

## **Violation of Women's Rights: the Implication of Girl-Child Marriages as an Aberration of International Human Rights**

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### **Abstract**

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Child marriage has devastating consequences for a girl's life. Child brides are frequently deprived of their rights to health, education, safety and participation. Thus, girls who marry young are far less likely to stay in school, with lifelong economic impacts. They are often isolated, with their freedom curtailed and they are at a higher risk of physical and sexual violence. Recently, girl-child marriage has increased due to a number of factors including insecurity. Now kidnapped girls are "married off." For example, child marriage rates have risen in war-ravaged Yemen, one of the few countries in the world without a legal minimum age for marriage. Now more than two-thirds of Yemen's girls are married before age 18, compared to half before the conflict escalated. In Africa, an estimated 12 million girls are still married each year. Thus, globally, girls affected by conflict are more than 20% more likely to marry as children than those living outside of conflict zones. The objective of this paper is to demonstrate that child marriage can be viewed as a violation of children's rights and a form of gender-based violence that robs children of childhood as well as a form of slavery and servitude which is contrary to international human rights law. This research, proposes that potential victims and /or girls who are forced into child-marriage may be offered special protection such as asylum if governments recognize the act as a gross human right violation.

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**Keywords:** Girl-Child, Women, Human Rights, Child Marriage, gender-based violence, Conflicts.

### **1. Introduction**

Inhuman treatment has been condemned by the international human rights framework since the Universal Declaration of Human Rights (UDHR), especially for individuals who require extra protection, like women. Thus, the United Nations ("UN") is actively working to reduce the global prevalence of girl-child marriage as one of the violations of human rights. In December, 2011, a resolution was adopted by the United Nations General Assembly<sup>2</sup> designating October 11, as the International Day of the Girl Child. On October 11, 2012, the first International Day of the Girl Child was held, the theme of which was ending child marriage. In 2013, the first United Nations Human Rights Council resolution against child, early, and forced marriages was adopted. The resolution recognizes child marriage as a human rights violation and pledges to eliminate the practice as part of the UN's post-2015 global development agenda. In 2014, the UN's Commission on the Status of Women issued a document in which they agreed, among other things to eliminate child marriage. All of these serve to emphasize the UDHR's tenet that "human beings (including children) are born free and equal in dignity and rights." The UDHR has acted as a strong moral conscience for the international community for many years. Thus, the global community is expected to abide by the international rules and standards that have been established.

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<sup>2</sup> Resolution (A/RES/66/170).

In 1979 and 1989, the UN passed two international treaties which are foundational in establishing child marriage as a violation of human rights. These are the Convention on the Elimination of all forms of Discrimination against Women (“CEDAW”)<sup>3</sup> and the Convention on the Rights of the Child (“CRC”),<sup>4</sup> respectively. The CRC, considered one of the most universally endorsed and ratified treaties in history, defined all humans below the age of eighteen as children.<sup>5</sup> Together, these conventions internationally denounce the practice of child marriage.

The UN Sustainable Development Goals (“SDGs”), a series of objectives hailed as “the crowning achievement of the development agenda,” went even farther in 2015 by emphasizing child marriage as a danger to the advancement of humanity.<sup>6</sup> The SDGs incorporated the primary aims of both the CRC and the CEDAW and called for the elimination of “all harmful practices, such as child, early and forced marriage and female genital mutilations.” Hence, the UN General Assembly adopted four distinct resolutions in 2014, 2016, 2018, and 2020 urging UN Member States to enhance and expedite measures to combat child, early, and forced marriages.<sup>7</sup> Despite global efforts to ban child marriage, it still occurs because of cultural and religious exceptions to the law. When there is parental approval, court approval, or customary or religious norms that take precedence over national law, several nations permit exceptions to the rule on the minimum marital ages.<sup>8</sup> Most of these exceptions reflect deeply rooted gender inequality, a dynamic that makes child marriage disproportionately harmful to girls and women. Such inequality is evidenced in a report by the World Policy Analysis Center where it found that ninety-three countries legally allow girls to marry before the age of eighteen.<sup>9</sup> Thus, it is imperative that the issue of child marriage is addressed through the enactment of domestic legislation where governments have an obligation to implement the laws despite the culture or practice and criminalize these acts and also give protection such as asylum for girls who are under the threat of being abducted or forced into child marriage. Therefore, as highlighted in this paper, child marriage is a major hinderance to human resource development of nations.

## 2. International Conventions addressing girl-child marriages

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 and by the tenth anniversary of the Convention in 1989, almost one hundred nations had agreed to be bound by its provisions. The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights.<sup>10</sup> The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.<sup>11</sup> In its preamble, the Convention explicitly acknowledges that “extensive discrimination against women continues to exist,” and emphasizes that such discrimination “violates the principles of equality of rights and respect for human dignity.” As defined in article 1, discrimination is understood as “any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field.”

<sup>3</sup>Article 16, United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)(1979).

<sup>4</sup>United Nations, Convention on the Rights of the Child(CRC) (1989).

<sup>5</sup>Article 1 of the CRC.

<sup>6</sup>Rangita de Silva de Alwis, *Making Laws, Breaking Silence: Case Studies from the Field* 43, 44 (Rangita de Silva de Alwis ed., 2018).

