

# CHILD MARRIAGE: A REOCCURRING ISSUE IN GHANA AND SOUTH AFRICA (CULTURAL PERSPECTIVE)

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MA Capstone Thesis

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## ABSTRACT.

The Issue of child marriage cannot be over emphasized. It is a generational issue which seems to be very difficult to eradicate. International and local researchers, advocates, legal practitioners and students have in the previous years contributed to its eradication, but unfortunately the practice still persists. Poverty, gender inequality, weakness in law enforcement and teenage pregnancy are the major causes of child marriage in Ghana. This Study will, however, focus on traditional and cultural practices, which is also a cause of child marriage and how these practices occur despite the numerous legal frameworks in Ghana while comparing it to South Africa.

Cultural Practices like child betrothal, Trokosi tradition, Ukuthwala, the tradition of having more children in the rural areas of the Northern region of Ghana and the Eastern Cape of South Africa will be examined. Not only does these practices contribute to child marriage, but they are also very difficult to be detached from the people who practice them because that has become their way of living.

Legal frameworks in both Jurisdictions protecting the rights of the child as well as policies and programs put in place to mitigate the practice will also be assessed. This study explores these challenges and proposes solutions where available.

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To future readers and researchers, thank you for using my work to make the world a better place.

Let’s continue to fight for the rights of the children.

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# CHAPTER ONE

## 1.1 INTRODUCTION

Imagine a 10-year-old happy schoolgirl, with future ambitions to be a successful lawyer, pilot, actress or soldier, living in the Northern Region of Ghana. She gets her first flow and by tradition, considered as a woman. Weeks later, her mom tells her about a celebration. She gets dressed in beautiful clothes and suddenly becomes the center of attention. The purpose of the gathering is a wedding- her wedding. She had no idea, she was not informed. Many questions run through her mind: who is she getting married to? Is she going to leave her parents to stay with a stranger? Will she still go to school? Will she still be able to play with her friends? Unfortunately, she gets no answers to her questions and has no choice than to do the bidding of her family all in the name of tradition and family honor, while neglecting her best interest. Many girls in the Northern region of Ghana, find themselves in this situation<sup>1</sup> which has become a way of life for some families for many generations in a very long time.

Marriage is a very important aspect of a person's life. It is the legal or formal recognized union of two people as partners in a personal relationship.<sup>2</sup> This mostly involves adults, but in some parts of the World, the marriage of children are endorsed.<sup>3</sup> Child marriage is a practice that robs millions of girls of their childhood, their rights and their dignity<sup>4</sup>. In a discussion paper by Tehera Ahmed, child marriage is defined as a marriage before the age of 18<sup>5</sup>. Many scholars ascribe the high rates

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<sup>1</sup> Richard de Groot and others, 'Child Marriage and Associated Outcomes in Northern Ghana: A Cross-Sectional Study' (2018) 18 BMC Public Health 285.

<sup>2</sup> 'Marriage | Definition of Marriage by Oxford Dictionary on Lexico.Com Also Meaning of Marriage' (*Lexico Dictionaries | English*) <<https://www.lexico.com/definition/marriage>> accessed 2 June 2020.

<sup>3</sup> Atoyebi Esther Iyanuolu, 'Name Student Number Degree Email Supervisor Submission Date' 93.

<sup>4</sup> 'Note\_on\_Child\_Marriage.Pdf' <[https://www.unicef.org/policyanalysis/files/Note\\_on\\_Child\\_Marriage.pdf](https://www.unicef.org/policyanalysis/files/Note_on_Child_Marriage.pdf)> accessed 3 June 2020.

<sup>5</sup> '(PDF) Child Marriage: A Discussion Paper' (*ResearchGate*) <[https://www.researchgate.net/publication/284276993\\_Child\\_Marriage\\_A\\_Discussion\\_Paper](https://www.researchgate.net/publication/284276993_Child_Marriage_A_Discussion_Paper)> accessed 3 June 2020.

of the practice to Africa, due to the low value placed on the girls. Boys also face some form of child marriage, but on a lower rate as compared to the girls.<sup>6</sup> The United Nations Children's fund (UNICEF) estimates that about 21% of girls married before their 18<sup>th</sup> Birthday, 12 million of these girls are married off every year, and in sub-Saharan Africa, 37% of the girls are married before the age of 18.<sup>7</sup> The causes of child marriage globally is attributed to poverty, lack of education, social perceptions, socio economic issues in countries like Chad, Bangladesh, Mali, Niger<sup>8</sup>. These also have prevalence in Ghana, but are being monitored and addressed by governmental and Non-governmental bodies.

One may ask: Why is child marriage still rising despite the legal frameworks and policies in Ghana? The children's Act of 1998 in article 14, provides the right to refuse betrothal and marriage<sup>9</sup>, together with the chapter 5 article 28 of the 1992 constitution of the republic of Ghana, which clearly communicates the protection of the rights of children.<sup>10</sup> Most of these policies made in Ghana, address the socio economic aspect of the practice. The traditional and cultural aspect relating to child marriage is not usually addressed and this is slowly increasing the numbers of child marriage especially in a way that seems "normal" to the people involved because it is deeply rooted in their cultural practice.<sup>11</sup>

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<sup>6</sup> Christina Misunas, Colleen Murray Gastón and Claudia Cappa, 'Child Marriage among Boys in High-Prevalence Countries: An Analysis of Sexual and Reproductive Health Outcomes' (2019) 19 BMC International Health and Human Rights 25.

<sup>7</sup> 'Child Marriage around the World' <<https://www.unicef.org/stories/child-marriage-around-world>> accessed 3 June 2020.

<sup>8</sup> 'SOWC09-CountryExample-Mali.Pdf' <<https://www.unicef.org/sowc09/docs/SOWC09-CountryExample-Mali.pdf>> accessed 3 June 2020.

<sup>9</sup> 'GHA56216.Pdf' <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/56216/101251/F514833765/GHA56216.pdf>> accessed 6 June 2020.

<sup>10</sup> 'Gha129754.Pdf' <<http://extwprlegs1.fao.org/docs/pdf/gha129754.pdf>> accessed 6 June 2020.

