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CHILD MARRIAGE: AN OBSTACLE TO SOCIO- ECONOMIC DEVELOPMENT IN SUB-SAHARAN AFRICA

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SUMMARY

Africa is among the regions in the world with a high rate of child marriage. In many countries in sub-Saharan Africa, the minimum legal age for the marriage of girls is still under 18 years. Although ending child marriage is now one of the goal targets of the United Nations' Sustainable Development Goal (SDG) of Gender Equality (goal 5), investment to end the practice remains limited across Africa. Apart from its negative impact on the physical growth, health, and mental and emotional development of a girl child, it is also linked to the unequal position of women in society, and limits their access to owning property, formal employment, and education. Girls who marry young are more likely to be poor and remain poor. Child marriage affects the entire society, as it reinforces a cycle of poverty and perpetuates illiteracy and malnutrition, as well as a high infant and maternal mortality rate. Furthermore, child marriage undermines the achievement of eight (or almost half) of the 17 SDGs. This article examines the socio-economic impact of child marriage in Africa. It considers five domains of impact, namely lost opportunity to grow; cost facing healthcare systems; lost education and earnings; lower growth potential, and the perpetuation of poverty. It seeks to establish a link between child marriage and the socio-economic status of African states. The article argues that women and girls constitute over 50 per cent of the African population and give birth to the other 50 per cent. Therefore, their interests must be protected to ensure the development of the African continent.

1. INTRODUCTION

There is a growing body of literature on the harmful consequences of child marriage and children's rights, particularly in Africa.¹ While the focus has mainly been on the link between child marriage and the violation of human rights, hardly any research has explored the link between this practice and its socio-economic impact on society.



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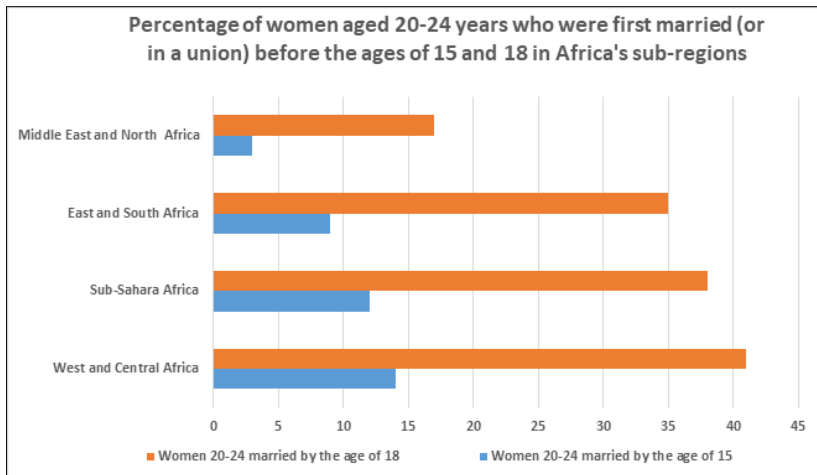


1 See, for example, Zechenter 1997; Akia: 2014; Warner 2004; Girls not Brides 2014; Odala 2013; Msuya 2017; Human Rights Watch 2014; African Commission on Human and Peoples' Rights 2018:3; Owen 2018:13; UNICEF 2015a:22; Maswikwa *et al* 2015:1; Msuya 2019b:295-315.

Taking this into account, the purpose of this article is to analyse and discuss the complex interplay between child marriage and its socio-economic effect in Africa. It also sets out the legal frameworks that prohibit child marriage and describes some of the circumstances that result from laws being ineffective in practice. Without discounting the needs of children who are already married or adults who were married as children, it outlines a selection of successful interventions and makes recommendations for the progressive elimination of child marriage in Africa.

The article adopts the social legal research approach, whereby a desk review of the existing body of literature and research concerning the effects of child marriage is considered. An analysis of international instruments and domestic laws that expound the subject of this article is conducted. It also examines various recommendations, case studies and toolkits on child marriage, as documented by research studies, reports, meetings, conferences, policy statements, and the media. Part one of the article identifies the human rights principles that relate to the prohibition of child marriage. Part two examines factors that fuel child marriage in Africa and explores some country-specific studies as well as some of the new law-related developments regarding child marriage in those countries. Part three argues that child marriage is setting back Africa's socio-economic development. Part four makes recommendations for a holistic approach to reforming the law and addressing child marriage.

2. INTERNATIONAL HUMAN RIGHTS PRINCIPLES THAT ADDRESS CHILD MARRIAGE



It has been established that, in Africa, one in three girls is married by the age of 18 years and one in nine by the age of 15 years. Although the largest number of child brides are in South Asian states, those with the highest rates

of child marriage are in Africa.² Thus, worldwide, 39 per cent of women aged between 20 and 26 years, who were married before they attained the age of majority, are from sub-Saharan countries.³ Countries reported to have a high rate of child marriage in Africa are Niger (75 per cent), Chad and Central Africa Republic (68 per cent), Guinea (63 per cent), Mozambique (56 per cent), Mali (55 per cent), Sudan and Burkina Faso (52 per cent), Malawi (50 per cent), Madagascar (48 per cent), Eritrea (47 per cent), Somalia (45 per cent), Sierra Leone (44 per cent), Zambia (42 per cent) and Ethiopia (41 per cent).⁴ Globally, the practice of child marriage is a violation of childhood of both sexes, as 115 million men were married before the age of 18 years.⁵ Although boys who marry in childhood do not face the same risks and consequences as girls, due to biological and social differences, they have still experienced violation that shortens their childhood.⁶

The highest level of child marriage is found in sub-Saharan Africa (UNICEF global databases (2018), based on DHS, MICS and other national surveys (2010-2017).

The United Nations Convention on the Rights of the Child (UNCRC) defines a 'child' as "every human being below the age of eighteen, unless under the law applicable to the child, majority is attained earlier".⁷ The United Nations Children's Fund (UNICEF)⁸ regards child marriage or early marriage as any marriage where at least one of the parties is under the age of 18 years.⁹ A child marriage is also considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent, due to their young age.¹⁰ The younger a child is, the less control s/he has to give his/her free consent to marriage. Child marriage can amount to forced marriage if the child has been given in marriage against his/her will, or is "subjected to control a sense of 'ownership' particularly through abuse and threats", and is exploited once within a marriage with the inability to leave a marriage in which s/he no longer wishes to remain.¹¹ Several international and regional treaties consider child marriage to be a violation of human rights. At the international level, the Universal Declaration of Human Rights (UDHR) provides that "men and women of full age ... are entitled to equal rights as to marriage, during marriage and at its dissolution" and that "marriage shall be entered into only with the free and full consent of the intending spouses".¹² This has also been reaffirmed by the United Nations Convention on Consent

2 UNFP 2012:12.

3 UNICEF 2013a:5.

4 Maswikwa *et al* 2015:19.

5 UNICEF 2019:2.

6 UNICEF 2019:3; Nsingi 2016:12.

7 UNCRC 1990:art. 1.

8 His acronym stems from the agency's erstwhile title 'United Nations International Children's Emergency Fund'.

9 UNICEF 2019:4.

10 Swart & Hassen 2016:458-475.

11 Freedom United 2019:1.

12 UDHR of 1948:art. 16(1) and (2).

to Marriage, Minimum Age or Marriage and Registration of Marriages.¹³ Child marriage is linked to other rights such as the right to protection from all forms of abuse, the right to be protected from harmful traditional practices, and the right to express views freely.

