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IN SEARCH OF PROTECTION FOR CHILD'S RIGHT: A DIAGNOSTIC APPRAISAL OF CHILD BRIDES IN AFRICA.

INTRODUCTION

Right is a universal phenomenon, and the emergence of human rights law in international sphere is one of the most significant developments that have taken place since the end of the Second World War. Amongst the world recognized rights are right to self determination, peace, general satisfactory of environment favourable to peoples development, and people's right to full sovereign over their natural resources; economic, social association. Others are minority rights and child's rights. In Africa, it is common to see many communities engaged in giving out their female children out in marriage without the brides consent. This practice is rife and forceful in nature. In this case, it is the parents that give consent and arrange the marriage rites and ceremonies. One important element in marriage, that is, "consent of the parties" is absent; this makes the marriage a "forced marriage"[1]. The parents or third parties give consent on behalf of, especially the child bride. Indeed, child bride is a form of forced marriage without respecting the right and dignity of the child.

This paper therefore aims at analyzing the reasons for the child's brutality via undignified marriage, the paper further examines the consequence of a child marriage and child's right to either agree or disagree to marriage. Conclusion drawn on the legal effect of child marriage and solution proffer to the menace of child marriage.

DEFINITION OF TERMS

a. A child_is any human being below the age of eighteen (18) years[2]. A child according to Black Law Dictionary is a person under the age of majority[3].

b. A Bride denotes a woman who has just been married or is about to be married. A Woman means an adult female person. A "Bride" therefore, is an adult female person, who upon maturity both legally and physically and after having appreciated the responsibilities associated with marriage has consented to and contracted same[4].

c. "Child Bride" is a marriage of a female - child who is under aged. It means marrying out a girl-minor, at underage when she is not matured physically, intellectually and legally to know and appreciate the responsibilities of marriage.

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[1] Forced marriage in the sense that it has no informed consent or free will of the parties

[2] (as defined by the Convention on the Rights of the Child; African Charter on the Rights and Welfare of the Child and the Nigerian Child Rights Act).

[3] Black's Law Dictionary, third Pocket Edition

[4] It is pertinent to note however, that under the Islamic Family Law, majority is not a perquisite for marriage. What is important is the witnessing of her first menstrual period

CHILD MARRIAGE PHENOMENA:

Child marriage usually refers to two separate social phenomena which are practiced in some societies:

- The first and more widespread practice is that of marrying a young child (generally defined as below the age of eighteen) to an adult. In practice, it is usually a young girl married to a man sometimes old enough to be her grandfather.
- The second practice is a form of arranged marriage in which the parents of the two children from different families arrange a future marriage. In this practice, the individuals who become betrothed often do not meet one another until the wedding ceremony, which occurs when they are both considered to be of a marriageable age. In child betrothals, a child's parents arrange a match with the parents of a child from another family (social standing, wealth and expected education all play a part), thus unilaterally determining the child's future at a young age.

In many tribal systems[5], a man pays a bride price to the girl's family in order to marry her. In many parts of Africa, this payment, in cash, cattle, or other valuables, decreases as a girl gets older. Even before puberty, it is common for a married girl to leave her parents to be with her husband. Many marriages are poverty related, with parents needing the bride price to feed, clothe, educate, and house the rest of the family[6].

It is important to note that, families are able to solidify political and/or financial ties by having their children inter-marry. The betrothal is considered a binding contract upon the families and the children. The breaking of a betrothal can have serious consequences both for the families and for the betrothed individuals themselves.

In Africa, it is common to see many communities engaged in giving out their female children out in marriage without the brides consent. In this case, it is the parents that give consent and arrange the marriage rites and ceremonies. One important element in marriage, that is, "consent of the parties"[7] is absent; this makes the marriage a "forced marriage"[8]. The parents or third parties give consent on behalf of, especially the child bride. Indeed, child bride is a form of forced marriage.

Forced marriage is a marriage that is performed under duress and without the full and informed consent or free will of both parties. Being under duress includes feeling both physical and emotional pressure.

MOTIVES FOR CHILD MARRIAGE

There are various motives for child marriage. These include:

- **Poverty:** Some poor families use child marriage as a means to gain financial ties with wealthier people
- **Political:** The aristocracy of some cultures tends to use child marriage among different factions or states as a method to secure political ties between them. For example, the son or daughter of the royal family of a

[5] For Example, in Yoruba land (Nigeria).