<sup>11</sup> 'Child Marriage a Cultural Problem, Educational Access a Race Issue? Deconstructing Uni-Dimensional Understanding of Romani Oppression' (*European Roma Rights Centre*) <<http://www.errc.org/roma-rights-journal/child-marriage-a-cultural-problem-educational-access-a-race-issue-deconstructing-uni-dimensional->



This research will focus on cultural practices such as child betrothal, dowry increase, virginity and chastity, family honor and the culture of having many children in Northern region of Ghana while comparing it to Ukuthwala<sup>12</sup> (bride abduction), common to the rural part Eastern cape of South Africa and why they continue despite the legal frameworks established to mitigate child marriage. Instruments like the convention on the rights of the child<sup>13</sup>, convention on the elimination of all forms of discrimination against women<sup>14</sup>, protocol to the African Charter on Human and peoples' rights on the rights of women in Africa<sup>15</sup>, the African Charter on the rights and welfare of the child<sup>16</sup> as well as certain marriage acts in both Jurisdictions.

## 1.2 Research Problem:

Ghana, a developing country in West Africa still records cases of child marriage in the Northern Region despite the numerous governmental interventions and policies to curb the issue. Research shows that the issue has a cultural aspect that is deeply rooted in the people of the Northern region of Ghana and the Eastern Cape of South Africa where the numbers of the cases are rising. This research will examine the role of culture and its influence on child marriage in Ghana, despite the laws established to mitigate the practice”.

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understanding-of-romani-oppression> accessed 3 June 2020; ‘Child Marriage: When Does a Cultural Practice Become a Global Health Issue?’ (*Berkeley Public Health*, 7 March 2014) <<https://publichealth.berkeley.edu/news-media/publications/berkeley-health-magazine/bhm-features/child-marriage/>> accessed 3 June 2020; Abamfo Ofori Atiemo, *Religion and the Inculturation of Human Rights in Ghana* (A&C Black 2013).

<sup>12</sup> ‘2018 Ukuthwala Pamphlet English.Pdf’

<[http://lrc.org.za/art\\_external/pdf/2018%20Ukuthwala%20Pamphlet%20English.pdf](http://lrc.org.za/art_external/pdf/2018%20Ukuthwala%20Pamphlet%20English.pdf)> accessed 3 June 2020.

<sup>13</sup> ‘Crc.Pdf’ <<https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>> accessed 3 June 2020.

<sup>14</sup> ‘Cedaw.Pdf’ <<https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>> accessed 3 June 2020.

<sup>15</sup> ‘Protocol\_rights\_women\_africa\_2003.Pdf’

<[https://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf)> accessed 3 June 2020.

<sup>16</sup> ‘African Charter on Human and Peoples’ Rights | African Union’ <<https://au.int/en/treaties/african-charter-human-and-peoples-rights>> accessed 3 June 2020.

### **1.2.1 Research Question:**

To what extent, does culture influence child marriage in the Northern Region of Ghana, despite the laws established to mitigate the practice?

### **1.2.1 Sub Research questions**

- What are the cultural Practices and reasoning that expand these practices?
- What are the Governmental and local interventions put in place to mitigate the practice?
- How can child marriage be mitigated, without affecting the culture of the people entirely?

## **1.3 SIGNIFICANCE OF THE RESEARCH**

- This research will educate readers, students and policy makers about culture and its relationship with child marriage.
- This research will further enlighten girls, parents and families who find themselves in a culturally entangled marriage.
- This research will serve as a guide to future researchers who are interested in protecting the rights of women and girls.

## 1.4 BACKGROUND OF THE STUDY

Child marriage has always been a global issue. This practice has been in existence since time immemorial and not inherent to Africa but also parts of south Asia<sup>17</sup>, West Asia<sup>18</sup>, Southeast Asia<sup>19</sup>, Latin America<sup>20</sup> and Oceania<sup>21</sup>. According to the United Nations sustainable development goals, child marriage affects goals 1, 3, 4, 5 and 10, which are poverty, good health, education, gender equality and reducing inequality respectively.<sup>22</sup> This study will emphasize on the cultural perspective and the extent to which it influences child marriage in the Northern Region of Ghana while comparing to the Eastern Cape of South Africa and the various legal mechanism taken by both Jurisdictions, drawing on some of their weaknesses and the power of culture. In Africa, culture is a very important figure and has a great impact in decision making. This research will compare the Northern Region of Ghana to the Eastern Cape of South Africa which equally has rising numbers of child brides due to traditions or culture,<sup>23</sup> resulting in 39% of girls married before 18 and 13% married before their 15<sup>th</sup> birthday.<sup>24</sup> Legal instruments which are international, regional and national such as the convention on the elimination of all forms of discrimination

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<sup>17</sup> 'Differential Impacts of an Intimate Partner Violence Prevention Program Based on Child Marriage Status in Rural Cote d'Ivoire | Elsevier Enhanced Reader' <<https://reader.elsevier.com/reader/sd/pii/S1054139X15003018?token>> accessed 1 June 2020. page 4 on the part of Asia

<sup>18</sup> Joel Brinkley, 'Opinion: Child Marriage Still an Issue in Saudi Arabia' (*SFGate*, 14 March 2010) <<https://www.sfgate.com/opinion/brinkley/article/Opinion-Child-marriage-still-issue-in-Saudi-Arabia-3270366.php>> accessed 3 June 2020.

<sup>19</sup> Thomson Reuters Foundation, 'Southeast Asia's Big Dilemma: What to Do about Child Marriage?' (*news.trust.org*) <<https://news.trust.org/item/20130827050032-zr80c/>> accessed 3 June 2020.

<sup>20</sup> 'Child Brides Child Marriage What We Know NOW PBS - Induced.Info' <<http://induced.info/?s=Child+Brides++Child+Marriage+What+We+Know++NOW++PBS>> accessed 3 June 2020.

<sup>21</sup> Foundation (n 19).

<sup>22</sup> 'Sustainable Development Goals Report 2018 – Goal 5: Child Marriage | Multimedia Library - United Nations Department of Economic and Social Affairs' <<https://www.un.org/development/desa/publications/graphic/sustainable-development-goals-report-2018-goal-5-child-marriage>> accessed 3 June 2020.

