

Article

EDUCATION AS A CONTRIVANCE TO ENDING CHILD MARRIAGE IN AFRICA: PERSPECTIVES FROM NIGERIA AND UGANDA

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ABSTRACT

Nigeria and Uganda have both ratified the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and have enacted domestic legislations that provide for the promotion and protection of the rights and welfare of children. Sadly, child marriage still exists and is one of the leading causes of morbidity and school dropout among children in both countries. This paper examines the legal and policy frameworks for combating child marriage and highlights the trends, challenges and prospects from a socio-legal perspective. It reveals a number of systematic procedural problems in the legal and policy apparatus for addressing child marriage. In responding to these challenges, the authors argue that the Nigerian and Ugandan governments should enhance access to basic education and initiate institutional reforms pertinent to the legal framework for effective enforcement of the laws that address child marriage.

Keywords: Child marriage; Education; Human Rights; Women's Rights; Africa.

Introduction

The quandary of child marriage has recently attracted renewed interest with the emergence of stronger consensus to end the practice. Child marriage is a prevalent infringement on the human rights of girls. It is rooted in gender inequality and impedes socioeconomic development. It has been argued that the low value placed on girls causes

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child marriage and its tolerability in societies where the practice is common.¹ Drawing from international conventions, treaties and declarations, Parson et al. define child marriage as any legal or customary union involving a boy or girl below the age of 18.² Child marriage is also described as ‘early marriage’ and the children are also referred to as ‘child brides.’ Nour contends that the term ‘child bride’ seems to glorify child marriage by creating the impression of a bride who is happy to begin a loving union with her spouse, ignoring the fact that most girl brides do not know and may have never met their groom.³

Millions of African girls become wives every year.⁴ Some African countries, like Ethiopia, are making important steps in the fight to protect girls from becoming child brides.⁵ Despite these success stories, significant deficits remain. For instance, it is predicted that in Niger about 75 percent of girls could become child brides before they turn 18.⁶ In Chad and the Central African Republic the predicted figure is 68 percent. The practice of child marriage remains alarmingly common in Africa and is growing.⁷

The United Nations (UN) and other international organisations started pursuing legal and policy mechanisms to eradicate child marriage in 1948.⁸ This can be traced to Article 16(3) of the Universal Declaration of Human Rights (UDHR), which provides that an individual should be at ‘full age’ when being married and that those persons should not be forced into marriage without their consent. Since then, a plethora of international instruments including the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Child Rights Convention (CRC) and other declarations have been adopted to uphold these principles.

Despite these efforts, current statistics indicate that the rate of child marriage is still alarming across the globe and in Africa specifically.⁹ The seriousness of the menace of child marriage is succinctly captured by United Nations International Children’s Emergency Fund (UNICEF) in its 2014 Progress report which emphasises that without the adoption of effective and efficient strategies to combat child marriage, more than 280 million girls alive today are at risk of becoming brides by the time they turn 18 years.

¹ J. Parsons, J. Edmeades, A. Kes, S. Petroni, M. Sexton & Q. Wodon ‘Economic impacts of child marriage: A review of the literature’, *The Review of Faith and International Affairs*, 2015-13, pp. 12-22.

² *Ibid.*

³ N.M. Nour, ‘Child marriage: A silent health and human rights issue’, *Review of Obstetric Gynecology* 2009-2, p. 52.

⁴ Girls Not Brides, ‘Ending child marriage in Africa’, at: <http://www.girlsnotbrides.org/region/sub-saharan-africa/> (accessed on 2 May 2017).

⁵ A. Pankhurst, ‘What needs to be done to keep child marriages trending down’, *The Conversation Africa*, 23 June 2015, at: <https://theconversation.com/what-needs-to-be-done-to-keep-child-marriages-trending-down-43419> (accessed on 2 May 2017).

⁶ International Centre for Research on Women, ‘Child marriage around the world’, at: <https://www.icrw.org/child-marriage-facts-and-figures/> (accessed on 2 May 2017).

⁷ United Nations Children’s Emergency Fund (UNICEF), ‘Ending Child Marriage: Progress and Prospects’, *UNICEF* 2014, p. 2.

⁸ See Nour 2009, supra note 3; N.M. Nour, ‘Health consequences of child marriage in Africa’, *Emerging Infectious Diseases* 2006-12, pp. 1644; see J.A. Walker, ‘Early marriage in Africa: Trends, harmful effects, and interventions’, *African Journal of Reproductive Health* 2012-16, pp. 231. Walker defines child marriage as a formal marriage or an informal union before the age of 18 years, before a girl is psychologically, physically and physiologically prepared for marriage and childbearing.

⁹ UNICEF 2014, supra note 7, p. 2.

Moreover, due to population growth, the number will approach 320 million by 2050 with the total number of women married in childhood growing from more than 700 million today to approximately 950 million by 2030 and nearly 1.2 billion by 2050.¹⁰ Current statistics moreover show that ten million girls under the age of 18 marry each year.¹¹ That is around 83.333 a month, 192.307 a week, 27.397 a day, 19 every minute or around one girl every three seconds. These statistics also indicate that the practice is endemic in South Asia where about 56 percent of girls marry before the age of 18, followed by Africa where about 47 percent of girls become wives before their 18th birthday.¹² Currently, according to UNICEF, the situation of child marriage in Sub-Saharan Africa is extreme and UNICEF contends that even when the present pace of progress is maintained, it will not be fast enough to offset the problem due to population growth. The number of child brides in Sub-Saharan Africa will double by 2050 and the region will surpass South Asia in terms of the largest number of child brides. Doubling the current rate of decline in child marriage in Sub-Saharan Africa is still not enough to reduce the number of child brides. In Africa, despite the inclusion of boys in the definition of child marriage, studies reveal that most children that marry below the age of 18 are girls.¹³ For instance, in Mali the girl to boy ratio of marriage before the age of 18 is 72 to 1 and in Kenya, it is 21 to one.¹⁴ These statistics clearly demonstrates that international, regional and national efforts are failing to find durable strategies to eradicate child marriage, particularly in Sub-Saharan Africa.

Within Africa, Nigeria is expected to have the largest absolute number of child brides despite the country having witnessed about one percent decline in child marriage annually over the past three decades.¹⁵ With a population of over 167 million, Nigeria has the largest population of married girls in Africa with about 39.4 percent of all females between the ages of 20 to 24 having been married before the age of 18 by 2011.¹⁶ Without efforts to achieve drastic reduction, the total number of child brides in Nigeria would double by 2050. In contrast to global trends, Uganda has also been experiencing stagnant level of child marriage. In Uganda, the prevalence has remained constant at around 44 percent for the past three decades.¹⁷ If this persists, the number of child brides will increase substantially in the coming years due to population growth.

While both countries have set the minimum age for marriage at 18 in their domestic laws,¹⁸ these laws are not enforced effectively.¹⁹ It has been argued that child marriage represents one of the greatest development challenges in Nigeria and Uganda where it

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Idem*, p. 6.

¹⁴ Nour 2006 and 2009, *supra* note 8, p. 1644.

¹⁵ J.A. Walker, 'Why ending child marriage needs to be an education goal: The case for improved coordination between ending child marriage and girls, education movements in West Africa', *Brookings Center for Universal Education Research Report* 2013, p. 1.

¹⁶ *Ibid.*

¹⁷ UNICEF 2014, *supra* note 7, p. 6.

¹⁸ Nour 2006, *supra* note 8, p. 1644.

