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Poverty, Culture, Religion and Legislative Omissions- the Fourfold Cause of Female Child Marriages in Africa: Nigeria as a Case Study

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1.0 Introduction

Child marriage is a gross violation of the human rights of any child.¹ The United Nations Children’s Fund (UNICEF) defines child marriage as a formal marriage or union before 18 years of age.² Child marriage is a major issue that affects every African country to varying degrees; from 76% in Niger to 2% in Algeria.³ Research shows that girls in West and Central Africa are at a higher risk of getting married at childhood. 4 in 10 women are married before they are 18 years of age.⁴ 1 in 3 of child brides in West and central Africa are married before age 15.⁵ About 1 in 4 adolescent⁶ girls in the region are either married or in a union as

¹ UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa*, New York, 2017, p.2 (accessed June 3, 2018), available at:

<https://data.unicef.org/wp-content/uploads/2017/10/Child-Marriage-WEB.pdf>; see also, World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report* by Q.T. Wodon, C. Male, K.A. Nayihouba, A.O. Onagoruwa, A. Savadogo, A.E.J. Yedan, *et al.* Washington, D.C., 2017. p.17, (accessed June 10, 2018), available at: <http://documents.worldbank.org/curated/en/530891498511398503/pdf/116829-WP-P151842-PUBLIC-EICM-Global-Conference-Edition-June-27.pdf>

see also R. Kidman, “Child Marriage and Intimate Partner Violence: A Comparative Study of 34 Countries.” *International Journal of Epidemiology*, vol.46 no.2, (2017) pp.663 and 675 (accessed June 10, 2018) DOI: 10.1093/ije/dyw225

See also UNICEF. *Child Marriage is a Violation of Human Rights, but is all too Common* (updated June 2018) (accessed June 3, 2018) available at <https://data.unicef.org/topic/child-protection/child-marriage/#>

² UNICEF, Child Marriage is a Violation of Human Rights, (*supra*) note 1; See also A. Raj and U. Boehmer, “Girl Child marriage and its Association with National Rates of HIV, Maternal Health and Infant Mortality across 97 Countries.” *Violence Against Women*, Vol. 19, Issue 4, (2013): p.536

³ See p. 22 of this paper for some reasons why Algeria has such a low record of child marriage. See also UNICEF. *Algeria: MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa*. UNICEF Regional Office for the Middle East and North Africa, October 2011, (accessed June 5, 2018) available at: <https://www.unicef.org/gender/files/Algeria-Gender-Eqaulity-Profile-2011.pdf> see also, UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa*, (*supra*) note 1, p.2

⁴ UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage- Focus on West and Central Africa*, (*supra*) note 1, p.2

⁵ UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage- Focus on West and Central Africa*, (*supra*) note 1, p.4

⁶ An adolescent is a person in a transitional phase between childhood and adulthood. See Encyclopaedia definition available at <https://www.britannica.com/science/adolescence> ;The World Health Organisation (WHO) defines an adolescent as a person between ages 10 and 19. See WHO. *Maternal, Newborn, Child and Adolescent Health: Adolescent Development*. (accessed June 14, 2018) available at http://www.who.int/maternal_child_adolescent/topics/adolescence/development/en/

compared to 1 in 17 in East Asia and the Pacific.⁷ In fact, West and Central Africa encompasses 6 of the 10 countries with the highest rates of child marriage in the world.⁸ The situation in this region is peculiar; child marriage is very prevalent whereas decline is slow and the population of girls in the region is increasing.⁹ Considering these factors, it has been predicted that if the rate of decline in the region does not improve significantly, by 2050 up to 25 million girls below the age of 18 would be married.¹⁰

Globally, more than 700 million women presently alive were married before they were 18 years of age, and of this figure 250 million got married before they were 15 years of age.¹¹ Every year an average of 12 million girls get married. If the prevalence of child marriage continues at the present rate UNICEF anticipates that by 2030 more than 150 million additional girls will get married before they turn 18¹² and the number of women alive who are married before reaching 18 would increase from 700 million to 1.2 billion.¹³ Although child marriage occurs among boys and girls, it is about five times more prevalent among girls than boys.¹⁴ This research will therefore focus on child marriage as it relates to girls.

The fact that child marriage is prevalent in the African continent is not an indication that it is solely an African problem.¹⁵ Child marriage is a global issue that affects even first world countries. For instance, data from 38 states in the US reveal that about 167,000 children of at least 12 years old were married in the U.S. from 2000 to 2010. The data also revealed the children being married were often young girls marrying adult men.¹⁶ Florida alone had a

⁷ UNICEF, *Child Marriage is a Violation of Human Rights, but is all too Common* (*supra*) note 1

⁸ UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage- Focus on West and Central Africa* (*supra*) note 1, p.2

⁹ UNICEF has projected the population of girls that will be under age 18 in the West and Central Africa by 2050 to increase up to 250 million, see UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa* p.2

¹⁰ According to UNICEF, not even a doubling of the present rate of decline will be sufficient. See, UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa* (*supra*) note 2

¹¹ UNICEF. *Ending Child Marriage: Progress and Prospects*. New York. 2013. P.2 (accessed June 8, 2018), available at: https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf

¹² UNICEF. *Child Marriage is a Violation of Human Rights, but is all too Common* (*supra*) note 1

¹³ UNICEF. *Ending Child Marriage: Progress and Prospects*. (*supra*) note 11, p.6

¹⁴ For instance, the ratio of girls to boys married before age 18 is 72:1 for Mali, In Niger, 77:5. Even in countries with low rates of child marriage, the proportion of women married before age 18 is higher than their male counterparts. For instance, in Moldova, 15 per cent of women between 20 to 49 were married before age 18 as compared to 2 per cent of men in the same age range. See UNICEF. *Ending Child Marriage: Progress and Prospects*. (*supra*) note 11, p.2; See also UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa* (*supra*) note 1, p.2

¹⁵ Human Rights Watch. *Florida: Child Marriage Ban Hits a Bump, Legislators Should Support Bill Setting Minimum Age at 18*. February 2018. (Accessed 18/06/18) available at:

<https://www.hrw.org/news/2018/02/05/florida-child-marriage-ban-hits-bump>

See also UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa* (*supra*) note 1, p.2

¹⁶ The above data is provided by Unchained at Last, a non-profit organisation in the US dedicated to helping women and girls leave or avoid arranged/forced marriages and creating social, policy and legal change to end forced and child marriage in America. The NGO succeeded in retrieving and analysing marriage-license data from across the US. The research project revealed that child marriage is a significant problem in America. Although data could not be accessed from 12 states and Washington D.C., based on strong correlation identified between population and child marriage, Unchained NGO estimated the overall number of child marriage in the US between 2000 and 2010 as 248,000. The data also revealed that of this figure, 85.1% were girls and 14.53% were boys See Unchained, *Child Marriage: Shocking Statistics*, available at <http://www.unchainedatlast.org/about/> (accessed June 6, 2018)

record of more than 1,800 marriages involving children below 18 years and as young as 13 years from 2012 to 2016.¹⁷

1.1 Aim and Scope of Research

In addressing the issue of child marriage in Africa- noting its negative and life altering effects on the female child, exposing the major causes of this and using Nigeria as a case study- this paper adds to the existing literature by including Nigeria's experience in the ongoing international advocacy for an end to child marriage in Africa and indeed the world.

The paper assesses the gravity and extent of the problem of child marriage in Africa with the aim of bringing to the fore the need to treat the issue of child marriage in Africa as an international emergency, one that needs immediate and consolidated effort to bring to an end.

The African Union's Agenda 2063 (AU Agenda 2063) is also in focus. The paper considers Aspiration 6 of the AU's Agenda 2063 which directly addresses the issue of child marriage under its goals; with a view to end child marriage by 2063. The possibility of achieving this Aspiration is also assessed considering the high statistics of child marriage in Africa, the factors responsible for the situation and the level of commitment from the national and regional level to bring an end to child marriage.

In considering the efforts/commitments made so far at national and regional levels to address the issue of child marriage, this paper will demonstrate that although a few countries in Africa are stepping up to the challenge, overall, there is not enough political will at a national level to review outdated laws, enact new laws and implement these laws to protect children from the abuse of child marriage. Using Nigeria as a case study and drawing from a few other country situations, the paper will demonstrate that Africans, African traditional and religious leaders and governments are not fully poised/ready to break free from age long negative cultures and religious beliefs that undermine the African children's rights in this regard. Efforts to end child marriage need to be accelerated, as efforts at present are not sufficient to steer the continent towards achieving an end to child marriage by 2063 as envisaged by the AU's Agenda 2063.

The paper will canvass for a strategic and sustained grassroot and a country by country mobilisation approach in addressing the problem as well as highlighting those African countries who are taking major steps to address the issue of child marriage as examples to follow. The African Union's aspirations must be matched with action, resources and engagement of intercountry and intercontinental support to become a reality.

¹⁷ Human Rights Watch. *Florida: Child Marriage Ban Hits a Bump*, (supra) note 15; see also Sean Rossman, "Yes, children are still legally able to get married in the United States." *USA Today*, March 13, 2018. (Accessed June 12, 2018), available at: <https://eu.usatoday.com/story/news/nation-now/2018/03/13/yes-children-still-legally-able-married-all-across-united-states/419419002/>

2.1 Negative Effects of Child Marriage on the Child

2.1.1 Health implications

The negative effects of child marriage are far reaching. Child marriage compromises the health and development of the child.¹⁸ Child marriage exposes the child to the risk of early pregnancy;¹⁹ because the reproductive organs of the child bride are not mature, there is a higher risk of complications during pregnancy and at child birth.²⁰ These complications range from eclampsia, postpartum haemorrhage, obstructed labour due to underdeveloped pelvis, leading to fistula and resultant faecal or urinary incontinence which may cause humiliation and ostracism even by the husband of the child bride.²¹ In some cases, complications at child birth may result in maternal and infant mortality.²² According to the World Health Organisation statistics, complications during pregnancy and childbirth are the leading cause of death for girls aged 15 to 19 years globally,²³ and 90% of births to girls aged 15 to 19 years occur within marriage.²⁴

The health risk of HIV/Aids infection and other sexually transmitted diseases (STDs) are also concerns for child marriage. Globally, the rate of HIV/Aids infection and other sexually transmitted diseases (STDs) is highest among girls/women aged 15 to 24 years of age.²⁵ Studies on Africa as regards the prevalence of HIV/Aids reveal that married girls are more prone to contracting HIV/Aids as compared to their unmarried counterparts.²⁶ For instance, in Kenya, a study revealed married girls are 50% more likely than unmarried girls to contract HIV/Aids virus, in Zambia the risk is 59%. In Uganda the statistics is a relatively high 89% as against their unmarried counterparts which is 69%, using statistics of girls aged 15-19