Child marriage is also condemned by the United Nations' so-called "international bill of rights for women",¹⁴ namely the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).¹⁵ Art. 16 hereof states that men and women have equal rights to enter into marriage and requires all states parties to record all marriages in its vital statistics registry and, importantly, to consider any marriage of a child under the state's specified minimum age as being non-binding.¹⁶ The United Nations Commission on the Status of Women (UNCSW) adopted a resolution in 2013, which appeals to states to abolish child marriage and forced marriage.¹⁷ In its resolution adopted on 17 November 2014, UNCSW reaffirmed the necessity to abolish child marriage, with an emphasis on education as a way to improve women's economic power and general empowerment, in the following terms:

Recognizing that child, early and forced marriage is a harmful practice that violates, abuses and impairs human rights and is linked to and perpetuates other harmful practices and human rights violations and that such violations have a disproportionately negative impact on women and girls, and underscoring the human rights obligations and commitments of States to promote and protect the human rights and fundamental freedoms of women and girls and to prevent and eliminate the practice of child, early and forced marriage.¹⁸

The UNCRC established the principle of "in the best interests of the child" for evaluating the laws and practices of states with respect to the protection of children, and certainly the effect of child marriage suggests that it is not best for children.¹⁹ State parties to UNCRC are obliged "to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children".²⁰ Furthermore, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that marriage must be entered into with the free consent of the intending spouses.²¹ The Concluding Comments of the ICESCR expounded further concerns about child marriage

13 OHCHR 1964:art. 2.

14 See <https://www.un.org/womenwatch/daw/cedaw/> (accessed on 29 July 2020).

15 It was adopted in 1979 and came into force in 1981.

16 CEDAW of 1979:art. 16(2).

17 UNCSW UN headquarters in New York on the 57th CSW, 4-15 March 2013.

18 UN Resolution on Child, Early and Forced Marriage, 17 November 2014.

19 Art. 3(1) of the UNCRC provides that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Art. 19.1 of the UNCRC also requires states to take all appropriate measures to protect the child from all forms of abuse, neglect, or maltreatment while in the care of parents.

20 UNCRC 1990:art. 24(3).

21 ICESCR:art. 10.

and the application of art. 10, such as that differences in marriageable age between males and females violated this article.²² The ICESCR Concluding Comments in France professed that early marriage had a negative impact on the right to health, education, and work.²³ The Committee also recommended that the legal minimum age of marriage be raised to 18 years.²⁴

At the regional level, art. 21(2) of the African Charter on the Rights and Welfare of the Child (ACRWC),²⁵ adopted by the (then) Organisation of African Unity (OAU),²⁶ expressly provides that

*[c]hild 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 and make registration of all marriages in an official registry compulsory.*²⁷

The ACRWC thus indisputably fixes the minimum age of marriage at 18 years, with no exceptions being made for religion or culture, or for where the consent of a government authority or that of the child's parents or guardians has been given.²⁸ All African countries signed the ACRWC, although the Central African Republic, Sahrawi Arab Democratic Republic, the Democratic Republic of Congo, Somalia, South Sudan, Sao Tome and Principe, and Tunisia are yet to ratify it.²⁹ While Egypt and Sudan ratified the ACRWC, they had reservations about art. 21(2), which particularly provides for child marriage, and Botswana does not consider itself bound by the definition of a child provided in art. 2 of the ACRWC to mean "every human being below the age of 18".

The Protocol to the African Charter on Human and People's Rights and the Rights of Women in Africa (the so-called "Maputo Protocol") also has a relevant provision that addresses child marriage.³⁰ Art. 6(c) effectively rules out the practice of child marriage, by stipulating that the minimum age of marriage is 18 years, while art. 6(a) prohibits marriage without the free and full consent of both parties.

Prior to these developments, the Assembly of Heads of State and Government in Africa had adopted the guiding human rights document called The African Charter on Human and People's Rights (ACHPR, also known as "the Banjul Charter"), which recognised collective rights.³¹ The ACHPR has provisions that relate to child marriage such as art. 16, which guarantees

22 ICESCR Concluding Comments, Suriname, E/1996/22 (1995):par.159.

23 ICESCR Concluding Comments, France, E/2002.22 (2001):par. 876.

24 ICESCR Concluding Comments, France, E/2002.22 (2001):par. 876.

25 Adopted in Addis Ababa, Ethiopia, on 1 July 1990, and entered into force on 29 November 1999.

26 Now the "African Union" (AU).

27 ACRWC:art. 21:2 (emphasis supplied).

28 Warner 2004:254.

29 African Committee of Experts on ACRWC 2018:4.

30 The AU in Maputo, Mozambique, adopted the Protocol on 11 July 2003. It came into force in November 2005 after it was ratified by 15 AU member states.

31 The ACHPR was adopted in Nairobi, Kenya, on 27 June 1981, and came into force on 21 October 1986.

the right to health of every individual.³² Art. 18 of the ACHPR makes states responsible for protecting the family and taking care of its physical and moral health. The rights of all people to a satisfactory environment that is favourable to their development is also guaranteed under art. 24 of the ACHPR.

Apart from adopting the regional human rights instruments, a number of mechanisms and institutions in Africa have recognised and taken steps to address child marriage.³³ Among them is a campaign to end child marriage in Africa, launched by the African Union (AU)³⁴ in 2014 to raise awareness of the harmful impact of child marriage.³⁵ The campaign required African states to take appropriate social, legal and economic measures to address child marriage.³⁶ The AU also appointed a Goodwill Ambassador for Ending Child Marriage, and the African Committee of Experts on the Rights and Welfare of the Child (“the Committee”) appointed a Special Rapporteur on Child Marriage in 2014.³⁷ In addition, the AU adopted an African Common Position on the AU Campaign to End Child Marriage in Africa (the AU Common Position) in 2015. The Common Position urges all member states to take legislative and strategic measures to combat child marriage.³⁸ In that regard, the Plenary Assembly of the Southern African Development Community Parliamentary Forum (SADC-PF), at sub-regional level, adopted the Southern African Development Community (SADC) Model Law on Eradicating Child Marriage, and Protecting Children Already in Marriage.³⁹ The model serves as a guide for parliamentarians, ministries of justice, policymakers, and all stakeholders of SADC member states in the development of effective national laws to end child marriage and tackle conflicts in their legal structures. The Model Law institutes a revolutionary note in the struggle to end child marriage in Southern Africa.

Unfortunately, despite the above gains, hardly any progress has been made in preventing child marriage in Africa.⁴⁰

3. FACTORS THAT PROMOTE AND REINFORCE CHILD MARRIAGE

The vast majority of cultural, social, economic or religious factors that trigger child marriage are also the after-effects thereof. In many instances, a combination of these results is the “incarceration” of children in marriages

32 The article proves that “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health”.

33 African Union Common Position on the Campaign to End Child Marriage in Africa, adopted by the Heads of State and Governments of the African Union in July 2015.