<sup>23</sup> John Cantius Mubangizi, 'A South African Perspective on the Clash between Culture and Human Rights, with Particular Reference to Gender-Related Cultural Practices and Traditions' (2012) 13 17.

<sup>24</sup> 'The State of the World's Children 2015: Reimagine the Future' (*UNICEF*) <[https://www.unicef.org/publications/index\\_77998.html](https://www.unicef.org/publications/index_77998.html)> accessed 3 June 2020.

against women, convention on the rights of the child, the Maputo protocol as well as marriage acts of both jurisdiction in relation to documents protecting the rights of women will be assessed to measure their efficacy to result in interventions or modifications, which will improve their effectiveness will be suggested.

## **1.5 METHODOLOGY**

This research is based on secondary literature analysis. It includes reviews from scholarly articles, books and journals relating to culture and child marriage. International, regional and national legal instruments such as the Universal declaration of Human Rights, the Convention on the Right of the child, Convention on the elimination of all forms of discrimination against women, The African Charter on Human and people's Rights, The African Charter on the welfare of the child, the Protocol on the African Charter on Human and people's rights on the rights of women as well as the constitutions of both jurisdictions and other documents that address the right of the child.

Policies and projects done in both Jurisdictions in relation to ending child marriage will also be included in this research. Projects, policies and programs in other jurisdictions in Africa will also be assessed and how they will benefit the jurisdictions in the project while ensuring development will be looked at. This research will also borrow scholarly articles, Dissertations, writing and other academic sources

## CHAPTER TWO

### OVERVIEW OF CHILD MARRIAGE

This chapter will examine the types of marriages in both jurisdictions as well as the cultural practices that trigger the practice of child marriage.

#### 2.1 THE GHANAIAN CONTEXT

Ghana, also known as the Republic of Ghana, previously known as Gold Coast, is located on the West African coast<sup>25</sup>. It shares its borders on the East by Togo, the West by Ivory Coast, the North by Burkina Faso and in the South by the gulf of Guinea<sup>26</sup>. It is the second largest producer of cocoa after Ivory Coast<sup>27</sup> and largest producer of gold globally.<sup>28</sup> It was the first country in Sub-Saharan Africa to gain independence in 1957 and it is made up of 16 regions, with Accra as the capital. It is a developing country with an average Gross domestic product of over 2,000 USD,<sup>29</sup> which has seen an increase in per capita income of \$ 2.16<sup>30</sup>, and has for the previous years experienced a tremendous increase in business investments in information technology and the flow of investors from Germany, Portugal, China and parts of the United States<sup>31</sup>. The country is gradually

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<sup>25</sup> 'Ghana - Geography' <<http://countrystudies.us/ghana/23.htm>> accessed 3 June 2020.

<sup>26</sup> 'Border Crossings Ghana - Easy Track Ghana' <[https://www.easytrackghana.com/travel-information-ghana\\_border-crossings.php](https://www.easytrackghana.com/travel-information-ghana_border-crossings.php)> accessed 3 June 2020.

<sup>27</sup> 'Cocoa Production in Ghana', , *Wikipedia* (2020) <[https://en.wikipedia.org/w/index.php?title=Cocoa\\_production\\_in\\_Ghana&oldid=959261837](https://en.wikipedia.org/w/index.php?title=Cocoa_production_in_Ghana&oldid=959261837)> accessed 3 June 2020.

<sup>28</sup> 'Ghana Now Africa's Largest Gold Producer, but Reforms Await' (*The Africa Report.com*, 8 October 2019) <<https://www.theafricareport.com/18245/ghana-now-africas-largest-gold-producer-but-reforms-await/>> accessed 3 June 2020.

<sup>29</sup> 'Ghana GDP Per Capita 1960-2020' <<https://www.macrotrends.net/countries/GHA/ghana/gdp-per-capita>> accessed 3 June 2020.

<sup>30</sup> *ibid*.

<sup>31</sup> 'Smart City in Accra-Ghana: A Gold Coast Again' <<https://www.thesmartcityjournal.com/en/articles/1034-smart-city-accra-ghana-gold-coast>> accessed 6 June 2020.

becoming one of the fastest developing countries in Sub Saharan Africa, after Nigeria and Kenya.<sup>32</sup> Ghana is also party to international and regional instruments protecting the rights of the child, and has domesticated parts of these ratified treaties in the 1992 constitution of the Republic of Ghana. The Government and ministries have adopted the modern ways of using technology to enhance education and organizational structures but, despite all these, traditional practices still persist in some regions, especially the ones with less developmental projects. This makes the enforcement of legal instruments very difficult, while traditional rules are on top. The government as well as special ministries concerned with the protection of the rights of children have structured certain programs and campaigns that seek to end the practice of child marriage. World Vision International Ghana, as a way to end child marriage started a campaign “End child marriage now, it takes us all” in 2017, aimed at ending child marriage by 2021.<sup>33</sup> In the northern region of Ghana, where the numbers of child marriage is increasing, research shows that one in five girls equivalent to 20.7% marry before their 18<sup>th</sup> birthday and one in twenty girls equivalent to 4.9% marry before their 15<sup>th</sup> birthday. The Ministry of Gender, children and social protection, whose mission is to contribute to the development of the nation by achieving gender equality and equity, enforcing the rights of the child and protecting the vulnerable<sup>34</sup> is very active in the issue of child marriage in Ghana. They work with international organizations such as the United Nations children’s fund and girls not brides to plan to structure programs with the aim of ending child marriage.