¹⁸ N.M. Nour, "Health Consequences of Child Marriage in Africa." *Emerging Infectious Diseases*, vol.12, No.11, pp.1644, (accessed June 5, 2018) DOI:[10.3201/eid1211.060510](https://doi.org/10.3201/eid1211.060510)

¹⁹ Nigeria, Demographic and Health Survey 2013, p.57 available at <https://dhsprogram.com/pubs/pdf/FR293/FR293.pdf>; see also N.M. Nour, "Health Consequences of Child Marriage in Africa." (*supra*) note 18, p.1646

²⁰ N.M. Nour, "Health Consequences of Child Marriage in Africa." (*supra*) note 18, p.1646

²¹ A.Raj, "When the Mother is a Child: The Impact of Child Marriage on Health and Human Rights of Girls." *Archives of Diseases in Childhood*, vol. 95, (2010): pp.931-935; see also N.M. Nour, "Health Consequences of Child Marriage in Africa." (*supra*) note 18, p.1646

²² A.Raj, "When the Mother is a Child: The Impact of Child Marriage on Health and Human Rights of Girls." (*supra*) note 21; see also N.M. Nour, "Health Consequences of Child Marriage in Africa." (*supra*) note 18, p.1646

²³ WHO. *Adolescent Pregnancy*, February 2018, (accessed June 13, 2018) available at <http://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy>

See also, WHO Global Health Estimates 2015: Deaths by Cause, Age, Sex, by Country and by Region, 2000–2015. Geneva: WHO 2016

²⁴ UNFPA. *Girlhood, not Motherhood: Preventing Adolescent Pregnancy*. New York: 2015

²⁵ UNAIDS. *HIV Prevention among Adolescent Girls and Young Women: Putting HIV Prevention among Adolescent Girls and Young Women on the Fast-Track and Engaging Men and Boys*. 2016, pp.3-4 (accessed June 10, 2018) available at: http://www.unaids.org/sites/default/files/media_asset/UNAIDS_HIV_prevention_among_adolescent_girls_and_young_women.pdf

See also M. Laga, *et al*, "To Stem HIV in Africa, Prevent Transmission to Young Women." *AIDS*. 2001, vol.15, p.931-934. (accessed June 15, 2018), available at: <https://www.ncbi.nlm.nih.gov/pubmed/11399966>

²⁶ Population Council. *Addressing Sexual Violence and HIV Risk among Married Adolescent Girls in Rural Nyanza, Kenya*, by C. Undie, Brief no. 19, March 2011, pp.1 (accessed June 12, 2018) available at: https://www.popcouncil.org/uploads/pdfs/TABriefs/19_KenyaMarriedAdol.pdf

years.²⁷ These studies reveal that the married girls were being infected with the virus by their husbands.²⁸ The reason for this is closely linked to the fact that in most parts of Africa, specifically the Sub-Saharan Africa, it is common practice for husbands to be significantly older than their wives,²⁹ and by reason of age only, these husbands are more likely to have had numerous sex partners as compared to younger ‘boy-friends’ of single girls. Therefore, they have a higher chance of being infected with the HIV virus from numerous sex partners prior to their marriage to the child bride.³⁰ More so, many cultures in this region support polygamy³¹ which also involves the husband having multiple sex partners and increasing his chances of contracting the virus himself.³² Due to the tender age of the child brides as compared to the mature age of their husbands, the child brides are unable to negotiate safe/protected sex.³³ Moreover, by culture, she is expected to prove her fertility as an African wife and has little or no business with protected sex.³⁴

2.1.2 Domestic Abuse/Violence

Child Marriage exposes the child bride to a higher risk of domestic abuse and violence from her husband and in-laws.³⁵ Due to the tender age of the child bride as compared to the advanced age of the husband³⁶ and the African culture of reverence for elders,³⁷ that is

²⁷ A.J. Nunn, J.F. Kengeya-Kayondo, S.S.Malamba, J.A.Seeley, D.W. Mulder, “Risk Factors for HIV-1 Infection in Adults in a Rural Ugandan Community: A Population Study,” *AIDS* 1994, vol. 8 p.81-86

See also J.R. Glynn, M. Carael, B. Auvert, M. Kahindo, J. Chege and A. Buve. “Why do Young Women have a much higher Prevalence of HIV than Young Men? A study in Kisumu, Kenya and Ndola, Zambia,” *AIDS*, 2001, vol.15, p.51–60

²⁸ Population Council. *Addressing Sexual Violence and HIV Risk among Married Adolescent Girls in Rural Nyanza, Kenya*, by C. Undie, (supra) note 26, p.2; see also R.J. Kelly, R.H. Gray, N.K. Sewankambo, D. Serwadda, F.Wabwire-Mangen, M.J. Wawer, “Age Differences in Sexual Partners and Risk of HIV-1 Infection in Rural Uganda.” *Journal of Acquired Immune Deficiency Syndrome*, vol.32, (2003): pp.446–451, (accessed June 18, 2018), available at: <https://www.ncbi.nlm.nih.gov/pubmed/12640205>

²⁹ Population Council. *Adolescence in the Kibera Slums of Nairobi Kenya*, by A.S. Erulkar, J.K. Matheka, 2007, pp.18 (accessed June 9, 2018) available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.175.8171&rep=rep1&type=pdf>

³⁰ Population Council. *Addressing Sexual Violence and HIV Risk among Married Adolescent Girls in Rural Nyanza, Kenya*, by C. Undie, (supra) note 26, p.2

³¹ For instance, one in three married adolescent girls in Guinea-Bissau are in a polygynous union, one in four in Burkina Faso, and one in five in Benin and Cameroon are in polygynous union. See UNICEF. *A Profile of Child marriage in Africa*, New York. 2015, p.5 (accessed June 5, 2018) available at https://data.unicef.org/wp-content/uploads/2015/11/UNICEF-Child-Marriage-Brochure-High-Single_246.pdf

³² Clark S. “Early Marriage and HIV Risks in Sub-Saharan Africa,” *Studies in Family Planning* 2004, vol.35 p.149–158

³³ Population Council. *Adolescence in the Kibera Slums of Nairobi Kenya*, by A.S. Erulkar, J.K. Matheka (supra) note 29, p.18

³⁴ A.Raj and U.Boehmer, “Girl Child marriage and its Association with National Rates of HIV, Maternal Health and Infant Mortality across 97 Countries.” (supra) note 2, p.538

³⁵ International Centre for Research on Women (ICRW). *Child Marriage and Domestic Violence*, Washington D.C. 2006 p.1, (accessed June 11, 2018) available at <https://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Domestic-Violence.pdf> See also World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report* (supra) note 1, p.65

³⁶ Population Council. *Adolescence in the Kibera Slums of Nairobi Kenya*, by A.S. Erulkar, J.K. Matheka (supra) note 29, p.18

See also R.J. Kelly, R.H., Sewankambo N.K, Serwadda D, Wabwire-Mangen F, Wawer M.J. Age Differences in Sexual Partners and Risk of HIV-1 Infection in Rural Uganda. *Journal of Acquired Immune Deficiency Syndrome*, vol.32, (2003): pp.446–448, (accessed June 18, 2018), available at: <https://www.ncbi.nlm.nih.gov/pubmed/12640205>

common place in most African cultures the child is compelled to be subservient, ‘obedient,’ and is then made voiceless to the husband and in-laws.³⁸ Child brides are more likely to be uneducated, without any source of livelihood, making them financially dependent on their husbands; therefore, lack any form of autonomy and would easily fall victim to gender discriminatory cultural practices.³⁹ All of these factors make child brides especially in the African region more vulnerable to domestic abuse, violence and neglect.⁴⁰ Domestic abuse and violence include from psychological, sexual and physical abuse and violence.⁴¹

2.1.3 Disruption of Education and limitation of opportunities in life

Child marriage disrupts the education of the child bride and limits her opportunities in life.⁴² Apart from the benefits of formal education which improves the lifetime earnings of the female child, there are also associated benefits of schooling. These include developing social skills and building networks with other students which helps for a confident, independent woman in future. Girls who marry early are likely to miss out on such opportunities.⁴³

Although efforts are being made by most African countries to introduce the Free Universal Basic Education, which has helped to minimise the gap between boys’ and girls’ enrolment especially in primary school, this increase in enrolment and completion has not been fully reflected at secondary school level especially in rural areas and among poor communities in different regions of Africa.⁴⁴ Apart from reasons of fewer secondary schools leading to long daily travel distance to school, financial pressure on families as regards associated schooling costs is a major reason for a lower secondary school attendance by girls especially in the rural areas where there is cultural pressure for girls to get married in their schooling age and produce children.⁴⁵ A report focusing on 5 Francophone African countries Burkina Faso,

³⁷ A. Twum-Danso, “Reciprocity, Respect and Responsibility: The 3Rs Underlying Parent-Child Relationship in Ghana and the Implications for Children’s Rights.” *International Journal of Children’s Rights* vol. 17 (2009): pp. 419-420 (accessed June 10, 2018) DOI:10.1163/157181809X430337

See also World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report* (*supra*) note 1, p.58

³⁸ International Centre for Research on Women (ICRW). *Child Marriage and Domestic Violence* (*supra*) note 35 p.1

³⁹ R. Kidman “Child Marriage and Intimate Partner Violence: A Comparative Study of 34 Countries.” *International Journal of Epidemiology*, vol.46 no.2, (2017) pp.663 and 665, (accessed June 10, 2018) DOI: 10.1093/ije/dyw225

Oxford University Press. (Public Release). The Connection Between Child Marriage and Domestic Violence Oxford University Press USA, October 2016, (accessed June 10, 2018) available at: https://www.eurekalert.org/pub_releases/2016-10/oupu-tcb101316.php

⁴⁰ International Centre for Research on Women (ICRW), *Child Marriage and Domestic Violence*, 2006 p.1 available at <https://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Domestic-Violence.pdf> accessed (11/06/18), See R. Kidman “Child Marriage and Intimate Partner Violence: A Comparative Study of 34 Countries.” (*supra*) note 39 pp.662–665

⁴¹ International Centre for Research on Women (ICRW). *Child Marriage and Domestic Violence*, (*supra*) note 35

⁴² World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report*, (*supra*) note 1, p.58

⁴³ *ibid.*

⁴⁴ Education Policy and Data Centre-FHI 360. *Teenage, Married and Out of School: Effects of Early Marriage and Child Birth on School Drop Out* by C. Omoeva, R. Hatch and B. Sylla, April 2014, p.7, (accessed June 12, 2018) available at http://www.ungei.org/resources/files/EPDC_EarlyMarriage_Report.pdf

⁴⁵ *ibid.*

Cameroon, Ivory Coast, Guinea and Togo revealed that one of the major reasons given for dropping out of school by girls of reproductive age was early marriage and pregnancy.⁴⁶

When a child gets married as a child, she is forced into the responsibilities of adulthood prematurely. She is saddled with the responsibility of managing a home, bearing and raising children herself.⁴⁷ Her priorities are reshuffled unwittingly and education is no longer a priority. It becomes difficult to meet the demands of the family and education. This in the long run limits the child's economic opportunities in life to take up paid employment or develop skills that will empower her economically⁴⁸ and plunges her deeper into the circle of poverty and dependence on her husband for sustenance.⁴⁹ It is however argued that in some instances it is the fact that the girls are not in school in the first instance that pushes them into early marriage and not the reverse.⁵⁰ Using Nigeria as a case study, statistics show that 82% of women with no education were married before 18, as opposed to 13% of women who had at least finished a secondary education.⁵¹ It is evident therefore, that there is a direct link between child marriage and educational limitations of the female child.