34 As mentioned earlier, this was formerly “The Organisation of African Unity”, which was disbanded on 9 July 2002.

35 African Commission on Human and Peoples’ Rights 2018:2.

36 African Commission on Human and Peoples’ Rights 2018:2.

37 African Commission on Human and Peoples’ Rights 2018:3.

38 Commitment A1-A5.

39 It was adopted on 3 June 2016.

40 UNFPA 2012:12.

without their consent. This part of the article provides an overview of how various factors tend to result in child marriage in Africa, focusing on examples from specific countries.

3.1 Religious and cultural beliefs

Norms and beliefs have influenced child marriage. Religious and cultural traditions are key causes and reasons for the persistence of child marriage in sub-Saharan Africa.⁴¹ There is no single religion associated with child marriage, as it is continent-wide and justified by moral and religious beliefs at every level of society where child marriage takes place. In countries where Islam is widespread, local traditions interpret the Quran as approving and, in some instances, even encouraging child marriage.⁴² This is reported to be the main reason why the level of child marriage is so high in African states with a large Islamic population.⁴³ Some influential religious leaders in these states explicitly support child marriage and oppose campaigns to eliminate it.⁴⁴ The interpretation of some Muslim *imams* is that a girl should be ready to be married after her first menstrual period, while others claim that a girl should have her first menstrual period in her in-laws' house.⁴⁵ Some girls are taken out of school by their parents to be married when they start their period.⁴⁶ On the other hand, some Christians believe that Mary, the mother of Jesus, was married when she was as young as 12 years, while her husband Joseph was 99 years old. She was roughly 11 years old when she became pregnant with Jesus.⁴⁷ For example, in the apostolic faith, where religion is combined with

41 See, generally, Addaney & Azubike 2017:110-130 (especially at 118, and 125-127).

42 ARROW 2018:18.

43 ARROW 2018:18.

44 For instance, 95 per cent of the population in Gambia is Muslim and child marriage is not regarded as a wrong in the society or against the best interests of the child. Many community members believe that child marriage is a constructive part and prepares girls for life. In Mali and Mauritania, child marriage practices are also very common and are supported by interpretations of the Quran. The practice is also widespread in the Cameroon Muslim population, although they are merely 20 per cent.

45 Girls Not Brides 2017:9. It is contested that Islam does not stipulate a specific age of marriage, either for the husband or for the wife, but according to Tafseer al-Sa'di (2011) the teaching mentions "[a]nd for such of your women as despair of menstruation, if ye doubt, their period (of waiting) shall be three months, along with those who have it not' [*al-Talaaq* 65:4]. Al-Sa'di ... said: 'along with those who have it [menses] not' means minors, those who have not yet started to menstruate." Furthermore, this website (see the link to "On acting; and the rule on marrying young girls") states that "the Prophet ... married 'Aa'ishah when she was six years old and the marriage was consummated when she was nine' [years old as] narrated by al-Bukhaari 4840 and Muslim 1422." <https://islamqa.info/en/answers/146882/is-there-a-set-age-for-marriage-in-islam> (accessed on 22 September 2019).

46 UNICEF 2014:12.

47 Gerber 2017:12; Gemignani & Wodon 2015:14-47.

traditional culture, young girls often marry older men.⁴⁸ Their doctrine is that “girls must get married when they are between 12 and 16 years old to make sure they do not sin by having sexual relations outside marriage”.⁴⁹

Traditionally, marriage determines a woman’s status in many African communities and is regarded as part of womanhood.⁵⁰ Thus, parents are concerned that, if their daughter is not married off according to social expectations, she will not get married at all. This puts parents under pressure to marry off their daughter early, in order to prevent them from becoming sexually active before marriage and bringing dishonour to her kinfolk and society. Girls are married off early to preserve a family’s honour and to avoid the shame of having a daughter who becomes pregnant out of wedlock or is unmarried. Most of the African societies consider girls who have lost their virginity as ruined and unsuitable for marriage. Some parents take the opportunity to arrange a marriage for their daughters while they are still young to ensure that they remain a virgin and to maximize their childbearing years.⁵¹

Other African cultural practices and traditions such as female genital mutilation (FGM), polygamy, marriage by abduction, paying a dowry and inheritance are also associated with the persistence of child marriage, because they are connected with the sexual control of girls. For instance, FGM is conducted as a rite of passage into adulthood, sometimes when girls are only 12 years old. It is estimated that over 125 million women and girls have undergone FGM, and a further three million girls in Africa will undergo FGM annually if current trends continue.⁵² FGM is conducted to control girls’ sexual desires so that they will be satisfied with their husbands only, and to make it easier for men to have intercourse with their wives.⁵³

Other societies force girls as young as eight years to go to camps where they are shown how to please a man in bed to prepare them for married life.⁵⁴ This practice, which is conducted as a rite of passage into adulthood, begins at the onset of menstruation, and sometimes involves fingers or sticks being inserted into the girls’ genitalia to test their virginity.⁵⁵ Girls are told not to disclose what happens in the camps, where they are taught about their role in the community as girls, how to dance traditional dances, to respect their elders, and how to perform their household duties.⁵⁶ In marriage by abduction, a girl will be abducted by her admirer and taken somewhere where she is raped to compel the family of the girl or young woman to enter into marriage

48 The religion is mostly in southern Africa among Zimbabweans, Zambians and Malawians (Human Rights Watch 2015:2).

49 Human Rights Watch 2015:2.

50 Human Rights Watch 2015:3.

51 Human Rights Watch 2015:3.

52 28 Too Many 2013:12.

53 28 Too Many 2013:12.

54 Ahmed 2014:1; Johnson 2018:786-803.

55 The practice is common in eastern, western and southern Africa, in countries such as Tanzania, South Africa, Mozambique, Zambia, and Malawi. Hertrich & Lesclingand 2015:12.

56 UNICEF 2011:12.

negotiations.⁵⁷ A girl who is kidnapped and spends the night with a male cannot go back to her parents or refuse to be married to her captor.⁵⁸ Girls as young as 12 years are reported to be kidnapped for marriage.⁵⁹ This culture is common in sub-Saharan African countries such as Kenya, Rwanda, Tanzania, Ethiopia, Somalia, and South Africa.⁶⁰ The traditional practice of paying a dowry is also considered to be a key driver of child marriage in many African countries.⁶¹ Families view their daughters as a source of wealth. Marriages are contracted after the groom and his family negotiate with the bride's family and pay them a dowry in the form of cattle, other animals or, increasingly, money. Greedy parents force their young daughters to leave school to get married, at times to well-off men who are old enough to be their grandfathers.⁶²

These cultural aspects prevail in many countries in sub-Saharan Africa, with slight differences depending on the country and circumstances, but in most instances for the same purpose.⁶³

3.2 Poverty

Poverty is considered to be another main driver of child marriage. Many underprivileged communities have few resources and opportunities to invest in alternative options for girls, who are not regarded as potential wage earners, but as a financial burden on their families. They are considered less valuable than boys. Children from the poorest households are more likely to be married before the age of 18 years than those from richer households. Countries with a low gross domestic product are reported to have a higher prevalence of child marriage.⁶⁴ For instance, in Mozambique and Mali, approximately half of the girls are married before the age of 18 years and three-quarters of their population live on less than \$2 a day.⁶⁵ The connection between child marriage and poverty is also evident at the regional level, as most of the rural regions in the above-mentioned countries, with a high prevalence of child marriage, are overwhelmingly the poorest. For instance, in Mozambique, the prevalence of child marriage is 42.4 per cent in urban areas and 56.4 per cent in rural areas. In the Democratic Republic of Congo, it is only 18 per cent in urban Kinshasa as against 50 per cent in rural Katanga.⁶⁶

