marriage is a violation of human rights and is prohibited by a number of international conventions and other instruments. The right to free and informed consent in marriage is a basic human rights principle enshrined in all the major human rights conventions. The practice of child marriage violates several provisions in a number of international human rights instruments. Child marriage violates a child's human rights including the right to education, leisure, and good health, freedom of expression and freedom from discrimination. Although international human rights law extends respect to traditional customs and values, it is however, categorical that all harmful customs and practices be abolished or eliminated. This is more so when it is realised that most of the children subjected to these practices and customs have no knowledge about the harmful consequences of these practices and customs. Where such children are purported to have consented to the customs and practices, the truth is that they have no choice and alternatives.

##### **Universal Declaration of Human Rights, (UDHR)1948<sup>56</sup>**

The Universal Declaration of human rights (UDHR) in Article 16(2) emphasises the need for free and full consent of the intending spouses to a marriage and only men and women of full age should be allowed. It provides as follows:

Men and women of full age ... have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending parties.<sup>57</sup>

##### **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964<sup>58</sup>**

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964), similarly emphasises consent, a minimum age for marriage and the registration of all marriages by a competent authority. Articles 1-3 provides:

Article 1 No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person ... as prescribed by law. Article 2, States Parties to the present Convention shall ... specify a minimum age for marriage ("not less than 15 years" according to the nonbinding recommendation accompanying this Convention). No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses ... Article 3, All marriages shall be registered ... by the competent authority.

##### **Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)1979<sup>59</sup>**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the most comprehensive international bill of rights for women. It emphasises in part IV, Article 16, the equal rights for both men and women in entering a marriage and choosing a spouse. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) calls on States to ensure that the betrothal and marriage of children has no legal standing and its treaty-monitoring committee recommends a minimum marriageable age of 18 years. Early marriage for the girl-child is one of the negative traditional and cultural practices that are in violation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which states that both partners share "the same right freely to choose a spouse and to enter into marriage only with their free and full consent." Article 16. states that any betrothal or marriage of a child should not have any legal status. The Committee that monitors this convention states further in General Recommendation 21 (Article 16(2)) that the minimum age for marriage for both male and female should be 18 years, the age when "they have attained full maturity and capacity to act". The CEDAW Committee routinely condemns child marriage.<sup>60</sup> It recommends public awareness campaigns to change local attitudes.<sup>61</sup>

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<sup>56</sup> Universal Declarations of Human Rights. G.A. Res 217, UNGAOR 3rd Sess.Supp. No 127 at 71 UN Doc A/80 (1948)

<sup>57</sup> Articles 16 (1) &(2) UDHR

<sup>58</sup> UN General Assembly, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages available at: <https://www.refworld.org/docid/456d89064.html> accessed 9 July 2022.

<sup>59</sup> Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW 1979, A/RES/34/180

<sup>60</sup> CEDAW Committee, Concluding Observations: Burundi, para. 56, U.N. Doc. A/56/38 (2001



### **Convention on the Rights of the Child, 1989<sup>62</sup>**

The Convention on the Rights of the Child (CRC) has been ratified by all countries of the world, with the exception of the United States. A number of articles within the CRC hold relevance to child marriage, some of which are listed here; Article 3: 'In all actions concerning children ... the best interests of the child shall be a primary consideration'. Article 19: 'The right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian, or any other person'. Article 24: The right to health; and to access to health services; and to be protected from harmful traditional practices. Articles 28 and 29: The right to education on the basis of equal opportunity. Article 34: The right to protection from all forms of sexual exploitation and sexual abuse. Article 36: The right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare. The CRC is also emphatic in urging states parties, in Articles 12(1) and 24 (3) to ensure that the child's views on matters affecting his/ her life are heard and considered, and to abolish all traditional practices considered prejudicial to the child. Perhaps the international community should support the CRC with some robust social, political and economic development intervention especially in the less developed societies so as to create structures that are in tandem with the CRC's assumed socio- political and economic levels of the target states parties. Until then, some of the CRC's provisions will remain only relevant and realisable in the developed world even when they are very clear in pointing out customs and practices that are inimical to the rights of the child in the developing world. CRC explicitly requires states parties to 'take measures to abolish traditional practices that are harmful to children's health.'<sup>63</sup> The Children's Rights Committee calls child marriage a harmful practice and a form of gender discrimination. The United Nations' (UN) Committee on the Rights of the Child, which monitors countries' actions related to the Convention on the Rights of the Child, recognises early marriage as a harmful traditional practice.<sup>64</sup> Although most countries have established laws prohibiting marriage before the age of 18, in some of the countries, these laws often are not enforced.