3.0 International Law Provisions on Child Marriage

Considering the negative impact of child marriage on the child, countries and the world, international and regional treaties have made provisions against child marriages to ensure children around the world are protected. and These provisions also act as a basic framework for countries to adapt to suit their peculiar national circumstances.⁵²

Article 21(2) of the African Charter on the Rights and Welfare of the Child 1990 (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.' The ACRWC further provides for States Parties to the Charter to take all appropriate measures to eliminate harmful social and cultural practices that affect the welfare, dignity, normal growth and development of the child especially those customs and practices harmful to the health or life of the child and discriminatory to the child on the grounds of sex or other status. Child

⁴⁶ World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report*, (supra) note 1, p.58; see also C.B. Lloyd and B.S. Mensch, "Marriage and Childbirth as Factors in Dropping Out from School: An Analysis of DHS Data from Sub-Saharan Africa." *Population Studies*, vol.62 Issue 1, (2008): p.4-5 (accessed June 10, 2018) <https://doi.org/10.1080/00324720701810840>

⁴⁷ International Center for Research on Women (ICRW). *The Causes, Consequences and Solutions to Forced Child Marriage in the Developing World*, by A. Malhotra, July 2010, p.3-5 (accessed June 14, 2018) available at <https://www.icrw.org/files/images/Causes-Consequences-and%20Solutions-to-Forced-Child-Marriage-Anju-Malhotra-7-15-2010.pdf>

⁴⁸ World Bank. *Understanding Poverty*. (Updated April 2018) (accessed June 7, 2018, available at: <http://www.worldbank.org/en/topic/poverty/overview>

⁴⁹ The Connection Between Child Marriage and Domestic Violence Oxford University Press USA, October 2016, available at https://www.eurekaalert.org/pub_releases/2016-10/oupu-tcb101316.php (accessed 11/06/18)

⁵⁰ Education Policy and Data Centre-FHI 360. *Teenage, Married and Out of School: Effects of Early Marriage and Child Birth on School Drop Out* (supra) note 44, p.7

⁵¹ Girls not Brides. *Child Marriage Around the World: Nigeria*. (accessed June 11, 2018), available at <https://www.girlsnotbrides.org/child-marriage/nigeria/>

⁵² Population Reference Bureau. *Ending Child Marriage in the Arab Region*, by F. Roudi-Fahimi and S. Ibrahim, Washington D.C. 2013, p.2, (accessed June 5, 2018) available at <https://assets.prb.org/pdf13/child-marriage-arab-region.pdf>

marriage embodies all of these and more; it is a discriminatory, it is a harmful socio-cultural practice that affects the physical and psychological development of the female child.⁵³

The United Nations Convention on the Rights of the Child 1989 (UNCRC) on the other hand does not expressly provide for marriage or for the age of marriage but provides under Article 19(2) that States Parties should take "...all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse..." Child marriage as established in this paper is an exploitation of the child, it is sexual abuse by older men on children made vulnerable by poverty, culture, religion or legislative shortcomings.⁵⁴ Child marriage in most cases leads to physical and mental violence, and neglect of the child.⁵⁵ Therefore Article 19(2) of the UNCRC directly applies to child marriage

Article 6 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003, requires States Parties to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. States Parties are also required to enact appropriate national legislative measures to guarantee that every marriage takes place with the free and full consent of both parties. The minimum age for marriage is also set at 18 years for women.

Other treaties/conventions that address the issue of marriage include the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 Article 16(1) and (2), the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 10(1) and the International Covenant on Civil and Political Rights (ICCPR), 1966, Article 23(2)(3)(4).

4.0 Some Causes of Child Marriage: Nigeria as a Case Study

Four major identified causes of child marriage will be addressed in this paper, they include; poverty, culture, religion and legislative omissions. Other causes may be responsible for child marriage,⁵⁶ but the four causes addressed are the most common amongst African countries and they encompass most of the other causes.⁵⁷ For instance, gender discrimination is a factor responsible for child marriages. However, gender discrimination can be seen as a negative cultural practice common in Africa, and is thus covered under culture. Therefore, in addressing these four factors other factors are addressed simultaneously.

⁵³ See section 2.1.1 and 2.1.2 of this paper for detailed discussion on the health and developmental challenges caused by child marriage to the child. See also A.Raj. "When the Mother is a Child: The Impact of Child Marriage on Health and Human Rights of Girls." (*supra*) note 21, pp.931-935

⁵⁴ See sections 4.0.1, 4.0.2, 4.0.3 and 4.0.4 of this paper for details.

⁵⁵ See pages 4-7 and pages 10-13 of this paper dealing with these abuses and consequences of child marriage on the child.

⁵⁶ For instance, insecurity in the time of conflict, illiteracy, desire to create family ties between two wealthy families are some other factors that can trigger child marriage

⁵⁷ International Center for Research on Women (ICRW). *The Causes, Consequences and Solutions to Forced Child Marriage in the Developing World*, (*supra*) note 47, p.3-5,

In Nigeria 43% of girls are married before they attain the age of 18 and 17% are married before they are 15 years old.⁵⁸ Nigeria has the largest number of child brides in Africa, with 23million women who were married as children.⁵⁹ The figures of child marriage vary in different regions of the country with figures as high as 76% in the North-West region and as low as 10% in the South-East.⁶⁰ The fact that the figures of child marriage are high in the northern part of the country does not suggest that it is a Northern Nigeria problem only. The four identified causes addressed in this paper play out in every part of Nigeria but different causes have varying levels of significance in different parts of the country.

In the North, religion and poverty which will be discussed later in this paper are the strongest drivers for child marriage.⁶¹ However, recently *Boko Haram*, an Islamic extremist whose insurgency has led to the capturing of school girls including the 276 Chibok School girls in 2014 and the recent kidnapping of 110 Dapchi school girls in February 2018,⁶² has added another twist to the many causes of female child marriage and vulnerability in Northern Nigeria. Some of the kidnapped girls who are mostly teenagers were taken as brides by the Islamic fighters.⁶³ This particular issue will not be addressed further in this paper.

In the South-East, South-West and South-South of Nigeria, especially in the rural communities, negative cultural beliefs/practices drive parents to want to give out their children early in marriage. Poverty is also a major factor responsible for child marriage in this region.⁶⁴ This paper will address the four identified causes of child marriage, linking them to other sub-causes where necessary, using Nigeria as a case study.

⁵⁸ Girls not Brides. *Child Marriage Around the World: Nigeria*, (supra) note 51

⁵⁹ It is therefore no surprise that Nigeria is home to 10% of the world's fistula cases as a result of its high level of child marriages. See Girls not Brides, *The Legal Loopholes that Perpetuate Child Marriage*, (accessed June 14, 2018) available at <https://www.girlsnotbrides.org/legal-loopholes-perpetuate-child-marriage/> See also UNICEF. *A Profile of Child marriage in Africa*, (supra) note 31, p.5

⁶⁰ Girls not Brides. *Child Marriage Around the World: Nigeria*. (supra) note 51. The case of children like Wasilu Umar a 14-year-old girl from Kano State, Northern Nigeria forced into marriage, who poisoned and killed her husband who was 35years old is one of the numerous tragedies of child marriage in Nigeria. See BBC News Report, "Nigeria Child Bride 'Poisons Older Husband.'" April 10, 2014, (accessed 14/06/18), available at: <https://www.bbc.co.uk/news/world-africa-26978872> Also the case of Boko Haram insurgency has worsened the situation of child bride increase in Nigeria as these Boko Haram fighters have resorted to a new strategy of kidnapping girls especially from rural communities in Maiduguri and marrying them and having them produce children for the fighters. The case of the 270 Chibok Girls being kidnapped is one among many. See Stephanie Sinclair, "Child, Bride, Mother: Nigeria." *New York Times*, January 27, 2017, (accesses 10/06/18), available at: <https://www.nytimes.com/interactive/2017/01/27/sunday-review/29Exposures-child-bride-interactive.html>

⁶¹ See section 4.0.2 and section 4.0.3 of this paper for details on poverty and religion as causes of child marriage

⁶² See S. Marris, "110 Girls Missing after Boko Haram Attack on School in Nigeria." *Sky News*, February 26, 2018, (accessed 12/06/18) available at: <https://news.sky.com/story/over-100-girls-missing-after-boko-haram-attack-in-nigeria-11267647>

See also, J. Gopepe and D.Searcey, "In Nigeria, Another Mass Kidnapping Stirs Painful Memories and Anger." *New York Times* February 25, 2018, (accessed 12/06/18), available at: <https://www.nytimes.com/2018/02/25/world/africa/nigeria-kidnapping-girls-dapchi-chibok.html>

⁶³ See BBC News Report, "Nigeria Child Bride 'Poisons Older Husband.'" (supra) note 60; See also Stephanie Sinclair, "Child, Bride, Mother: Nigeria." *New York Times*, January 27, 2017, (supra) note 60; See also Girls not Brides. *Child Marriage Around the World: Nigeria*, (supra) note 51. The case of children like Wasilu Umar a 14-year-old girl from Kano State, Northern Nigeria forced into marriage, who poisoned and killed her husband who was 35years old and was charged for murder is one of the numerous tragedies of child marriage in Nigeria.