[6] Nour, Nawal M. (2006). "Health Consequences of Child Marriage in Africa", Emerging Infectious Diseases 12 (11): 1644–1649. ISSN 1080-6059. PMID 17283612. http://www.cdc.gov/ncidod/EID/vol12no11/06-0510.htm, accessed 2/3/2011

[7] That is parties agreement

[8] Forced marriage in the sense that it has no informed consent or free will of the parties

weaker power would sometimes be arranged to marry into the royal family of a stronger neighboring power, thus preventing itself from being assimilated.

- **Religion:** Some religion do not specify marriageable age, thus many people hide under this guise to marry children. For example a legislator of an African country recently married a 13 year old girl from another African country. During a media interview condemning the act, he claimed he had not offended any religious law.
- **Tradition:** It is cultural in many African settings to arrange marriage for children. For example in Nupe speaking community of Kwara State Nigeria, as soon as a girl child is born, parents of a young boy immediately seek the girl's hand in marriage and both families will monitor the nurturing of that girl until puberty (11-15 years) and marry her off to the young man. In some other communities, a girl child is married off to an old man who is old enough to be her grandfather.

WAYS OF CONDUCTING FORCED MARRIAGE:

Report across Africa On Child Brides

- Victims fall prey to forced marriage through deception, abduction, coercion, fear, and inducements. In most cases because of the absence of legal age for marriage there is no consent.
- Ukuthwalwa is a cultural practice among people from the Xhosa ethnic group in South Africa's Eastern Cape Province, whereby girls are abducted for marriage.

  (NS) Nolizwi Sinama, age 14, (a victim of this culture in South Africa) one day set off from her aunt's home to a neighboring village, thinking she had been sent on a routine chore, but in fact, she was on her way to be married to a 42-year-old man. She had this to say: "They stole my innocence and my childhood; I begged them not to take me. I told them I wanted to continue with my studies that I wasn't ready to be a wife but they wouldn't let me go . . . They told me that I didn't have a say in the matter - one of them said all the arrangements were made with my family's consent." Her aunt and brother had arranged the marriage, taking three cows as a bride price, or ilobolo as it is known in South Africa[9].

  Three years later, Ms Sinama says the experience left her feeling worthless. Her husband forced her to sleep with him, and she became pregnant a month after she was abducted. Sinama says she told her aunt that her husband forced her into having intercourse, but was told that a failed marriage would disgrace the family. She finally filed a divorce after discovering her husband was HIV positive[10].

  Prince Xhanti Sigcawu, a member of the Xhosa royal family, in defense of the custom said: "Ukuthwalwa like all our other customs was and remains an important part of who we are as a people"[11].
- In villages throughout northern Malawi (East Africa), girls are often married at or before puberty to whomever their fathers choose, sometimes to husbands as much as 50 years older. Many of those girls choose lifelong

[9] BBC news: Stolen youth of South Africa's child brides; Page last updated at 01:31 GMT, Wednesday, 14 October 2009 02:31 UK: http://news.bbc.co.uk/2/hi/africa/8303212.stm, accessed 2/3/2011

[10]. http://news.bbc.co.uk/2/hi/africa/8303212.stm accessed 2/3/2011

[11] http://news.bbc.co.uk/2/hi/africa/8303212.stm accessed 2/3/2011

misery over divorce because custom decrees that children in patriarchal tribes belong to the father[12].

(MS) Mapendo Simbeye sent his 11-year-old daughter, Mwaka, a shy first-grader, to Kalabo's hut, to serve as a servant to his first wife and to become Kalabo's new bed partner in order to pay back 2,000 kwacha ($16) he borrowed to feed his wife and five children[13].

Mwaka says her parents never told her she was meant to be the second wife of a man about three decades older. "They said I had to chase birds from the rice garden. I didn't know anything about marriage."[14]

Mwaka ran away, and her parents took her back after six months. But her escape is the exception. In remote lands like this, where boys are valued far more than girls, where older men prize young wives, where fathers covet dowries, and where mothers are powerless to intervene, many African girls like Mwaka must leap straight from childhood to marriage at a word from their fathers. Sometimes that word comes years before they reach puberty.