In general, there are financial incentives for marrying off young girls. For families living in extreme poverty and with numerous children, marrying off a daughter early is simply a way to reduce the desperate economic conditions

57 Wambura & Khaday 2010:26.

58 Makoye 2014:2.

59 Department of Justice and Constitutional Development: Gender Directorate, South Africa 2010:4; Gena 2007: 2.

60 Meli 2018:4.

61 Human Rights Watch 2015:9.

62 Girls not Brides 2014:12.

63 Msuya 2017:113; Ogoma 2014:95; OHCHR 1995:4.

64 UNICEF 2010:8.

65 International Centre for Research on Women 2006:3.

66 International Centre for Research on Women 2006:3.

in which they find themselves.⁶⁷ Parents have few resources to provide a healthier alternative for their daughters, so marrying them off cuts costs.⁶⁸ In short, it is one less person to educate, feed, and clothe. In societies where economic dealings are vital for the marriage to proceed, a dowry is often welcomed as an income for disadvantaged families.⁶⁹ In communities where the girl's family pays the dowry, parents marry off their daughters at a young age to avoid more expensive dowries, which are often demanded in the case of marriages of older girls.⁷⁰ In communities where the dowry is paid by the groom to the parents of the bride, young girls often get a higher price.⁷¹ This is due to the assumption that young brides have more time to dedicate to their new family and bear more children. Worse still, girls are often married off to pay family debts, settle conflicts, or as a substitute for actual money.⁷² In these circumstances, parents are left with no option but to arrange their daughter's marriage along with that (or those) of her sister(s) if a cheaper package can be obtained.

3.3 Gender inequality

Girls and women in sub-Saharan African societies suffer from gender inequality and are often regarded as inferior. This is simultaneously an important cause, result and aggravating factor of child marriage.⁷³ Many African communities believe in strongly differentiated gender roles and relations between males and females that tend to be disadvantageous to women.⁷⁴ Men exercise the preponderance of power in almost every aspect of life, which prevents women from exercising their rights and denies them an equal role in their families and communities.⁷⁵ Females are generally viewed as inferior and subordinate to males, which perpetuates the lower status accorded to girls by the family, the community and society.⁷⁶ Gender inequality is fuelled by the preference for male children, a powerful traditional belief in Africa. Preference begins at the first signs of pregnancy, when a woman receives unsolicited prayers from her husband and his family for the safe delivery of a baby boy.⁷⁷ Usually, the birth of a son is welcomed with celebration as an asset, whereas that of a girl is viewed as a liability and an impending economic drain.⁷⁸

67 Chaaban & Cunningham 2011:2.

68 Msuya 2017:228.

69 Msuya 2017:228.

70 Msuya 2017:229.

71 In Ethiopia, parents mentioned that they married their young daughters for economic reasons. While in South Asia and sub-Saharan Africa, marrying girls is paid by exchanging wealth between the bride and groom's families in the form of a dowry or a bride price.

72 ILO 2017:12.

73 Nsingi 2016:12.

74 Nsingi 2016:12.

75 Msuya 2017:228.

76 Msuya 2019a:1-14.

77 Mulema 2014:10.

78 Msuya 2019a:1-14.

Raising a girl is considered to be akin to watering a neighbour's garden, as eventually a girl will be married and become a member of another family, and so investing in her is tantamount to working hard for others.⁷⁹ This makes a girl child accept that the purpose of her life is to get married and raise children.⁸⁰ In some societies, wives who have not given birth to a son are liable to be divorced and returned to their father's homestead in disgrace.⁸¹ The culture of preferring sons has prompted some men to marry a second or third wife so that they can have a male child.⁸² This custom subordinates women, particularly at the community and household level, because husbands are regarded as the head of the family and their decisions are final.⁸³ The vast majority of men grow up believing that dominating girls and women is what makes them men. They thus regard their wives as dependent and inferior partners, who need to listen to them and follow their instructions.⁸⁴ Women are required to respect and obey their husbands at all times. Consequently, men prefer to marry young girls, as they make obedient wives who are easily manageable.⁸⁵ Control of land and property, together with formal family headship, typically pass through the male line.⁸⁶ In the vast majority of traditional societies, women are not allowed to inherit property, as they are regarded as belonging to their husbands. Male members thus retain the right to own and use the property.⁸⁷ Therefore, greater social value is generally ascribed to boys, resulting in the under-investment in girls' health, education, and development. These social inequalities systematically render girls subservient and vulnerable and put them at risk of child marriage and other forms of social harm.⁸⁸

3.4 Insecurity in the face of conflict

Child marriage is also regarded as a way to protect girls in a hostile environment or fragile situation such as crisis or war.⁸⁹ Most of the time, members of national armies and rebel groups rely on sexual violence, rape, abduction, torture, and other forms of abuse to exert control over societies.⁹⁰

79 Save the Children 2017:4.

80 Mulema 2014:10.

81 Msuya 2017:228.

82 Msuya 2017:228.

83 Baloyi 2007:29.

84 Msuya 2017:27.

85 Msuya 2019a:1-14.

86 Msuya 2019a:1-14.

87 Gaddis *et al* 2018:1-38. In South Africa, a significant development in this regard occurred when the principle of male primogeniture in the context of intestate succession was declared to be constitutionally invalid and was accordingly abolished. See the landmark ruling of the Constitutional Court in *Bhe v Magistrate, Khayelitsha* (Commission for Gender Equality as Amicus Curiae); *Shibi v Sithole*; *South African Human Rights Commission v President of the Republic of South Africa* 2005 1 SA 580 (CC).

88 Nsingi 2016:12.

89 Rocha da Silva 2014:5.

90 United Nations 2018:3.

This puts women and children at risk and leads to child marriage.⁹¹ Parents may marry off their daughters as a last resort in times of conflict and natural disaster. This is usually done with the purpose of offering protection to the daughter, especially in situations where sexual violence is common, or to bring the family some income in times of economic difficulty.⁹² When people are forced from their homes, they believe that it is better for a girl to have the protection of a husband than to be at risk of sexual or physical assault from an unknown person in a refugee camp.⁹³ Social instability and conflict may force young girls to marry men who exercise power.⁹⁴ When political, legislative and judicial institutions fail to function effectively, laws are not enforced, leading to the lack of protection.⁹⁵ Therefore, all laws outlawing child marriage cannot be enforced, leaving traditional leaders, cultural practices and customary law as the only consistent source of authority.⁹⁶

According to the World Vision report of 2008, the Lord's Resistance Army, which is a Ugandan rebel group, abducted young girls and forced them to serve as wives of commanders and bear their children on threat of death.⁹⁷ Although this is not the norm for child marriages worldwide, it affects thousands of children in sub-Saharan Africa. The number of child marriages was reported to increase during the time of food insecurity in Kenya,⁹⁸ which also happened during the civil war in Sierra Leone and Somalia.⁹⁹ Young girls were given by their families in exchange for protection, or they were abducted and given as "bush wives" to warlords, during the conflicts in Mali, Sudan, Uganda, Liberia, and the Democratic Republic of Congo.¹⁰⁰ When a large number of people become refugees or fall into poverty due to conflicts, this exacerbates existing risk factors and leads to child marriage, because conflicts disrupt education and other fundamental services. It can also mitigate economic pressure.¹⁰¹