¹⁹ It is noted however that, in Nigeria, legal pluralism, including Sharia and customary law practices, in some parts of the country continues to provide a leeway for violation of 18 years as the minimum marriageable age. See generally, A.C. Onuora-Oguno & O. Adeniyi, 'Sexual abuse and child marriage: Promise and pathos of international human rights treaties in safeguarding the rights of the girl child in Nigeria', *Child Abuse Research: A South African Journal* 2015-16, pp. 78.

robs children of their childhood, undermines their health, and destroys their hopes for a bright future²⁰. For instance, about 54 percent of women marry before their eighteenth birthday in Uganda and 42 percent in Nigeria.²¹ This is notwithstanding the fact that both countries have signed and ratified international agreements to eradicate the practice. Studies indicate that most child brides in these two countries are forced into marriages.²² Svanemyr et al. posit that child marriage through coercion forces girls into lives of servile isolation, and into the trauma of early pregnancy.²³ These child brides become victims of human rights violations by being deprived of the right to education, optimal health, life and an adequate standard of living.²⁴ It has also been argued that child marriage denies women and girls equal opportunity to engage in civil, economic, and political development.²⁵ Young mothers are deprived of their right to education in order to raise their children and to perform their roles as wives. They are also at higher risk of maternal death or delivery complications than older women.

On this premise, at the International Conference on Population and Development organised in 1994 it was declared that the minimum age for marriage should be raised and enforced, that marriage should be entered into with free consent and as equal partners, and that education and employment of girls should be encouraged.²⁶ The foregoing analysis calls for time-bound targets to leverage progress in strategic areas where change remains urgent. This article therefore explores the socio-legal strategies used to combat child marriage among girls in Africa with insights from Nigeria and Uganda, to identify the prospects, weaknesses and gaps in these strategies.

The authors contend that the education of the girl child should be pivotal since it not only empowers them to gain autonomy but also enhances their ability to acquire skills and consequently increase their access to gainful employment. The authors therefore argue that the education of the girl child as well as the curriculum designed towards it should form the core strategy, alongside the legal and policy framework approach in Nigeria and Uganda, to dismantle the stronghold of child marriage which is perpetuated by religious, economic and socio-cultural influences. The introductory section of the article is followed by an analysis of the legal framework for combating child marriage in Africa in general and Nigeria and Uganda in particular. The third section engages with the theoretical nexus between education and child marriage. Section four explores how education can be used to end child marriage in Africa, before leading into the conclusion.

²⁰ J. Svanemyr, V. Chandra-Mouli, C.S. Christiansen, & M. Mbizvo, 'Preventing child marriages: first international day of the girl child "my life, my right, end child marriage"', *Reproductive Health* 2012-9, pp. 1-4.

²¹ See generally, Q. Wodon, (ed.) 'Child Marriage and Education in Sub-Saharan Africa', *World Bank Group* 2015, p. 2.

²² See generally, Onuora-Oguno & Adeniyi 2015, supra note 19, p. 78; Walker 2013, supra note 15, p. 1; UNICEF 2014, supra note 7, p. 6; A.A. Allen & P.O. Adekola, 'Health Implication of Child Marriage in North-East Nigeria' *Seria Geografie* 2017-1, pp. 54-61.

²³ Svanemyr et al. 2012, supra note 20, p. 9.

²⁴ Nour 2006, supra note 8, p. 1644.

²⁵ Plan International, 'Empowering Girls: what the Commonwealth can do to end early and forced marriage', *Briefing Paper* 2013-1, pp. 4.

²⁶ The United Nations International Conference on Population and Development, 'ICDP programme of action', Principle 9, Action 4.18 & Action 5.5, at: <http://www.un.org/popin/icpd2.htm> (accessed on 2 May 2017).

I. Using Law to Combat Child Marriage in Africa

Child marriage has always been a subject of great debate and political contestation. On this premise, this section examines the legal mechanisms that address child marriage at the international, regional and national levels with the aim of identifying the relevant human rights norms and policy standards that states are required to comply with in their effort to eradicate the practice of child marriage.

I.1 International Framework for Ending Child Marriage in Africa

Before delving into the analysis of the international and regional framework addressing child marriage, it is important to note that a lacuna seems to exist in the global legal regime. None of the relevant international instruments, including the CRC and CEDAW, specify a minimum marriageable age. This lacuna however, has been sufficiently filled by the regional legal framework in Africa.

The protection and promotion of the rights of the child and the girl child have been addressed by several UN treaties and their associated treaty bodies. The core aim of these treaties is to ensure that girls enjoy their human rights to the fullest extent and hence that they are not to be married off before the age of 18.²⁷ The UDHR provides that, 'marriage shall be entered into only with the free and full consent of the intending spouses'.²⁸ The Commonwealth Charter includes the same provision in Article 16(2).²⁹ In addition, Article 1(c) of the 1956 Supplementary Convention on the Abolition of Slavery prohibits 'any institution or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group'.³⁰

Articles 1, 2 and 3 of the 1962 UN Convention of Consent to Marriage, Minimum Age for Marriage and Registration of Marriages oblige state parties to institute a minimum age for marriage and provides that all marriages should be registered.³¹ According to Article 2 of the CEDAW, 'States Parties shall take legislative action to specify a minimum age for marriage'. Article 3 establishes that 'all marriages shall be registered in an appropriate official register by the competent authority'³². However, it was not until 1989 that the CRC defined children as persons below the age of 18.³³ Article 1 of the CRC defines 'child' as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.³⁴ For this reason, the prohibition of child marriage should be understood according to this international standard of 18 years. However, international standards allow marriage at a younger age if domestic law provides for this. Thus, there appears to be a gap in international law.

²⁷ Equality Now, 'Protecting the girl-child: Using the law to end child, early and forced marriage and related human rights violations', 2014, p. 13.

²⁸ 1948 Universal Declaration of Human Rights, UNGA Res. 217A (III), Article 16(2).

²⁹ 1993 Charter of the Commonwealth of Independent States (with declaration and decisions), No. 31139, Article 16(2).

³⁰ 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 UNTS 3, Article 1(c).

³¹ 1962 United Nations Convention of consent to marriage, minimum age for marriage, and registration of marriages, 521 UNTS 231.

³² *Ibid.*

³³ 1989 UN Convention on the Rights of the Child 1577 UNTS 3, Article 1.

³⁴ *Ibid.*

Moreover, Article 16 of the CEDAW has the clearest and strongest language on this issue, stating that ‘the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory’.³⁵ Article 16(1) further provides that ‘women shall have the same right as men to freely choose a spouse and to enter into marriage only with their free and full consent’.³⁶ CEDAW provides that ‘the marriage of a child shall have no legal effect’, and thus aims to outlaw child marriages.³⁷ The reasoning is that any state that permits child marriage violates its obligation to protect the human rights of the individual, particularly the child involved.³⁸ Article 34 also obliges states ‘to protect children from all forms of sexual exploitation and sexual abuse’.³⁹ Article 28 furthermore provides for the right of the child to education and obliges state parties to adopt measures to reduce school drop-out rates.⁴⁰ Article 31 lastly provides for the child’s right to engage in activities appropriate to the age of the child.⁴¹

Even though child marriage also involves boys, the number of girls affected is higher.⁴² Due to the impact on girls, it is argued that child marriage is a symptom of discrimination against girls which violates the provisions of CEDAW and is therefore clearly illegal. General Recommendation Number 21 of the CEDAW Committee provides that ‘a woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being’. The Committee therefore calls for the prohibition of all forms of forced marriage. It furthermore provides that, ‘subject to reasonable restrictions based, for example on a woman’s youth or consanguinity with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced in law’.⁴³

Even though child marriage is not explicitly mentioned in the CRC, the issue of child marriage is repeatedly addressed by the CRC Committee as it is tied to other rights in the CRC. These rights include the right to protection from all forms of abuse⁴⁴ and the right to be protected from harmful traditional practices.⁴⁵ The CRC Committee has categorically stated that ‘early marriage is a harmful practice that negatively affects girls’ sexual and reproductive health’ and it strongly recommends that all states parties have

³⁵ 1981 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1249 UNTS, 13, Article 16(2).

³⁶ *Idem*, Article 16(1).

³⁷ *Idem*, Article 16.

³⁸ UDHR 1948, *supra* note 28, Article 16.