<sup>7</sup> Birchall Z, “UN General Assembly adopts 4th Resolution on child, early and forced marriage,” *Girls Not Brides* (2020), available at <https://www.girlsnotbrides.org/articles/un-general-assembly-adopts-4th-resolution-child-early-and-forced-marriage/> accessed 18<sup>th</sup> November 2022.

<sup>8</sup> “The law and child marriage,” *Girls Not Brides*, available at, <https://www.girlsnotbrides.org/child-marriage-law/> accessed 18<sup>th</sup> November 2022.

<sup>9</sup> Ibid.

<sup>10</sup>The Commission on the Status of Women (CSW) is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. A functional commission of the Economic and Social Council (ECOSOC), it was established by ECOSOC resolution 11(II) of 21 June 1946.

<sup>11</sup> Ibid.

The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."<sup>12</sup> In addition, Article 16 also has an explicit reference to child marriage which states that, "the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."<sup>13</sup>

The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.<sup>14</sup> The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). The Committee's mandate and the administration of the treaty are defined in the Articles 17 to 30 of the Convention. The Committee is composed of 23 experts nominated by their governments and elected by the States parties as individuals "of high moral standing and competence in the field covered by the Convention."<sup>15</sup>

Furthermore, The Convention on the Rights of the Child (CRC) was adopted by the United Nations in November, 1989. Nigeria ratified the CRC in March, 1991. It is the most widely accepted instrument of the UN so far. Its provisions are not only binding on Nigeria but have also attained the status of international customary law. Article 1 of the CRC states that "for the purposes of the present convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." Thus, some view the CRC as setting a strong global age standard for marriage since children must be taken not matured enough for marriage. For others, the CRC with its imperfections, far from being a comprehensive treaty on children's rights, is a weak defensive legal mechanism for the protection of child brides.<sup>16</sup> The CRC creates a framework that establishes children, based on years of life, as a special population for whom specific rights should be granted and protected, which proposes something unique about younger human beings.<sup>17</sup>

### 3. Child- marriages and the harmful effect on National and Global Development

There are other Conventions that denounce the practice of child-marriage such as the African Charter on the Rights and Welfare of the Child<sup>18</sup> and United Nations Convention on the Rights of the Child, which affirm 18 as the age of majority, and guarantee a child's right to be free from coercion and violence, and to obtain health care and education.<sup>19</sup> Despite increasing global consensus that girl child marriage should be prevented as a result of the violation of the rights and welfare of girls, no region has been able to achieve the Sustainable Development Goal (SDG) 5 Target 3 which states "to eliminate all harmful practices including child, early, and forced marriage and female genital mutilations."<sup>20</sup> The United Nations Sustainable Development Goals therefore call for global action to end this human rights violation by 2030.

After years of lobbying and discussion, the African Children's Charter and CRC were ultimately domesticated in Nigeria with the enactment of the Child Rights Act in 2003(CRA). Section 21 of the CRA prohibits child marriage as follows: "No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void of no effect whatsoever. For the avoidance of doubt, section 22 states that:

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

<sup>12</sup> Article 3 CEDAW 1979.

<sup>13</sup> Article 16 of CEDAW on Marriage and Family Relations.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid

<sup>16</sup> Braimah T, "Child Marriage in Northern Nigeria: Section 61 of Part 1 of the 1999 Constitution and the Protection of Children against Marriage," (2014) 14(2) *African Human Rights Law Journal (AHRLJ)* 474-88.

<sup>17</sup> Ibid at page 6.

<sup>18</sup> Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU Addis Ababa, Ethiopia - July 1990 Entered into force on 29 November, 1999. See Articles 16 and 21.

<sup>19</sup> "Nigeria: Child Marriage Violates Girls' Rights." Available at <https://www.hrw.org/news/2022/01/17/nigeria-child-marriage-violates-girls-rights> accessed 29 December, 2022.

<sup>20</sup> Efevbera, Y., Bhabha, J, "Defining and deconstructing girl child marriage and applications to global public health." (2020) 20 *BMC Public Health* 1547 at 1. <https://doi.org/10.1186/s12889-020-09545-0>. Accessed 19 December, 2022.

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

Unfortunately, over two decades after the Child Rights Act was passed, Nigerian girls are still being forced into child marriages. Thus, according to Human Rights Watch, a global Non-Governmental Organization, “Nigerian states should urgently act to adopt, implement, and align existing laws with the provisions of the Child Rights Act, which criminalizes marriage before the age of 18 and protects girls’ rights.”<sup>21</sup>

Unfortunately, females who marry before the age of 18 are less likely to finish their education and are more likely to endure domestic violence. They experience lower economic and health results than their single contemporaries, and when they finally have children of their own, the nation's ability to offer high-quality healthcare and education is severely strained.<sup>22</sup> Child brides often become pregnant during adolescence, and experience associated risks of complications during pregnancy and childbirth – for themselves and their infants.<sup>23</sup> In addition to isolating girls from their families and friends and preventing them from engaging in their communities, the practice can have a detrimental effect on the girls' physical and mental health. Thus, child marriage has a negative influence on a girl's health, future, and family. As a result, it has significant financial expenses for the country as a whole and has serious negative effects on development and prosperity.<sup>24</sup>

The African Union Charter on the Rights and Welfare of the Child, of which Nigeria is a signatory, contains more explicit provisions. Article 2 states categorically that: “For the purposes of this Charter, a child means every human being below the age of 18 years.”

