

# Many Years of Adoption of the African and Children's Charter: Need to Hasten Efforts to End Child Marriage in Africa

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## Abstract

Children are the future of any society and any act or treatment perpetrated on a child which has the effect of affecting the child negatively, also affects the future of the community. Marriage is principally an institution in which interpersonal relation usually sexual, is acknowledged. People also marry for various reasons such as legal, social, libidinal, emotional, financial, spiritual and religious. Again, who they marry may be determined by rules of incest, prescriptive marriage rules, parental choice and individual desires. A child in Nigeria and indeed in many other countries is anybody below the age of eighteen (Child Rights Act 2003). Such an individual does not possess the requisite maturity to understand the social, libidinal, emotional, financial, spiritual and religious dynamics of life. After several years of adoption of The African and Children's Charter, child marriage still persists in many parts of Africa, Nigeria inclusive. This paper a glance at the African and Children's Charter; the endemic practice of child marriage in Africa and proffers recommendations that will lead to collective effort at eradicating the practice.

**Keywords:** African Charter, Child, Welfare, Marriage

## Introduction

The importance of the welfare of children to the future of the entire world can never be over emphasized. They are the future of all human societies, and must be nurtured and helped in order to develop into responsible and productive adults capable of running the affairs of the society (Child Rights Act 2003). In 1948, the Universal Declaration of Human Rights was adopted by the United Nations General Assembly (Resolution 217(111)).

The Declaration saw the rights contained therein as inherent in man, hence the preamble;

Recognition of the inherent dignity and of the equality and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

It also states *inter alia* that;

All human beings are born free and equal in dignity and rights -- (UN1948)

The writer is certain that this does not exclude children either expressly or impliedly. Although the Universal Declaration was not a binding instrument, it gave rise to many subsequent Conventions, Covenants and Treaties protective of human rights. One of such Conventions was the Convention on the Rights of the Child which was adopted in 1989. This is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children, over the whole spectrum of civil, political, economic, social and cultural rights. The then Organization of African Unity in order to bring the message of the Convention on the Rights of the Child home to Africans, adopted the African charter on the rights and welfare of the child (Children's charter). This then further called for the establishment of an African Committee of Experts on the Rights and Welfare of the child, whose aim is to promote and protect the rights established by the African Charter on the Rights and Welfare of the Child. This charter was adopted by the Organization of African Unity in 1990, and in 2001, the O.A.U legally became known as the African Union (A.U). The charter now entered into force in 1999. Despite these laws it would seem that child abuse and the incidental child marriage have persisted in Africa. This paper briefly discusses the root cause of child marriage and proffers solution as to the way forward.

## Brief Overview of the Charter

### Background

The human rights' of African children are violated every day of their lives with severe consequences which extends well beyond their childhood. The Convention on the Rights of the Child (C.R.C) was adopted in 1989, and the general feeling was that African interests were not adequately captured therein, since only a few African states were involved in the process of drafting the Convention, conducted in Geneva under the auspices of the United Nation.

In 1987 a regional meeting was convened by the African Network for the Protection against Child Abuse and Neglect (ANPPCAN) with the formidable support of the United Nations Children Fund (UNICEF) to discuss children in situations of armed conflict. In 1988, a conference was held to consider the United Nation's Instrument (C R C) and its application to African children, and whether it was necessary to supplement it with an African Charter. There was a consensus that the CRC was comprehensive for children of the world. Economically, socially and culturally the world is diverse and so given the peculiar circumstance children in

Africa are developing in these areas, there was the need to draft the African Charter on the Rights and Welfare of Children, which will take care of the African child's particular situation.

### **The Charter**

The African charter on the Rights and Welfare of the child was adopted by the organization of the African Unity (now African Union) in 1990 but became operative in 1999. At the last count in 2013, the Charter had been ratified by 41 of the 54 states that make up the African union and signed by a further nine states. In August 2014 plans to ratify it was announced by Somali government(Internet source 2015).

### **Objectives**

Children in Africa live with various forms of abuse ranging from physical, mental to sexual abuse. Specifically, they are affected under economic, sexual exploitation, gender discrimination, early marriage and child headed households(Internet source 2015). The objectives of the Charter are to pay attention to special issues prevailing in Africa such as these and secondly to complement the United Nation's Convention on the Rights of the Child.