³⁹ CRC 1989, *supra* note 33, Article 34.

⁴⁰ CRC 1989, *supra* note 33, Article 28.

⁴¹ CRC 1989, *supra* note 33, Article 31.

⁴² For instance, in Zambia, 45 percent of women aged between 20 and 49 were married by the age of 18. The Zambia Demographic and Health Survey Report revealed that child marriage is more common among girls (17 percent) than boys (1 percent). See Ministry of Chiefs and Traditional Affairs, ‘Child marriage situation for Zambia: Qualitative and quantitative summary’, paper presented at the National Workshop on Child Marriage Laws in Zambia, 23-24 June 2015.

⁴³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994.

⁴⁴ CRC 1989, *supra* note 33, Article 19.

⁴⁵ CRC 1989, *supra* note 33, Article 24(3).

legislation in place setting the marriageable age at 18.⁴⁶ However, it must be noted that the specification of 18 years is solely a recommendation to state parties and is not part of the treaty law. Swart and Hassen argue, however, that the CRC prohibits child marriage indirectly because it is a form of commercial exploitation of children.⁴⁷

I.2 Regional Framework for Ending Child Marriage in Africa

The regional human rights systems do not offer any specificity either, except under the African regional framework. Under the European human rights system, Article 12 of the European Convention on Human Rights simply provides that: ‘men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right’.⁴⁸ Under the American regional system, the American Convention on Human Rights also defers the protection of marriage to the domestic laws of its member states. The Convention provides in Article 17(2) that: ‘the right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of non-discrimination established in this Convention.’⁴⁹

The two regional frameworks above follow the provisions at the international level strictly. In contradiction, the African Charter on the Rights and Welfare of the Child (ACRWC) explicitly proscribes child marriages of both boys and girls under the age of 18 years, filling the gap created by Article 16 of the CEDAW which does not set 18 years as the minimum age for marriage.⁵⁰ Article 21(2) of 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 18 years and make registration of all marriages in an official registry compulsory’.⁵¹ Thus, it is safe to argue that the position of the ACRWC on the minimum age for marriage is a progressive one and it complements international instruments to strengthen the protection mechanism to promote the rights and welfare of children in Africa. Article 21 generally protects children against harmful socio-cultural practices. It obliges state parties to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child especially those prejudicial to the health or life of the child⁵² as well as those customs and practices discriminatory to the child on the grounds of sex or other status.⁵³

⁴⁶ See UN Committee on the Rights of the Child (CRC), Adolescent health and development in the context of the Convention on the Rights of the Child, General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child, 2003, UN Doc. CRC/GC/2003/4.

⁴⁷ CRC 1989, *supra* note 33, Articles 19 & 34. See also M. Swart & S. Hassen ‘A comparison between the position of child marriage ‘victims’ and child soldiers: Towards a nuanced approach’, *African Human Rights Law Journal* 2016-16, pp. 458-475.

⁴⁸ 1950 European Convention on Human Rights (ECHR), 213 UNTS 221, Article 12.

⁴⁹ 1969 American Convention on Human Rights (ACHR), 1144 UNTS 123, Article 17(2).

⁵⁰ 1990 African Charter on the Rights and Welfare of the Child (ACRWC), OAU Doc. CAB/LEG/24.9/49 (1990), Article 21(2).

⁵¹ *Ibid.*

⁵² *Idem*, Article 21(1a).

⁵³ *Idem*, Article 21(1b).

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) establishes the same standard. Article 16 of the Maputo Protocol provides that 'no marriage shall take place without the free and full consent of both parties'⁵⁴, 'the minimum age of marriage for women shall be eighteen years'⁵⁵, and 'every marriage shall be recorded in writing and registered in accordance with national laws in order to be legally recognised'⁵⁶. Article 8 of the African Youth Charter also adds momentum to the prohibition of child marriage by providing that 'young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities'⁵⁷. As already argued, the UDHR protects the right to free and full consent to marriage. It is clearly not possible for consent to be free and full if one party to the marriage is not sufficiently mature to make an informed decision regarding the choice of a marriage partner.⁵⁸ In the absence of free and full consent, such marriage would be considered forced.

From the above, it is very clear that state parties to CEDAW, the CRC, the ACRWC and other relevant international human rights instruments have a responsibility to take all necessary legislative, judicial, administrative and other measures to ensure the full realisation of children's rights specifically the rights of the girl child contained in them. Therefore, state parties to these instruments have a due diligence obligation to prevent and ensure that private actors do not engage in actions that impair the child's physical, mental, spiritual, moral, psychological and social development, including violence.⁵⁹

Moreover, the Special Court for Sierra Leone (SCSL) in 2008 held that forced marriage can constitute a crime against humanity.⁶⁰ To meet the conditions of a crime against humanity, an act must be an element of a 'widespread and systematic attack'. 'Widespread' has been defined by the International Criminal Tribunal for Rwanda (ICTR) as 'massive frequent large-scale action, undertaken collectively with substantial gravity and directed against a multiplicity of victims'.⁶¹ Even though the CRC clearly protects children from being subjected to interfering with their families and homes⁶², child marriage denies girls of their childhood and socially isolates them from their families and friends.⁶³ Child marriage also limits employment and educational opportunities of children because most child brides abandon their education contrary to their right to education.⁶⁴ Child brides are also not able to carefully negotiate safe sex with their partners, a situation that exposes them to various forms of sexual abuse which is also prohibited by the CRC.⁶⁵ Child marriage has many health implications principally sexual

⁵⁴ 2000 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, AU CAB/LEG/66.6, Article 6(a).

⁵⁵ *Idem*, Article 6(b).

⁵⁶ *Idem*, Article 6(d).

⁵⁷ 2006 African Youth Charter, Article 8, at: <http://www.africa-union.org/root/ua/conferences/mai/hrst/charter%20english.pdf> (accessed on 23 March 2017).

⁵⁸ UNICEF 2014, *supra* note 7, p. 8.

⁵⁹ Equality Now 2013, *supra* note 27, p. 13.

⁶⁰ M.P. Scharf, 'Forced marriage as a separate crime' in C. Jalloh (Ed.) *The Sierra Leone Special Court and its legacy*, Cambridge: Cambridge University Press 2013, p. 193.

⁶¹ *Prosecutor v Akayesu*, Trial Judgement, Case No. ICTR-96-4-T, 2 September 1998, para 580.

⁶² CRC 1989, *supra* note 33, Article 16.

⁶³ UNICEF 2014, *supra* note 7, p. 8.

⁶⁴ CRC 1989, *supra* note 33, Article 28.

⁶⁵ CRC 1989, *supra* note 33, Article 34.

health problems, although the CRC protects children's rights to health. The effects of child marriage as outlined above generally satisfy the 'considerable seriousness' condition.

I.3 National Framework for Ending Child Marriage in Nigeria and Uganda

At the national level, the existence of a legal framework to combat child marriage is not sufficient in most African countries. The mechanisms for combating child marriage in Nigeria and Uganda are reflective of the situation in Africa. The prevalence of child marriage in Nigeria and Uganda is a clear demonstration of the states' failure to comply with international human rights standards and norms, particularly in their enforcement.⁶⁶ However, it is argued that legal strategies and guidelines should assist to raise awareness and create normative standards as well as remedies to address child marriage.⁶⁷ Child marriage in Nigeria and Uganda is more prevalent in poor areas where the educational levels are lowest. According to Gemignani and Wodon, child marriage is rooted in socio-cultural practices and religious beliefs in many communities.⁶⁸ Burris observes that in countries with a high child marriage rate, cultural and social practices are more valuable in the community than laws and regulations, which results in the ineffective enforcement of domestic laws prohibiting these marriages.⁶⁹ Nigeria and Uganda function as examples for this.