### **The International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1976<sup>65</sup>,**

The International Covenant on Economic, Social, and Cultural Rights echoing the Universal Declaration of Human Rights, declares that '...[m]arriage must be entered into with the free consent of the intending spouses.'<sup>66</sup>

### **African Charter on the Rights and Welfare of the Child, 1990<sup>67</sup>**

The regional instrument, the ACRWC in Article 1 (3) states that; *...any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present charter shall to the extent of such inconsistency be discouraged.* Article 21 (1) specifically deals with traditional customs and practices and urges states parties to take appropriate measures to abolish all harmful traditional customs and practices. Article 21 ACRWC provides that: *Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years.* The ACRWC requires State parties, in article 21(1) to take appropriate measures to eliminate all harmful customs and cultural practices to the child. In 21(2), it singles out child marriage and betrothal of boys and girls for abolition. It fixes the minimum age of marriage at 18 and requires that all marriages be registered. The African Charter on the Rights and Welfare of the Child (1990) states that the minimum age should be 18 years.

### **Protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa,<sup>68</sup>**

Its article 5 urges State parties to prohibit through legislative measures backed by sanctions all forms of harmful practices.<sup>69</sup> Article 6 states that; *... no marriage shall take place without the free and full consent of both parties.* The article states unequivocally that minimum age of marriage for women shall be 18 years.<sup>70</sup>

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<sup>61</sup> CEDAW Committee, Concluding Observations: Cameroon, para. 54, U.N. Doc. A/55/38 (2000);

<sup>62</sup> Convention on the Rights of the Child (CRC), adopted 20 November 1989 (entered into force 2 September 1990) GA Res. 44/25 (1989), UN Doc A/RES/44/25 (1989), UNTS 1577.

<sup>63</sup> Art 24(3) CRC

<sup>64</sup> Convention on the Rights of the Child: Concluding Observations: Nigeria CRC/C/NGA/CO/3-4 June 2010.

<sup>65</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec 16 (1966) UNTS 993, p.3 (entered into force Jan 3, 1976)

<sup>66</sup> Art 10(1) ICESCR

<sup>67</sup> African Charter on the Rights and Welfare of the Child (ACRWC) (1990), OAU/Doc/CAB/LEG/24.9/49 (1990) entered into force Nov 29 1999

<sup>68</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted July 11, 2003, 2nd African Union Assembly, Maputo, Mozambique.

### *Municipal Laws*

The 1999 Constitution of the Federal Republic of Nigeria, concretely enumerated provisions against discrimination on grounds of sex, religion, ethnicity, age or circumstances of birth against any citizen.<sup>71</sup> Section 42 of the 1999 Constitution which takes care of the fundamental human rights of the Nigerian citizens prohibits all forms of discrimination on the basis of gender therefore protects the rights women too.

The Violence against Persons (Prohibition) Act (VAPA) was enacted in 2015. It is an Act which prohibits all forms of violence against persons in private and public life, and provides maximum and effective remedies for victims and punishment of offenders. Some of the provisions are specifically to protect women, namely; Section 6 which prohibits female circumcision or genital mutilation, section 15 forbids harmful widowhood practices and section 20 outlaws harmful traditional practices. Also, this Act, which proscribes female genital mutilation, harmful widowhood practices and other harmful traditional practices applies only in the Federal Capital Territory and not in the states of the Federation where these practices are prevalent. Gender-based violence against women and girls, including domestic violence, remains prevalent since the Act is, applicable only in the Federal Capital Territory. To date, the drafting and adoption of its “enforcement procedure” framework for the implementation of the Violence against Persons (Prohibition) Act nationwide has not been prepared.

Child’s Right Act (CRA) (2003) The Act in its sections 22 & 23 prohibits child marriage and betrothal. Also states that the marriageable age is 18 years.<sup>72</sup> Notwithstanding the ratification of the international treaties by Nigeria and the various national laws prohibiting Child marriage in Nigeria, child marriage and other harmful practices continue to be prevalent.