Article 21 (2) also states 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 eighteen years and make registration of all marriages in an official registry compulsory.” Article 3 provides that, the “best interest of the child” shall be the primary consideration in all actions concerning the child. Moreover, the cumulative effect of Articles 1(3) and 21 is to render invalid customs, tradition, cultural and religious practices that are injurious to the welfare, dignity, normal growth and development of the child. Child marriage as practiced in northern Nigeria can indeed be invalidated under Article 21(1)(a) as prejudicial or harmful to the health or life of the child bride. Thus, child marriage before the age of 18 is a human rights violation. Despite laws against it, the harmful practice remains widespread. For instance, CEDAW denounces child marriage in article 16 (2) where it states that “the betrothal and marriage of a child shall have no legal effect.”

In Nigeria, another pertinent issue that affects the validity of child marriages is the consent of the parties to the marriage. According to this argument, there cannot be consent if the bride is too young to understand or appreciate the transaction or to make an informed opinion about the relationship.<sup>25</sup> Cases of child marriage victims and the conventional approach to handling crimes under the Nigerian criminal justice system despite the age of the girl-child perpetrator and the forced nature of the union, clearly reveals that there is no sympathy for such victims as follows:

Maimuna Abdulmunini was just 13 when she was arrested for burning her 35-year-old husband to death.<sup>26</sup> The prosecution of the case continued for five years after the alleged crime committed till Maimuna attained the age of 18 years old. Thus, in the year 2012, when she turned 18, Maimuna was convicted of murder and sentenced to death. In June 2014, the ECOWAS court granted a stay of execution of the judgment of the High Court. The court ruled that the decision to sentence Maimuna to death for a crime committed when she was a minor was a violation of her rights. In its judgment, the court also noted a number of flaws in the original trial.

<sup>21</sup> Section 23 of the Nigerian Child Rights Act 2003 states that, A person—

(a) who married a child; or (b) to whom a child is betrothed; or (c) who promotes the marriage of a child; or (d) who betroths a child, commits an offence and is liable on conviction of a fine of 500,000 naira or imprisonment for a term of five years or both such fine and imprisonment.

<sup>22</sup> UNICEF ‘Child marriage’ Available at <https://www.unicef.org/protection/child-marriage>, accessed 16th November 2022.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Fayokun K, “Legality of Child Marriage in Nigeria and inhibitions against Realisation of Education Rights (2015) 12 *US-China Law Review* 812 at 814.

<sup>26</sup> Child Rights International Network (CRIN), “A child bride, a dead husband and a long battle,” *Maimuna Abdulmunini v. Federal Republic of Nigeria, Katsina State Government and the Nigerian Prison Service*, available at <https://www.crin.org/node/40392> accessed 21 July, 2023.

The issue of her age had been ignored which was a major issue as she was just 13 years when she allegedly committed the crime. However, a separate criminal appeal was filed by Maimuna's lawyer at the national level challenging the death sentence conviction by the High Court. Maimuna was eventually discharged and acquitted in view of her age when she allegedly committed the crime. Furthermore, conflict increases the inequalities that make girls vulnerable to child marriage and its consequences. Families may arrange marriages for girls, believing marriage will protect their daughters from violence by strangers or armed groups, as well as to ease financial burdens on the family. For example, child marriage rates have risen in war-ravaged Yemen, one of the few countries in the world without a legal minimum age for marriage. Now more than two-thirds of Yemen's girls are married before age 18, compared to half before the conflict escalated. Child marriage is also a growing concern among refugee children, including those from Myanmar and the Central African Republic.<sup>27</sup>

#### 4. Conflict and Girl-Child Marriages

Child marriage particularly affects victims from countries facing war and extreme poverty. For instance, in 2015, between the Houthis forces and the administration of President Abd Rabbu Mansur Hadi, Yemen descended into a civil and regional conflict. Consequently, the government was overthrown, and a Saudi-led counteroffensive was launched.<sup>28</sup> Yemen is currently experiencing the world's greatest humanitarian crisis as a result of continued warfare and a Saudi-mandated blockade that imposed a weapons embargo. This combination has caused a humanitarian emergency and brought Yemen to the verge of famine.<sup>29</sup> The rise of al-Qaeda (AQAP) and other radical Islamist groups, including the Islamic State, notably in the south and east of the nation, has made matters even worse for the government's struggle with security to this day.<sup>30</sup> 27.4 million people, or around 70% of Yemen's population, are now in dire need of humanitarian aid as a result of the catastrophe.<sup>31</sup> More than 3 million children and women who are pregnant or nursing are suffering from acute to severe acute malnutrition, signaling a worsening of the nutrition situation. Around 2.2 million individuals have been internally displaced, and an estimated 2 million children have been forced to drop out of school.<sup>32</sup>