I.3.1 Nigeria

In Nigeria, girls face discrimination on a daily basis under prevailing unjust economic, social and cultural structures which limit them from realising their full potential and aspirations.⁷⁰ The case of Wasila Umar, a 14-year-old Nigerian child bride standing trial for killing her husband clearly illustrates the complexity surrounding the issue of child marriage in Nigeria. Wasila was 14 years when she was married off to 35 year old Umar Sani in Gezawa near the Northern city of Kano in April 2014.⁷¹ Wasila was accused of murdering Umar and three of his friends by poisoning food during the wedding party, only seventeen days into the marriage.⁷² After her arrest, Wasila reported to her lawyer that she had been tied to the bed and raped by Sani on their wedding night.⁷³ Despite her age and Nigeria's obligation under international human rights law to protect the girl child from child marriage, the High Court rejected a plea to have murder charges against her quashed by ruling that the trial should proceed.⁷⁴ She therefore stands the risk of conviction and possible death penalty. Child marriage remains a difficult and contentious

⁶⁶ R. de Silva de Alwis, 'Child marriage and the law', *UNICEF* 2007, p. 1.

⁶⁷ *Idem*, p. 33.

⁶⁸ R. Gemignani, & Q. Wodon, 'Child marriage and faith affiliation in Sub-Saharan Africa: Stylized facts and heterogeneity', *The Review of Faith & International Affairs* 2015-13, pp. 14-47.

⁶⁹ C. Burris, 'Why domestic institutions are failing child brides: A comparative analysis of India's and the United States' legal approaches to the institution of child marriage', *Tulane Journal of International and Comparative Law* 2014-23 pp. 151-176.

⁷⁰ K.O. Fayokun 'Legality of child marriage in Nigeria and inhibitions against realisation of education rights', *US-China Education Review B* 2015-5, pp. 460-470.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

problem in Nigeria, with broad disapproving perspectives on the issue based on cultural and religious differences, ethnic disparities, as well as conflict of law issues.⁷⁵

In terms of cultural and religious norms, child marriage is rooted in the cultural traditions of the communities in Northwest Nigeria. Child brides often come from patriarchal societies where parents and elders play very significant or domineering roles in selecting spouses for their children. Strong cultural norms place emphasis on a girl's virginity which is fundamentally tied to a family's honour. Parents are inclined to marrying off their daughters at a very young age to ensure they marry as virgins and retain the family honour. The need to follow tradition, reinforce ties among or between communities, and protecting girls from out-of-wedlock pregnancy is some of the main reasons given for supporting the practice of child marriage. For instance, betrothing girls to male adults is still a habitual trend among the Hausa-Fulani ethnic group who inhabit northern Nigeria and to an extent, it is also prevalent in other parts of the country such as the Southwest.

Child marriage is also greatly influenced by religion in Nigeria. It has historically been practiced and continues to be practiced.⁷⁶ Due to force exerted on children to marry early in Nigeria, about 48 percent of Muslim girls are married by age 15 and 78 percent are married by the age of 18.⁷⁷ The issue of child marriage is very critical in relation to high school dropout rates for girls and poor educational outcomes in the northeast and northwest. In these areas, about 35 percent of the girls aged six to eleven are out of school. Most of the girls in these areas have either never attended school or are unable to read despite having completed primary school.⁷⁸ Characteristically, the largest concentration of married children is in these states where the median age of first marriage ranges between 15.2 and 15.6 years with 75 percent of girls marrying before the age of 18.⁷⁹

The government of Nigeria has adopted several mechanisms to eradicate the practice of child marriage. The 1999 Federal Constitution of Nigeria is the cornerstone for the protection of the rights of all citizens, including children. In addition, the Child Rights Act of Nigeria was passed in 2003 to incorporate into domestic law the CRC, the ACRWC and the Maputo Protocol.⁸⁰ The Act provides for all the rights and duties of children and integrates all laws protecting the rights and welfare of children into one law as well as outlines the obligations of the government, parents and other relevant institutions. Section 277 of the Act defines a child as anyone below the age 18.⁸¹ The Nigerian Act expressly establishes the age of 18 as the minimum age for marriage. Article 21 of the Act provides that 'no person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever'. Conversely, state laws on the minimum age of marriage vary. Akinwumi argues that

⁷⁵ T. S. Braimah, 'Child marriage in Northern Nigeria: Section 61 of Part 1 of the 1999 Constitution and the protection of children against marriage', *African human Rights Law Journal* 2014-14, pp. 474-488.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Global Education First Initiative, *Accelerating Progress to 2015: Nigeria; A Report Series to the UN Special Envoy for Global Education* (Washington DC: Good Planet Foundation, April 2013).

⁷⁹ Walker 2012, *supra* note 8, p. 16.

⁸⁰ E.E.O Alemika, I. Chukwuma, D. Lafratta, D. Messerli & J. Souckova, 'Rights of the Child in Nigeria: Report on the implementation of the Convention on the Rights of the Child by Nigeria', CLEEN Foundation and World Organisation Against Torture 2005, p. 6.

⁸¹ 2003 Child Rights Act of Nigeria, Section 277.

whereas the minimum age of marriage in Southern Nigeria is between 18 and 21 years, by contrast, it falls between 12 and 15 in most regions in the North.⁸²

It can be argued that Nigeria is not abiding by its international, regional and domestic legal obligations by virtue of section 61 of Part 1 of the Second Schedule to the 1999 Constitution⁸³ which removes any legal restrictions on Islamic and customary marriages. For instance, Braimah argues that ‘there is a strong argument to be made that child marriage is not illegal in Nigeria under Second Schedule Part 1 item 61 of the Nigerian Constitution’⁸⁴ which is part of the exclusive legislative list that bequeaths plenary powers on the arrangement, dissolution and closure of Islamic and customary marriages because such marriages become part of the residual legislative list. He further posits that ‘when a person marries a child under Islamic law in Northern Nigeria and violates the Child Rights Act, such a person cannot be tried since the federal government would be snooping into an Islamic marriage and consequently would be in violation of Part 1 Section 61 of the 1999 Constitution’⁸⁵. As a result, in combating child marriage, Part 1 Section 61 of the 1999 Constitution makes the Child Rights Act ineffective since the 1999 Constitution is the supreme law in Nigeria.

Moreover, the Child Rights Act criminalises sexual intercourse with a child and provides that any individual who violates this provision commits an offence of rape liable to conviction to life imprisonment.⁸⁶ Section 31(3b) provides that when a person has sex with a child, it is irrelevant whether the sexual intercourse was with the consent of the child. Conversely, any person who marries a child, or to whom a child is betrothed or who promotes the marriage of a child or who betroths a child is liable on conviction to a fine of N500,000 or imprisonment for a term of five years or both a fine and imprisonment.⁸⁷ This contradiction of laws requires for a harmonisation of a position that is more favourable to the age restriction at 18 as enshrined in the ACRWC.

On the government’s part, although the states cannot be forced to adopt the age limit of 18 which is prescribed for marriage under the Child Rights Act, the Act does provide a guide and standard to be followed. The age set by the Child Rights Law of a state will apply to both customary and Islamic marriages under which most child marriages occur.⁸⁸ It is therefore important for states to pass this law which forbids parents or guardians or any other person to betroth a child under the age of 18 years to any person, and declares any such betrothal not only void⁸⁹ but also a criminal offence.⁹⁰ The impact of the difference in federal states in Nigeria is that the Child Rights Act cannot be effectively

⁸² O.S. Akinwumi, ‘Legal Impediments on the Practical Implementation of the Child Right Act 2003’, *International Journal of Legal Information* 2009-37, pp. 385-396.

⁸³ Sec 61: ‘The formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto ...’

⁸⁴ Braimah 2014, supra note 76, p. 474.

⁸⁵ *Ibid.*

⁸⁶ Child Rights Act of Nigeria, supra note 82, Section 31 (1) & (2).

⁸⁷ *Idem.*, Section 23.