## **V. Prevalence and practice of child marriage in Nigeria**

Africa is home to nearly 60 million child brides, with the largest share in Nigeria. Among the region's child brides, over 20 million were married before age 15.<sup>73</sup> Nigeria is home to over 23 million child brides; 2 in 5 young women were married in childhood.<sup>74</sup> Current levels of child marriage: Married before age 15 10.3 million, married before age 18 23.6 million. The least progress in ending the practice has been observed in the Central African Republic, Chad and Nigeria.<sup>75</sup> Tackling early marriage is important in Nigeria from statistical data of its prevalence in the country, compared to other African countries. Early marriage is one of the risks in social relationships which the girl-child in Nigeria has to be coping with in her life. Under cultural law, there is no minimum age for marriage as girls are considered to be ready for marriage upon reaching puberty. Nigeria has a high rate of child marriage with girls below 12 years being married off. It is difficult to get accurate numbers on rates of early marriage because it is hard to ascertain the ages of these girls as their births are seldom registered.

This trend of child marriage is predominantly rampant in the Northern part of Nigeria, where parents marry off a number of their girls in their early teens, even when they are too young for their consent to be reasonably obtained. Senator Yerima’s controversial marriage with a 13-year old Egyptian girl is a known example of this type of marriage. Thus, the girl-child is entrusted with early marital and reproductive responsibilities for which she is physically or mentally immature to handle. According to the National Demographic and Health Scheme (NDHS) 1999 Report, about 27 percent of teenagers aged 15-19 years had given birth to their first child before they were 18 years old. This is more pronounced in the Northwest and Northeast Geo-political Zones (Muslim-concentrated areas) of Nigeria, where girls tend to marry early. The above figures seem to be much higher than those of the Southwest Geopolitical Zone, where the figure stands only at 8 percent comparatively.

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<sup>69</sup> Arts 5 & 6 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

<sup>70</sup> Art 6 (b) Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa

<sup>71</sup> Section 42(1)(a)(b), (2) and (3) 1999 Constitution of Nigeria

<sup>72</sup> Section 21 CRA

<sup>73</sup> UNICEF global databases, 2022, based on MICS, DHS and other nationally representative sources, 2010–2021. Demographic data are from the United Nations, Department of Economic and Social Affairs, Population Division, World Population Prospects 2019, online edition, 2019.

<sup>74</sup> *ibid*

<sup>75</sup> Data are sourced from the Demographic and Health Survey 2018 unless otherwise noted. Data on the legal age at marriage are sourced from the World Bank, Women, Business and the Law, 2018 dataset. Demographic data are from the United Nations, Department of Economic and Social Affairs, Population Division, World Population Prospects 2019, online edition, 2019. All references to ‘marriage’ or ‘child brides’ include both formal marriage and informal unions in which women started living together with a partner as if married. Source: Child Marriage in West and Central Africa: A statistical overview and reflections on ending the practice Age of Marriage

Writing about Nigeria, Nkoyo identifies how minimum age for marriage for both sexes is set at 18 in the Child Rights Act, 2003, but that child in the Children and Young Person's Act is defined as one under 14, while a young person under the same act is between 14 and 17. She further notes that the Immigration Act defines a child as one under the age of 16 while the Matrimonial Causes Act identifies as a majority, anyone over the age of 21.<sup>76</sup> She also remarked as problematic the clash of norms engendered by the existence of plural legal systems.<sup>77</sup> The Committee of the CRC is concerned in particular about the extremely high prevalence of early marriages among girls in the northern states and its impact on their enjoyment of other human rights, especially the right to education. In this context, the Committee notes with appreciation the adoption by some states of laws prohibiting the withdrawal of girls from school because of marriage. While noting the multidisciplinary approach adopted by the State party to raise awareness and promote attitudinal change with respect to female genital mutilation (FGM) and child marriage, and that practice of child marriage is made punishable offences in the Child Rights Act, the Committee is concerned about the high percentage of women who child brides. The Committee regrets the lack of up-to-date information on measures taken by the State party to prevent and eliminate harmful traditional practices, including progress in the implementation of its earlier recommendations.<sup>78</sup> The Committee urges the State party as a matter of priority, to take prompt measures to address the practice of early marriages in the northern states; and to undertake sensitisation programs on the prohibition of early marriages in the Child Rights Act and ensure that state legislation incorporates such prohibition of all children under the age of 18.<sup>79</sup>