More than 700 million women worldwide who are alive today were child brides. The Middle East contributes 700,000 of the 40 million child brides worldwide each year. All Middle Eastern and North African (MENA) areas that have seen internal displacement or are otherwise experiencing violence have seen a rise in the number of child brides, despite the fact that the number of child brides in a country like Syria has declined.<sup>33</sup> In Iraq, 15% of marriages were child marriages in 1997, but this rose to 24% in 2016. About 5% of those in child marriages in Iraq were younger than 15. In Yemen, which does not have a minimum legal age for marriage, two-thirds of marriages involve child brides, including 44% under the age of 15.<sup>34</sup> Hence, the practice of early marriage is often rooted in gender inequality. Such unions exist because they provide control and/or protection over female sexuality.<sup>35</sup> In Yemen's patriarchal society, a woman's virginity is connected with purity, chastity, and family honor. Therefore, a family will force their daughter to marry to ensure that she remains "intact."<sup>36</sup>

Various complicated factors, such as poverty, war, culture, and religious doctrine, contribute to underage marriage. Human Rights Watch (HRW) claims that child marriage stories are strikingly similar across nations and regions due to factors including discriminatory gender roles, including the belief in some cultures that sons should care for their parents in old age while daughters "belong" to their in-laws; lack of access to education, which

<sup>27</sup> Ibid.

<sup>28</sup> 'Child Marriage in the Middle East and North Africa – Yemen Country Brief,' United Nations Children's Fund (UNICEF) Middle East and North Africa Regional Office in collaboration with the International Center for Research on Women (IRCW), 2017. Available at <https://www.unicef.org/mena/media/1821/file/%20MENA-CMReport-YemenBrief.pdf>. Accessed 28 July 2023.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> 'Child Marriage in the Middle East and North Africa – Yemen Country Brief,' United Nations Children's Fund (UNICEF) Middle East and North Africa Regional Office in collaboration with the International Center for Research on Women (IRCW), 2017. Available at <https://www.unicef.org/mena/media/1821/file/%20MENA-CMReport-YemenBrief.pdf>. Accessed 28 July 2023. Ibid. at page 5.

<sup>33</sup> Rand Lateef, "The Causes and Consequences of Child Marriages in The Middle East," 28 February, 2021, available at <https://borgenproject.org/child-marriages-in-the-middle-east/> accessed 18 November 2022.

<sup>34</sup> Ibid.

<sup>35</sup> Baz, Mira "Yemen: Where Men Marry Children." The World from PRX. Accessed 11 December, 2021. <https://theworld.org/dispatch/middle-east/100316/child-brides-yemen>.

<sup>36</sup> Ibid.

forces girls out of school and raises the likelihood that they will marry young; poverty, including food insecurity; and attempts to control girl power, lack of access to comprehensive sex education, contraception and abortion; financial incentives, driven by dowry and “bride price” practices; and social pressures.<sup>37</sup> A number of limiting and damaging factors, including illiteracy, ignorance of one's rights, and lack of choice, are a corollary of poverty. In such situations, divorce, domestic violence, drug addiction, and psychological issues are common. All of these elements influence parents to marry off their daughters as soon as a husband is found, or in the absence of the father, only mothers. The perceived necessity to protect the “honor” of the family and avoid public disgrace and humiliation adds to the urgency to “get rid” of the daughter.

According to *Girls Not Brides*, a global network of organizations working to end child marriage around the world, parents, by marrying off their daughters early, are not doing so out of cruelty but rather out of fear that they will not be able to provide for and protect them, believing that marriage might protect their daughters from harm while also providing them with a level of financial stability.<sup>38</sup>

In these families, female illiteracy is the norm, eliminating choice. For example, the Moroccan network Azzahrae conducted a case study in 2012 that showed that the illiteracy rate of underage married girls’ parents is 53.7 per cent for mothers and 27.9 per cent for fathers. Indeed, it is rare to find an educated mother marrying off her daughter to “get rid” of her. The level of education, especially that of the mother, is crucial also in providing appropriate family care for her daughters, such as reinforcing them against various problems such as drug use, especially during adolescence.

The social value of honor is paradoxically very strong among the impoverished in the MENA region, despite the likelihood of social issues in poor households. Thus, a justification for underage marriage could be that it “saves the family's honor,” as it is in Jordan, for instance. Amina Filali, a Moroccan woman who committed suicide in 2012 after being forced to marry her rapist in order to save her family's reputation, is known to have engaged in underage marriage, experienced terrible brutality, and committed suicide. Numerous human rights and feminist NGOs were compelled to hold protests against underage marriage as a result of this tragedy. Article 475 was changed as a result of the violent activity, going from enabling a rapist to marry his victim to dictating a 30-year prison sentence.<sup>39</sup>

Girls are also at risk in conflict-ridden countries such as Syria, Yemen and Libya.