⁸⁸ Onuora-Oguno & Adeniyi 2015, supra note 19, pp. 78-87; A. C. Onuora-Oguno, ‘constitutionalising the violation of the right of the girl child in Nigeria: exploring constitutional safeguards and pitfalls’, in Laura Hilly & Claire Overman (eds.), *Global Perspectives on Human Rights*, Oxford: The Oxford Human Rights Hub Blog, 2012-2013.

⁸⁹ Child Rights Act of Nigeria, supra note 82, Section 22 (2).

⁹⁰ Child Rights Act of Nigeria, supra note 82, Section 23 (d).

engaged in any legislative initiative of the federal government to tackle the challenge of child marriage. The prevalence of child marriage in most of the Northern states necessitated the advocacy by the Emir of Kano calling for the adoption of a unified minimum age for marriage of every girl child in the Northern part of Nigeria.⁹¹ The inefficiency of the laws is described more aptly by Onuora-Oguno and Adeniyi as the failed promises of the law in ending child marriage.⁹² Another impact of the legal uncertainty is the lack of prosecution for violation of individuals that have engaged in child marriages.

Lastly, Article 222 of the Nigerian Criminal Code provides that ‘any person who unlawfully and indecently deals with a girl under the age of 16 years is guilty of a misdemeanour and is liable to imprisonment for two years with or without caning. If the girl is under the age of 13 years, the person is guilty of a felony and is liable to imprisonment for three years with or without caning.’⁹³

I.3.2 Uganda

In Uganda, just like other countries in Sub-Saharan Africa, many factors contribute to the pervasiveness of child marriages. Uganda is an underdeveloped country beset with several socio-economic problems⁹⁴, and marriage is mostly perceived as a critical protection of a girl’s honour.⁹⁵ Marriage at an early age is regarded as a means of preventing premarital sex and to protect the child from sexual immorality.⁹⁶ Child marriage is also used to construct family alliances, create economic partnerships or strengthen political ties.⁹⁷ Poverty and underdevelopment are particularly fundamental as underlying causes that fuel child marriages.⁹⁸ Girls in Uganda are often considered as an economic burden to their families, a situation that stresses the value of marriage because the family will receive valuable resources and money from the groom in return for their daughter.⁹⁹ Financial benefits associated with marriage contribute to sustainment of the practice. This is supported by the argument of Parson et al. that in situations where ‘bride price’ is practiced (i.e. a groom offers money and other resources to the bride’s family in exchange for marriage), families may possibly obtain instantaneous monetary benefits from marrying off their daughters.¹⁰⁰ Park moreover contends that political volatility and

⁹¹ A. Muhammad, ‘It’s time to peg marriage age in Nigeria, says Emir of Kano’, at: <http://www.vanguardngr.com/2016/05/time-peg-marriage-age-nigeria-says-emir-kano/> (accessed on 20 March 2017).

⁹² See generally Onuora-Oguno & Adeniyi 2015, *supra* note 19, p. 79.

⁹³ 1990 Criminal Code Act, Chapter 77 Laws of the Federation of Nigeria, Article 222.

⁹⁴ D. K., Kaye, F. Mirembe, A. Johansson, A.M. Ekstrom, & G.B. Kyomuhendo, ‘implications of bride price on domestic violence and reproductive health in Wakiso District, Uganda,’ *African Health Sciences* 2007-5, pp. 300–303.

⁹⁵ Women Living Under Muslim Laws (WLUML), ‘Child, Early and Forced Marriage: A Multi-Country Study’, A Submission to the UN Office of the High Commissioner on Human Rights (OCHCR), WLUML 2013, p. 13, at: <http://www.wluml.org/sites/wluml.org/files/UN%20report%20final.pdf> (accessed on 20 March 2017).

⁹⁶ *Ibid.*

⁹⁷ Swart & Hassen 2016, *supra* note 47, p. 458-475.

⁹⁸ *Ibid.*; See also E.S. Nwauche, ‘Child marriage in Nigeria: (Il)legal and (un)constitutional’, *African Human Rights Law Journal* 2015-15, pp. 421-432.

⁹⁹ *Ibid.*

¹⁰⁰ Parsons et al. 2015, *supra* note 1, p. 12-22.

armed conflicts which make communities poor and deprived are also causal factors of child marriages.¹⁰¹

Men and women in Uganda who are of the age of 18 years and above have the right to marry and to found a family and they are entitled to equal rights in marriage, during marriage and at its dissolution, in accordance with Article 31(1) of the Constitution of Uganda. The Constitution of Uganda sets the marriageable age for both sexes with the age of majority for all purposes at 18 years. Meanwhile, the Hindu Marriage and Divorce Act (Cap. 250) provides for the exception of parental consent.¹⁰² Also, a marriage is void under the Customary Marriage Registration Act (Cap. 248) when the male party is not yet 18 and the female party is not yet 16.¹⁰³ Even though both the Customary Marriage Registration Act (Cap. 248) and the Hindu Marriage and Divorce Act (Cap. 250) provide that the minimum age of marriage for women is 16, the Constitutional provision provides for the age of 18 for both men and women. The provisions of the Customary Marriage Act and the Hindu Marriage Act regarding the minimum age for girls are void because the Constitution is the supreme law of Uganda.¹⁰⁴ The Constitution is superior to both the Hindu and Customary Acts and, because it does not provide any exceptions, it seems to invalidate the younger age set by those acts.

The 2003 Children's Act (Cap. 59) of Uganda is the basic policy that protects and promotes the rights and welfare of children. Article 5(2) also obliges any person having custody of a child to protect the child from discrimination, violence and abuse.¹⁰⁵ Article 7 protects children from harmful customary practices and provides that 'it shall be unlawful to subject a child to social or customary practices that are harmful to the child's health'.¹⁰⁶ The Act does not expressly protect children from marriage. However, Schedule 4(3) provides that the rights in the Act should be exercised in addition to all the rights provided for in the CRC and the ACRWC that are not specifically mentioned in the Act.¹⁰⁷ Considering the pervasiveness of the practice of child marriage in Uganda as discussed above, it can be argued that Uganda is not implementing its obligations under international and regional laws to prohibit child marriage. The provisions in the current legislative mechanisms are generally vague and allow for the adaptation of international and regional standards, consequently diminishing the protection they provide for children.

¹⁰¹ A.S.J. Park, 'Forced marriage, girl soldiers and the Special Court for Sierra Leone', *Social and Legal Studies* 2006-15, pp. 327.

¹⁰² 1961 Ugandan Hindu Marriage and Divorce Act (Cap. 250). Section 2(4) provides that 'where the bride has not attained the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage'.

¹⁰³ 1973 Ugandan Customary Marriage Registration Act (Cap. 248). Section 11(1, 2) provides that 'a customary marriage shall be void if (1) The female party to it has not attained the age of sixteen years and (2) The male party to it has not attained the age of eighteen years'.

¹⁰⁴ 1995 Constitution of the Republic of Uganda. Article 2 provides that 'the Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

¹⁰⁵ 1997 Children Act of Uganda, Cap 59, Article 5(2).

¹⁰⁶ *Idem*, Article 7.

¹⁰⁷ *Idem*, Schedule 4(3).

Moreover, Section 129(1)¹⁰⁸ of the Penal Code of Uganda (Cap 120) as amended by Act 8 of 2007 criminalises any form of sexual act with a person below the age of 18. Even though there are no criminal penalties for violating the minimum age for marriage, there are no exceptions to the crime of defilement (sexual abuse) even if they are allegedly married. Therefore, making consummation of a marriage to a child constitutes defilement which carries heavy penalties. The problem arises with the challenge of enforcement. It can therefore be argued that the laws in Uganda do not adequately tackle the practice of child marriage: The Constitution provides something, but the law does not provide the means to adequately protect the constitutional provisions.