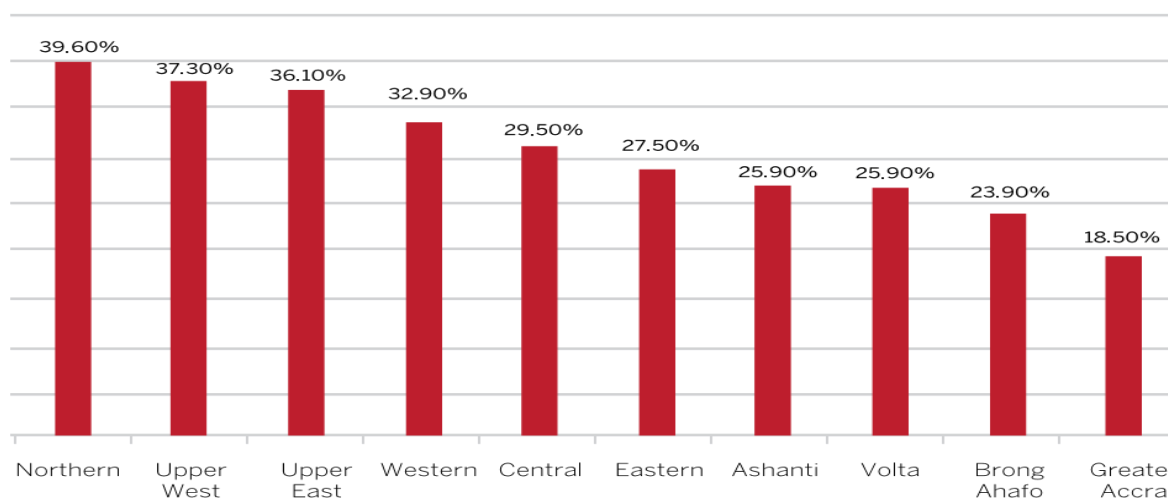
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<sup>32</sup> Stephen Appiah Takyi, ‘Comparative Study of Capital City Elements: The Case of Ghana and Nigeria’ (2016) 35 African Geographical Review 168.

<sup>33</sup> “‘End Child Marriage Now! It Takes Us All Campaign’ <<https://www.wvi.org/ghana/gallery/end-child-marriage-now-it-takes-us-all-campaign>> accessed 3 June 2020.

<sup>34</sup> ‘Ministry of Gender, Children and Social Protection’ <<http://www.mogcsp.gov.gh/>> accessed 3 June 2020.

In Ghana 70% of the population are Christians, 18% Muslims and 5%, who practice their traditional religion<sup>35</sup>. Northern Ghana comprises the three northernmost administrative regions of Ghana: the Upper West Region, Upper East Region and Northern Region. It is home to different people with diverse lingual background and cultural similarities. It is made up of rural areas due to its location, which is the savannah vegetation belt, making most of the people are farmers, cultivating varieties of millet, sorghum and rice. Animal Husbandry is also prevalent, unfortunately agricultural industries that manufacture primary goods into finished and semi-finished good are declining due to lack of technological knowhow.<sup>36</sup>



*Figure 1: Prevalent cases of child marriage in Ghana, region by region.*  
(DHS 2014 for ages 20-49 married or in a union by age 18).

<sup>35</sup> 'Northern Ghana, Tamale and Dagbani Culture - Youth Home Cultural Group' <<https://www.yhcg.net/tamale-cultural-tours/northern-ghana-tamale-and-dagbani-culture.aspx>> accessed 6 June 2020.

<sup>36</sup> AK Awedoba, 'The Peoples Of Northern Ghana' 11.

## 2.2 TYPES OF MARRIAGES IN GHANA

Marriage in Ghana is very important. This is because it does not only unite the individuals involved but the families and also serves as a legitimate way to start a family. The Accra Metropolitan Assembly, in charge for the registration of civil marriages registered a total of 18,973 marriages between 2017 and 2018.<sup>37</sup> There are three types of marriage in Ghana, namely, the customary or traditional marriage, the marriage by ordinance or court or white marriage and the Islamic or Mohammedan marriage.<sup>38</sup>

### 2.21. Customary or traditional marriage

Customary or traditional marriage type of marriage in Ghana, follows the customs and beliefs of a particular ethnic groups. It long existed before the introduction of marriage of ordinance/ church/ white wedding, which is a western influence as a result of colonization. This marriage heavily depends on customs of ethnic groups. It involves negotiation and some form of mutual understanding between the two families involved. As a result, customary marriages vary from one ethnic group to the other and is the basis of the other types of marriages in Ghana. The only common thing amongst the various types of ethnic groups is the payment of the bride price and the presence of both families at the ceremony. This type of marriage is not associated with any religion, is usually polygamous and illegal because it is not recognized under civil law, but widespread due to the prevalence of culture.<sup>39</sup> It is not recognized by law, unless it is registered

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<sup>37</sup> 'AMA Registers 18,973 Marriages in Accra from 2017 - 2018' <<https://ama.gov.gh/news-details.php?n=bjlvMXM5ODhzclw3EwN3NwODAwNDRzbjdvTk1NzQ5cDFycjMyNw==>> accessed 6 June 2020.

<sup>38</sup> '3 Ways to Marry in Ghana—Legally!' (*Labone Express*, 3 August 2013) <<https://laboneexpress.com/2013/08/3-ways-to-marry-in-ghana-legally/>> accessed 4 June 2020.

<sup>39</sup> This means that the man involved in the marriage can marry more than one wife.



under the provisional National Defense Council (PNDC) Law 112 of 1985.<sup>40</sup> This law allowed for mandatory registration of customary marriages until 1991, it was amended making the registration optional.<sup>41</sup>

### **3.2.2 The Islamic Marriage**

The Islamic Marriage is associated with the teachings of Prophet Mohammed and is accepted after the customary marriage has been performed. This type gives people the choice to be either monogamous or polygamous according to the teachings of the Holy Quran Sura 4: Ayah 3<sup>42</sup> and common among Muslims.

### **2.2.3 Marriage by ordinance**

Marriage by ordinance is monogamous, meaning a man is entitled to one wife and the same applies to the woman. It does not allow for a man to marry more than one wife, making polygamy illegal. It must be registered at the Registrar of marriages requiring that the people involved in the marriage should be more than 18 years of age. Customary marriage is a pre-requisite for Marriage by ordinance. These types of marriages are civil and can be done at the church, the court or a private ceremony and can be done with just a few witnesses and not the entire family.

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<sup>40</sup> 'Tribunal Decisions' <<https://tribunalsdecisions.service.gov.uk/utiac/37727>> accessed 4 June 2020.

<sup>41</sup> 'Tribunal Decisions' <<https://tribunalsdecisions.service.gov.uk/utiac/37727>> accessed 6 June 2020.