Based on a study on child marriage in Syria, published in 2018, *Girls Not Brides*, found that although 13% of Syrian women aged 20 to 25 were married before they turned 18 even before the conflict began, child marriage is a growing problem for Syrian girls in refugee communities in Jordan, Lebanon, Iraq and Turkey. In Jordan, for instance, figures show an increase over time, from 12% of registered marriages involved a girl under the age of 18 in 2011 to 18% in 2012, 25% in 2013 and 32% in early 2014. In Lebanon, 41 % of young displaced Syrian women were married before 18 and, given that many marriages are unregistered, these figures may be much higher.<sup>40</sup>

Research carried out by Human Rights Watch, revealed that conflict and insecurity, as well as other crises such as natural disasters, can heighten the risk of child marriage. “In a crisis, parents may be struggling to feed and protect their children. They may see marrying a daughter off—earlier than they would have in peacetime—as a way to reduce their burden and make it more feasible to care for their remaining children,” Heather Barr, acting co-director of the Women’s Rights Division at Human Rights Watch stated that:<sup>41</sup>

“They may mistakenly view marriage as a way to protect a daughter from risks associated with the conflict, including the risk of sexual violence. They may simply be overwhelmed and unable to cope. And in cultures where a marriage involves a financial transaction, like the payment of dowry or “bride price,” child marriage may offer a parent stressed by the conflict a financial gain or an opportunity to avoid having to pay a dowry themselves.

<sup>37</sup>Fanack, “Underage Marriage in the Middle East and North Africa.” Published on September 24, 2021  
><https://fanack.com/human-rights-in-the-middle-east-and-north-africa/child-rights-in-the-middle-east-and-north-africa/underage-marriage-in-the-middle-east-and-north-africa/> accessed 18<sup>th</sup> November 2022.

<sup>38</sup> Ibid.

<sup>39</sup> One of the measures taken by Morocco to prevent early and forced marriages of children was the abrogation of the second paragraph of Article 475 of the Penal Code; which allows for the prosecution of the minor girl's rapist and forbids him from marrying her, and to reinforce this protection, particularly for children.

<sup>40</sup> Fanack, “Underage Marriage in the Middle East and North Africa.” Published on September 24, 2021  
><https://fanack.com/human-rights-in-the-middle-east-and-north-africa/child-rights-in-the-middle-east-and-north-africa/underage-marriage-in-the-middle-east-and-north-africa/> accessed 18<sup>th</sup> November 2022.

<sup>41</sup> Ibid.

Many parents, faced with the terrible choices imposed by a conflict, genuinely believe that swiftly arranging a marriage for their daughter is their only or best option to try to protect her and the rest of the family.”

According to Barr, it is often difficult to gather accurate data on child marriage, even during times of peace, because of gaps in data or child marriages being concealed due to illegality. “In the context of conflict in these three countries, gathering accurate data is even more challenging. But *Girls Not Brides* has documented an increase in the number of child marriages among Syrian girls displaced by the conflict and there is every reason to believe that pattern also holds for Yemen and Libya.” Just before the outbreak of the war in Yemen in March 2015, there was talk of ending child marriage, a window of hope in the country that had, at that time, the most cases of underage marriage of girls. With war raging in Yemen and the extremely unstable situation throughout the region, conflict and war present a bleak and frightening vision of the future of underage marriage there. Barr also stated that, “We know that when families experience great stress due to factors such as a conflict, child marriage can become a coping mechanism, especially in an environment where child marriage already exists, this is why conflict or other crises bring a serious risk of an increase in rates of child marriage.”<sup>42</sup> As stated by a UNICEF official;

“In Yemen, there is a low level of education and high illiteracy rates, which makes it difficult because it has important implications for accessing health services and also for engaging with families about the importance of education... Education programmes are hard to implement because many people don’t understand how it is effective.” Thus, when school is not seen as an avenue to future social and economic stability, girls are instead forced to marry due to prevailing gender inequalities, where girls are seen as an economic burden, and families privilege a son’s education over a daughter’s education.<sup>43</sup>

## 5. Girl- Child Marriage in the United States of America

Conflicts and custom are basically not found in the United States occasioning child-marriage. However, in the United States, child marriage is a pervasive issue with devastating domestic consequences. Between 2000 and 2018, almost 300,000 children were married in the United States alone, with approximately 30,000 to 60,000 of those marriages occurring at a spousal age difference that should have been considered a sex crime.<sup>44</sup> As there is no federal law regulating child marriage, states are free to establish their own requirements. Child marriage remains legal or unchecked in 46 states. While most states do impose a minimum marriage age, the majority of them set that age at under 18. Additionally, the majority do not require marriage applicants to furnish official proof of their age, which allows many underage children to slip through the cracks. Other states permit the practice to continue through parental, judicial, religious, or pregnancy exceptions. Only four states Massachusetts, Minnesota, New York, and Rhode Island have banned child marriage outright by requiring that both parties provide official proof that they are 18 years or older before they can obtain a marriage license.<sup>45</sup>

Child marriage is a gendered practice with grave social, financial, physical, and psychological consequences. The United States Department of State has called marriage before 18 a “human’s rights abuse” that “produces devastating repercussions for a girl’s life, effectively ending her childhood.” Thus, to protect children and secure their futures, the practice of child marriage must be outlawed. The movement to end child marriage and sex abuse in the United States is growing, and CHILD USA is dedicated to reforming the laws to ensure children are not married before the age of 18.<sup>46</sup> In the United States, a 2021 study analyzing marriage certificate data from all fifty states found that approximately 86% of these underage marriages involved girls and 14% involved boys.<sup>47</sup> While the general public often assumes that child marriage is an issue that does not pertain to America, it is widespread across the country today. Despite the persistent occurrence of child marriage in the United States, the American government consistently fails to take federal action to confront the problem. On the international level, the United States Congress declined to ratify the two UN conventions that form the bedrock of the international community’s progress in eradicating child marriage.