⁶⁴ See section 4.0.1 and 4.0.3 of this paper for details on the effect of poverty and culture on child marriage in Nigeria

4.0.1 Culture

Culture plays a major role amongst the reasons why children are given out in marriage in Nigeria as in most parts of Africa.⁶⁵ The negative traditional perception of gender roles; that a woman is confined to being a wife and mother and nothing more, is a negative trigger for parents to feel justified to give out their young female children to be married.⁶⁶

In the rural areas of Nigeria as in other African countries, where traditional beliefs still thrive, investing in the education or otherwise of a female child is often viewed as a waste of resources as the female child will eventually get married and leave the family. Male children are therefore prioritised as they are seen to carry on the family name.⁶⁷

In some communities, it is culturally believed that having a child marry at an early age especially after puberty, will prevent her from being promiscuous and bringing shame to the family.⁶⁸

4.0.2 Religion

Religion is another factor responsible for the disturbing rate of child marriage in Nigeria, specifically in Northern Nigeria⁶⁹ which has a predominantly Muslim population.⁷⁰

Some Islamic scholars and jurists have addressed the issue of age of marriage based on the interpretations of the Quran. According to these scholars and jurists, there is no specified legal age for marriage in Islam; a child “experiencing wet dream” or “experiencing monthly course,” as stated in the Quran, indicates the age of maturity for males and females

⁶⁵ K.O. Fayokun, “Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights.” *US-China Education Review B*, Vol. 5, No. 7, (July 2015): p.462, (accessed June 13, 2018) doi: 10.17265/2161-6248/2015.07.005

⁶⁶ Association of Family and Reproductive Health. *Child Marriage an Unending Abomination in Nigeria*, by C. Orjiako, March 2018, (accessed June 12, 2018), available at: <http://arfh-ng.org/child-marriage-an-unending-abomination-in-nigeria/>

see also C.N. Okafor and I. Oyakhiromen, “Nigeria and Child Marriage: Legal Issues, Complications, Implications Prospects and Solutions.” *Journal of Law, Policy and Globalisation*, vol.19 (2014) p.120-126, (accessed June 12, 2018), available at: https://www.researchgate.net/publication/284183893_Nigeria_and_Child_Marriage_Legal_Issues_Complications_Implications_Pro Prospects_and_Solutions See also World Bank. *Educating Girls, Ending Child Marriage*. August 2017, (accessed June 12, 2018) available at: <http://www.worldbank.org/en/news/immersive-story/2017/08/22/educating-girls-ending-child-marriage>

⁶⁷ Population Reference Bureau. *Ending Child Marriage in the Arab Region (supra)* note 52, p.2; see also K.O. Fayokun, “Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights.” (*supra*) note 65, p.461,

⁶⁸ Population Reference Bureau. *Ending Child Marriage in the Arab Region (supra)* note 52, p.2; see also World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report (supra)* note 1, p.24 and p.65

⁶⁹ K.O. Fayokun, “Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights.” (*supra*) note 65, p.462

⁷⁰ Z. Pierri and A. Barkindo, “Muslims in Northern Nigeria: Between Challenge and Opportunity.” in *Muslim Minority- State Relations -The Modern Muslim*, edited by Mason, R. World Palgrave Macmillan, New York, 2016, p.133; see Nigeria Research Network and Oxford Department of International Development. *A Survey of the Muslims of Nigeria's North Central Geopolitical Zone*, compiled by Ostein P. Working Paper No.1, p.8 and p.50, (accessed June 9, 2018) available at: <http://www.qeh.ox.ac.uk/sites/www.odid.ox.ac.uk/files/WP1Ostien.pdf>

respectively.⁷¹ However, the *ihtilam* (wet dream) for males and *haidah* (menstruation) for females are not attained at any particular age. It therefore implies that if a child of 12 years or even younger shows signs of puberty she can be given out in marriage.⁷² These scholars also support their argument with the example of the marriage of the Prophet Mohammed to one of his brides, Aisha when she was only 6-year-old.⁷³ They cite the statement of Aisha, the bride of the Prophet Mohammed who said the Prophet Mohammed got married to her when she was 6 years old and the marriage was consummated at age 9.⁷⁴

The impetus given to child marriage by religion was brought to limelight in Nigeria in 2010 when a Nigerian senator, and devout Muslim,⁷⁵ Ahmad Sani Yerima, a senator for Zamfara West in Northern Nigeria, allegedly married a 13-year-old Egyptian girl after paying \$100,000 to her parents.⁷⁶ He argued that he was within the Islamic law and was not concerned about any other law.⁷⁷ Senator Yerima also cited the example of Prophet Mohammed who married a 6-year-old while he was alive as justification for his action.⁷⁸

In 2007 and 2014, Maimuna Abdulmunini and Wasila Tasi'u- a 13-year-old and a 14-year-old child brides from the Northern part of Nigeria, who were given in marriage to men more than twice their age- were accused of and later convicted of murder of their husbands. When asked why they got involved in such crimes, they had similar answers; they were married off against their will, they were being physically and sexually abused and had been frustrated and overwhelmed in their matrimonial homes.⁷⁹

⁷¹ N.F. Abdul Manaf, "Childhood: Coming of Age Rituals, Malaysia." In *Encyclopedia of Women and Islamic Cultures: Family, Body, Sexuality and Health*, volume III, edited by J. Saude, (Leiden-Boston: Brill 2006); see also M.A. Ambali, *The Practice of Muslim Family Law in Nigeria* (Zaria: Tamaza Publishing Co. Ltd, 2003), p.154-155

⁷² A. Dauda, *An Introduction to Sharia*, (Zaria: Benchmark Publishers Limited, 2005) pp. 129-130.

⁷³ K.O. Fayokun, "Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights." (*supra*) note 65, p.462

⁷⁴ M.K. Majid, "Family Law In Malaysia," *Malayan Law Journal*, Kuala Lumpur, (1999) p.20; see also N.N. Badli- Shah, *Marriage and Divorce Under Islamic Law*. (Kuala Lumpur: International Law Book Services, 1998) p.6; see also I. Hussain and N. Abdul Aziz, "The Child Bride: Rights under the Civil and Shariah Law" *Procedia - Social and Behavioral Sciences*, 2012, vol.38, (2012): p.55, (accessed June 2, 2018), available at: https://ac.els-cdn.com/S1877042812008026/1-s2.0-S1877042812008026-main.pdf?_tid=31683c57-f9ce-42a5-b8fa-783270a1f107&acdnat=1529034346_7fac64f4cad0f6997adddea3d6ce144c

⁷⁵ Senator Yerima was the Governor of Zamfara State from May 1999 to May 2007 and under his governorship, he oversaw the introduction of sharia law into Zamfara State as the first Northern State to introduce Sharia as State Law.

⁷⁶ BBC News Report, "Nigerian Senator Sani Denies Marrying Girl of 13." *BBC News*, April 30, 2010, (accessed June 10, 2018) available at <http://news.bbc.co.uk/1/hi/world/africa/8651043.stm> see also Aljazeera News Report, "Nigerian senator marries girl of 13, Bride's Parents received Dowry of \$100,000 before Wedding took place in Abuja." May 18, 2010, (accessed June 11, 2018) available at: <https://www.aljazeera.com/news/africa/2010/05/2010518858453672.html>

⁷⁷ BBC News Report, "Nigerian Senator Sani Denies Marrying Girl of 13." *BBC News*, April 30, 2010 (*supra*) note 76

⁷⁸ *ibid.*

⁷⁹ The case of Wasila Tasi'u and Maimuna Abdulmunini who poisoned and burnt their husbands to death respectively and were convicted of murder in 2015 and 2010 is instructive here of the frustration of children made to marry against their will and before they are ready to do so. See E.A. Agege, E.U. Nwose, S. Odjimogho and E.O. Igumbo, "Legalities of Child Marriage in Nigeria: Implications on Health and Strategies of Prevention," DOI: 10.15761/SHI.1000105 (accessed June 10, 2018) available at:

4.0.3 Poverty

Poverty in Africa is still a major problem and is a major trigger for child marriage.⁸⁰ According to a World Bank report, half of the world's extreme poor live in Sub-Saharan Africa and over half of this figure are children below 18 years of age.⁸¹ This extremely poor population is found majorly in the rural areas of Africa and is poorly educated.⁸² Although Africa's population in extreme poverty declined from 56% in 1990 to 43% in 2012, due to population increase there are actually more people in extreme poverty in Africa now than there were in 1990. In 1990 the number of persons living in extreme poverty in Africa was 280million but by 2012 the figure had risen to 330million.⁸³

In Nigeria as in Africa generally, the high rate of poverty especially in the rural areas is a major driving force for child marriage. Girls from the poorest households are 3 times more likely to become child brides than those from the richest households.⁸⁴ More than half the number of girls from the poorest households in developing countries of which most African countries are classified, get married before they are 18.⁸⁵

In most poor rural communities in Nigeria and Africa generally,⁸⁶ female children are given away for marriage by poor families to reduce the economic burden of child care such as feeding, education, clothing *et cetera*.⁸⁷ The financial gain of bride price is also an incentive for child marriage to poor families.⁸⁸ The payment of bride price is an ancient tradition in most African communities.⁸⁹ It involves the giving of material items, such as animals,

<http://www.oatext.com/legalities-of-child-marriage-in-nigeria-implications-on-health-and-strategies-of-prevention.php>

see also K.O. Fayokun, "Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights." (*supra*) note 65, p.462; see also, The Guardian Report, "Nigeria: Child Brides Facing Death Sentences a Decade after Child Marriage Prohibited." *The Guardian*, March 11, 2015, (accessed June 9, 2018) available at: <https://www.theguardian.com/global-development-professionals-network/2015/mar/11/the-tragedy-of-nigerias-child-brides>

⁸⁰ World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report*, (*supra*) note 1, p.56

⁸¹ World Bank. *Understanding Poverty*. (Updated April 2018), (*supra*) note 48

⁸² *ibid*.

⁸³ World Bank. *Poverty in Rising Africa, Africa Poverty Report*, by K. Beegle, C. Luc, A. Dabalén, I. Gaddis, Washington D.C. 2016, p.11 (accessed June 5, 2018) <https://www.un.org/africarenewal/sites/www.un.org.africarenewal/files/Poverty%20in%20a%20Rising%20Africa%20Overview.pdf>

⁸⁴ UNICEF. *A Profile of Child marriage in Africa*, (*supra*) note 31, p.1; Girls not Brides. *The Global Partnership to End Child Marriage, Taking Action to Address Child Marriage: the Role of Different Sectors- Economic Growth and Workforce Development*, (accessed June 4, 2018) available at <https://www.girlsnotbrides.org/wp-content/uploads/2016/03/4.-Addressing-child-marriage-Econ-growth.pdf>

See also UNICEF. *Ending Child Marriage: Progress and Prospects*, (*supra*) note 11, p.2

⁸⁵ UNICEF. *A Profile of Child marriage in Africa*, (*supra*) note 31, p.1)

⁸⁶ World Bank. *Understanding Poverty*. (Updated April 2018) (*supra*) note 48

⁸⁷ T. Berhane-Selaisse, "Research on Early Marriage or Child Marriage in Ethiopia; Summary of Interim Report." Newsletter of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, 15(11), (1993) (accessed June 5, 2018) available at: <https://www.popline.org/node/333678>

⁸⁸ International Center for Research on Women (ICRW). *Child Marriage and Poverty*, Washington D.C. 2006, p.2, (accessed June 6, 2018) available at: <https://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Poverty.pdf>

⁸⁹ The Effect of High Bride Price on Marital Stability, *IOSR Journal of Humanities and Social Science*, 2013 vol. 17 Issue 5, p.65-70 @p 65 available at

clothing, food items or cash by the groom's family to the bride's family in exchange for the bride. It also serves as a seal/validation of a traditional marriage.⁹⁰ Receiving bride price for one child reduces the number of children to feed and coincidentally produces cash or material benefits to cater for the needs of the other children in the poor family.⁹¹ The combined effect of poverty and gender bias- where female children are seen as commodities for profit making and of lesser value to the family than male children in most parts of Africa especially in the rural settings- is a huge drive for child marriage and one that needs to be addressed.⁹²

4.0.4 Legislative Omissions/ Shortcomings

The absence of or inadequate legislation to address fundamental issues necessary for child protection generally, and child marriage specifically, is another factor responsible for the high rate of child marriage in Africa.⁹³ In Nigeria, there is no constitutional provision for the age of marriage. On the contrary, the Constitutional provision referring to marriage in relation to age of capacity to renounce a Nigerian citizenship is poorly drafted, contradicts itself, and creates room for exploitation of the child.⁹⁴ Section 29 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN) provides that:

29(1) "Any citizen of Nigeria of full age who wishes to renounce his Nigerian citizenship shall make a declaration in the prescribed manner for the renunciation.