<sup>42</sup> 'Surah An-Nisa [4]' (*Surah An-Nisa [4]*) <<https://quran.com>> accessed 4 June 2020.

## 2.3 THE SOUTH AFRICAN CONTEXT

South Africa also known as the Republic of South Africa is located on the southernmost part of Africa. It is bordered on the east by Mozambique, on the North by countries like Zimbabwe, Namibia and Botswana, and on the South by the coastline of Southern Africa stretching along the Indian Ocean.<sup>43</sup> The name South Africa is derived from the country's geographical location, which is the southern part of Africa with Johannesburg as the largest city. It has a population of about 57 million, with 49% of male and 50.5% of female.<sup>44</sup> South Africa is one of the most ethnically diverse countries in the World, with a complete mix of different races, languages, ethnic bond and cultural identities, hence the name “the Rainbow Nation”.<sup>45</sup> It is the second largest producer of Gold in Africa after Ghana.<sup>46</sup> The major Black ethnic groups are the Nguni which is made up of (Zulu, Xhosa, Ndebele and Swazi), Sotho, Shangaan-Tsonda and Venda. They are mostly found in the Eastern Cape of South Africa, which records high numbers of early and forced marriages through abduction.

South Africa has also ratified legal and regional treaties such as the Convention on the rights of the child and the Convention on the Elimination of all forms of discrimination against women protecting the rights of the child and even though the numbers of child marriage have over the past years have been regulated due to the emerging groups and activists.<sup>47</sup> Marriage in South Africa

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<sup>43</sup> ‘South African Maritime Safety Authority’, (2020)

<[https://en.wikipedia.org/w/index.php?title=South\\_African\\_Maritime\\_Safety\\_Authority&oldid=955489219](https://en.wikipedia.org/w/index.php?title=South_African_Maritime_Safety_Authority&oldid=955489219)> accessed 4 June 2020.

<sup>44</sup> ‘South Africa Population (2020) Live — Countrymeters’

<[https://countrymeters.info/en/South\\_Africa#population\\_2020](https://countrymeters.info/en/South_Africa#population_2020)> accessed 4 June 2020.

<sup>45</sup> ‘Race, Ethnicity and Language in South Africa’ (*World Elections*, 6 January 2014)

<<https://welections.wordpress.com/guide-to-the-2014-south-african-election/race-ethnicity-and-language-in-south-africa/>> accessed 4 June 2020.

<sup>46</sup> ‘Gold Production by Country | Gold Production | Goldhub’ (*World Gold Council*)

<<https://www.gold.org/goldhub/data/historical-mine-production>> accessed 4 June 2020.

<sup>47</sup> ‘6 Activists Who Are Fighting Child Marriage in Their Countries’ (*Global Citizen*)

<<https://www.globalcitizen.org/en/content/child-marriage-women-activists-africa/>> accessed 4 June 2020.

are also regulated by certain acts such as the South African marriage act. There are two types of Marriages in South Africa, which are the customary or traditional marriage and the Civil Union and Civil Marriage.

Most child marriage cases are recorded from the rural areas of the Eastern Cape and are usually related to the practice of Ukuthwala, in other words child bride abduction. According to Sizane Ngubane, an activist in charge of rural women's movement in South Africa, rising numbers of child can be attributed to poverty and traditional beliefs that treat women as inferior. In her role as an activist, Sizane investigated the KwaZulu-Natal traditional area and has helped a lot of women through advocacy and promotion of gender equality rights for women.<sup>48</sup>

## **2.4 TYPES OF MARRIAGES IN SOUTH AFRICA.**

Like in every African Country, Marriage is important. South Africa, like Ghana also has different types marriages, each unique in style and performance.

### **2.4.1 Customary marriage**

Customary marriage in South Africa, just like Ghana is a form of negotiation, agreement and celebration which heavily dwells on ethnic rules. It is done on the basis of the African customary law. The unique feature of customary law is the arrangement and agreement between families as well as the payment of the "lobolo" also known as the bride wealth or bride price in Ghana.<sup>49</sup>

Customary marriages in South Africa were not considered as legal marriages until November 2000, due to the introduction of the Recognition Act<sup>50</sup>. Before this, customary marriages did not

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<sup>48</sup> Zukiswa Pikoli, 'MAVERICK CITIZEN: FRIDAY ACTIVIST: Sizani Ngubane: A Champion for Rural Women's Rights' (*Daily Maverick*, 9 April 2020) <<https://www.dailymaverick.co.za/article/2020-04-09-sizani-ngubane-a-champion-for-rural-womens-rights/>> accessed 4 June 2020.

<sup>49</sup> 'Diala - THE CONCEPT OF LIVING CUSTOMARY LAW A CRITIQUE.Pdf' <<https://poseidon01.ssrn.com/delivery.php?ID=53908512407006909&EXT=pdf>> accessed 4 June 2020.

<sup>50</sup> 'Http://Juta/Nxt/Print.Asp?NXTScript=nxt/Gateway.DII&NXTHost=jut' 8.

require mandatory registration. The Act passed provided that, people engaged in customary laws should be above 18 years between the couple.

### **2.4.2. Civil Unions and Civil Marriages**

Civil Unions and Civil Marriages have the same characteristics. The only difference is that, the civil union is same sex marriage<sup>51</sup>, whilst civil marriage is between a man and a woman above 18. The Civil Union Act of 2006, provides the framework for people of the same gender to legalize their relationship through a civil union.<sup>52</sup> . This type of marriage is monogamous and conducted according to the Marriage Act<sup>53</sup>. It does not need a prerequisite like the customary marriage in Ghana

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<sup>51</sup> 'Coertzen - 2016 - A Perspective on Marriages and Civil Unions in Sou.Pdf' <<http://www.scielo.org.za/pdf/stj/v1n2/20.pdf>> accessed 5 June 2020.

<sup>52</sup> Pieter Coertzen, 'A Perspective on Marriages and Civil Unions in South Africa Part 2 – Civil Unions' (2016) 1 STJ | Stellenbosch Theological Journal <<https://ojs.reformedjournals.co.za/stj/article/view/1266>> accessed 5 June 2020.