3.5 Gaps in laws and enforcement

The domestic legal system in some African states has features that promote and permit child marriage.¹⁰² These comprise statutory and non-statutory frameworks and a code that contributes to the persistence of child marriage. The main factors that play a fundamental role in transmuting norms and protecting the rights of young women are a legal framework,¹⁰³ laws and

91 United Nations 2018:3.

92 Sharma 2015:131-139.

93 Obradovic 2015:9.

94 IPPF 2006:8.

95 Obradovic 2015:10.

96 Obradovic 2015:10.

97 Owen 2018:13; UNICEF 2015b:22.

98 North 2009:4; Plan International 2011:9.

99 UNFPA 2012:11.

100 UNFPA 2012:12.

101 Gottschalk 2007:8.

102 African Commission on Human and Peoples' Rights 2018:3.

103 African Commission on Human and Peoples' Rights 2018:3.

regulations that set the minimum age of marriage at 18 years for both girls and boys, laws prohibiting sexual and domestic violence, the requirement to register births and marriages, anti-corruption laws, and family laws that synchronise marriage, custody, divorce, and inheritance.¹⁰⁴ More than 20 states in the region still have statutes that allow girls to marry before the age of 18 years as the minimum legal age of marriage, where parental (or sometimes judicial) consent is given.¹⁰⁵ These countries are considered to be “least child-friendly” for failing to protect children from an early marriage, while the position is worse in Chad, Cameroon, Mali, Botswana, Djibouti, Cape Verde, Eritrea, and Sudan where attaining the age of 18 years is not even prescribed as the minimum age of marriage for girls.¹⁰⁶ It is revealed that some cultural and traditional practices inhibit reforms aimed at raising the minimum legal age of marriage,¹⁰⁷ whereas Lesotho, Libya, Tunisia, Algeria, Zimbabwe, Rwanda, Egypt, and Mauritius have established the age of 18 years or older as the minimum age of marriage for both boys and girls. They are thus considered to be the “most child-friendly countries”.¹⁰⁸

There are three types of legal approach to child marriage in sub-Saharan Africa. There are countries that criminalise child marriage;¹⁰⁹ some invalidate or ban marriages below the minimum age,¹¹⁰ and others simply prescribe the minimum age of marriage without banning or criminalising it.¹¹¹ It is essential that the legislation spells out clearly that sanctions will be imposed to serve as a deterrent. So far, only 24 countries in Africa have imposed sanctions on child marriage.¹¹² For instance, Botswana imposes a fine equivalent to \$3,400 to \$5,600 or imprisonment for a term of seven to ten years, or both.¹¹³ Ethiopia’s sanction is imprisonment for up to seven years, depending on the age of the minor.¹¹⁴ However, weak enforcement has meant that this legislation has had hardly any impact, due to the lack of training of law enforcers such as the

104 African Commission on Human and Peoples’ Rights 2018:3.

105 Countries that still permit girls to marry with parental consent or court approval include Burkina Faso (17), Gabon (15), Senegal (16), Kenya (16), Mozambique (16), Malawi (16), Niger (15), Sao Tome and Principe (14), Swaziland (16), Zambia (16), Zimbabwe (16), South Africa and Tanzania (15), as reported by Maswikwa *et al* 2015:12.

106 Maswikwa *et al* 2015:12.

107 Msuya 2019b: 295-315.

108 The African Child Policy Forum 2013:8; Odala 2013:2; Nsingi 2016:11.

109 These include Botswana, Cameroon, Burkina Faso, Central African Republic, Congo Brazzaville, Chad, Democratic Republic of Congo, Ethiopia, Egypt, Gabon, Kenya, Ghana, Liberia, Mali, Malawi, Mauritania, Rwanda, Nigeria, Senegal, South Sudan, Sierra Leone, Swaziland, Zambia, Zimbabwe, and Togo. Odala 2013:6.

110 Angola, Cape Verde, Burundi, The Gambia, Mozambique, Mauritius, Namibia, South Africa, Sao Tome and Principe, Uganda, and Tanzania. Msuya 2017:238.

111 These are Algeria, Comoros, Benin, Côte d’Ivoire, Eritrea, Djibouti, Guinea Bissau, Libya, Lesotho, Madagascar, Niger, Morocco, Tunisia, and Seychelles. Hattas & Tucker: 2016:12.

112 African Commission on Human and Peoples’ Rights 2018:6.

113 Odala 2013:16.

114 Maswikwa *et al* 2015:8.

police for dealing with these cases.¹¹⁵ The police often assume that it is not their job to prevent child marriage, or to go against the parents' or guardians' wishes.¹¹⁶ In addition, proving the age of the spouse has been a challenge, as birth or marriage certificates are rarely produced or verified at the time of marriage,¹¹⁷ because the majority of children in rural Africa have not been registered with the civil authorities and have not received a birth certificate. Some corrupt officials have been reported to accept a bribe and forge birth certificates to facilitate child marriages.¹¹⁸

Child marriage is also clouded by legal uncertainty that causes ambiguity as to the status of two different and conflicting laws within the same statutory legal system.¹¹⁹ Multiple laws are applicable to family matters in the vast majority of countries in Africa, where civil, religious, and customary laws overlap and generally contradict one another.¹²⁰ This complicates enforcement of the higher age of marriage, resulting in children being susceptible to early marriage. For example, sec. 3(1) of South Africa's *Recognition of Customary Marriages Act* 120 of 1998 prescribes the minimum marriageable age to be 18 years for both girls and boys. However, both the *Recognition of Customary Marriages Act* and the 1961 *Marriage Act* allow persons under the age of 18 years to get married, provided they have the necessary consent.¹²¹ On the other hand, in the case of a civil union,¹²² an absolute minimum age of 18 years is prescribed, with no provision for parental or other consent to validate a marriage involving a minor.¹²³ A clear inconsistency, therefore, arises. Likewise, in Eritrea, The Civil Code sets 18 years as the minimum age of marriage for both girls and boys, and the Logo Chwa Code of Customary Law provides the age of 15 years for girls. Religious or community leaders who combine child marriage with religious beliefs and customary practices may also resist the laws and their enforcement.¹²⁴ For instance, in Sudan, Muslim girls can marry as soon as they reach puberty and boys at the age of ten years, while the minimum age of marriage for non-Muslims is 15 years for boys and 13 year for girls.¹²⁵ In most instances, customary law is unwritten and administered by traditional leaders, who do not have a legal background and/or are unaware of international or domestic legislation outlawing child marriage and its consequences.¹²⁶

115 Human Rights Watch 2015:4.

116 Maswikwa *et al.* 2015:8.

117 Equality Now 2014:18.

118 Equality Now 2014:19.

119 African Commission on Human and Peoples' Rights 2018:3.

120 Odala 2013:16.

121 *Recognition of Customary Marriages Act* 120/1998:sec. 3(3)-(5); *Marriage Act* 25/1961:secs. 25 and 26; Mwambene 2018:540.