### **The Guiding Principles**

The Charter defines a 'child' as a human being below the age of 18 years. It recognizes the special position of children in the African society and affirms the fact that children are entitled to all the fundamental human rights such as right to life, dignity of the human person, peaceful assembly, right to thought, religion and conscience among others. The Charter protects the child from any exploitation that impairs or prevents the child's education, impairs his/her health, physical, moral, social, mental or spiritual development. To achieve this, the guiding principles are;

- Non-discrimination.
- Best interest of the child.
- Survival and development of the child.
- Child participation.
- Responsibilities of the child in his/her society and the world in general.

It complements the Convention on the Rights of the child by addressing the following issues;

- It raises the standards by stipulating 18 as the age of majority but also recognizes the challenges faced by children in Africa.
- It makes the right to education simpler and promotes affirmative action for girls' education and also allows girls who get pregnant to continue their education.
- Prohibits marriage or betrothal involving children.
- Article 15 recognizes the work done by children in informal sector (which is common in the continent) it also exposes the ills of child labour and prohibits begging as economic exploitation.
- In article 4 clause 1, the charter asserts the need for the best interest of the child to be the primary consideration in all actions taken by any person or any authority.
- The charter recognizes the importance of family and provides for its protection in article 18.
- The charter takes special consideration of discriminatory practices; hence it mandates state parties to prioritize the special needs of children living under such practices by eliminating such.
- Children of imprisoned mothers are also provided for in article 30, showing the recognition of the role of women in the upbringing of children.
- The charter reiterates that children do not only have rights, but also have duties and obligations to their families(Article31). This is upholding the African cultural heritage of looking out for one another.
- With the coming into force of the charter, the special committee of the African Union, ceased to exist and handed over to the African Committee of Experts on the rights and welfare of the Child.
- It also mandates state parties to offer assistance to parents or other persons responsible for the child maternally to ensure the development of the child where the need arises.

### **Reporting**

The ratifying state parties must submit initial reports within two years of ratification or the entry into force of the charter ( O.A.U Doc.1990), and thereafter every three years. Civil societies can also submit an alternative report which until recently could only be submitted after the state has submitted their reports. Now states are given 18 months to submit failing which the alternative report by the civil society organization shall be accepted as that state's report. The C.R.C and the charter have also informed the promulgation of national laws which are protective of children. For instance in Nigeria, the CRC has been domesticated *via* the Child Rights Act 2003. However it is only a partial domestication since it does not bind all the states automatically. The states that desire it have to incorporate it into their state laws for it to have a legally binding force on them. It should also

be noted that the African Charter on Children has not been domesticated in Nigeria for example.

### **Child Marriage in Africa**

Of particular relevance to this paper is the provision on child marriage by the Charter. The relevant provision(Article21(12) states;

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.

Despite this and other national protective instruments, child marriage still thrives in Africa, Nigeria inclusive. Historically, child marriage was common around the world. In ancient and medieval times, with the life expectancy then, as low as 40 to 45 years, child marriages and early motherhood were common(Internet source2015). Africa has the highest incidence rates of child marriage where about 70% of girls under the age of 18 in three nations according to UNICEF DATA(Unicef 2012) collected from a small population. Niger has one of the highest rates of early marriage in sub-Saharan Africa. Among the women between the ages of twenty and twenty four, 76% reported marrying before the age of 18 and 28% reported marrying before the age of 15. A 2012 data of UNICEF and United Nations place the percentage of girls married before the age of 18 in Niger, at 76 and 62% respectively(Internet source2015). In Chad, 68% of girls married before 18, while 49% got married before 18 according to 2010 data(United Nations 2010). Many African countries have enacted laws to limit the age of marriage. In Ethiopia, Chad and Niger the statutory case of marriage is 15 but customs allow girls of below 12 years to get married. In Zambia 40% of girls married by 18, and 9% by age 15 and this is more common in rural areas. A seventeen year old girl narrated how she was married three months ago; to a man she had never met. She narrated thus;

My parents sat me down and told me I was no longer their responsibility. They wanted me to move out and start a life of my own. Things moved faster than I expected – when a stranger paid a bride price to my parents. I had no say in the matter (BBC News).

This has been the lot of many young girls in different parts of the world, but this seems to occur at a higher rate because of the peculiar socio economic and cultural exigencies in Africa. In Ghana, the story is not much different as 21% of girls in Ghana are married before they are 18. A girl Zulie narrated the story of how her 14 year old sister was promised in marriage to an older man when he could no longer afford to send her to school. Her sister's favourite subject was Mathematics. She was 14 years old when a man came to see their father and offered him cola-nuts and 60 Cedis (\$40) to marry her sister. Their father agreed because he has no money to send them to school. According to her, her sister now just sits at home waiting to get married. Zulie was fortunate though because their father was able to pay for her school fees(Internet source 2015).