<sup>53</sup> 'Act-25-1961.Pdf' <[https://www.gov.za/sites/default/files/gcis\\_document/201505/act-25-1961.pdf](https://www.gov.za/sites/default/files/gcis_document/201505/act-25-1961.pdf)> accessed 5 June 2020.

## **CHAPTER THREE**

### **3.0. THE ISSUE OF CHILD MARRIAGE- CULTURAL PERSPECTIVE**

The issue of culture cannot be over emphasized. It is the way of living of particular group of people. This chapter will look at the cultural practices in both jurisdictions that leads to child marriage

### **3.1. CULTURAL PRACTICES INCREASING CHILD MARRIAGE IN GHANA**

Child marriage in the Northern Region of Ghana is fueled by poverty, lack of education, inequality and culture. Most of the people in the Northern Region are farmers and earn less than the minimum wage rate.<sup>54</sup> Due to this, many poor families give out their daughters at young ages to prevent them from spending on her, especially on her education. Culture is also one factor pushing more girls into marriage in Ghana and unfortunately, there have not been much work done in that aspect. Culture involves the totality of a group of people, it is their way of life and they stand by it. This is what makes culture an alarming factor pushing child marriage. Some scholars' attribute culture to the male dominance<sup>55</sup> system in Africa. This is because in Africa, most of the laws are made by men as well as most authoritarian positions, filled by men, while women are always at the receiving end and not allowed to make or take part in decision making.

One rationale that gives culture grounds is the popular believe that a woman's place is the kitchen.<sup>56</sup> Most fathers and family heads hold this perception and prefer to marry off their girls

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<sup>54</sup> 'LIVING-INCOME-REPORT-FOR-GHANA.Pdf' <<https://cocoainitiative.org/wp-content/uploads/2018/12/LIVING-INCOME-REPORT-FOR-GHANA.pdf>> accessed 6 June 2020.

<sup>55</sup> Christine M Venter, 'Community Culture and Tradition: Maintaining Male Dominance in Conservative Institutions' (1995) 12 Journal of Law and Religion 61.

<sup>56</sup> 'The Place of a Woman Is in the Kitchen – Part I – IDare Act' <<http://www.idareact.org/the-place-of-a-woman-is-in-the-kitchen-part-i/>> accessed 5 June 2020.

than investing in their education. Other cultural practices leading to child marriage rests on price placed on a girl's virginity and family honor. According to the Ghana Statistical services about 56.06% of the population live in the urban cities<sup>57</sup> whilst about 43.94% of them live in the rural areas in 2018.<sup>58</sup> Child marriage is very common in the rural areas of Ghana, especially in the three Northern regions of Ghana precisely amongst the sissala people of Wa<sup>59</sup>. Again, families give out their daughters due to poverty, in other to support themselves and other children especially the male children. The Sissala and Mole -Dagbani people in the Northern region, accord respect to a man who has more children, thus allowing these men marry young girls who have long child bearing age in order to have more children. Certain cultural practices such as child betrothal,<sup>60</sup> Dowry children or brides,<sup>61</sup> trokosi tradition,<sup>62</sup> importance of virginity and bride wealth or price increase the rates of child marriage in Ghana. The numbers of child brides keep increasing from 24.9% to 33.6% between 2011 to 2014 respectively<sup>63</sup> and 42% in 2017 as disclosed by the women

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<sup>57</sup> 'Ghana - Urban Population (% of Total Population)'

<<https://www.indexmundi.com/facts/ghana/indicator/SP.URB.TOTL.IN.ZS>> accessed 3 June 2020.

<sup>58</sup> 'Https://Tradingeconomics.Com/Ghana/Rural-Population-Percent-of-Total-Population-Wb-Data.Html - Google Search' <<https://www.google.com/search/Ftradingeconomics.com%2Fghana%2Frural-population-percent-of-total-populat-ab&ved=0ahUKEwjC8vaHmebpAhXEIYsKHUo2D3cQ4dUDCAw&uact=5>> accessed 3 June 2020.

<sup>59</sup> 'SISSALA PEOPLE: THE FRIENDLY AND XYLOPHONE PLAYING PEOPLE OF NORTHERN GHANA.' (*SISSALA PEOPLE*) <<https://kwekudee-tripdownmemorylane.blogspot.com/2013/08/sissala-people-friendly-and-xylophone.html>> accessed 5 June 2020.

<sup>60</sup> 'Explaining Teen Childbearing and Cohabitation: Community Embeddedness and Primary Ties\* | Request PDF' (*ResearchGate*)

<[https://www.researchgate.net/publication/229566005\\_Explaining\\_Teen\\_Childbearing\\_and\\_Cohabitation\\_Community\\_Embeddedness\\_and\\_Primary\\_Ties](https://www.researchgate.net/publication/229566005_Explaining_Teen_Childbearing_and_Cohabitation_Community_Embeddedness_and_Primary_Ties)> accessed 5 June 2020.

<sup>61</sup> National Survey of Family Growth (U.S.) and National Center for Health Statistics (U.S.) (eds), *Marriage and Cohabitation in the United States: A Statistical Portrait Based on Cycle 6 (2002) of the National Survey of Family Growth: Data from the National Survey of Family Growth* (US Dept of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics 2010).

<sup>62</sup> Thomson Reuters Foundation, 'Virgin Wives of the Fetish Gods - Ghana's Trokosi Tradition' (*news.trust.org*) <<https://news.trust.org/item/-3cmei/>> accessed 5 June 2020. This type of tradition, even though banned still persist in parts of the volta region. Many of the girls sent to the shrines, end up being the wives of the priests while children and perform wifely roles such as child bearing. Much is not done in this area because it is considered as "spiritual"

<sup>63</sup> 'Child\_Marriage\_Report\_7\_17\_LR..Pdf'

<[https://www.unicef.org/media/files/Child\\_Marriage\\_Report\\_7\\_17\\_LR..pdf](https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf)> accessed 5 June 2020.

empowerment advocacy organization in 2017.<sup>64</sup> The cultural practices influencing child marriage will be assessed below



Figure 2- Map showing the Northern Region of Ghana and its districts.