122 This is the only statute that provides for same-sex marriage, but it may also apply to opposite-sex couples.

123 For the definition of 'civil union', see *Civil Union Act* 17/2006:sec. 1.

124 Mwambene 2018:540.

125 UNICEF 2017:8.

126 UN 2018:10.

4. CHILD MARRIAGE AND SOCIO-ECONOMIC DEVELOPMENT OF AFRICA

As the world is moving toward sustainable growth and human development by 2063, one cannot avoid relating the serious impact of child marriage on the economic cost to Africa. Child marriage stands in direct conflict with eight (or almost half) of the United Nations' 17 Sustainable Development Goals (SDGs),¹²⁷ which include promoting education and women's empowerment, and reducing poverty, maternal mortality, and HIV/AIDS rates. Research shows a clear negative correlation between countries' child marriage practices and their Human Development Index (HDI) ranking. Most of the countries that are not scoring well in terms of their citizens' well-being are also those where child marriage is most common.¹²⁸

This part of the article considers why and how child marriage is a major impediment to Africa's socio-economic development. It focuses on five main impacts of child marriage, namely lost growth opportunity; cost to healthcare systems; lost education and earnings; lower growth potential, and the perpetuation of poverty.

4.1 Lost growth opportunity

Child marriage and early childbearing have a significant impact on growth opportunity, which is associated with higher rates of fertility and population growth, consequently reducing the level of wealth per person, especially in sub-Saharan African countries where there is high population growth.¹²⁹ Women married before they turn 18 years of age are likely to have more children, which reduces the ability to pay for the family's basic needs such as food, education, and healthcare.¹³⁰ At national level, increased fertility leads to having more children that contributes to population growth. It is estimated that girls who are married before they are 18 years old will, on average, have 26 per cent more children in their lifetime than those who are married when they are 18 years old and older.¹³¹ Therefore, child marriages have a national impact, as they put an increased burden on basic services. Ending child marriage will lead to a reduction in the birth rate, and increased productivity and economic growth in these countries.¹³²

Furthermore, adverse health effects of early and frequent pregnancies have an impact on the participation in the labour force,¹³³ as well as the risk of complications and morbidity caused by early and frequent childbearing. The reason for this is that women who survive severe complications while

127 See <https://www.girlsnotbrides.org/themes/sustainable-development-goals-sdgs/> (accessed on 29 July 2020).

128 UNFPA 2012:12.

129 Efevbera *et al* 2019:12.

130 Efevbera *et al* 2019:12.

131 Parsons *et al* 2015:12-22.

132 Raj 2010:931-935.

133 Raj 2010:931-935.

giving birth require a lengthy recovery time and, due to the long-term physical, social, and psychological consequences, they withdraw from the labour force.¹³⁴ This has a significant effect not only on individuals and households, but also on the nation as a whole. Women's reduced participation in paid employment increases households' vulnerability to poverty and economic shocks.¹³⁵ It also encourages short-term allocation decisions at the expense of longer term investment in human and physical capital, which leads to a lower level of physical well-being, short-term investment, and lower productivity, all of which influence economic growth.¹³⁶ These factors may also have an inter-generational impact, leading to children's poorer health and less investment in education and other forms of human capital development, as well as the inability to address shock (such as illness), all of which increases the probability of early marriage in the ensuing generations.¹³⁷ Economic growth is the greatest tool for reducing poverty and enhancing the quality of life.¹³⁸ However, the degree to which the poor participate in this growth and share in its proceeds is determined by the extent to which growth reduces poverty.¹³⁹ The pace, pattern, and growth of child marriage, which affects child brides' ability to take part in growth opportunities, has a crucial effect on attempts to reduce poverty. Eliminating this phenomenon will undoubtedly contribute to the inclusive growth of nations in Africa.

4.2 Cost to healthcare systems

Marrying early affects girls' physical and mental well-being in so many ways, including higher rates of malnutrition, isolation, and depression.¹⁴⁰ They also experience higher maternal mortality and morbidity, due to intimate partner violence (IPV).¹⁴¹ These health consequences are due to out-of-pocket expenses for the girl and her household. These have lasting effects on household earnings and reduce productivity.¹⁴² This has an inter-generational effect on their children, who may have poor physical health and suffer from poor nutrition, as well as experiencing a higher rate of infant mortality.¹⁴³ Marrying under age causes them to experience a higher level of anxiety, isolation and depression and leads to a higher level of self-harm and suicide. Young girls who are married without their consent and/or by abduction experience trauma, which may also result in lifelong mental health problems.¹⁴⁴ Poverty in the household and that caused by traditional gender norms concerning the role and place of married women when it comes to

134 Koblinsky *et al* 2012:124-140.

135 Koblinsky *et al* 2012:124-140.

136 WHO 2014:15.

137 UNFPA 2012:30.

138 UNFPA 2012:30.

139 UNFPA 2012:31.

140 UNFPA 2014:28.

141 UNFPA 2014:28.

142 Koblinsky *et al* 2012:124-140.

143 Koblinsky *et al* 2012:124-140.

144 UNFPA 2013:24.

meals may also result in malnutrition.¹⁴⁵ Poor sexual and reproductive health is also associated with child marriage, because child brides are often unable to negotiate safe sex with their husband, making them more susceptible to sexually transmitted infections such as HIV, and putting them at greater risk of an early pregnancy.¹⁴⁶ Some face pressure from their husbands and in-laws to become pregnant shortly after marriage, which leads to early pregnancy, increased child-bearing over time, and unhealthy birth spacing.¹⁴⁷

Furthermore, early pregnancy increases the likelihood of an induced abortion.¹⁴⁸ Due to their tender age, child mothers are also less likely to receive proper medical care during pregnancy and delivery than those who give birth later.¹⁴⁹ The combination of girls being physically immature and the lack of proper medical care during pregnancy and childbirth puts child brides at great risk of complications during gestation and delivery, such as obstetric fistula,¹⁵⁰ obstructed or prolonged labour, and death.¹⁵¹ Worldwide, pregnancy complications and childbirth are the second leading cause of death among young girls aged 15 to 19 years, with nearly 70,000 dying each year.¹⁵² Indirect costs, which estimate the value of lost lifetime earnings of women who have died as a result of early pregnancy, hinder national economic development.¹⁵³ Furthermore, the health effects of early marriage extend to the children born of underage mothers.¹⁵⁴ The mortality rate of babies born to mothers under the age of 18 years is 60 per cent higher than those born to older mothers.¹⁵⁵ Babies of young mothers are also more likely to suffer from poor nutrition and have a low weight when they are born and throughout childhood.¹⁵⁶ The effects of children's poor nutrition can feature throughout their lives, with a negative impact on educational attainment.¹⁵⁷

When child brides and their children suffer from poor health, there are both immediate direct health care costs, and longer-term economic impacts, resulting in lost productivity and lower earning potential.¹⁵⁸ Unexpected illness can result in large medical expenses, lost earnings, and fewer savings at

145 UNFPA 2013:12.

146 Walker *et al* 2013:17.

147 Walker *et al* 2013:18.

148 Nour 2009:51-56.

149 Nour 2009:51-56.

150 Obstetric fistula is a medical condition in which a hole develops in the birth canal as a result of childbirth. This can be between the vagina and rectum, ureter, or bladder. It can result in incontinence of urine or faeces. See Fistula Foundation 2018:1