(2) For the purposes of subsection (1) of this section.

(a) "full age" means the age of eighteen years and above;

(b) any woman who is married shall be deemed to be of full age."

<http://iosrjournals.org/iosr-jhss/papers/Vol17-issue5/K01756570.pdf> (accessed 12/06/18), See also International Center for Research on Women (ICRW). *Child Marriage and Poverty*, (supra) note88, p.2 World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report (supra) note, p.23*

⁹⁰ Bride price is referred to by different names in different parts of Nigeria; In Hausa language which is the language spoken by majority of the people in Northern Nigeria, it is called *sadaki*. Among the Tiv in the Middle Belts Region it is referred to as *kem*, in the West apart from the bride price in cash a list containing various food and other material items called the *Eru Iyawo* is given to the groom to provide the items listed on marriage day. In the East the items on the list to be purchased by the groom is also discouragingly lengthy, this also includes cash as bride price known as *ikpo onu aku nwayi*. Among the Zulus it is called *lobola*. See S. Ngutor, M.Y. Avanger and S.A.Agba, "The Effect of High Bride Price on Marital Stability." *IOSR Journal of Humanities and Social Science*, vol. 17 Issue 5, (2013): p.65, (accessed June 7, 2018), available at: <http://iosrjournals.org/iosr-jhss/papers/Vol17-issue5/K01756570.pdf>

See also G. Hague and R.Thiara. "Bride-Price, Poverty and Domestic Violence in Uganda, Final Report." An International Collaboration between MIFUMI Uganda Violence Against Women Research Group, University of Bristol, UK Centre for the Study of Safety and Well-being, University of Warwick, UK, (2009).p.65 (Accessed June 14, 2018), available at:

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.397.1304&rep=rep1&type=pdf>

see Dekker, M, and Hans H. "Bridewealth and Household Security in Rural Zimbabwe." *Journal of African Economics*, vol.11, Issue 1, (2002):114-145

Goody, J. "Bridewealth and Dowry in Africa and Eurasia." In *Bridewealth and Dowry*, edited by Jack Goody and Stanley J. Tambiah, (Cambridge: Cambridge University Press 1973)

⁹¹ See S. Ngutor, M.Y. Avanger and S.A.Agba, "The Effect of High Bride Price on Marital Stability." (supra) note 90, p.65

See also G. Hague and R. Thiara. "Bride-Price, Poverty and Domestic Violence in Uganda, Final Report." (supra) note 90, p.65

⁹² International Center for Research on Women (ICRW). *Child Marriage and Poverty*, (supra) note 88, p.2,

⁹³ *Girls not Brides, The Legal Loopholes that Perpetuate Child Marriage (supra) note 59*

⁹⁴ See Section 29(4)(a)(b) of the CFRN 1999

The implication of the above section, specifically section 29(b) above is that the age of majority for a man and a woman in Nigeria are different under this constitutional provision. For a man, 18 years is the age of majority, whereas, the age of a woman is irrelevant, a girl of any age; 0 or above, who is married is deemed to have reached the age of maturity. In other words, the marriage to a female child of any age is irrelevant in the eyes of the law. The drafters seem to suggest that the biological development and calculation of the age of a child is not the yardstick for measuring age and maturity, rather marriage upgrades the child from a child to an adult. The above provision not only contradict itself, it is also discriminatory against women, it promotes child marriage on a constitutional level, it is unjust and does not protect the best interests of the child.⁹⁵ The provision is archaic and of no relevance in modern society and as such ought to be expunged from the constitution which is the highest law of the land.⁹⁶

In July 2013, section 29(4)(b) was brought before the Nigerian Senate for review.⁹⁷ However, with significant lobbying campaign led by Senator Ahmad Sani Yerima – Senator for Zamfara West in northern Nigeria who himself got married to a child bride in 2010,⁹⁸ the vote to expunge the unjust section failed and the section remains valid till date.⁹⁹ The reason given by Senator Yerima for opposing the amendment of section 29(4)(b) of the CFRN was that it was against Islamic law to restrict the age of marriage of a girl.¹⁰⁰ Senator Yerima also argued that it is not within the powers of the legislators to interfere in marriages under Islamic law and custom as provided in Item 61 of the Second Schedule of the CFRN 1999 which provides for Legislative powers for “The formation, annulment and dissolution of marriages other than marriages under Islamic law and Customary law including matrimonial causes relating thereto.”(footnote)

The same CFRN provides in section 42(1) under chapter 4 (Fundamental Rights) provides for right to freedom from discrimination it states:

42. (1) “A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-

⁹⁵ ACRWC article 4 and the UNCRC article 3.

⁹⁶ See CFRN 1999 section 1 on the supremacy of the CFRN 1999.

⁹⁷ Nigeria’s federal legislative body, the National Assembly, consists of two houses—the House of Representatives and the Senate.

⁹⁸ A. Onuora-Oguno A. “Constitutionalising the Violation of the Right of the Girl Child in Nigeria: Exploring Constitutional Safeguards and Pitfalls.” Oxford Human Rights Hub, August 2013, (accessed June 14, 2018) available at: <http://ohrh.law.ox.ac.uk/constitutionalising-the-violation-of-the-right-of-the-girl-child-in-nigeria-exploring-constitutional-safeguards-and-pitfalls/>

⁹⁹ N.O. Okeke, “Section 29 (4) (b) Of The Constitution of the Federal Republic of Nigeria: Much Deeper than Child Marriage, Citizenship, Discrimination and Gender,” November 2013, (accessed June 15, 2018), available at:

https://www.academia.edu/13528291/SECTION_29_4_B_OF_THE_CONSTITUTION_OF_THE_FEDERAL_REPUBLIC_OF_NIGERIA_MUCH_DEEPER_THAN_CHILD_MARRIAGE_CITIZENSHIP_DISCRIMINATION_AND_GENDER See also Girls not Brides. *Nigeria’s Opportunity to Clarify its Position on Minimum Age of Marriage*. 2013, (accessed June 14, 2018) available at <https://www.girlsnotbrides.org/nigerias-opportunity-to-clarify-its-position-on-minimum-age-of-marriage/>

¹⁰⁰ Senator Yerima also argued that it is not within the powers of the legislators to interfere in marriages under Islamic law and custom as provided in Item 61 of the Second Schedule of the CFRN 1999 which provides for Legislative powers for “The formation, annulment and dissolution of marriages other than marriages under Islamic law and Customary law including matrimonial causes relating thereto.” See, Girls not Brides. *Nigeria’s Opportunity to Clarify its Position on Minimum Age of Marriage* (supra) note 99

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions are not made subject...”

Therefore, a girl, by reason of her sex cannot under the constitution be subject to treatment other male Nigerian citizens are not subject to as regards age of maturity being determined by marriage.¹⁰¹

Furthermore, by the combined reading of section 42(1)(b) and section 10 of the CFRN a religious opinion cannot be the basis of the provision of the CFRN and no citizen of Nigeria only by reason of his/her religion can be accorded any privilege or advantage not accorded to other citizens of Nigeria of other religions.¹⁰²

Section 10 of the CFRN 1999 provides that the government of the federation or a state shall not adopt any religion as state religion. Therefore, the basis for retaining section 29(4)(b) of the CFRN which is solely for the interest of religious (in this case Islamic) belief is fundamentally wrong as it imposes the principles of a particular religion on the federation and gives advantage not given to other religious groups to the Islamic religion. However, the lapses in the drafting of the constitution has not made it easy to properly address the issue of child marriage in Nigeria, it has made it more difficult to criminalise child marriage.

Nigeria has ratified both the United Nations Convention on the Rights of the Child¹⁰³ and the African Charter on the Rights and Welfare of the Child¹⁰⁴ and domesticated the provisions of these treaties in the Child Rights Act 2003 (CRA).¹⁰⁵ These two Conventions make provision for the protection of the child from child marriage.¹⁰⁶ The ACRWC has an elaborate provision on this and specifically provides for States Parties to enact legislation that specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.¹⁰⁷ There are however, complications as regards the application of the CRA for the benefit of all female Nigerian children.

In Nigeria an international treaty does not automatically have the force of law, it must be domesticated by the enactment of an enabling statute by the National Assembly. Where the

¹⁰¹ See CFRN 1999 section 29(4)(b) of the

¹⁰² CFRN 1999 Section 42(2) provides that:

42 (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

¹⁰³ Nigeria signed the UNCRC in January 1990 and it was ratified in April 1991, see Ratification Table of the UNCRC available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (accessed 26/06/18)

¹⁰⁴ Nigeria signed the ACRWC in July 1999 and it was ratified in July 2001, see Ratification Table: African Charter on the Rights and Welfare of the Child available at <http://www.achpr.org/instruments/child/ratification/> (accessed 26/06/18)

¹⁰⁵ Human Development Initiatives. Street Children and the Juvenile Justice System in Lagos State, by B.Owasanoye and M. Wernham, (2004): p.20 (accessed June 12, 2018), available at <https://www.streetchildrenresources.org/wp-content/uploads/2013/03/street-children-juvenile-justice-lagos.pdf>

¹⁰⁶ See Article 21(1)(2) of the ACRWC and Article 19(1) and (2)

¹⁰⁷ See Article 21(1)(2) of the ACRWC

matter in an international treaty falls outside the exclusive legislative list,¹⁰⁸ a Bill for an Act of the National Assembly must be endorsed by a majority of all the Houses of Assembly of the Federation before it is submitted for presidential assent to give effect to the treaty.¹⁰⁹

In a situation where the National Assembly erroneously enacts a treaty into law without first obtaining the endorsement of a majority of all the Houses of Assembly of the Federation, the enabling statute emanating from such erroneous process shall be considered as applicable only in the Federal Capital Territory Abuja.¹¹⁰