### 3.1.1 Importance and protection of virginity

The importance of virginity is valued in many communities.<sup>65</sup> When a girl marries as a virgin, it is a sign of respect and this shows decency and chastity. It is believed that, the younger the girl, the likely that she is a virgin. As a way to prevent a promiscuous lifestyle, most families resort to allowing girls to get married at young ages, most preferably after their first flow. In Africa, girls who lose their virginites before marriages, become a laughing stock and a disgrace to their

<sup>64</sup> 'Protect 5,000 Girls from Child Marriage in Ghana' (*GlobalGiving*) <<https://www.globalgiving.org/projects/end-child-marriage-in-ghana/>> accessed 5 June 2020.

<sup>65</sup> 'CHILD MARRIAGE AS A SURVIVAL STRATEGY FOR POOR RURAL COMMUNITIES: THE CASE OF BUHERA RURAL DISTRICT, ZIMBABWE, MY SHORT ANALYSIS OF GULTUNG'S CONCEPTUALIZATION OF CONFLICT' (*A discussion on how international integration and coordination has led to destructive conflicts worldwide*) <<https://vamutomba.blogspot.com/2019/03/a-discussion-on-how-international.html>> accessed 5 June 2020.

families, especially the parents. This is also seen as a way to prevent teenage pregnancy and the disgrace of having children out of wedlock. This is also a form of honor to the family, which the girls would have to protect.

### **3.1.2 Child betrothal**

Child betrothal is also a tradition that ends up in child marriage. In the Northern region, as well as other parts of Africa such as Kenya and Ethiopia this is very common<sup>66</sup>. Many of these child betrothal are in existence based on friendships or agreements made in the past either by the parents or the grandparents of the girl. This is an agreement, where a husband is already chosen for the girl and most of the time, when the girl is still a baby. In most cases, the husband takes care of the needs of the girl to show that he will be able to do that when they get married.

### **3.1.3 Trokosi Tradition**

Trokosi tradition is also another tradition that results in child marriage. This tradition involves sending a virgin girl to serve as a slave to atone for the sins of a family member. This tradition has existed for many years and is not supposed to end up in marriage but unfortunately, most of the girls who are sent to the shrines end up as wives of the priest while serving their purpose. After years or months of serving as slaves in the shrine, these girls are made to perform wifely duties like bearing children for the priests.

### **3.1.4 The urge to have a lot of children**

The number of children a man has is a very important factor to prove that the man is capable of handling positions in the society. In The northern Region where the main activity of the people are farming, cheap labor very important and when a man has a lot of children, he is assured of a good harvest as well as wealth. This gives him the opportunity to marry young girls who long child

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<sup>66</sup> Suzanne Petroni and others, 'New Findings on Child Marriage in Sub-Saharan Africa' (2017) 83 Annals of Global Health 781.



bearing years to enable her have a lot of children. This encourages polygamy, especially the women who are not able to give birth to the requested number of children go in for child brides to continue with child birth.

## **3.2 CULTURAL PRACTICES INCREASING CHILD MARRIAGE IN SOUTH AFRICA**

The recognition of the customary Marriages Act with the Marriage act allows people under 18 years to marry provided they have the necessary consent.<sup>67</sup> This makes issues conflicting. Parents who are ready to give out their children into marriages, do so, standing on this Act. They give their consent and the girls have no option than to get married. Child marriage in Southern Africa which includes Zimbabwe, Malawi and South Africa.<sup>68</sup> This conflicts with the numerous policies and projects aimed at ending all forms of child marriage. Culture is also another factor that keeps the practice alive. In South Africa, the Eastern Cape and the rural Xhosa area, the tradition of Ukuthwala, which is the abduction of the girl by her supposed groom and his friends is increasing.

### **3.2.1 The Tradition of Ukuthwala**

Ukuthwala means “to carry”. It is a culturally legitimated abduction of a female before a customary marriage, where a young man forcibly takes a girl to his home as his wife.<sup>69</sup> Girls as young as 13 are forced to marry through this traditional practice and are turned into wives with the burden of a wife in a gender unequal community exacerbated by age, rural poverty and culture.<sup>70</sup> The practice

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<sup>67</sup> See, in particular, sec 3(a) of the Recognition of Customary Marriages Act and sec 25 of the Marriage Act.

<sup>68</sup> Eg, sec 3(1) of the RCMA sets the marriageable age for both a man and woman at 18 years.

<sup>69</sup> ‘Koyana, DS --- “The Indigenous Constitutional System in a Changing South Africa” [2013] SPECJU 4’ <<http://www.saflii.org/za/journals/SPECJU/2013/4.html>> accessed 5 June 2020.

<sup>70</sup> ‘1. The Development of Customary Law and Constitutional Reform | African Legal Information Institute’ <<https://africanlii.org/content/i-development-customary-law-and-constitutional-reform>> accessed 5 June 2020.

of ukuthwala can be done in many ways.<sup>71</sup> The main issue here is, the kidnap is a violation of the freedom of movement of the girl. The abducted girl is kept and watched until she gets the ides of marriage. This process also involves sexual relations which is considered as a union between the girl and the man, as a result this act is traditionally not considered as rape, even if there is any form of resistance, violating her rights to bodily integrity<sup>72</sup> If an agreement is not reached. The girl is made to return to her family, but unfortunately, if the groom engages in a sexual with the girl, it can make her agree to such a marriage, especially if she gets pregnant.

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<sup>71</sup> 'Note\_on\_Child\_Marriage.Pdf' (n 4).

<sup>72</sup> Woods, K. 2005. 'Contextualising Group Rape in Post-apartheid South Africa'. Culture, Health and Sexuality, 7:17–35.

## CHAPTER FOUR

### **4.1 LEGAL FRAMEWORK FOR PROTECTING THE RIGHTS OF THE CHILD**

This Chapter will discuss various legal instruments that seek to address and protect the rights of the child. International, regional and nation Legal instruments to which both jurisdictions are party to or have ratified will be examined in relation to child marriage. Legal instruments such as the convention on the rights of the child, Convention on the elimination of all forms of discrimination against women, the international convention on economic, social and cultural rights, African Charter in the rights and welfare of the child, the Maputo Protocol as well as the constitutions of the jurisdiction in question will be addressed.