<sup>42</sup> Ibid.

<sup>43</sup> ‘Child Marriage in the Middle East and North Africa – Yemen Country Brief,’ United Nations Children’s Fund (UNICEF) Middle East and North Africa Regional Office in collaboration with the International Center for Research on Women (IRCW), 2017. Available at <https://www.unicef.org/mena/media/1821/file/%20MENA-CMReport-YemenBrief.pdf>. Accessed 28 July 2023.

<sup>44</sup> ChildUSA “CHILD MARRIAGE IT HAPPENS MORE THAN YOU THINK,” available at <https://childusa.org/child-marriage/> accessed 18 November 2022.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

While America signed the CRC, it is the only country that has yet to ratify it, preserving its status as a “Signatory” instead of a “State Party” to the Convention.<sup>48</sup> The United States also stands alone as the only country in the Western hemisphere, and the only industrialized democracy, that has not ratified the CEDAW.<sup>49</sup> Surprisingly, developed countries such as the United States continue to allow this form of marriage. Before 2017, premature unions were legal in all 50 states.<sup>50</sup> Between 2000 and 2018, 300,000 minors, some as young as ten, entered an early marriage in the United States. These marriages were mostly to older men.<sup>51</sup>

On the national level, there is no federal law banning child marriage; as a result, it is governed by the States under the federalist legal structure. State autonomy over the issue of child marriage means that America lacks nationwide consensus regarding proper and effective child marriage laws.

This decentralized system creates a legal framework in which certain states strongly protect against child marriage while others maintain lax laws that facilitate the practice. For instance, state laws vary widely on the legal minimum age for marriage. Delaware, New Jersey, Minnesota, New York, Pennsylvania, and Rhode Island have banned child marriage by establishing a minimum marriage age of eighteen<sup>52</sup> while states with more lenient laws such as Maryland, Missouri, New Mexico, North Carolina, and Oklahoma approve marriages involving children under the age of eighteen.<sup>53</sup> This disparity produces “destination” states for child marriage.<sup>54</sup> Missouri has historically been one such destination, with evidence of individuals crossing state lines to marry fifteen-year-old brides; some travel to Missouri from as far off as Oregon, Idaho, Utah, and Florida.<sup>55</sup> In the absence of a federal prohibition against child marriage, most state laws still offer avenues through which child marriage persists. Indeed, state child marriage laws are fraught with legal loopholes; while many states set the age floor for marriage at eighteen, there are arrays of exceptions to this rule that “can in effect drop the true minimum marriage age much lower.”<sup>56</sup>

## 6. Comparative analysis of child marriage in Nigeria and other countries.

In Nigeria, with or without crisis, child marriage still occurs as a result of customs, poverty and religion. Although there are laws against child marriage such as the Child Rights Act and the Child Rights Laws of various states in Nigeria, the practice is still prevalent in some communities due to customs as well as poverty. As a result, young girls are given in marriage to boost the economy of the household which consequently violates the girl-child’s right to education, right to health and right to the dignity of the human person. These are rights protected by the constitution of the Federal Republic of Nigeria, 1999,<sup>57</sup> however, enforcement mechanisms are non-effective to curb this practice. The crisis in Nigeria which can be compared with countries such as Yemen emanated from a sect known as Boko Haram, which is a terrorist group using various arms and ammunitions and killing innocent people through suicide bombing and direct invasion of villages and towns particularly in North-East Nigeria.<sup>58</sup> On the 14<sup>th</sup> of April 2014, Boko Haram militants kidnapped more than 250 schoolgirls from a government secondary school in Chibok in Nigeria’s northeastern Borno State.

<sup>48</sup> Status of Ratification Interactive Dashboard: Convention on the Rights of the Child, OFF. OF THE UNITED NATIONS HIGH COMM’R FOR HUMAN RIGHTS, available at <https://indicators.ohchr.org/> accessed 18 November 2022.

<sup>49</sup> A Fact Sheet on CEDAW: Treaty for the Rights of Women, AMNESTY INT’L (August 25, 2005), available at [https://www.amnestyusa.org/files/pdfs/cedaw\\_fact\\_sheet.pdf](https://www.amnestyusa.org/files/pdfs/cedaw_fact_sheet.pdf) accessed 18 November 2022.

<sup>50</sup> “Child Marriage – Shocking Statistics.” *Unchained At Last*. available at <https://www.unchainedatlast.org/child-marriage-shocking-statistics/>. Accessed 27 July, 2023.

<sup>51</sup> *Ibid*.

<sup>52</sup> About Child Marriage in the U.S., *Unchained at Last*, <http://www.unchainedatlast.org/laws-to-end-childmarriage/> accessed 18 November 2022.