151 Xu *et al* 2003:111-117.

152 WHO 2012:1-8.

153 WHO 2012:1-8.

154 Xu *et al* 2003:111-117.

155 UNICEF 2014:2.

156 Wachs 2008:280-281.

157 Wachs 2008:280-281.

158 Wachs 2008:280-281.

the household level, all of which perpetuate the cycle of poverty.¹⁵⁹ For a girl and her household, the economic impact and the costs associated with child marriage can result in increased out-of-pocket expenditure for medical and associated costs, many of which stem from early pregnancy and the complicated labour and delivery of young mothers.¹⁶⁰ Children of child brides are more likely to die in the first year of life than those born to older mothers, and families of child brides are more likely to be poor and unhealthy.¹⁶¹ The economic burden resulting from illness associated with child marriage is huge and consumes a large amount of governments' health budgets.¹⁶² The estimated cost of treating illnesses associated with child marriage and the huge loss of productivity significantly hinders economic development.¹⁶³

4.3 Lost education and earnings

Early marriage ends the girls' childhood and curtails their education. They stop acquiring knowledge and skills required for the labour market, which affects their lifelong earning potential.¹⁶⁴ Females' reduced participation in the labour force and a consequent reduction in their expected returns from paid employment is often due to a lack of education, with the result that they end up in unpaid domestic work and producing more children.¹⁶⁵ Some girls are married before finishing primary school.¹⁶⁶ Removing them from formal schooling also removes them from the social network and support that schools and their peers provide, because, apart from being the source of formal and informal education, the school is also a place where they develop social skills and networks, allowing them to be mobile and engage in community activities and affairs.¹⁶⁷

The economic effects of child marriage and lack of education can be measured in terms of reduced earnings and productivity.¹⁶⁸ The lack of formal education or vocational training has inter-generational effects, such as on the educational attainment, nutritional status and physical health of their children.¹⁶⁹ Women's lower earnings in adulthood, due to child marriage, lead to a loss of worth of human capital, which is defined as the present value of future earnings of the labour force.¹⁷⁰ A study conducted in 12 African

159 UNICEF 2013b:15.

160 UNICEF 2013b:15.

161 UNICEF 2013b:15.

162 Perkins *et al* 2009:5.

163 UNICEF 2013b:15.

164 Khanna & Weiss 2013:18.

165 Klasen & Pieters 2012:12.

166 Klasen & Pieters 2012:12.

167 Khanna & Weiss 2013:18.

168 Pfeiffer *et al* 2001:83-97.

169 UNESCO 2012:5.

170 UNESCO 2012:5.

countries¹⁷¹ established that the loss of human capital wealth, incurred nowadays because of women who were married early in their youth, is estimated to be equivalent to US\$63 billion, with these countries accounting for half of Africa's population.¹⁷² Therefore, taking Africa as a whole, a simple extrapolation suggests that the loss could be twice as large. In this regard, the annual total net Official Development Assistance (ODA), which consists of disbursements of loans made on concessional terms net of the repayment of principal, was estimated in 2016 to be US\$41 billion for Africa.¹⁷³

4.4 Lower growth potential

As stipulated earlier, child marriage is associated with lack of voice and is rooted in gender inequality, which involves being alienated from participating in making decisions about issues facing the girl child and those of her household, family, or community.¹⁷⁴ Girls who are married at a tender age usually have hardly any say in when or whom they will marry, have hardly any influence on their husbands and in-laws, have hardly any opportunity to develop awareness of their rights, and are not in a position to claim or demand them.¹⁷⁵ Girl brides married at a young age are mostly under the control of their husband or in-laws, which limits their ability to voice their opinion, and pursue their own plans and aspirations. Often, child brides are married to husbands who are much older, and this age gap reinforces the power differential between them. Most of the time, their in-laws and husband perceive them as incapable of earning and managing finances for the household, due to their young age and lack of education, and those who do work rarely have control over their earnings.¹⁷⁶ This remains the case throughout their married life, meaning that they have hardly any control over household resources, a greater restraint on their time, and limited access to information, which has a major influence on economic decisions.¹⁷⁷ Child brides are more likely to experience violence in their marriage than girls who marry at the age of majority, due to their lack of education and access to better paid work, and their inability to make decisions outside the home.

The unequal allocation of family resources in terms of key inputs or agricultural land experienced by child brides leads to production gaps in the economy of states.¹⁷⁸ Mothers' aspirations for their daughters are realised through their involvement in decision-making. When they are forced to be silent on issues pertaining to childrearing, it affects the lives of their children before they are even born, due to lack of voice and agency in reproductive

171 The study was based on Burkina Faso, Democratic Republic of Congo, Egypt, Ethiopia, Malawi, Mali, Mozambique, Niger, Nigeria, Republic of Congo, Uganda, and Zambia.

172 World Bank 2018:12.

173 World Bank 2018:13.

174 Lloyd 2005:1-28.

175 Lansdown 2011:72.

176 Ramaswami & Mackiewicz 2009:459-477

177 Ramaswami & Mackiewicz 2009:459-477.

178 Beaman *et al* 2012:582-586.

decisions such as the timing, spacing and number of children,¹⁷⁹ which continues throughout their childhood and into their adult lives, thereby affecting the next generation.¹⁸⁰ Therefore, marrying early reinforces unequal gender norms in the next generation, resulting in reduced community investment in social services and programmes that might increase the chances of success in the future for the children of child brides.¹⁸¹ Restricting women's voice and agency has long-term effects on development goals. It contributes to loss of productivity, and limits child brides' input into decision-making at both community and national level,¹⁸² hence decreasing the possibility of more investment in social services, especially those directly relating to economic growth, such as education.¹⁸³

4.5 The perpetuation of poverty

Child marriage traps girls and their generation in a lifetime of economic disadvantage. When a girl is married at a young age and drops out of school, she is no longer able to become financially independent. Women who are employed reinvest a large amount of their earnings in their families, keeping themselves, their children and relatives out of poverty. Once a girl is educated, she has the potential to lift her entire family, clan and community out of poverty, which is happening in millions of families. As the inter-generational cycle of poverty continues, youth unemployment and economic instability can lead to conflict, violence and even migration. Withdrawing from school lessens their ability to engage in community and political processes and even in national-level discussions and debates. Girls who are married early are often removed from these supportive social networks and isolated in the marital home.

Illiteracy makes it more difficult for women to access information on health and welfare for themselves, their children and their clan, as they are usually the ones who take care of family members and the sick in societies in Africa. Children of less well-educated mothers are less likely to be well nourished and immunised against childhood diseases.¹⁸⁴ In addition, girls whose mothers have had no education are more likely to be married early, contributing to the cycle of poverty in subsequent generations. The reason for this is that girls from poor homes are the ones most likely to be married at a very young age and more likely to live in poverty and raise children in poverty. Tackling the issue of child marriage will, therefore, help many countries in Africa close the gap that hinders progress in meeting the SDGs.

