

Ending Child, Early and Forced Marriage in Africa: a Human Rights-based Approach

by Romola Adeola*

Introduction

The practice of child, early and forced marriage (CEFM) has emerged on the global scene as a pressing challenge that requires urgent attention. Daily, it is estimated that 39,000 children are married off worldwide. While the practice of CEFM involves boys and girls, girls are usually the ones most disproportionately affected. It is estimated that over 140 million girls will be married between 2011 and 2020.

Next to South Asia, Africa has the highest prevalence of CEFM. Fourteen out of twenty countries with the highest prevalence of CEFM in the world are in sub-Saharan Africa. Recent projections show that if current trends are not reversed, Africa will surpass South-east Asia in CEFM by 2050.

In recognition of the grim reality, African Union Heads of States and Government (HOSG) expressed grave concern over the prevalence of this form of marriage.¹ In June 2015, the HOSG adopted a Common Position in which they emphasised the fact that this practice not only prevents girls from enjoying their childhood, but that it also leaves long-lasting negative effects on their mental and physical health.² The HOSG further stressed the need for a rights-based solution to the problem taking into account international and regional norms on the rights of women and children.

While the Common Position emphasises human

rights as a solution, the operational implications of utilising a human rights-based approach (HRBA) is not clarified. This article considers how a rights-based approach can be utilised in addressing this issue of regional concern in Africa. However, before this is considered, it is relevant to discuss the causes and consequences of CEFM in Africa.

Causes and Consequences

Two significant root causes of CEFM in Africa are culture and religion. Another root cause of CEFM in Africa is poverty. With the hindsight that poverty affects 35.2 percent of Sub-Saharan Africa's population,³ its impact and the need to address it in ending CEFM resonates. Due to the perceived economic prospects of CEFM, many families in communities engaged in the practice of CEFM consider it futile to educate the girl-child. However, this decision in many instances only tends to fuel poverty and result in the loss of socio-economic opportunities for the girl-child.

Aside from loss of socio-economic opportunities, there are health risks associated with CEFM. Medically, it has been established that young girls are particularly vulnerable during pregnancies due to the developmental state of their reproductive organs.⁴ The UNFPA notes that females within the age range of 15 and 19 are 'twice as likely to die in childbirth' as opposed to females in their 20s.⁵ Also, females younger than age 15 are 'five times as likely to die' as opposed to females in their 20s.⁶ As child preg-

¹ See African Common Position on the AU Campaign to End Child Marriage in Africa (2015) (Common Position) http://pages.au.int/sites/default/files/CAP%20on%20Ending%20Child%20Marriage%20-English_0.pdf (April 2016); In the Agenda 2063 policy document, the need for a 'concerted drive towards immediately ending child marriages' was expressed as one of the blueprints for a prosperous, peaceful and united Africa. See African Union *Agenda 2063: The Africa we want* (2014) 17.

² Common Position (n 1 above).

³ MH Ngom 'World Bank predicts single digits below global poverty line' *The Borgen Project* 21 October 2015.

⁴ See NM Nour 'Child marriage: a silent health and human rights issue' (2009) 2(1) *Reviews in Obstetrics & Gynecology* 51-56;

⁵ UNFPA *Maternal mortality update 2004: delivering in good hands* (2004) 11.

⁶ As above.

nancy is most likely to occur in CEFM, maternal and infant mortality are likely consequences.⁷ In 2013, World Vision observed that '[a] girl growing up in Chad ... [was] more likely to die in childbirth than she was to attend school.'⁸ Other health risks associated with CEFM include cervical cancer, HIV epidemic and obstetrics fistula.⁹

Applying the Approach

Although the discourse on a human rights-based approach (HRBA) crystallised in the context of development, its application has extended beyond this field. Over the years, the HRBA has gained recognition as a persuasive rhetoric in advancing the discourse on various issues including migration, health, food security and climate change. The HRBA, which places human rights as the normative and operational tool for addressing issues, has become a central policy theme at global and regional levels through the initiatives of various agencies within the United Nations and regional organisations. Central to this approach is the need to place human rights at the centre of all actions, programmes, interventions, policies and plans on issues touching on human welfare. The HRBA resonates from normative frameworks, which in the context of the African human rights regional system, include treaties such as the African Charter on Human and Peoples' Rights and theme specific instruments on women, children, refugees and internally displaced persons. In the context of CEFM, the provisions of article 21(2) of the African Charter on the Rights and Welfare of the Child (Children's Charter)¹⁰ and 6(b) of the

⁷ International Center for Research on Women *Solutions to end child marriage: what the evidence shows* (2011) 4

⁸ World Vision *Untying the knot: exploring early marriage in fragile states* (2013) 28.

⁹ These risks have been observed in countries such as Malawi, Nigeria, Mali, Burundi and Chad. See United Nations Population Fund *Obstetric fistula: needs assessment report: findings from nine African countries* (2003) 18; JC Kamwenubusa 'Forced marriage in Burundi puts young girls at risk of HIV infection' *Girls Not Brides* 22 July 2014; S Spooner 'Sex initiation camps, child marriages and polygamy, the lesser-known side of cervical cancer in Africa' *Mail & Guardian Africa* 23 August 2015.