Due to the inadequacy of the laws of Uganda to protect girls against the practice of child marriage, Uganda is still among the top twenty countries with the highest rates of child marriage¹⁰⁹, with about twelve percent of women married by age 15 and 46 percent by age 18.¹¹⁰ In the poorest areas of the country, an estimated 62 percent of girls gets married before the age of 18 compared to 26 percent in rich areas.¹¹¹ Uganda is also in the top 20 countries with the highest rates of early childbearing; 36 percent of girls has given birth by the age of 18 and six percent has done so by the age of 15.¹¹²

From the foregoing, it can be argued that although most African countries have passed laws to protect children against early marriage, these laws lack effective enforcement. As revealed through this section, most of the international human rights instruments signed and ratified by these countries are also poorly enforced at the national level.¹¹³ This has been succinctly emphasised by the 57th Session of the Commission on the Status of Women on the need to end child marriage, when it was stated that African governments should:

‘review, enact and strictly enforce laws and regulations concerning the minimum legal age of consent and the minimum age for marriage, raising the minimum age for marriage where necessary, and generate social support for the enforcement of these laws in order to end the practice of child, early and forced marriage’.¹¹⁴

States should take their international, regional and domestic obligations to combat child marriage seriously because when they permit child marriages, they are not only violating

¹⁰⁸ 2007 Penal Code of Uganda (Cap. 120) as amended by Act 8 of 2007. Section 129 (1) recognises sex with persons under eighteen years of age as defilement. It provides that ‘any person, who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.’

¹⁰⁹ Human Rights Watch, *Q & A: Child Marriage and Violations of Girls’ Rights*, at: <http://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights> (accessed on 3 March 2017).

¹¹⁰ A. Davis, C. Postles & G. Rosa, ‘A girl’s right to say no to marriage: Working to end child marriage and keep girls in school’, *Working: Plan International* 2013, p. 19.

¹¹¹ UNICEF in Uganda, ‘Keeping Children Alive, Safe, Learning’, at: http://www.unicef.org/uganda/UNICEF_Uganda_Keeping_Children_Alive_Safe_and_Learning_2012.pdf (accessed on 3 March 2017).

¹¹² UNICEF, ‘Progress for Children: A Report Card on Adolescents’ 25 (2012) at: http://www.unicef.org/uganda/Progress_for_Children_-_No._10_EN_04272012.pdf.

¹¹³ Equality Now 2013, *supra* note 27, p. 15.

¹¹⁴ Commission for the Status of Women ‘Report on the fifty-seventh session’ (2013) New York, Para. B, p. 12.

the CRC, CEDAW and the ACRWC, but also the UDHR which is generally considered customary international law.¹¹⁵ It is critical to recognise, as discussed above, that child marriage is a deeply-entrenched cultural practice. The implication is that as a cultural practice, it is often unchallenged by the state since governments have a tendency to sustain the continuation of unfair practices such as child marriage. However, the content of the ACRWC makes it clear that the rights guaranteed in the Charter are superior over ‘any custom, tradition, cultural or religious practice’ inconsistent with such rights.¹¹⁶

Nevertheless, laws prohibiting child marriage often have little effect. For instance, in Nigeria, legal restrictions on the minimum age of marriage have not necessarily changed the practice.¹¹⁷ The ineffectiveness of domestic legislations is related partly to socio-cultural and religious customs.¹¹⁸ Beyond legal reform, other interventions are needed to curtail the prevalence of child marriage.¹¹⁹

II. Beyond Law: The Nexus Between Education and Child Marriage

Socio-economic status, educational levels, and social and cultural norms such as those related to faith, influence the likelihood of a girl being married at a young age.¹²⁰ Parson et al. observe that the poorest countries have the highest child marriage rates and it occurs more commonly among the poor who have less resources and prospects to invest in alternative options for the girl child.¹²¹ Education can be described as the process of becoming aware of one’s environment for better and informed decision making.¹²² It presents the greatest tool to affect change in the protection of children against child marriage in Africa. The right to education is a fundamental human right guaranteed to all regardless of age, gender and other factors by a range of international and regional human rights instruments.¹²³ Education is not just a human right, but also a dominant

¹¹⁵ Swart & Hassen 2016, supra note 47, p. 458-475.

¹¹⁶ ACRWC, supra note 50, Article 1(3).

¹¹⁷ N. Toyo, ‘Revisiting equality as a right: The minimum age of marriage clause in the Nigerian Child Rights Act, 2003’, *Third World Quarterly* 2006-27, pp 1299–1312.

¹¹⁸ P.S. Prettitore, ‘Family Law Reform, Gender Equality, and Underage Marriage: A View from Morocco and Jordan’, *The Review of Faith & International Affairs* 2015-13, pp. 32–40; E. Scolaro, A. Blagojevic, B. Filion, V. Chandra-Mouli, L. Say, J. Svanemyr, & M. Temmerman, ‘Child Marriage Legislation in the Asia-Pacific Region’, *The Review of Faith & International Affairs* 2015-13, pp. 23–31.

¹¹⁹ Parsons et al. 2015, supra note 1, p. 12-22.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Kumar and Ahmad define education as the purposive, conscious or unconscious, psychological, sociological, scientific and philosophical process which brings about the development of the individual to the fullest extent and also brings about the maximum development of society in such a way that both enjoy maximum happiness and prosperity. They summarised this definition as: ‘the development of an individual according to his or her needs and demands of society, of which he or she is an integral part’. See, S. Kumar & S. Ahmad ‘Meaning, aims and process of education’, at: <https://sol.du.ac.in/Courses/UG/StudyMaterial/16/Part1/ED/English/SM-1.pdf> (accessed on 26 March 2017).

¹²³ Including the UDHR and the CEDAW at the international level; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, the African Charter on Human and Peoples’ Rights, and the Maputo Protocol and the Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms at the regional level.

instrument for empowering girls and women as well as a strategic investment for development. Educating girls has a clear multiplier effect: girls and women who are educated are healthier, engage more in the formal labour market, earn added income and usually have less children.¹²⁴ The benefits of education consequently spread across generations and to communities at large. It is observed that when girls have better educational and economic opportunities, they are more likely to pursue such opportunities rather than having children in their teenage years.¹²⁵

Education gives girls a voice and agency¹²⁶ empowering them to make decisions about their lives and acting on those decisions without fear of reprisal or violence.¹²⁷ Closely related to a lack of voice and agency and rooted in gender inequality is their non-participation in decision making on issues pertinent to their own lives as well as those facing their family, and/or community. Child marriage reveals a lack of agency in a number of ways. For instance, child marriage deprives girls of their basic right to free and full consent to marry at full age (eighteen or as enshrined in the applicable national law) as provided in the UDHR. Klugman et al. assert that child marriage increases girls' risk of exposure to other forms of gender-based violence such as physical and emotional abuse by husbands and other family members.¹²⁸ Lack of education is therefore both a risk factor and a result of child marriage. For instance, it has been observed that in sub-Saharan Africa, women who married early are over five percent less likely to be literate and over eight percent less likely to have any secondary education.¹²⁹

Nguyen and Wodon argue that every year of child marriage drastically shrinks the likelihood of girls completing secondary school.¹³⁰ This exacerbates the challenges faced by child brides because they often experience overlapping vulnerabilities since they are young, poor and undereducated. UNICEF argues that education is the bedrock of sustainable development and serves as the pivot around which socio-economic and political developments as well as cultural transformation of a society revolve.¹³¹ This is because child marriage in Africa is generally due to underdevelopment and socio-religious factors.¹³² As discussed above, the practice of child marriage in Sub-Saharan Africa, like in other developing countries, is linked to underdevelopment, socio-cultural and religious traditions as well as economic status.¹³³

¹²⁴ J. Klugman, L. Hanmer, S. Twigg, T. Hasan, & J. McCleary-Sills, 'voice and agency: empowering women and girls for shared prosperity', *World Bank Group* 2014, p. 14.

¹²⁵ Parsons et al. 2015, supra note 1, pp. 12-22.