This is the case with the CRC and the ACRWC. The CRC and the ACRWC are treaties that border on the rights of the child. Matters concerning children generally or the welfare of children fall within the Residual List in Nigeria.¹¹¹ The National Assembly passed the enabling Statute, which is the Child Rights Act 2003 without obtaining the required majority consent of all the Houses of Assembly of the Federation. Therefore the C.R.A. is now being enacted on individual States basis and regulates only the Federal Capital Territory.¹¹²

The CRA has been promulgated into law in 25 states: Abia, Akwa-Ibom, Anambra, Benue, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Niger, Bayelsa, Kogi and Taraba.¹¹³

The Northern states except Jigawa and Nasarawa, do not yet have a law conforming to the CRA. These states include: Adamawa, Bauchi, Borno, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara.¹¹⁴ The reason for the unpopular status of the CRA especially in the Northern Nigeria, is that some of its provisions especially those bordering on adoption as well as the age for marriage set at eighteen years by the CRA¹¹⁵ upsets the

¹⁰⁸ See the CFRN 1999, Second Schedule, Part I and II which provides for three kinds of lists--

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

¹¹¹ There is no outright written provision for matters that fall within the residual list, but any matter outside the Exclusive and Concurrent Legislative Lists fall within the Residual List. See the CFRN 1999, Second Schedule, Part I and II, see also UNICEF, Information Sheet- The Child's Rights Act- August 2007 available at https://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf

¹¹² M.A. Abdulraheem-Mustapha. "Child Justice Administration in the Nigerian Child Rights Act: Lessons from South Africa." *African Human Rights Law Journal*, vol.16, No.2, (2016): pp.441; see also A. Omoware. Child Rights Act in Nigeria-Reality or Farce available at http://akinomoware.blogspot.co.uk/2010_12_01_archive.html

¹¹³ UNICEF. *On Nigerian Children's Day, UNICEF calls for an End to Violence against children and Adoption of Child Rights Acts in all States*, 27th May 2017, (accessed June 5, 2018), available at https://www.unicef.org/nigeria/media_11542.html

¹¹⁴ This Day News Online. "UNICEF Calls for Adoption of Child Rights Acts in All States." *This Day News*, June 1, 2017, (accessed June 3, 2018), available at: <https://www.thisdaylive.com/index.php/2017/06/01/unicef-calls-for-adoption-of-child-rights-acts-in-all-states/>

I.O Tajudeen, "Adoption Practice in Nigeria - an Overview." *Journal of Law, Policy and Globalization* vol. 19 (2013): p.8 (accessed June 7, 2018), available at: <http://iiste.org/Journals/index.php/JLPG/article/viewFile/8922/9081>

¹¹⁵ CRA section 21 to 23

Islamic beliefs of Islamic jurists who have tackled the issue of age of marriage and adoption based on the interpretations of the Quran.¹¹⁶

The legislative lapses in the Nigerian legal system have for so long been exploited and has prevented Nigeria from protecting its female citizens from child marriage. This predicament unfortunately is not unique to Nigeria. It is worthy of note that 88% of the 190 UN member States that have ratified the CRC have set a legal minimum age of marriage at 18 years, whereas, 12% of these countries are yet to set a legal minimum age of marriage to prevent child marriage.¹¹⁷ Even where the legal age of marriage is set, some countries have made such legal provision ineffective by providing exceptions and permitting child marriage where parental consent is given or under religious or customary law where such systems exist alongside civil law. Furthermore, 30% of countries that have ratified the CRC do not protect girls aged 15 from child marriage due to these exceptions.¹¹⁸

A study on 54 African countries revealed that 33 of the 54 countries have laws that set out the minimum age of marriage at 18. More so, a few African countries like Algeria,¹¹⁹ Lesotho, Libya and Rwanda have gone a step further to set the minimum age of marriage above 18 years to encourage girls of school age to conclude their basic education before marriage.¹²⁰ The remaining African countries have the minimum age of marriage below 18 years or discriminatory provisions regarding age of marriage as between boys and girls.¹²¹ Even where the legal age of marriage is set at 18 years, some countries have made such legal provision ineffective by providing exceptions and permitting child marriage where parental consent is given¹²² or under religious or customary law where such systems exist alongside civil law.¹²³ In some instances, child marriage to girls below 18 years can be permitted where a court order authorises it.¹²⁴

5.0 The African Union's Agenda 2063 as Regards Child Marriage: A Reality or Rhetorics?

The African Union's Agenda 2063 is a strategic framework for the socio-economic transformation of the continent over the next 50 years. Previous and existing continental

¹¹⁶ Ogbuabor, C.A, Nwosu, E.O. "Impact of Nigeria's Child's Rights Act on Alternative Dispute Resolution and the Criminal Justice System" *European Journal of Social Sciences*, vol. 42 No.4, (2014): pp.470, see also note 63, 64 and 55 above.

¹¹⁷ Girls not Brides, *The Legal Loopholes that Perpetuate Child Marriage*, (*supra*) note 59

¹¹⁸ *ibid.*

¹¹⁹ Algeria is one of the countries with the lowest rate of child marriage in Africa. This is not unconnected with some major legislative reviews embarked on by the country. See p.21-22 below for some reasons why Algeria has such a low record of child marriage. See also UNICEF. *Algeria: MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa*, (*supra*) note 3; See also, UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa*, (*supra*) note 1, p.2)

¹²⁰ Girls not Brides, *The Legal Loopholes that Perpetuate Child Marriage*, (*supra*) note 59 (accessed 20/06/18)

¹²¹ Girls not Brides, *The Legal Loopholes that Perpetuate Child Marriage*, (*supra*) note 59

¹²² In Angola for instance, the law permits 15-year-old girls to be married with parental consent even though the age of marriage is legally set at 18. See Girls not Brides, *The Legal Loopholes that Perpetuate Child Marriage*, (*supra*) note 59

¹²³ See the Nigerian situation as regards exemptions on grounds of religion and customary law in section 4.0.1 of this paper

¹²⁴ For instance, in Burkina Faso, the Civil Court can authorise marriage of a child below 18 years. in Ethiopia, the Ministry of Justice has discretionary power to authorise marriages below 18. Girls not Brides, *The Legal Loopholes that Perpetuate Child Marriage*, (*supra*) note 59

initiatives are integrated into Agenda 2063 with a view to accelerate and build on them.¹²⁵ The guiding vision for Agenda 2063 is the AU Vision of ‘An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in international arena.’¹²⁶

5.1 Aspirations Related to the Protection of the Female Child and Child Marriage

The African Union has set 7 Aspirations¹²⁷ for the transformed African continent that it envisions by 2063. These Aspirations generally apply to African children and more specifically as regards the focus of this paper; female African children and child marriage. Although the protection of the rights of the child resonates in all 7 Aspirations, Aspiration 6 directly and specifically affects female children and child marriage more than the others. Aspirations 2,¹²⁸ 3,¹²⁹ and 4¹³⁰ also refer to issues on female child protection and on child marriage but quite scantily. Therefore, only Aspiration 6 will be addressed in detail in this paper to avoid repetition, as aspiration 6 covers every aspect related to child marriage referred to by Aspirations 2,3 and 4.

Aspiration 6 envisages an Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for and putting its children first. An Africa where no child, woman or man will be left behind or excluded, on the basis of gender, political affiliation, religion, ethnic affiliation, locality, age or other factors.¹³¹

¹²⁵ See the AU explanation of the Agenda 2063 on <https://au.int/en/agenda2063/about> (accessed June 15,2018)

¹²⁶ Agenda 2063 builds on past and present initiatives such as: the Lagos Plan of Action, The Abuja Treaty, The Minimum Integration Programme, the Programme for Infrastructural Development in Africa (PIDA), the Comprehensive Africa Agricultural Development Programme (CAADP), The New partnership for Africa’s Development (NEPAD), Regional Plans and Programmes and National Plans. It is also built on national, regional, continental best practices in its formulation. See <https://au.int/en/agenda2063/about> (accessed June 15,2018)

¹²⁷ These Aspirations for Africa by 2063 are: **1.** A prosperous Africa based on inclusive growth and sustainable development **2.** An integrated continent, politically united based on the ideals of Pan Africanism and the vision of Africa’s Renaissance **3.** An Africa of good governance, democracy, respect for human rights, justice and the rule of law **4.** A peaceful and secure Africa **5.** An Africa with a strong cultural identity, common heritage, values and ethics **6.** An Africa, whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children **7.** Africa as a strong, united, resilient and influential global player and partner. See African Union Commission, *Agenda 2063: The Africa We Want*, available at https://au.int/sites/default/files/pages/3657-file-agenda2063_popular_version_en.pdf (accessed June 15,2018)

¹²⁸ Aspiration 2 envisions Africa as ‘an integrated continent, politically united, based on the ideals of Pan-Africanism and the vision of Africa’s Renaissance.’ It has as one of its goals gender equality in Africa. See the African Union Commission, *Agenda 2063: The Africa We Want*, (*supra*) note 127, Aspiration 2,)

¹²⁹ Aspiration 3 envisions ‘an Africa of good governance, democracy, respect for human rights, justice and the rule of law.’ It also refers to gender equality as one of its goals. See the African Union Commission, *Agenda 2063: The Africa We Want*, (*supra*) not 27, Aspiration 3,

¹³⁰ Aspiration 4 deals with ‘a peaceful and secure Africa’ and has amongst its goals, to achieve an Africa in 2063 where there is a flourishing culture of human rights, democracy and gender equality. As established, Child marriage prevents or limits the female child’s enjoyment of her full human rights and promotes the negative culture of gender inequality in Africa, therefore, is in contrast with Aspiration 4. See the African Union Commission, *Agenda 2063: The Africa We Want*, (*supra*) note 127, Aspiration 6, paragraph 47.

Aspiration 4 paragraph 34

¹³¹ African Union Commission, *Agenda 2063: The Africa We Want*, (*supra*) note 127, Aspiration 6, paragraph 47

Child marriage and its implications as addressed in this paper is in sharp contrast to the AU's Agenda 2063. Child marriage is a reflection of a culture and a people that put their children last not first as envisioned by aspiration 6.¹³² The best interests of the child is not in contemplation in child marriage, rather religion, culture, and material provisions derived from bride price *et cetera*, are placed above the rights and interests of the child. Child marriage is an abuse that takes advantage of the age of the child, it is a gender based abuse.¹³³

The AU aspires to see an Africa in 2063 where women specifically are empowered to play their rightful role in all spheres of life and full gender equality is achieved.¹³⁴ Child marriage does not empower a girl/woman, it disempowers her in many ways especially economically. It has been established that girls who marry as children stand a higher risk of dropping out of school due to pregnancy and child birth and the onerous demands of their matrimonial home.¹³⁵ In this way, the child bride's opportunities to be gainfully employed, is limited as she does not have the educational qualifications required for particular jobs neither does she have the time and opportunity to learn a trade or skill to be self-employed and economically empowered.