- Hadiza is from Northern part of Nigeria (West Africa), she said: "I was married when I was 15 years old. I was forced into it"[15]

Whenever her husband attempted to consummate the marriage, Hadiza would flee to her parents' home, but they kept returning her to the man to whom she had been married off. Finally her husband raped her; the attack was so violent that Hadiza was sent to hospital[16].

PROBLEMS OF CHILD MARRIAGE IN AFRICA:

The various UN commissioned reports[17] indicate that in many Sub-Saharan countries, there is a high incidence of marriage among girls younger than 15. Many governments have tended to overlook the particular problems that child marriage has resulted into, including obstetric fistulae, prematurity, stillbirth, sexually transmitted diseases (including cervical cancer), and malaria.

- In parts of Ethiopia and Nigeria, quite a number of girls are married before the age of 15 and some girls are married as young as the age of 7[18].
- In parts of Mali, 39% of girls are married before the age of 15.
- In Niger and Chad, over 70% of girls are married before the age of 18.
- In South Africa, there are legal provisions made for respecting the marriage laws of traditional marriages, whereby, a person might be married as young as 12 for females and 14 for males[19].

Early marriage is cited as "a barrier to continuing education for girls (and boys)". This includes *absuma* (arranged marriages set up between cousins at birth), bride kidnapping, and elopement decided on by the children[20].

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[12] New York Times, November 27, 2005; http://www.nytimes.com/2005/11/27/international/africa/27malawi.html?pagewanted=all accessed 2/3/2006

[13] http://www.nytimes.com/2005/11/27/international/africa/27malawi.html?pagewanted=all accessed 2/3/2006

[14] http://www.nytimes.com/2005/11/27/international/africa/27malawi.html?pagewanted=all accessed 2/3/2006

[15] Foreword Media; BROKEN LIVES: NIGERIA'S CHILD BRIDES WHO END UP ON THE STREETS. **Source:** TheTimes 28 November 2008: http://www.forwarduk.org.uk/news/news/426 accessed 2/4/2009

[16] Culture Waves: Nigeria's Child Brides, 2008-2010: http://culturewav.es/public_thought/34251

[17] Nour, Nawal M. (2006). "Health Consequences of Child Marriage in Africa". Emerging Infectious Diseases 12 (11): 1644–1649. ISSN 1080-6059. PMID 17283612. http://www.cdc.gov/ncidod/EID/vol12no11/06-0510.htm accessed 2/3/2008

[18] Child Marriage Factsheet: State of World Population 2005 - UNFPA^

[19] Nour, Nawal M. (2006). "Health Consequences of Child Marriage in Africa". Emerging Infectious Diseases 12 (11): 1644–1649. ISSN 1080-6059. PMID 17283612. http://www.cdc.gov/ncidod/EID/vol12no11/06-0510.htm accessed 2/3/2008

[20] ^ LEARNING FROM CHILDREN, FAMILIES, AND COMMUNITIES TO INCREASE GIRLS' PARTICIPATION IN PRIMARY SCHOOL Save the Children USA report^

Also, a male child in these countries is more likely to have a full education, obtain employment and pursue a working life, thus tending to marry later. In Mali, the female: male ratio of marriage before age 18 is 72:1; in Kenya, 21:1[21].

Going by statistics, the percentage of girls marrying before the age of 18 in some African countries are as follows: Niger 76.6; Chad 71.5; Mali 65.4; Guinea 64.5; Central African Republic 57.0; Mozambique 55.9; Uganda 54.1; Burkina Faso 51.9; Ethiopia 49.1; Liberia 48.4; Cameroon 47.2; Eritrea 47.0; Malawi; 46.9; Nigeria 43.3; Zambia 42.1[22].

CONSEQUENCES OF "CHILD BRIDES"

- **Premature Pregnancy:** Child brides almost always bear children before they are physically - or emotionally - ready.

- **Maternal Mortality:** Girls younger than 15 are five times more likely to die during child birth or pregnancy than older women. Pregnancy-related deaths are the leading cause of mortality for girls aged 15 to 19 worldwide.