¹⁰ Article 21(2) provides that 'Child marriage and the betrothal of girls

CHILD MARRIAGE
A Violation of Human Rights

- Every 2 seconds, a girl is married before 18.
- She is deprived of her rights to health, to education and to a life free from violence.
- Marriage is an abrupt end to her childhood.

Child marriage denies a girl's right to:

- HEALTH**: CHILD BRIDES ARE OFTEN PRESSURED INTO MOTHERHOOD putting them at risk of death or injury in childbirth. Girls who give birth before 15 are **5 TIMES MORE LIKELY TO DIE IN CHILDBIRTH** than women aged 20-24.
- CHOICE**: CHILD BRIDES HAVE LITTLE OR NO SAY IN IF, WHEN AND WHOM THEY MARRY. "Marriage shall be entered into only with the free and full consent of the intending spouses" Universal Declaration of Human Rights, 1948.
- LIFE FREE FROM VIOLENCE**: A girl who marries before 18 is more likely to experience **PHYSICAL, SEXUAL AND PSYCHOLOGICAL VIOLENCE** THROUGHOUT HER LIFE.
- EDUCATION**: After marriage child brides **USUALLY DROP OUT OF SCHOOL** if they were in school at all.

Child marriage violates treaties and conventions that governments around the world are bound by, including:

- The Convention on the **RIGHTS OF THE CHILD**
- The Convention on the Elimination of All Forms of **DISCRIMINATION AGAINST WOMEN**
- The Protocol to the African Charter on Human and Peoples' Rights on the **RIGHTS OF WOMEN IN AFRICA**

WE ALL HAVE A ROLE IN PROTECTING GIRLS' RIGHTS

- PARENTS** refuse to engage in dowry or bride price and choose not to marry off their children.
- COMMUNITY LEADERS** support alternative roles for girls beyond marriage.
- MEN AND BOYS** choose not to marry girls who are still children and speak up against the practice.
- GIRLS** are able to support one another through peer groups and collective action.
- TEACHERS** are trained to identify and report child marriages.
- LAW ENFORCEMENT OFFICIALS** register children at birth and check the ages of the bride and groom before marriage.
- GOVERNMENTS** adopt and implement strong laws and policies to prevent child marriage and support married girls.
- HUMAN RIGHTS BODIES** hold governments accountable for setting and implementing laws to end child marriage and promote gender equality.

END CHILD MARRIAGE AND WE WILL BUILD A SAFER, HEALTHIER AND MORE EQUAL FUTURE FOR ALL.

www.GirlsNotBrides.org #EndChildMarriage

GIRLS NOT BRIDES The Global Partnership to End Child Marriage

Protocol on the Rights of Women in Africa (Maputo Protocol)¹¹ are relevant normative standards.

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.' African Charter on the Rights and Welfare of the Child, adopted by the Organisation of African Unity, OAU Doc CAB/LEG/153/Rev. 2 (11 July 1990).

¹¹ The Maputo Protocol requires states to ensure that 'the minimum age of marriage for women shall be 18 years.' Protocol to the African Charter

While the normative tools of the HRBA are the treaty obligations of states enshrined in various instruments, there are four main operational tools of the HRBA, namely; participation, accountability, non-discrimination and empowerment. Applying the HRBA to ending CEFM necessarily requires that these four principles inform policies and programmes geared towards this goal.

Central to participation is the need to ensure that key stakeholders including children, their care givers, civil society and civil society organisations actively engage in proffering solutions to address the root causes of the problem. Policy interventions must not solely reflect the decisions of states but must be done with the meaningful engagement of relevant actors. The emphasis on a bottom-up as opposed to a top-down approach is a way of ensuring that policy interventions adequately respond to the root causes of the problem.

In line with the principle of accountability, duty-bearers must be identified and their obligations emphasised. In the context of the Children's Charter, states have a significant obligation to ensure that the rights of children are realised. Articles 19 and 20 of the Children's Charter recognise parents and those responsible for children (caregivers) as primary duty-bearers. Article 20(3) emphasises the obligation of states to assist parents and caregivers in the realisation of these duties. Although parents and caregivers have the primary responsibility to ensure the protection of children, states have a duty to provide assistance. The relevance of assistance resonates significantly in the context of tackling poverty and providing education.

In accordance with the principle of non-discrimination, states must ensure that specific groups are protected including children with disabilities. In the context of CEFM, this principle further requires states to

ensure that boys and girls are afforded equal protection under the law. This will necessarily require that laws and policies that lower the age of marriage for girls are revisited. In view of the principle of empowerment, states must ensure that children and their care-givers are empowered through advocacy, education and income-generating activities in order to combat issues of poverty, lack of education and harmful cultural practices that trigger CEFM.

Conclusion

As the ultimate test of human rights is at the national level, states have the ultimate duty in ending CEFM. It is important for states to develop and implement laws and policies that adequately respond to the issue. In the formulation and implementation process, states must ensure that the HRBA is a central theme not only in view of their obligations but also to ensure durable solutions. In the formulation process, it is important that human rights obligations are emphasised. In the implementation, the principle of participation, accountability, non-discrimination and empowerment must be ensured. While this paper has discussed some of the practical ramifications of adopting this approach, it is essential to note that ending CEFM must be guided by the conscious effort of states to adhere to human rights obligations and ensure adherence at all levels to such obligations.

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on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the Organisation of African Unity, OAU Doc CAB/LEG/66.6/Rev 1 (11 July 2003).