The Committee recommended that the State party: *Take all necessary steps to increase awareness via information campaigns highlighting the de facto average age of marriage, about the need to harmonise the minimum age.*<sup>80</sup> The State was further advised to develop and undertake comprehensive awareness-raising programs on the negative implications of early marriage for the girl child's rights to health, education and development, targeting in particular traditional and religious leaders, parents and state parliamentarians, and the prohibition by law of withdrawal of children from school because of marriage.<sup>81</sup>

The following progress have been made by the government as regards the issue of child marriage; Specific measures taken by the Government to combat harmful cultural practices affecting children are articulated in Sections 21 and 22 of the CRA prohibiting child marriage and child betrothal. Most of the States that have passed the CRA, have specific provisions prohibiting child marriage and tattoos and skin marks. In the Northern states, while Kebbi and Niger states have prohibited child marriage, Borno, Gombe and Bauchi states have prohibited withdrawal of girls from schools for marriage purposes. Part IV (Sections 41-49) of the CRA provides for additional protection through civil and welfare proceedings. Thus, it makes provisions for securing assessment orders in relation to ascertaining the state of health or development of, or the way in which the child has been treated, with a view to enabling a determination as to whether the child is suffering or is likely to suffer significant harm or exploitation. To this end, the appropriate authority may secure an order from the Family Court for emergency protection of children where and when necessary. The CRA additionally imposes duties on State Governments to safeguard or promote the welfare of any child in danger or suspected to be in danger of suffering significant harm within their jurisdiction<sup>82</sup>. Part V (Sections 50-52) of the CRA empowers a Child Development or Police Officer or any other authorized person to bring a child in need of care and protection before a court for a protective or corrective order; if he has reasonable grounds for believing that the child may be physically harmed or sexually exploited. In addition, Sections 31 and 32 of the Child's Rights Act prohibits sexual intercourse with a child, and an offender under this provision is liable on conviction to life imprisonment. In support of the VAPA, some State Houses of Assembly have recently made legislation to prohibit violation of girls/women's rights and punish perpetrators of violence especially in the states. The Houses of Assembly of Benue, Delta, Edo, Jigawa, Kaduna, Lagos, Abia, Anambra, Ebonyi, and Katsina States are already at different stages of passing Domestic Violence Prohibition Bills. Child marriage is still prevalent in the northern part of the country. International Agencies such as UNICEF, Forward and other NGOs are working in the Northern part of the country where the practice is endemic to keep children in school since a correlation exists between girls' education and age at marriage. Current initiative by government and the CSOs are promoting a culture of opposition to all forms of harmful traditional practices against women and girls, using the media and involving

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<sup>76</sup>Nkoyo, T. (2006), 'Revisiting Equality as a Right: the Minimum age of Marriage Clause in the Nigerian Child Rights Act 2003' 27 *Third World Quarterly* 1299, at 1303.

<sup>77</sup> *Ibid* at 1304

<sup>78</sup> Convention on the Rights of the Child: Concluding Observations: Nigeria CRC/C/NGA/CO/3-4 June 2010. (CRC/C/15/Add.257, paras. 54-58).

<sup>79</sup> Para 65 Convention on the Rights of the Child: Concluding Observations: Nigeria

<sup>80</sup> *Ibid* para 66

<sup>81</sup> *ibid*

<sup>82</sup> Section 41 CRA

men in addressing gender stereotypes and discriminatory values and norms which increase the risks faced by both women and girls. In Northern Nigeria, FORWARD has established clinics to treat girls and women with obstetric fistula and runs income-generating schemes and other initiatives to improve their social and economic status and well-being. Lessons learnt from this programme have highlighted the importance of a holistic approach to addressing child marriage, necessitating integrated education, health, economic and participatory community development programmes.