- **Infant Mortality:** Mortality rates for babies born to mothers under age 20 are almost 75% higher than for children born to older mothers. The children that survive are more likely to be premature, have a low birth weight, and are more at risk of contracting HIV/AIDS.

- **Health Problems:**
  a. **Vesico Vaginal Fistula VVF**: Premature childbirth can result in a variety of health problems for mothers, including VVF, a debilitating condition that causes chronic incontinence. Girls with fistula are often abandoned by their husbands and ostracized by the society. There are approximately 2 million girls living with fistula, and 100,000 new cases are reported every year.

VVF is an abnormal communication between the bladder and the vagina as a result of prolonged obstructed labor. While RVF is an abnormal opening between the rectum and the vagina as a result of prolonged obstructed labor. A person can have both VVF and RVF when both bladder and rectum are affected.

Northern Nigeria has one of the highest rates of child marriage in the world: nearly half of all girls here are married by the age of 15.

The consequences have been devastating. Nigeria has the highest maternal mortality rate in Africa and one of the world's highest rates of fistula, a condition that can occur when the pressure of childbirth tears a hole between the vagina and the bladder or rectum. Many women are left incontinent for life. Up to 800,000 women suffer from fistula in Nigeria.

"They marry young, they get pregnant young, they deliver young and they pick up the fistula," said Kees Waaldijk, the Chief Consultant Surgeon at the Babbar Ruga hospital, the world's largest fistula clinic, in the Northern State of Katsina[23].

Most cases happen to young girls during their first pregnancy, and nearly half the patients at Babbar Ruga are under 16.

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[21] Nour, Nawal M. (2006). "Health Consequences of Child Marriage in Africa", Emerging Infectious Diseases 12 (11): 1644–1649. ISSN 1080-6059. PMID 17283612. http://www.cdc.gov/ncidod/EID/vol12no11/06-0510.htm accessed 2/3/2008

[22] Child Brides: NOW on line. 2010; http://www.pbs.org/now/shows/341/facts.html accessed 2/3/2010

[23] Foreword Media; BROKEN LIVES: NIGERIA'S CHILD BRIDES WHO END UP ON THE STREETS, Source: The Times 28 November 2008; http://www.forwarduk.org.uk/news/news/426

Dr Waaldijk operates on approximately 600 women a year, with no electricity or running water. He sterilizes his equipment in a steel casserole pot that sits on a gas camping stove. Rows of girls and women - some as young as 13 - lie listlessly on rusty hospital beds or on the floor, each connected to a catheter[24].

b. **HIV/AIDS:** Married girls are more likely to contract sexually transmitted diseases, including HIV/AIDS, than unmarried girls. Young girls are more physically susceptible to STD's, have less access to reproductive education and health services and are often powerless to demand the use of contraception.

- **Illiteracy:** Child brides are often taken out of school and denied further education. Their children are also more likely to be illiterate.

- **Poverty:** Child brides, already poor - are isolated and denied education and employment opportunities, making it difficult for them to break out of the cycle of poverty.

- **Abuse and Violence:** Child brides are more likely to experience domestic abuse, and violence than their peers who marry later.

- **Mental Health:** Violence and abuse can lead to post-traumatic stress and depression.

- **Isolation and Abandonment:** Child brides are often isolated from their peers and abandoned when they develop health problems like fistula.

SOLUTIONS TO THE MENACE OF CHILD MARRIAGE

1. Education

- Girls with a secondary education are about six times less likely to marry young compared to girls with little or no education. Vocational training for those who do not have the opportunity or cannot cope with formal education serves the same purpose.
- Education delays the age at which a woman marries. For example, Amina Mohammed (an orphan) hails from Nupe speaking community of Kwara State Nigeria, traditionally, she has been betrothed to a husband from infancy, her actual marriage to the young man has been delayed because she is learning sewing in the city, where she has opportunity to live with an enlightened family. She is 19 years now.
- Education provides an alternative opportunity for girls other than marriage.
- Education increases socio-economic status and earning potential for girls.

2. Employment/Poverty Reduction

The world's poorest countries have the highest rates of child marriage. Families often marry girls off to lessen their economic burden and provide a future for their daughters.

- Girls from poor families are about twice as likely to marry young than girls from better-off households.