Aspiration 6 of the AU's Agenda 2063 further envisages an Africa where 'all forms of gender-based violence and discrimination (social, economic, political) against women and girls will be eliminated and the latter will fully enjoy all their human rights. An Africa where all harmful social practices (especially female genital mutilation and child marriages) will be ended and barriers to quality health and education for women and girls eliminated.'¹³⁶

Child marriage as established is 5 times more prevalent among girls than boys.¹³⁷ Child marriage is a gender-based violence against the female child.¹³⁸ It is a discriminatory and harmful social practice¹³⁹ that has far-reaching and life transforming consequences on the female child's development, health, psychology, self-worth and more.¹⁴⁰ Child marriage prevents or limits the female child's enjoyment of her full human rights including the right to health, the right to life, the right not to be discriminated against, the right to hold an opinion, the right to education,¹⁴¹ and more as envisaged by the AU's Agenda 2063.

¹³² See the African Union Commission, *Agenda 2063: The Africa We Want*, (*supra*) note 127 Aspiration 6, paragraph 47

¹³³ Population Council. *Adolescence in the Kibera Slums of Nairobi Kenya*, by A.S. Erulkar, J.K. Matheka (*supra*) note 29, p.18

International Centre for Research on Women (ICRW). *Child Marriage and Domestic Violence*, (*supra*) note 35, p.1

¹³⁴ See the African Union Commission, *Agenda 2063: The Africa We Want*, (*supra*) note 127, Aspiration 6, paragraph 49-50 and 52,

¹³⁵ Education Policy and Data Centre-FHI 360. *Teenage, Married and Out of School: Effects of Early Marriage and Child Birth on School Drop Out*, (*supra*) note 44, p.7; see also C.B. Lloyd and B.S. Mensch, "Marriage and Childbirth as Factors in Dropping Out from School: An Analysis of DHS Data from Sub-Saharan Africa." (*supra*) note 46, p.4-5

¹³⁶ See the African Union Commission, *Agenda 2063: The Africa We Want*, (*supra*) note 127, Aspiration 6, paragraph 51

¹³⁷ UNICEF. *A Profile of Child marriage in Africa*, (*supra*) note 31, p.2

¹³⁸ International Centre for Research on Women (ICRW). *Child Marriage and Domestic Violence*, (*supra*) note 35, p.2

¹³⁹ *ibid.*

¹⁴⁰ UNICEF. *A Profile of Child marriage in Africa*, (*supra*) note 31, p.2

¹⁴¹ International Center for Research on Women (ICRW). *The Causes, Consequences and Solutions to Forced Child Marriage in the Developing World*, (*supra*) note 47, p.11

5.2 Are these Aspirations achievable considering the above challenges?

In considering if the AU Agenda 2063 as it concerns the female child and child marriage is achievable, the magnitude of the problem of child marriage must be considered alongside the factors that trigger child marriage.¹⁴² The steps presently taken by African countries to address the issue must also be considered and whether such steps are sufficient as they are presently or they need to be accelerated and/or new approaches taken to create the desired change and make the AU Agenda 2063 a reality.

The magnitude of the problem of child marriage in Africa cannot be down played; UNICEF has estimated that if current trends and rates of child marriage in Africa continue,¹⁴³ almost half of the world's child brides in 2050 will be African.¹⁴⁴ Considering that West and Central Africa are at a higher risk¹⁴⁵ and efforts being made to address the issue of child marriage in this region is insufficient to match the exponential rise in the figures of child marriage.¹⁴⁶ UNICEF has estimated it would take over 100 years to end child marriage in this region unless commitment is accelerated.¹⁴⁷ This is approximately 54 years beyond the AU's targeted time for ending child marriage in 2063 in Africa.¹⁴⁸

Four major factors responsible for child marriage were identified in this paper. The factors considered include; legislative omission which refers to the absence of or inadequate legislation to address fundamental issues necessary for child protection generally and child marriage specifically, negative cultural practices, poverty and religion. More so, the aim of highlighting these problems is not to extinguish the hope for the realisation of the AU Aspiration 2063; rather it is a call for urgent action, a reality check and an attempt to proffer practical solutions.

6.0 The Way Forward

Recognising child marriage as a major problem in Africa is a step towards seeking a solution. Identifying the causes is another major step further in this direction. Proffering possible solutions to end child marriage is a clear indication that the problem is resolvable. However, solutions must be backed with action to have any value at all.

¹⁴² These factors are addressed in sections 4.0.1, 4.0.2, 4.0.3 and 4.0.4 of this paper and See pp.1-2 of this paper demonstrates the current trends and rates of child marriage in Africa

¹⁴³ See pp.1-2 of this paper for details of current trends and rates of child marriage in Africa

¹⁴⁴ UNICEF. *A Profile of Child marriage in Africa*, (*supra*) note 31, p.1 and 3

¹⁴⁵ UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa*, (*supra*) note 1, p.2

¹⁴⁶ UNICEF has projected the population of girls that will be under age 18 in the West and Central Africa by 2050 to increase up to 250 million, see UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa*, (*supra*) note 1, p.2

¹⁴⁷ UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa*, (*supra*) note 1, p.5

¹⁴⁸ The UNICEF research estimating 100 years before child marriage is eradicated considering present rate of decline was released in 2017. 100 years from 2017 is 2117. Considering the number of years between 2063 and 2117, the result is about 54 years. See UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa*, (*supra*) note 1, p.5

6.0.1 Education, skills Acquisition and Female Empowerment as a tool to Combat Child Marriage

Keeping girls in school is one of the most effective tools to combat child marriage.¹⁴⁹ According to a recent World Bank report, each year of secondary education for a girl reduces the likelihood of her marrying before she turns 18 years old by 5% or more in many countries.¹⁵⁰ By contrast, child brides are more likely to drop out of school than their peers who marry later.¹⁵¹ Education also empowers a girl to be economically independent as it increases her chances of formal employment in the future, thus breaking the cycle of poverty which is a major cause of child marriage.¹⁵²

In Uganda, about 1500 girls' clubs being run by BRAC Uganda, which is part of a Bangladesh-based International organisation is making success in reducing child marriage in the country. These clubs engage girls in vocational training, sex education, music, financial literacy, games, and the likes. They also offer microfinance to young female aspiring entrepreneurs. Research shows that members of these clubs who have been involved in these clubs for up to 2 years are 58% more unlikely to marry early.¹⁵³

In Nigeria, a non-governmental organisation (NGO) known as the Isa Wali's Empowerment Initiative, organises an empowerment programme for girls, teaching them skills that are relevant in their locality. For instance, some girls from Kano,¹⁵⁴ where rice production is a very popular industry, are taught how to process and package rice. Another group of girls are taught how to make re-useable sanitary towels, sell these items in the community to other women and girls and use the proceeds to cover cost of their education where their parents cannot afford to do so.¹⁵⁵ Furthermore, as a short-term measure, parents are also given incentives (financial and material) to keep their daughters in school and unmarried. The results and benefits of these initiatives go beyond the generation of girls being empowered presently as an educated and an empowered girl is more likely to educate her daughter in future and protect her from child marriage too.¹⁵⁶

6.0.2 Enacting, Reviewing and Restructuring Legislation and Putting in Place Enforcement Mechanism

The fight against child marriage in Africa cannot be won without a restructuring and reviewing of the outdated legislation on child marriage in Africa on a country-by-country basis.

¹⁴⁹ World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report*, (*supra*) note 1, p.58

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

¹⁵² World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report*, (*supra*) note 1, p.57:

¹⁵³ World Bank. *Educating Girls, Ending Child Marriage*, (*supra*) note 66

¹⁵⁴ Kano is a state in Northern Nigeria

¹⁵⁵ Girls not Brides. *Economic Empowerment and Child Marriage: Lessons from Nigeria*. March 15, 2017. (accessed June 12, 2018) available at <https://www.girlsnotbrides.org/economic-empowerment-child-marriage-lessons-nigeria/>

¹⁵⁶ *ibid.*

In 2005, as a step to protect children from child marriage and to review other family law issues, Algeria amended its family code¹⁵⁷ and set the minimum age for marriage at 19 for both men and women.¹⁵⁸ Consent for marriage according to the amended code must also be mutual.¹⁵⁹ The code also prohibits proxy marriage which usually involves a different person from the spouse representing the spouse to be married at the marriage ceremony.¹⁶⁰ This scenario was very common in the rural areas and was used to perpetuate forced marriages. However, the review and amendment of the Algerian Family Code in 2005 to a great extent has been responsible for its 2% record of child marriage, one of the lowest in the continent.¹⁶¹

Other positive examples of African countries like, Lesotho, Libya and Rwanda who have also gone a step further to set the minimum age of marriage above 18 years to encourage girls of school age conclude their basic education before marriage¹⁶² should be followed. The age of marriage should be set at 18 or above without exceptions such as religious or customary law,¹⁶³ parental consent¹⁶⁴ or court order¹⁶⁵ as these exceptions make such legal provision ineffective and tacitly permit child marriage. Discriminatory provisions in the laws of different countries regarding age of marriage for boys and girls¹⁶⁶ should be expunged and a uniformed age set instead. Child marriage should be clearly criminalised and penalties imposed for violation of the provisions against child marriage in the law.¹⁶⁷ Registration of all marriages including customary and religious marriages in an official registry should be made compulsory to ensure persons getting married are up to the legal age of marriage and children are not discretely taken as brides by older men.¹⁶⁸

¹⁵⁷ The Family Code of 1984 modified by Ordinance No. 05-02 of 27 February 2005

¹⁵⁸ See Family Law Code 2005 of Algeria article 13

¹⁵⁹ Family Law Code 2005 of Algeria articles 9 and 10, see also UNICEF: Algeria MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa, p.2, available at <https://www.unicef.org/gender/files/Algeria-Gender-Eqaulity-Profile-2011.pdf> accessed (24/06/18), see also Committee on the Elimination of Discrimination against Women, Third and Fourth periodic report of Algeria, CEDAW/C/DZA/3-4, 2010, see also Refugee Documentation Centre of Ireland, Information on Forced Marriages and Polygamous Marriages, including the Treatment of Women- Algeria, (July 2011) p.2, available at <http://www.refworld.org/pdfid/4e3ba9212.pdf> (accessed 26/06/18)

¹⁶⁰ See Family Law Code 2005 of Algeria article 10, see also Refugee Documentation Centre of Ireland, Information on Forced Marriages and Polygamous Marriages, including the Treatment of Women- Algeria, (July 2011) available at <http://www.refworld.org/pdfid/4e3ba9212.pdf> (accessed 26/06/18)

¹⁶¹ UNICEF. *Algeria: MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa.* (*supra*) note 3, p.2; See also UNICEF Child Marriage Data Base, Updated March 2018, (accessed June 15, 2018), available at <https://data.unicef.org/topic/child-protection/child-marriage/>

¹⁶² Girls not Brides, The Legal Loopholes that Perpetuate Child Marriage, available at <https://www.girlsnotbrides.org/legal-loopholes-perpetuate-child-marriage/> (accessed 20/06/18)

¹⁶³ See the example of the omissions and contradictions in the Nigerian constitution which tacitly permits child marriage in section 4.0.4 of this paper

¹⁶⁴ In Angola for instance, the law permits 15-year-old girls to be married with parental consent even though the age of marriage is legally set at 18. See Girls not Brides, *The Legal Loopholes that Perpetuate Child Marriage*, (*supra*) note 59

¹⁶⁵ For instance, in Burkina Faso, the Civil Court can authorise marriage of a child below 18 years. In Ethiopia, the Ministry of Justice has discretionary power to authorise marriages below 18. Girls not Brides. *The Legal Loopholes that Perpetuate Child Marriage*, (*supra*) note 59

¹⁶⁶ *ibid.*

¹⁶⁷ See Article 21(2) of the ACRWC which supports this position.