<sup>53</sup> TAHIRIH JUST. CTR. 1, 7 (2020), [https://www.tahirih.org/wp-content/uploads/2020/01/Reflection-Paper\\_Making-ProgressBut-Still-Falling-Short\\_FINAL-with-map\\_May-13\\_2020.pdf](https://www.tahirih.org/wp-content/uploads/2020/01/Reflection-Paper_Making-ProgressBut-Still-Falling-Short_FINAL-with-map_May-13_2020.pdf). accessed 18<sup>th</sup> November 2022.

<sup>54</sup> Kaia Hubbard, “Child Marriage Is Not Uncommon in the U.S., but States Are Taking Action,” *U.S. NEWS* (Sept. 1, 2021, 11:39 AM), <https://www.usnews.com/news/best-states/articles/2021-09-01/north-carolina-joins-growing-number-of-states-to-limit-child-marriage> accessed 18 November 2022.

<sup>55</sup> Daniele Selby, “Why Missouri Is a ‘Destination Wedding Spot for 15-Year-Olds,” *GLOBAL CITIZEN* (Mar. 12, 2018), <https://www.globalcitizen.org/en/content/child-marriage-missouri-us-statutory-rape/> accessed 18 November 2022.

<sup>56</sup> Understanding State Statutes on Minimum Marriage Age and Exceptions, TAHIRIH JUST. CTR. 1, 1 (Aug. 26, 2021), available at <https://www.tahirih.org/wp-content/uploads/2021/09/August-2021-State-Statutory-Compilation-1.pdf> [hereinafter State Statute Compilation] accessed 18 November 2022.

<sup>57</sup> Chapter 2 of the Nigerian Constitution, 1999.

<sup>58</sup> Zenn J, “Boko Haram and the Kidnapping of the Chibok Schoolgirls,” (2014) 7 (5) Combating Terrorism Centre (CTC) Sentinel, available at [https://ciaotest.cc.columbia.edu/journals/cs/v7i5/f\\_0031885\\_25881.pdf](https://ciaotest.cc.columbia.edu/journals/cs/v7i5/f_0031885_25881.pdf) accessed 30 July, 2023.

Soon after the kidnapping, reports surfaced that Boko Haram may have transferred many of the girls from Nigeria to Cameroon, Chad and as far as Central African Republic's Birao region near Sudan. In a video released on May 5, 2014, Boko Haram leader Abubakar Shekau announced he would "sell" the schoolgirls as "slaves in the market," and on May 12 proposed that "if you want us to release your girls that we kidnapped, you must release our brethren that are held in Borno, Yobe, Kano, Kaduna, Enugu and Lagos states, as well as Abuja."<sup>59</sup> Crisis of the insurgency of Boko Haram terrorists revealed the hidden disdain for education of the girl-child. The age range of these girls were between 15 and 17 thus still regarded as minors.

Similarly, in Yemen, the issue of child marriage seemed to be decreasing in occurrence until the war started and girls were married off for their protection against the consequences of war which includes displacements from homes, sexual exploitation and capturing girls as sex slaves. It was estimated that after the war a large percentage of girls much more than before the war were given out in marriage. The basic problem which can be distinguished from Nigeria and other countries is the lack of legislation prohibiting the practice and non-existence of an age limit for both boys and girls. The same problem also exists in the United States where child marriage is not federally legislated and thus a few states have an age for marriage while the majority do not have laws prescribing a marriageable age.

The position in India can be examined to ensure the governments mentioned above can be more precise in prohibiting child marriage and therefore empower courts to pronounce on the illegality or legality of the practice based on legislation. It is note-worthy that India has made attempts in enacting laws prohibiting child-marriage even though India ranks the highest in the world in the number of child marriages.<sup>60</sup> Hence, in the Indian example, the enabling laws are the Hindu Marriage Act of 1955 (as amended) of India, the Prohibition of Child Marriage Act 2006 of India and the Child Marriage Restraint Act 1929 of India. Under the Prohibition of Child Marriage Act 2006 of India, marriage of the minor child is void and voidable. This Act is applicable for a male child under 21 years and for a female under 18 years. Child marriage is void under the following:

First, by taking or enticing out of keeping of lawful guardian,

Second, by force compelled, deceit, induced to go from any place,

Third, sold for marriage, made to go through a form of marriage, married and then sold or trafficked or for immoral purpose. Such acts are rendered null and void.<sup>61</sup> The Act also renders a child marriage voidable where such marriage was solemnized before or after the commencement of the Act. The Act further empowers the child in the contracting marriage party to file before a district court a decree of nullity annulling the child marriage.<sup>62</sup>

If at the time of filing the petition of nullity, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the child marriage petition officer.<sup>63</sup> The Petition may be filed at any time but before the child completes two years of attaining majority. Also, the bride price and gifts are to be returned.<sup>64</sup>

The Act criminalizes any person who engages a minor child into any child marriage to two or more-year imprisonment or a fine or both.<sup>65</sup>

<sup>59</sup>Zenn J, "Boko Haram and the Kidnapping of the Chibok Schoolgirls," (2014) 7 (5) Combating Terrorism Centre (CTC) Sentinel, available at [https://ciaotest.cc.columbia.edu/journals/cs/v7i5/f\\_0031885\\_25881.pdf](https://ciaotest.cc.columbia.edu/journals/cs/v7i5/f_0031885_25881.pdf) accessed 30 July, 2023.