Back home in Nigeria, customary law condones child marriage as most customs peg the age of marriage at puberty, which is between 9 years to 14 years. These two ages are by all standards are ages of minority(C.R.A.2003). The Eastern part of Nigeria is regulated by age of marriage law 1956 which pegged the minimum age at 16 and attached sanction to it. The old Western states in their adoptive laws prescribe 18, and in some of the Northern states, the native authorities and their declaration on native marriage law and custom orders fixed their marriageable ages as follows(S.41.(1);

- ❖ Bornu – 14 years
- ❖ Idoma – 12 years
- ❖ Tiv – age of puberty.

Despite the array of laws, child marriage still thrives in many parts of Nigeria, because most of these laws tacitly condone child marriage except the Child Rights Act which cannot for now apply to every child in Nigeria. This is so because the issue of children falls within the residual list and so only states that want it will adopt it in their state laws.

### **Effects of Child Marriage**

#### **Health**

Child marriage has health implications for girls. There is a correlation between maternal age and maternal mortality/morbidity. Girls between age 10 to 14 and 15-19 are five times and twice respectively, likely to die in child birth than women of 20-24 years(Internet source2014). These effects are largely due to the child mother's physical immaturity where the pelvis and birth canal are not fully developed. Where they survive, some also stand the risk of contracting Vesicco Vaginal Fistula or Recto Vaginal Fistula caused by prolonged labour of an underdeveloped pelvis. Unless repaired by surgical means, this can cause years of permanent disability, shame and rejection to the victim.

#### **Impaired socio/economic Development**

Child marriage often terminates the child brides education, leaving her with a low level of education. Child

marriage seems to have a cause and effect relationship with low level of education as both have the ability of reinforcing each other. This has been affirmed by studies showing a strong correlation between age of marriage and level of education(NFPA2005). Such child brides also tend to have low legal status both in their families and in the society at large. They are more likely to suffer abuse and accept domestic violence perpetrated on them as justified(Janson and Thornton2013). They are also not likely to be educationally and economically equipped to recognize, enjoy and enforce their fundamental human rights and this will leave them open to all forms of abuse without redress.

### **Development**

One of the millennium Development Goals to be achieved by the year 2015 is Gender Equality. Gender equality is a *sine qua non* for development and eventual sustainable development. Development cannot be achieved if young under aged girls who should be in school either pursuing careers or, undergoing positive changes in life are bundled into marriage, thereby terminating their educational experiences. These girls are prematurely extricated from contributing to their country's economic development because of lack of participation in the areas that account for development.

### **Factors Responsible for Child Marriage in Africa**

#### **Poverty**

Poverty seems to be the basic determinant of child marriage because it has a nexus with other remote causes. Poverty drives a family to give out their under aged daughter in marriage in order to either alleviate the family's poverty or send the boys to school. It is poverty in conspiracy with 'male child preference' prevalent in many African communities that makes the girls stay at home uneducated with the better option of marriage as against being handed out as housemaids or other menial jobs which leave them vulnerable to all forms of abuse.

#### **Gender Discrimination**

The differential treatment given to boys and girls has necessitated a lower educational and nutritional investment on the girl child. Whoever invests in a girl child in many African communities believes he/she is doing so for the benefit of another family. They therefore believe it is a waste of resources and so the best option is to send her out in marriage early. Gender discrimination results in lower value for the girl child and consequently to child marriage and child marriage further results in high level gender based discrimination against the child bride.

#### **Social insecurity and stigma**

In many communities in Africa, parents abhor the likely stigma that goes with having grown up unmarried girls in the family. Families in Africa also fear the incidence of rape on their daughters which is not only devastating but also decreases' their chances of getting suitors for not many African men would want to marry a victim of such a crime(Thappa1996).

#### **Preservation of Virginit**

Many African communities believe that a girl's virginity is not only her pride but also that of her family. The families therefore fear that a girl may involve in illicit sexual relationship if allowed to grow to full age in her father's house. The best way to forestall this to them is to give her out in marriage at an early age before her body starts speaking to her. Parents believe that marriage provides their daughters protection from sexual promiscuity and the possible contraction of sexually transmitted disease. These young girls end up marrying older men and then stand at a more risk of contracting a sexually transmitted disease from an older man with a long and sometimes protracted sexual history.