5. RECOMMENDATIONS

Although promising strategies and evidence-based approaches to ending child marriage have been developed and tested in some African countries,

179 Beaman *et al* 2012:582-586.

180 Beaman *et al* 2012:582-586.

181 Beaman *et al* 2012:582-586.

182 Parsons *et al* 2015:12-22.

183 Nguyen & Wodon 2015:31.

184 Boyle *et al* 2006:2242-2254.

more targeted financial and political investment is needed to rid Africa of the evil of child marriage. To that end, regional and national strategies should be adopted to reduce poverty and enhance social justice, and programmes that prioritise the most vulnerable that are fully backed by governments, development practitioners, civil society, communities, families and the girls themselves should be implemented. Sub-Saharan states will struggle to tackle the causes leading to families marrying off their children, unless poverty, as a core driver of child marriage, is addressed first.¹⁸⁵

Legal reforms setting the minimum age for marriage at 18 years (or older) and eliminating parental or judicial consent as an exception to this are an important way to safeguard boys and girls from being married before they are ready. Sub-Saharan states have a legal duty to protect the rights of every individual, including children. As such, they should adopt a holistic approach.¹⁸⁶ This entails first amending – and where necessary (such as is still required in the case of South Africa) harmonising – their domestic laws to set the legal minimum age of marriage to be 18 years. This should be done on the basis of what is provided and called for by international instruments, which recognise that children do not have the maturity to consent to marriage, thus offering them legal protection from the abuse, violence and exploitation they risk facing when married as a child. It is essential that children be recognised in the law as being exactly that, and that they are accorded the full protection of the law to prevent the sexual exploitation of girls under the guise of marriage. Furthermore, it is important for countries to specify a legal minimum age for sexual consent and ensure that the age of marriage is not lower than this age. Criminalisation of child marriage should also be part of this holistic approach.

In addition, customary laws that endorse child marriage need to be codified and developed in a manner that harmonises local culture and international human rights standards. Legal changes need to be accompanied by awareness-raising campaigns to educate people about the negative impact of child marriage and why it is important to outlaw it. Furthermore, it is essential that mechanisms be put in place whereby children can report abuse and, if they wish to extricate themselves from the marriage, receive protection and not be forced to return to it, due to lack of financial support or because of pressure from parents or guardians.

Law enforcers' sensitisation will enhance ineffective enforcement of the existing laws that address child marriage in sub-Saharan states. Law enforcement officers, including legal professionals, prosecutors, the police, and medical practitioners, must be involved in campaigning against child marriage and other harmful cultural practices that facilitate the same. If the courts are to effect substantive justice, then lawyers and adjudicators must ensure that the social context, values and perspectives that underpin people's legal claims are properly heard and understood.¹⁸⁷

185 Parsons *et al* 2015:12-22.

186 Girls not brides 2013:2.

187 Human Rights Watch 2014:5.

It may also be possible for the end result of abolishing child marriage in a particular jurisdiction to be achieved through strategic litigation, which should ideally result from well-thought-out arguments resulting in robust judgments that are resistant to criticism. Lawyers must attempt to persuade courts to make decisions that demonstrate why child marriage practices constitute unlawful discrimination and, *inter alia*, defeat the principle of equality. So far, the judiciary in Zimbabwe¹⁸⁸ and, more recently, in Tanzania¹⁸⁹ have demonstrated this by delivering laudable judgments that condemned and voided child marriages. The principles underlying the Bills of Rights and, importantly, the right to equality as entrenched in many constitutions in sub-Saharan Africa countries must be used to fight child marriage and the harmful cultural practices that facilitate it. These cultural practices should not, in law, be allowed to trump the fundamental rights of the child.

Furthermore, girls need to be empowered and educated at a young age to prevent them from becoming victims due to the fact that they are raised to believe that marrying early is part of the natural order of things.¹⁹⁰ If they grow up with this belief, they will probably find it difficult to resist being married because of their subordinate status. Their “emancipation” can thus be achieved by including human rights education in the primary school curriculum, which should cover topics concerning women’s rights. Eliminating obstacles to the education of girls and women is essential.¹⁹¹ This should be achieved by adopting measures to retain girls in school and implementing awareness-raising programmes to overcome stereotyping and traditional attitudes to the contrary. Parents should be motivated to ensure the comprehensive education of their daughters in line with that of their sons. Once girls have been empowered, they will grow up to be strong and independent women, who will, in turn, protect the future generation from harmful traditions. Empowered girls will also be able to make decisions about their bodies without fear.¹⁹²

Efforts should be made to change the norm of gender inequality during childhood, because child marriage persists in an environment where women and girls have unequal access to education, wealth, health, and employment and are unaware of their basic rights.¹⁹³ Thus, governments should take effective measures to ensure that women have access to, and control of economic resources, including land, credit and employment, as a way of promoting self-esteem, a prerequisite for ensuring the higher status of women in the family and community.¹⁹⁴ This will help improve the social position of women and children in society, make them aware that they need to shake off oppression, and challenge them to oppose child marriage.

188 *Loveness Mudzuru and Ruvimbo Tsopodzi v Minister of Justice Legal and Parliamentary Affairs and Others* CCZ 12/2015.

189 *Attorney General v Rebeca Z. Gyumi* Civil Appeal no. 204 of 2017 Court of Appeal of Tanzania at Dar es Salaam.

190 World Bank 2018:12-24.

191 Myers & Harvey 2011:17.

192 Save the children 2017:18.

193 Msuya 2019a:13.

194 UNICEF 2014:19.

Lastly, efforts to end child marriage in Africa must involve changes in both men's and women's knowledge, perceptions, attitudes and behaviour, due to the fact that men are the beneficiaries of child marriage and because of the role they play in society as community leaders, providers and heads of families.¹⁹⁵ Therefore, they are in a prime position to ensure the eradication of child marriage. Men need to be involved in programmes aimed at empowering young girls and women by encouraging them to participate in peer-to-peer learning.¹⁹⁶ This will do away with various forms of traditional masculine superiority and the resultant behaviour that discriminates against women in society, leading to child marriage.

6. CONCLUSION

Dropping out of school and marrying young ruins child brides' lives, robs them of their right to safety and security, health and education, as well as the right to make their own decisions. Child marriage not only puts a stop to girls' hopes and dreams, but also hampers efforts to end poverty and achieve economic growth and equity. Ending this practice is the morally, ethically and economically right thing to do. Sub-Saharan African states need to put more effort into ending child marriage for their own socio-economic development and to achieve the SDGs aspired to by the United Nations. Reinforcing the need for girls to avoid marrying early, to be properly educated and to delay having children until reaching adulthood translates into greater opportunities for them to develop new skills and generate an income, as well as building an economic base that will help lift future generations out of poverty and, hence, contribute to the national income. To undervalue the contribution and participation of girls and women in any region is to limit the possibility of growth, stability and transformation. Women contribute almost 50 per cent to developments, from the low level of family activities to the high level of state governance.¹⁹⁷ Therefore, their rights and welfare should not be treated separately from other African developmental goals in these states.

In sum, it is the duty of states, regardless of their prevailing political, economic and cultural systems, to protect all human rights and fundamental freedoms. Using the law to address child marriage practices is necessary, and an effective legal framework should be implemented as a major tool to change harmful legal and social settings.¹⁹⁸ The benefits of using the law to address child marriage will include conveying a message to society as a whole that child marriage constitutes a violation of human rights and that this can no longer be tolerated.

195 Human Rights Watch 2015:3.

196 Msuya 2017:240.

197 United Nations Women 2018:7

198 Msuya 2019b:314.

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