<sup>60</sup>Sneha Karma Foundation 2015-2023, Available at [https://www.snehakarma.org/society-at-stake-a-take-on-child-marriage/?gclid=EAIaIQobChMImYOq6I66gAMVGdvtCh3MgAF9EAAAYASAAEgLJkFD\\_BwEA](https://www.snehakarma.org/society-at-stake-a-take-on-child-marriage/?gclid=EAIaIQobChMImYOq6I66gAMVGdvtCh3MgAF9EAAAYASAAEgLJkFD_BwEA) accessed 31 July, 2023. A patriarchal mind-set is one of the main reasons for most child marriages in India: young girls, and women in general are perceived to be natural homemakers. Their lives are to be limited within the four walls, as they are unqualified to protect themselves from the dangerous world outside. They need not be educated, nor employed, as they are born to serve and care for the men in the family. When young and unmarried, they are a liability that must be prevented from doing 'unwomanly' acts, to avoid bringing shame upon the community. Hence, they must be married off young to withhold family honour, sometimes even to men twice their age. This heinous practice has notably caused deaths in married girls aged 15-19 due to premature pregnancies. The girls run the risk of contracting HIV, and their children, if born, suffer from low immunity, many of them dying in infancy. Several girls, in such a condition, are exposed to sexual abuse, and suffer from post-traumatic stress.

<sup>61</sup> Section 12 (a) – (c) of the Prohibition of Child Marriage Act 2006 and Section 12 (a) – (d) of the Hindu Marriage Act of 1955 as amended of India.

<sup>62</sup> Section 3 (1) – (4) of the Prohibition of Child Marriage Act 2006 and Section 11 of the Hindu Marriage Act of 1955 as amended of India.

<sup>63</sup> Section 3 (2) of the Prohibition of Child Marriage Act 2006 of India.

<sup>64</sup> Section 3 (4) of the Prohibition of Child Marriage Act 2006 of India.

<sup>65</sup> Section 9, 10 and 11 of the Prohibition of Child Marriage Act 2006 of India.

In addition, the Prohibition of Child Marriage Act 2006 of India and the Hindu Marriage Act 1955 of India<sup>66</sup> both render child marriage voidable and either the male or a relative of either couple can petition to the district court in India to nullify the marriage. In the case of *Lajja v State*, it was established that a minor child Meera of under 17 years old consented to marry the accused and the Court declared the marriage voidable and ruled that the girl has the power to exercise her rights under the Prohibition of Child Marriage Act 2006 of India.<sup>67</sup>

Other jurisdictions such as the United Kingdom have enacted a law which prohibits child marriage in all its entirety. The Marriage and Civil Partnership (Minimum Age) Act 2022, which gained Royal Assent in April 2022, came into force on the 27<sup>th</sup> of February 2023. It states that boys and girls under the age of 18 will no longer be allowed to marry or enter a civil partnership, even if they have parental consent. It is now an offence to cause a child under the age of 18 to enter a marriage in any circumstances, without the need to prove that a form of coercion was used. This is clearly an attempt on the part of the UK government to curb the practice of child-marriage in accordance with the CEDAW and other international human right instruments.

## 7. Conclusion and Recommendations

Child marriage is a violation of human rights. It is a dangerous violation of CEDAW and other international laws. Every girl-child has the right to be protected from this harmful practice, which has devastating consequences for girls and for society. Child marriage is now firmly on the global development agenda, most prominently through its inclusion in Sustainable Development Goal target 5.3, to eliminate the practice by 2030.

It is hereby recommended that:

The enactment of domestic legislation that will unequivocally spell out the minimum age for young girls to get married without exceptions and a stiff penalty for those who contravene this law. The UK Law of 27<sup>th</sup> of February is a good example that can be emulated.

Similarly, the Supreme Court of the United States of America can make pronouncements on issues such as child marriage as it threatens the constitutionality of the human rights of children. As the Supreme Court of America has pronounced on the issue of same-sex marriage which appears to have validated the practice, eleven years after same-sex marriage was first made legal in Massachusetts, the U.S. Supreme Court ruled that the Constitution guarantees it throughout the country. It was believed that limiting marriage only to heterosexual couples violates the amendment's guarantee of equal protection under the law. In the same vein, as children's rights are threatened as a result of child marriages, the highest court of the land in each country where the Constitution of the country aligns with the UDHR and other Conventions may also pronounce on the constitutionality of forced or early marriage for young girls to ensure that the other rights such as right to an education, right to personal dignity and right to life will be preserved for the young girls whose fundamental rights are violated as a result of premature entry into marriage.

Secondly, enforcement mechanisms can be established such as where there is a threat to child marriage, enforcement agencies can be approached and the child or children can be protected and taken away from the threatening environment and granted asylum, if necessary, in a foreign country. This was the case where two girls who escaped from the Boko Haram Kidnappers den in Nigeria, were granted an opportunity by the American government to continue their education in the United States. The girls have since graduated from Universities in the US.<sup>68</sup>

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<sup>66</sup> Section 11 and 12(a) – (d) of the Hindu Marriage Act of 1955 as amended of India.

<sup>67</sup> 2012 Cri. LJ 3458.

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