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[24] Foreword Media; BROKEN LIVES: NIGERIA'S CHILD BRIDES WHO END UP ON THE STREETS, Source: The Times 28 November 2008: http://www.forwarduk.org.uk/news/news/426

- Girls who earn a wage may be seen as an economic asset, not a burden, by their families, they are less dependent on others to provide for them.

3. Increase advocacy

- Increase in advocacy against early marriage is a good means of reorienting communities who practice this tradition
- Public enlightenment seminars/talk will broaden the knowledge of members of communities who practice child marriage and this may change their attitude, relieve their ignorance and overcome their naïve state ,
- Awareness and sensitization of the girl child about the danger associated with under age marriage. This may curb the submission of young girls to marry by withdrawing from primary schools (common in Plateau State of Nigeria and some other parts of Northern Nigeria).

4. Political will

- Political will of government to implement/enforce existing laws to discourage child marriage is a major factor against child brides

Already, laws are in place both nationally and internationally to discourage child marriage in Africa. For example **Article 21(2) of the African Charter on the Rights and the Welfare of the Child** in protecting African children from child marriage 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"

In Nigeria, Sections **31 and 32 of the Child Rights Act (CRA), 2003** state forcefully that 'no person shall have sexual intercourse with a child.' Anyone who contravenes this provision 'is liable on conviction to imprisonment for life';

It must be noted that, the law provides that it is immaterial if 'the offender believed the person to be of or above the age of eighteen' or that 'the sexual intercourse was with the consent of the child'.

In Kwara State, Nigeria, the CRA has been domesticated (through concerted efforts of various stakeholders, including this writer). Now, the Child Rights Law, 2006, regulates the rights of the child in the State. **In Kwara State, the prescribed age of a child is reduced to 16 years. Sections 21 to 23** discourages child/forced marriage and prescribes stringent penalty on the violators of the Law. It provides as follows:

S. 21. No person under the age of sixteen (16) is capable of contracting a valid marriage, accordingly, a marriage so contracted is null and void and of no effect whatsoever

S. 22. (1) No parent, guardian or any other person shall betroth a child to any person

(2) A betrothal in contravention of sub section (1) of this section is null and void.

23. A person-

(a) who marries a child; or

(b) to whom a child is betrothed or married; or

(c) who promotes the betrothal or marriage of a child; or

(d) who betroths a child ,

Commits an offence and shall be liable on conviction to a fine not exceeding Three Hundred Thousand Naira or imprisonment for a term not exceeding three years.

Despite these beautiful provisions in protecting the rights of the child, child brides are still common in Africa. Except the government take the bull by the horn, to ensure such laws are enforced and violators penalized/punished, child brides discussions may not exceed rhetoric.

THE ROLE OF THE BAR

The topic as contemplated by the Family Law Committee of the International Bar Association, I believe it is to improve the lots of many African children susceptible to under age marriage. To this end, the Bar has key roles to play in addressing this embarrassing menace. Viz:

1. Members of the Bar are encouraged to take family law cases, especially on child marriage on pro bono basis, at local, national and international levels. This will assist the young victims to get legal respite.

2. International and National Bar Associations should collaborate with and support Non Governmental Organizations working on the field, on children and particularly on forced marriage issues

3. International and National Bar Associations can help identify NGO working on forced marriage cases in Africa, to access funding from International Agencies, to support victims and organize sensitization programmes to curb the practice.

CONCLUSION

From the foregoing, it is certain that the evils of the child bride/early marriage limit the affected children from attaining their full potentials. However, an increase in the advocacy of human rights, whether as women's rights or as children's rights, has significantly reduced the tradition of child marriage as it was considered unfair and dangerous for the children.
In all, though the African perspective traditionally was to use child brides to gain "wealth", "power", "maintain culture and tradition", it should be noted that, education and various legal and health enlightenment programmes have exposed many Africans to the advantages of marriage of children at maturity and this is gradually phasing out child brides in some part of Africa. It is expected that if this enlightenment programmes continues, it may bring changing attitude to issues of child marriage in those communities in Africa where the practice is still deep rooted. If this can be achieved, then, Africa will be a better place for young girls to live without a fear of being forced into early marriage.