#### **Armed Conflict and displacement**

During armed conflicts, girls may be taken by armed groups and forced into marriage. Parents may also willingly give out their under-aged daughters in marriage to armed groups or the military for envisaged better protection. The act of being refugees or internally displaced may contribute to early marriage as this reduces the number of children the parents may have to cope with under stringent conditions as refugees or internally displaced. This is particularly relevant to Africa where internal strife's are rampant.

#### **Un-harmonized Laws, Religion and Culture**

In majority of African states, laws provide the marriageable age as eighteen. Most of these laws leave loopholes for the practice of child marriage by allowing exceptions for under aged youth with parental or judicial consent. For example in Nigeria the Marriage Act(Cap M6 L.F.N2004) provides:

If either party to an intended marriage not being a widower, or widow is under twenty-one

years of age, the written consent of the father, or if he be dead or of unsound mind or absent from Nigeria, of the mother(S.18)

The provision does not make an express provision for a marriageable age, it only prescribes the age below which parental consent is required and places no limit to the parental consent. Some communities in Africa have their religion as their governing laws and some of them allow child marriage.

### **Political and business/Financial relationships**

Political affiliations and business relationships can determine child marriages and betrothal. Families in wanting to cement political, business and financial ties may have their children marry. They may cause a betrothal between their children, one (likely the girl) of who may be a minor. The betrothal is deemed to be a binding contract between the families and their betrothed children. The breach of such a contract can have serious financial, political and business consequences for the families and the betrothed individuals. At the time of the contract, one or both of the betrothed individuals may not be old enough to give informed consent and this amounts to child or forced marriage.

### **Recommendations and conclusion**

This paper will not be complete if recommendations as to the solution of the 'Canker worm' child marriage are not made. The following recommendations are hereunder suggested.

#### **Education**

It is obvious that when children are busy doing what they should rightly be doing at every stage of life, there would be no interlocking of these stages in their lives. This means that there is time for basic education in one's life and if the children are busy at that point in school, there would be little chance for anyone to marry them off as marriage has its own time in their lives. The importance of education in efforts to end child marriage can never be over emphasized. It should be noted that it is parents who are educated and know the worth of education that keep their children in school. Education also affords parents the ability to compete in the labour market and attain the economic where withal required to educate their children.

#### **Harmonization of existing laws**

Most African states have an array of laws and legislations covering the area but many of the laws operating in some communities seem to be in conflict with one another. Harmonization of these laws is therefore very necessary. For example in Nigeria, cultural acceptance, religious laws and legislation seem to have different provisions on the same issue.(legislations,customs and some religious laws)

#### **Domestication**

Those African states have placed a stricture upon themselves with regards to application of international and regional instruments should remove these strictures and domesticate these instruments. For example Nigeria signed the African Charter on the Rights and Welfare of the Child on 13/7/1999, ratified it on 23/7/2001 and deposited it on 2/5/2003. Up till now Nigeria has not domesticated the charter.

#### **Gender Equality**

If Gender equality is achieved in African states, there will be no reason to marry a girl off while her male siblings are in school. This is because all would have realized that disempowering even the minutest percentage of any population will impede the general development of the community.

#### **Elimination of harmful Cultural Practices and acceptances**

Cultural practices that subjugate females and enforce male child preferences should be abolished in all African communities. These will include practices like male preference, child marriage, nutritional taboos, female genital mutilation, mourning rites, wife inheritance and others which are inimical to the dignity and development of women. This can be achieved by legislation.

#### **Reduction or possible elimination of poverty**

African nations should by now be taking stock of how much of the Millennium Development goals they have achieved. Poverty is a key determinant of child marriage and effort at its eradication will go a long way in curbing the incidence of child marriage.

#### **Advocacy**

Active advocacy campaign by stakeholders is needed in African communities against the practice and enforcement by monitoring is also needed.



## Conclusion

This paper has tried to give an over-view of the charter and its protective frontiers to the welfare of children in Africa. The incidence, causes and effects of child marriage have also been x-rayed. The paper has also proffered the way forward by way of recommendations. Child marriage in Africa is the product of the inter-play of socio economic, legal, political and cultural factors and this cannot be tackled in isolation. It requires the concerted effort of all stake holders such as parents, the schools, the government, the law enforcement agents, traditional rulers and the civil society. With determination and a little selflessness, this ugly practice that has turned some African females into the living dead shall be extinguished.

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