## **VI. Challenges of ending child marriage**

In the traditional settings, early marriage is often perceived as the only option for girls and is often seen by parents of young girls as a means of securing both their own and their daughter's future. Child marriage is an issue that cannot be solved in isolation as it is results from a complexity of social, cultural and economic dimensions and widespread gender discrimination. The causes and consequences of child marriage are intrinsically linked, including girl's lack of autonomy and low levels of education, poor health status, poverty and overall low socioeconomic status. Despite the emphatic reiteration of various children and human rights laws prohibiting child marriage, and worldwide condemnation of the practice, child marriage still thrives and there are still several impediments preventing its elimination. Some these barriers are as follows;

First, only marriages celebrated under the statutes in accordance with the Marriage Act are the ones that are compulsorily registered in the Marriage Registries. All the other types of marriages are often not even registered and child marriages are in most cases not formal. The ceremonies often involve handing over of the bride by her family to the groom's family and she is taken away. This makes the extent of the practice difficult to document. Existing data is likely to give an underestimate given that data is difficult to gather because marriages are often not registered and ages of children are not always accurate since many of the children were not registered at birth.

Second, an 'offending' provision is Section 29(4) of the Constitution, which states that a woman is deemed to be of full age upon marriage, thereby lending support to early marriages. There is the presumption that any married female child assumes the status of an adult. This provision implicitly recognises and legitimises child marriage. CEDAW Committee in its Concluding Observation to Report submitted by Nigeria<sup>83</sup> urges the State party to repeal without delay Section 29(4) of the 1999 Constitution of Nigeria.<sup>84</sup>

Third, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has explicit provisions outlawing discrimination on grounds of amongst other things, sex or gender,<sup>85</sup> thus upholds the principle of equality, and non-discrimination, but in most cases, custom, culture or religion dominates. It is submitted that if the Constitution is the supreme law of the country, one would expect that other laws would be in compliance therewith based on the principle of constitutional supremacy.<sup>86</sup> On the contrary, personal laws regarding marriage, divorce, and inheritance, triumph in most cases if there is a conflict between constitutional provisions and personal law so long as it passes 'repugnancy test'. According to the British Council research report, Nigeria ranks 118 out of 134 countries in the Gender Equality Index.<sup>87</sup>

Fourth, laws are still not fully harmonised: Provisions relating to children's rights are found in a broad range of laws – from penal codes and specific legislation on adoption, education, social welfare, and divorce, and separation proceedings. The problem is further compounded by the pluralist nature of legal systems in the region, where common and civil law coexists with customary and religious law. While child-centred provisions remain in this fragmented and complex state, legislation relating to children will continue to be conflicting and poorly implemented. Children in the region are still being subjected to harmful practices. There is the need for a comprehensive review of all existing legislation.

Fifth, children's voices remain unheard; There is need for changes in cultural and societal attitudes about children from the current situation where children's voices are seldom heard.

Sixth, there is seldom political will to act when it comes to women's and girls' human rights. This lack of political will is brought about by the fear that the private violators (mostly communities) are powerful enough to threaten the political survival of the ruling elite. The proponents of child marriage and other harmful traditional customs and practices are neither targeted directly by the CRC or ACRWC nor are participants in the debates on these customs and practices. Yet at the domestic level, they are too powerful a force for states parties to ignore in the implementation of the convention or charter. The CRC and ACRWC are only binding to states

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<sup>83</sup>Committee on the Elimination of Discrimination against Women (CEDAW) Concluding observations on the combined seventh and eighth periodic reports of Nigeria CEDAW/C/NGA/CO/7-8, 24 July 2017.

<sup>84</sup> Ibid para 32(b).

<sup>85</sup> S.42(1) 1999 Constitution of Nigeria

<sup>86</sup> S.1 1999 Constitution of Nigeria

<sup>87</sup>The British Council (2012) 'Gender in Nigeria Report 2012: Improving the lives of girls and women in Nigeria', London: The British Council.

parties, who in turn are obligated to take appropriate measures domestically to secure and promote the rights of the child. Even when legislations have been put in place, it is usually difficult to deal with the people at the grassroots and the communities. Traditional African societies therefore had in place elaborate activities and practices to ensure that their present and future are, as much as possible, lived as the past was lived. Although the maintenance of unity and cohesion in a family or society is a universal desire and aim of all, how this is to be achieved becomes crucial in justifying the end. When the means appear discriminatory and harmful, then there is cause for concern. This discriminatory approach is a consequence of women's social and economic powerlessness in patriarchal societies where men control virtually everything. The search for societal unity, cohesion and morality should not be the responsibility of only one sex. customs and traditional practices are restricting women's rights, notably in family law and penal law with regard to their participation in public life. This bleak portrait of human rights in some African countries including Nigeria shows the distance between the letter of the Charter and of the international instruments adopted by various African countries, and reality. Additionally, the international development community has largely failed to target development assistance to address this gross rights violation.