¹⁶⁸ Article 21(2) of the ACRWC

6.0.3 Awareness Campaigns

The disadvantages of child marriage, value for the female child and the benefits of education for the female child should be incorporated in school curriculum from an early age to re-orientate¹⁶⁹ and sensitise both male and female children on these issues early in life.

The campaign against child marriage should not be superficial and conducted just in major cities; these campaigns should be rigorously carried out in the rural areas most especially, as statistics show that child marriage is more prevalent in rural, poor communities than in the urban cities¹⁷⁰ and must be addressed from the root.

Family heads, religious and traditional leaders should be sensitised and incorporated in the campaign against child marriage in Africa. These leaders reach the rural people more directly than government officials will as they already have existing structures, platforms and social networks through which they can influence their followers.¹⁷¹

The example of Voices for Change (V4C) in Nigeria, a £29 million programme funded by UK Aid, with a vision to create an enabling environment for gender equality in Nigeria¹⁷² is worth noting. The programme targets adolescent women and girls, providing them with the skills, knowledge and confidence they need to stand up against discriminatory social norms in their schools, homes work places and the community. The women are not empowered in isolation; traditional leaders, religious leaders and influential persons in society are re-orientated and trained to join the fight against gender discrimination, child marriage and other harmful socio-cultural practices. Reports show that more than half of the 403 trained religious and traditional leaders are taking action against discriminatory beliefs and sharing their message with more than 300,000 people and change is evident.¹⁷³

Social media, television, radio and other media outlets are useful awareness tools to reach out to children and adults alike in this regard.

Awareness campaign and support for birth registration especially in rural areas in Africa, and making birth registration compulsory, will be a positive step in the move to eradicate child

¹⁶⁹ The negative cultural orientation about the fact that female children are of less value as compared to their male counterparts is one that is well established in most African cultures. A re-orientation is urgently needed if progress is to be made in eradicating child marriage in Africa. See C.N.Okafor, and Oyakhiromen I. "Nigeria and Child Marriage: Legal Issues, Complications, Implications Prospects and Solutions." *Journal of Law, Policy and Globalisation*, vol.19 (2014) p.120-126, (accessed June 12, 2018), available at: https://www.researchgate.net/publication/284183893_Nigeria_and_Child_Marriage_Legal_Issues_Complications_Implications_Prospects_and_Solutions See also T. Berhane-Selaisse, "Research on Early Marriage or Child Marriage in Ethiopia; Summary of Interim Report." Newsletter of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children,5(11), (*supra*), note 87

¹⁷⁰ UNICEF. *A Profile of Child marriage in Africa*, (*supra*) note 31, p.1

Girls not Brides. *The Global Partnership to End Child Marriage, Taking Action to Address Child Marriage: the Role of Different Sectors-Economic Growth and Workforce Development*, (*supra*) note 84; see also UNICEF. *Ending Child Marriage: Progress and Prospects*, (*supra*) note 11, p.2

¹⁷¹ UK Aid and Voices for Change. *Engaging Religious and Traditional Leaders for Gender Equality, V4C Stories of Learning*, June 2017, p.8 (accessed June 14, 2018), available at: http://www.v4c-nigeria.com/wp-content/uploads/2014/09/SOL_EngagingLeaders_Web.pdf

¹⁷² UK Aid and Voices for Change. *Engaging Religious and Traditional Leaders for Gender Equality, V4C Stories of Learning*, (*supra*) note 171, p.12

¹⁷³ *ibid.*

marriage in Africa. Birth registration which involves recording the birth of a child by a government authority, establishes the existence of the child and acts as evidence of age. This official evidence of age can be a vital tool in protecting the child not only from child marriage, but also from other abuses like child labour, enrolment in armed forces, sexual abuse, *et cetera*.¹⁷⁴

6.0.4 International Partnership and Co-operation

The aspiration to end child marriage in Africa by 2063 cannot be achieved if fought as a battle in isolation by Africa as a continent or by individual countries in Africa alone. International and intercontinental partnership and co-operation is required; in terms of exchange of knowledge and expertise, financial partnership, and more. For instance, the governments of Burkina Faso, Chad, Cote d'Ivoire, Mali, Mauritania, and Niger with financial support from IDA, the World Bank's fund for the poorest countries and the Sahel Women Empowerment and Demographic Dividend (SWEDD) project, are working in partnership to empower girls/women in this region.¹⁷⁵ The \$205 million SWEDD project is aimed at preventing early marriage and giving greater access to reproductive, child and maternal health services to girls and women.¹⁷⁶ Conditional cash transfers are also being given to encourage girls to stay in school. The project incorporates traditional and religious leaders to aid easy and direct access to the target groups in the community.¹⁷⁷

Governments of various African countries and NGOs should support and encourage poor families to send and keep their children in school by giving aids such as free school uniforms, free tuition or reduction of fees and cash transfers where possible. This will make a great difference.¹⁷⁸ In addressing poverty and child marriage, no support is to be underestimated. Seemingly insignificant issues as lack of sanitary facilities in school have impeded menstruating female children from attending school and thus encouraged child marriage.¹⁷⁹ Building more schools in rural areas and assisting with transportation for children to and from schools will encourage school attendance by female children in especially those in secondary schools in most rural areas in Africa.¹⁸⁰ In some cases, due to the long distance to school transportation is required, the cost of which poor families cannot afford.¹⁸¹ Due to the cultural perception of the vulnerability of a female child, parents in these rural settings will not permit their female child to walk long lonely distances to school for fear of being physically or sexually molested. This, is enough reason to want to keep their female child at home and let the 'tougher sex' (male children) go to such schools, thus, expanding the gender gap in education and encouraging child marriage.¹⁸² Providing facilities such as free school

¹⁷⁴ African Union. *Campaign to End Child Marriage in Africa: Call to Action* p.4,(accessed June 12, 2018) available at: <https://au.int/sites/default/files/pages/32905-file-campaign-to-end-child-marriage-in-africa-call-for-action-english.pdf>

¹⁷⁵ World Bank. *Educating Girls, Ending Child Marriage*, (*supra*) note 66

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

¹⁷⁸ World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report*, (*supra*) note 1, p.58

¹⁷⁹ World Bank Group. *Economic Impacts of Child Marriage: Global Synthesis Report*, (*supra*) note 1, p.54

¹⁸⁰ *ibid.*

¹⁸¹ *ibid.*

¹⁸² *ibid.*

buses, free tricycles or bicycles for students' transportation and building more secondary schools in these rural areas will go a long way to address this.

7.0 Conclusion

The AU's Agenda 2063 as it concerns the protection of the female child with regards to child marriage may be ambitious but it is none the less achievable.¹⁸³ Although it has been established in this paper that the four identified causes of child marriage are deeply engrained in the fabrics of African society,¹⁸⁴ and that Africans and African leaders have not done enough to address these causes on a national and regional level,¹⁸⁵ the willingness of a few African countries that have stepped forward to put an end to child marriage in their countries, and have achieved results, is an indication that eradicating child marriage in Africa by 2063 is achievable. Agenda 2063 must be matched with action. Time is of the essence if the target time for eradicating child marriage by 2063 is to be achieved;¹⁸⁶ the time to act is now.

Efforts to stop child marriage need to be accelerated especially in those countries¹⁸⁷ and regions in Africa where the figures of child marriage are highest.¹⁸⁸ The approach to ending child marriage should be proactive/preventive to ensure a lasting solution to the problem. In this sense, more commitment should be given to strategies such as education, skill acquisition and empowerment of female children. Awareness campaigns/sensitisation of female children across Africa, and the communities they belong to, is also a priority here. If legislation in African countries set the minimum age of marriage at 18 years or higher for both sexes, and go a step further to criminalise and penalise perpetrators, this will act as a deterrent to other perpetrators of child marriage.

Child marriage is a concern to all and the impact of child marriage is felt by communities, nations and the entire world. Female children are valuable assets and "systems that undervalue the contribution and participation of girls and women limit their own possibilities

¹⁸³ The AU Aspires to eradicate child marriage and other negative socio-cultural practices against the child by 2063. See African Union Commission, *Agenda 2063: The Africa We Want*, (*supra*) note 127, Aspiration 6; see also K. DeGhetto K, J.R. Gray and M.N. Kiggundu, "The African Union's Agenda 2063: Aspirations, Challenges, and Opportunities for Management Research." *Africa Journal of Management*, vol.2 no.1 (2016): p.97 (accessed June 14, 2018) available at: <https://doi.org/10.1080/23322373.2015.1127090>

¹⁸⁴ See sections 4.0.1, 4.0.2, 4.0.3 and 4.0.4 of this paper where the identified causes of child marriage are addressed, demonstrating also how deeply rooted these factors are in Africa

¹⁸⁵ See p.21-22, section 6.0.2 above for examples of some African leaders that have taken positive steps towards eradicating child marriage

¹⁸⁶ Although UNICEF has estimated that eradicating child marriage at the present rate of change especially in West and Central Africa may take up to 100 years to achieve; this should act as a propeller to accelerate actions and not as a discouragement. If actions are accelerated, the target of 2063 can be achieved. See UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage-Focus on West and Central Africa*, (*supra*) note 1, p.5

¹⁸⁷ For instance, countries such as Niger with child marriage rates as high as 76% Niger should be urgently considered. See UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage- Focus on West and Central Africa*, (*supra*) note 1, p.2.

¹⁸⁸ West and Central Africa should be placed as priority in taking actions to end child marriage as the rates in this region are highest amongst other regions in Africa. UNICEF, Data Analytics Section. *Achieving a Future without Child Marriage- Focus on West and Central Africa*, (*supra*) note 1, p.2; see also p.1 of this paper for details of the rate of child marriage in African regions.

for growth, stability and transformation.”¹⁸⁹ Culture, religion, poverty or legislative shortcomings in Africa, which have undermined their protection and encouraged child marriage should not be allowed to overshadow this truth. The words of Nelson Mandela are instructive here for Africa, “There can be no keener revelation of a society’s soul than the way in which it treats its children.”¹⁹⁰

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