¹²⁶ Sen defines agency as what a person is free to do and achieve in pursuit of whatever goals or values he or she regards as important. See A. Sen, 'Well-being, Agency, and Freedom: The Dewey Lectures 1984', *The Journal of Philosophy* 1985-82, pp. 169-221.

¹²⁷ Klugman et al. 2014, supra note 125, p. 14.

¹²⁸ *Ibid.*

¹²⁹ E. Field & A. Ambrus, 'Early marriage, age of menarche, and female schooling attainment in Bangladesh', *Journal of Political Economy* 2008-116, pp. 881-930; M.C. Nguyen, & Q. Wodon, Estimating the Impact of Child Marriage on Literacy and Education Attainment in Africa, *World Bank Group* 2013, p. 22.

¹³⁰ *Ibid.*

¹³¹ United Nations International Children's Emergency Fund (UNICEF), 'Early Marriage: A harmful traditional practice. A statistical exploration', *UNICEF* 2005, p. 1.

¹³² Wodon 2015, supra note 21, p. 12.

¹³³ Q. Wodon, 'Child marriage, family law, and religion: An Introduction to the Fall 2015 Issue', *The Review of Faith & International Affairs* 2015-13, pp. 1-5.

Education is recognised as a dynamic tool for change due to its transformative power in promoting and improving the status of an individual.¹³⁴ The Department for International Development of the United Kingdom argues that educating girls is a critical investment for the growth and development of not only themselves but their entire societies or countries.¹³⁵ This is due to the profound opportunity that education can offer for girls to claim their rights as well as in achieving respectable statuses in society including political representation and economic independence.¹³⁶ In addition, education enables girls to choose as well as create their own future.

The other way around, child marriage can be devastating for the education and personal development of children.¹³⁷ Mathur et al. argue that child marriage has negative effects on girls' education since girls with low levels of education are more likely to be married early.¹³⁸ Mensch et al. contend that child marriage virtually puts an end to a girl's education.¹³⁹ The main issue is that being married at a young age in combination with a lack of education limits a child's capacity for interaction and its ability to reach out to support systems to get the skills, mobility and network: their ability to overcome poverty is constrained. In support of this, Jejeebhoy posits that lack of education affects the girls' health, physical safety and autonomy which in effect deprive them of their basic human rights as well as impedes their social and economic development prospects.¹⁴⁰

Sadly, millions of girls around the world are barred from accessing and completing their education due to negative social norms about gender roles that limit girls' agency - the choices they are allowed to make about their own lives. These norms are mostly replicated in recognised societal structures such as discriminatory laws and policies. In 2014, Klugman et al. revealed that in about 128 countries around the world, there was at least one law that discriminated against women and girls, with 56 countries having more than five, and 28 countries having more than ten of such laws.¹⁴¹ These unfavourable norms are reinforced through legislation and sanctions imposed by the state.¹⁴² These norms differ across regions and countries. In the context of education, adverse norms include

¹³⁴ A.C. Onuora-Oguno, 'Enhancing and eliminating discrimination: Girl child empowerment and access to quality basic education in Nigeria', *Yonsei Law Journal* 2015-6, pp. 75.

¹³⁵ Department for International Development, 'Programme to end child marriage', at: iatidf.gov.uk/iati_documents/3707292.docx (accessed on 6 March 2017).

¹³⁶ C. Anyanwu & A.C. Onuora-Oguno, 'Ten Years of the AU Protocol on the Rights of Women in Africa: An Overview of the girl child access to basic education in Africa', 2013, p. 74 at: www.equalitynow.org/sites/.../MaputoProtocol_JourneytoEquality.pdf (accessed on 6 March 2017).

¹³⁷ S. Jain & K.C. Kurz, 'New insights on preventing child marriage: A global analysis of factors and programs', *International Centre for Research on Women* 2007, pp. 1-60; S. Mathur, M. Greene & Anju Malhotra, 'Too young to wed: The Lives, Rights and Health of Young Married Girls', *International Center for Research on Women* 2003, p. 2.

¹³⁸ B.S. Mensch, S. Singh & J.B. Catherine, *Trends in the Timing of First Marriage Among Men and Women in the Developing World*, New York: Population Council 2005. p. 118.

¹³⁹ *Ibid.*

¹⁴⁰ S.J. Jejeebhoy, 'Education and women's age at marriage' in S.J. Jejeebhoy (ed.), *Women's Education, Autonomy, and Reproductive Behaviour: Experience from Developing Countries*, Oxford: Clarendon Press 1995, p. 60.

¹⁴¹ Klugman et al. 2014, *supra* note 125, p. 14.

¹⁴² J. Lejeune & G. Mackie, 'Social dynamics of abandonment of harmful practices: A new look at the theory', *UNICEF Innocenti Research Centre* 2006, pp. 1-48, at: <http://pages.ucsd.edu/~gmackie/documents/UNICEF.pdf> (accessed on 16 March 2017).

attitudes and practices which devalue girls' education and development, sexism in the curricula, violence in and around schools, early childbearing, as well as early marriage.¹⁴³

This depiction persists despite the fact that an increasing number of governments now consider child marriage illegal. However, the national laws in these countries are often not effectively enforced because of countervailing norms and widespread exceptions to international standards. Vogelstein contends that customary or religious law in some countries such as Nigeria makes exceptions for the minimum age of marriage allowing a girl to marry before age 18 with her parents' consent.¹⁴⁴ There is therefore a variety of social, structural and economic barriers to girls' enrolment and completion of both primary and secondary education.

A study undertaken by the International Centre for Research on Women (ICRW) through analysing global data discovered that girls' education is 'the single most important factor connected with child marriage'.¹⁴⁵ UNICEF argues that a girl with ten years of education has a six times lower chance of being pushed into marriage before the age of 18.¹⁴⁶ This confirms the findings of Clark et al. that variations in the duration of school careers by age at first marriage were evident both in countries with low levels of overall education including Burkina Faso, Ethiopia and Mali and in countries with higher levels of education such as South Africa and Zimbabwe.¹⁴⁷ This indicates that early enrolment and longer duration of education particularly the 'transition to secondary level' is very critical in protecting girls from child marriage. The analysis above shows a strong link between age at marriage and higher education attainment.

Furthermore, Wodon contends that in countries with higher prevalence rate of child marriage, girls with three years of education or less are up to six times more likely to marry young than girls with secondary education.¹⁴⁸ This indicates that child marriage reduces educational attainment and vice versa. Reversely, girls with less access to quality education are more likely to marry early. A World Bank study on child marriage and education reveals that child marriage has a vast negative effect on educational attainment.¹⁴⁹ Two approaches have been used to estimate this effect. Nguyen and Wodon observe that 'child marriage and to a much lower extent pregnancies contribute to between 15 and 20 percent of school dropouts'¹⁵⁰. Using contemporaneous and past incidence of child marriage in the area where a girl lives, they realised that in Africa each

¹⁴³ F. Gennari, A. Urban, J. McCleary-Sills, D. Arango, & S. Kiplesund, 'Violence against women and girls: education sector brief', *World Bank Group* 2015, p. 3.

¹⁴⁴ R. Vogelstein, 'Ending child marriage: How elevating the status of girls advances U.S. Foreign Policy Objectives', *Council on Foreign Relations* 2013.

¹⁴⁵ Jain & Kurz 2007, *supra* note 138.

¹⁴⁶ United Nations International Children's Emergency Fund (UNICEF), 'Child marriage', at: <http://unicef.in/Whatwedo/30/Child-Marriage#sthash.uDHhnxiU.dpuf> (accessed on 16 March 2017).

¹⁴⁷ S. Clark, J. Bruce & A. Dude, 'Protecting young women from HIV/AIDS: The case against child and adolescent marriage', *International Family Planning Perspectives* 2006-44, pp. 79-88.

¹⁴⁸ Q. Wodon, 'Eliminating child marriage to boost girls' education', at: <http://blogs.worldbank.org/education/eliminating-child-marriage-boost-girls-education> (accessed on 16 March 2017).