### **VII. Recommendations (What can be done?)**

Child marriage has been seen as a faceless violation of the rights of the child. It has far reaching social, economic, health and even political implications for the girl child. It is an issue that cannot be solved in isolation as it results from a complexity of social, cultural and economic dimensions and widespread gender discrimination. Education and economic empowerment of the communities and especially the girls can help in changing the attitude that the value of girls lies in marriage and motherhood. Provision of health facilities to help in reducing child mortality rates will also be important. Education plays important role in efforts to eliminate child marriage. Education is the key driver, as the least educated are the most prone Research by UNICEF shows that the more education a girl receives, the less likely she is to be married as a child.<sup>88</sup> Improving access to education and eliminating gender gaps in education are therefore important strategies for ending the practice of child marriage. Girls must be kept in school, drop outs must get back to school, learning for future.

The use of religion and tradition to justify child marriages shows an urgent need for developing effective strategies for collaboration with religious and traditional leaders. There is the need for an assessment of the role of customary and religious laws that condone child marriage and promote dialogue with traditional and religious leaders to identify practical ways to reduce child marriage. Efforts to deal with gender relations and reproductive health and rights should be based on sensitivity to local social dynamics, gaining the support of leaders and developing allies with local change agents. If we want to reduce cases of child marriage then there is the need to focus on its socio-economic functions that help in retaining the practice. Once these functions are rendered irrelevant through the introduction of better alternatives, then the practices will begin to wear out. Data is important. Data collection is very important as it enhances monitoring and accountability. Data should be up to date, reliable, and reflect the voices and needs of child brides. Research institutions, particularly in resource-poor settings. Provide support for economic and livelihood opportunities for girls and young women in rural communities. This can help ensure that marriage is not seen as the only option available to poor families. There is need for attitudinal change, raising young activists who are rejecting the practice. Young people should be drivers of change. Government is obliged to take effective and appropriate measures to eliminate child marriage.<sup>89</sup> These obligations include the prohibition through legislation, backed by sanctions, of child marriage by every level of government. On balance, there is the need to intensify and expand efforts working towards the complete abandonment child marriage in Nigeria

### **VIII. Conclusion**

Although the maintenance of unity and cohesion in a family or society is a universal desire and aim of all, how this is to be achieved becomes crucial in justifying the end. When the means appear discriminatory and harmful, then there is cause for concern. This discriminatory approach is a consequence of women's social and economic powerlessness in patriarchal societies where men control virtually everything. However, there is a saying that when you educate a woman you educate a nation. Education, even at a basic level, is not only about livelihood and technical skills but more importantly provides social 'connectedness' or aptitude which enables one to access key resources to alleviate poverty.<sup>90</sup> Individuals can also develop their self-esteem and confidence to voice their opinions and to take control over their own actions, lives and bodies.<sup>91</sup> Educated women are more

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<sup>88</sup>UNICEF Innocenti Research Centre. (2001) Early Marriage: Child Spouses, *supra*

<sup>89</sup> CEDAW General Recommendation No. 14.

<sup>90</sup>Bayisenge, Jeannette (2010) "Early Marriage as a Barrier to Girl's Education, *supra* note 10.

<sup>91</sup> *ibid*

likely to have a say in decision-making regarding the size of their families and the spacing of their children. They are also likely to be more informed and knowledgeable about contraception and the healthcare needs of their children.

Traditions are not written on stones, culture is not static, values are no one's property; they flourish under favorable conditions.<sup>92</sup> Nothing would be more exaggerated than if we were to present African cultures as if they are static, non-evolving and shielded from external influences. Traditional practices that are harmful to the rights of the child have simply refused to die, that is puzzling. Despite all changes that have occurred, these practices seem determined to survive. If change is to be facilitated in the Nigerian communities and against the practices, the cause of this resistance to change must be understood and dealt with accordingly. Much work needs to be accomplished. There can be no task nobler than giving every child especially the girl-child, a better future. It is impossible to realise our goals under the SDG 5 and Target 5.3 while discrimination against half of the country's population who are female is not addressed. Declarations, Conventions, goals and legislations are not enough, it is imperative that Nigeria moves resolutely from realms of words to realms of concrete action. Words on paper alone do little justice to the aspirations inherent in these documents: the rights they contain must be humanised and the time is now.

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