¹⁴⁹ Klugman et al. 2014, *supra* note 125.

¹⁵⁰ M.C. Nguyen & Q. Wodon, 'Measuring child marriage', *Economics Bulletin* 2012-32, pp. 398.

year of child marriage decreases the probability of literacy by 5.6 percent and the chance of completing secondary school by 6.5 percent.¹⁵¹

Unfortunately, in most African countries, unequal traditional gender norms allow parents to place less value on their daughter and to regard her as a drain on limited family resources. This perception results in strong discrimination against girls based on their gender and leads to low investment in the education and skills acquisition of girls, reinforcing the practice of marrying girls off at an early age. It should be emphasised that this cultural bias (gender discrimination against women) is linked to economic constraints due to poverty and underdevelopment. It is also linked to the perception that boys are more skilful and talented than girls and therefore less value is placed on girls' education.¹⁵² This inevitably reinforces the perception that a 'good marriage' is the most important way to promote and secure a girl's wellbeing in society.¹⁵³

Myers and Harvey attribute this phenomenon to the failure of the government and the education sector as well as donors to identify the detrimental effect of child marriage on girls' education, especially basic education.¹⁵⁴ They contend that instead there has been a tendency to focus policy discourses on specific issues such as health, maternal mortality, HIV and AIDS, resulting in a failure to develop a nuanced response to address the complex challenges of child marriage that are not limited to violations of health rights but to other rights such as to education, and to development. Therefore, strategies to curb child marriage should take account of the importance of education in creating an environment that understands and promotes the rights and welfare of girls.

Achieving this would require a rights-based approach to education planning and delivery, which implies translating 'human rights into educational strategies and practices by moving beyond equal access to education and equality in education to education for equality'.¹⁵⁵ Walker contends that one key, but not yet fully harnessed strategy, is to use girls' education as a mechanism for eradicating child marriage. There is a renewed global consensus on the importance of using education as a strategy to combat child marriage even though it is yet to be translated into action in most African countries.¹⁵⁶

III. Using Education to Combat Child Marriage

In translating the international, regional and national normative frameworks to end child marriage at the local levels, governments and international organisations should map comprehensive and integrated strategies centring around education. As Walker argued, in Africa there is a fundamental policy gap between education and strategies to end child marriage that must be bridged urgently.¹⁵⁷ The recommendations discussed below offer

¹⁵¹ *Ibid.*

¹⁵² Walker 2012, *supra* note 8, pp. 231-240.

¹⁵³ Plan International 2013, *supra* note 25, p. 4.

¹⁵⁴ J. Myers & R. Harvey, 'Breaking vows: Early and forced marriage and girls' education', *Working: Plan International* 2011, p. 3.

¹⁵⁵ K. Tomasevski, 'Human rights and poverty reduction, girls' education through a human rights lens: what can be done differently, what can be made better', at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4349.pdf> (accessed 27 March 2017).

¹⁵⁶ Walker 2012, *supra* note 8, p. 1.

¹⁵⁷ Walker 2012, *supra* note 8, p. 2.

innovative and responsive strategies suitable for eradicating child marriage in Africa in general and Nigeria and Uganda in particular.

African governments should take the lead in approaching the problem of child marriage as an issue of education. International and regional institutions and policy makers working on girls' education should work closely with national governments and other stakeholders working to end child marriage to formulate responsive strategies. This should result into the mapping out of tools and programmatic initiatives to maximize the synergies between girls' education policies and their reproductive health rights.¹⁵⁸ Regional human rights policies and programmes on child marriage must be extended to cover girls' education to ensure that the human rights challenges, and especially the right to education, are addressed.

Many international development partners are implementing girls' educational projects across Africa and most government institutions must renew their support for girls' education.¹⁵⁹ A comprehensive and integrated country by country review to evaluate the impact of projects on girls' education on child marriage rates as well as to compare implementation strategies and approaches is a necessity.¹⁶⁰

Furthermore, the African Commission on Human and Peoples' Rights through the NGO Forum should use all available instruments to exert pressure on the Nigerian and Ugandan governments to implement policies in line with the 2013 Joint Statement to Governments on Innovation in Girls' Education (The Joint Statement).¹⁶¹ This Joint Statement urges governments to increase girls' enrolment and attendance through enhancing their access to all levels of education and their right to a place in a school free of intolerance.¹⁶² It further encourages members states to take swift action to eliminate barriers to girls' education and to institute the innovations identified above.¹⁶³ This can be achieved through the provision of free compulsory basic education at least up to the primary level, the creation of awareness among parents and the wider society of the benefits of education and through instituting momentary exceptional measures to guarantee girls' participation in fields of study in which females are underrepresented. Providing sanitary facilities and safe environments devoid of sexual violence and harassment including during transit to and from school is another measure that is worth considering. To make a sustainable impact, empowering girls through transforming the mode of delivery from didactic to constructivist approaches to allow girls to become active and confident and assertive learners as well as combatting gender stereotypes that replicate patriarchal norms from curricula, textbooks and teaching materials is also indispensable.

In addition, the Nigerian and Ugandan governments must work around bureaucratic politics to bring girls' educational policies and child protection laws in alignment with the

¹⁵⁸ *Idem*, p. 28.

¹⁵⁹ For example, the Open Society Initiative, the Ford & MacArthur Foundations, World Vision, Plan & Care International and UNICEF.

¹⁶⁰ Walker 2012, *supra* note 8, p. 28.

¹⁶¹ African Commission on Human and Peoples' Rights, 'Joint Statement on the International Day of the Girl Child by the African Commission on Human and Peoples' Rights (The Joint Statement)', <http://www.achpr.org/press/2013/10/d178/> (accessed on 27 March 2017).

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

new international strategy in which education is pivotal. For instance, in Nigeria, legal problems such as the lack of implementation of laws by federal states are problematic in the fight against child marriage. In Uganda, only the constitution provides that marriage under the age of 18 is prohibited, the Child Rights Act does not incorporate international standards. Domestic laws need comply with international standards and policies and programmes that implement these standards should concretise them.

There is also a need for capacity-building training for women who are leading girls' education campaigns and initiatives to champion increased expenditure, school to work policies for girls, alternative non-formal education models for married girls and gender responsiveness curricula within education bureaucracies at all levels.¹⁶⁴ These training programmes must target women to develop leadership skills of girls' education activists to enhance the development of holistic gender responsive models to end child marriage.

As has been demonstrated in this paper, child marriage is a cross-sectoral issue that fails to be addressed by governments because of endemic problems such as gender stereotypes, poverty, and lack of appropriate laws. Article 10(3) of the Maputo Protocol, ensuring that sufficient budgetary allocation is committed to enhancing the education of girls should be enforced as a viable means of ending child marriage.¹⁶⁵ For instance, Article 10(3) of the Maputo Protocol commits African states to make such economic decisions. African governments should moreover try to engage with international stakeholders and donors to implement this issue as a priority.

Conclusion

Child marriage is a cross-cutting human rights issue affecting children's and women's rights to health, education, equality, non-discrimination, and to live free from violence and exploitation. It requires a holistic and comprehensive response by states working in collaboration and partnership with a range of stakeholders. African states should address child marriage through a holistic child protection framework by adopting both legal and social approaches that focus on the education of the girl child. Promoting girls' education must be recognised as an important strategy towards ending child marriage in Sub-Saharan Africa. Despite the pragmatic nature of this strategy, there is a need to overcome political bureaucracy and a lack of guidance on how to implement policies on girls' education by the appropriate institutions. These institutions' ability to implement such an integrated intervention with development initiatives (national and international) should prioritise this goal in order to be able to realise full effect of this strategy.

¹⁶⁴ Walker 2012, *supra* note 8, p. 231-240.

¹⁶⁵ Onuora-Oguno 2015, *supra* note 135, p. 75.