### **4.2 INTERNATIONAL TREATIES PROTECTING THE RIGHTS OF THE CHILD.**

Human rights are very important to ensure that, there is peace and adequate security. People who are allowed to enjoy their rights contribute positively to the development of others leading to the development of the World as a whole. If young girls are allowed to enjoy their rights as young girls, and are not forced into situations (marriage), giving them additional responsibilities of taking care of their husbands and children eventually burdens them, they would be able to develop themselves and contribute to make the world a better place.

The Universal Declaration of Human rights (UDHR) in article 1 states that “All human beings are born free and equal in dignity and rights.” All Human beings here refer to both male and female, thus when decisions are being made, both men and women should be consulted before a final

decision is made. This is unfortunately not the case of child bride in South Africa when they are being forced into marriages through Ukuthwala. Article 16 of UDHR, paragraphs 1 and 2, which states “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. 2. Marriage shall be entered into only with the free and full consent of the intending spouses”. Both South Africa and Ghana are party to this declaration thus, this goes against child marriage in both jurisdictions. Men and women have the right to marry, and they shall be allowed to do this only if they have consented or agreed, not when only one party has agreed as what is seen in the practice of child marriage and the practice of ukuthwala.

Article 1 of the Convention on the rights of the child (CRC) states that “.....a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” This clearly states, who a child is with the exception of national laws who state otherwise. The South African constitution chapter 2, paragraph 28 on the section on children as well as chapter 5, article 28, paragraph 5 of the 1992 constitution of the republic of Ghana. This explains why the legal age in Ghana for one to vote, acquire a driver’s license as well as have access to any property either acquired or inherited is always done when the child is 18 years or above. Article 3 of the CRC talks about the “best interest of the child.” The convention admonishes the state, parents, guardians, policy makers and all in charge of managing affairs relating to children to put the best interest of the child at the center before considering any other factor. This relates to the harmful effects of child marriage on the child. This view is affirmed by the UN Committee on the Rights of the Child, in its General Comment No.4, which directly addresses the issue of child marriage. With this, the Committee clearly recognizes early marriage as a harmful

practice, which has significant negative effect on those affected including “health problems related to sexual and reproductive health, HIV<sup>73</sup>.

This means factors that lead to the positive development of the child should be considered and prioritized. Many traditional practices in Ghana for instance the price placed on the virginity, is to prevent teenage pregnancy and having children out of wedlock, but making a child marry at such an early age is not the way to prevent such uncertainties. There can be other ways such as sexual educational session for the girls.

The Convention on the elimination of all forms of discrimination against women (CEDAW), an international legal instrument that addresses issues regarding discrimination against women, in article 16, provides that, States should take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) the same right to enter into marriage (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent.<sup>74</sup>

This shows that, the practice of child betrothal, ukuthwala and other forms of cultural practices violates this article. The girls are not allowed to choose their husband neither do they have a say in the marriage negotiations. Their feelings are not considered and their views not respected.

The international Covenant on Economic, Social and Cultural rights, in article 15(a), provides that the State recognizes the right for everyone to take part in cultural life. This article means everyone including indigenous groups have the right to take part in cultural activities. Cultural activities that should be beneficial to the people as well as leading to their development and not the violation of

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<sup>73</sup> ‘OHCHR | Committee on the Rights of the Child’ <<https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>> accessed 7 June 2020.

<sup>74</sup> United Nations. 2004. General Recommendation on Women Rights 21, 13th session. 1994. Washington: United Nations. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

their rights. One can state that, the rationale behind the cultural activities behind child marriage can be seen to protect the girls, but they violate their rights. Traditional heads believe in the notion of children must be seen and not heard, thus in their right to practice their tradition, the views or voice of the children does not count.

### **4.3 REGIONAL LEGAL INSTRUMENTS PROTECTING THE RIGHTS OF THE CHILD**

The African charter on Human and people's right, which is the regional treaty for the Organization of African Union, in article 16 paragraph 2, gives the State the responsibility to assist families in executing traditional customs and values recognized in the community. In paragraph 3, the State is also to ensure that there is the elimination of every discrimination against women and to ensure the protection of the rights of women and children. It is important that the State, recognizes the right to practice your culture as well as the protection of the rights of women and children. As a result, Customs and traditions can be practiced, but they should not act as a discrimination and violation of rights of women and children.

The protocol to the African charter on Human and People's rights on the rights of women also known as the Maputo Protocol is the first regional treaty that address the rights of women in Africa. This is the first regional treaty that sole addresses the rights of the woman. The treaty in article 5 and 6 talks about the prevention of harmful practices against women and marriage respectively. In article 5(a) the treaty provides that there should be public awareness, educating people about certain harmful practices which violates the rights of women such as early and forced marriages to women. The state should strategically put individuals and organizations at places where child marriage rates are high to create awareness and educate the parents and children about the dangers

while giving them options from which they could rely on. In article 6, the treaty provides that, marriage should be entered with the consent of both parties, and they should be above 18 years.

The African Charter on the Rights and Welfare of the Child in Charter 21(2) talks about child marriage and the betrothal of girls and boys should be prohibited and this should be effective in all legislations of the parties or States who have ratified as well as to make the registration of all marriages in an official registry compulsory. Again charter 48, outlines the framework aimed at the elimination of gender discriminatory practices. It prohibits discrimination against children in any form. It guarantees all children the right to enjoy the rights and freedoms recognized in the Children's Charter. This is irrespective of the child's or his or her parents' or legal guardians' race, ethnic group, color, sex, birth or other status.<sup>75</sup>

#### **4.4 NATIONAL LEGAL INSTRUMENTS PROTECTING THE RIGHTS OF THE CHILD**

The South African Constitution in chapter 2 article 28 speaks about children. Paragraph (2) and (3) speaks about the best interest of the child as the paramount interest and the definition of a child as a person below 18 years respectively. This is equivalent to Chapter 5 of the 1992 constitution of Ghana.

The children's Act 1998, in sections 1 and 2 describe the meaning of the child and the best interest of the child respectively. The definition of a child, cuts across all the international, regional and national treaties. The second section provides for the best interest of the child. Section 11, provides

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<sup>75</sup> Women Legal Centre Report. 2010. Submissions on South Africa to the Advancement of Women Commission on Status of Women. Cape Town: Constitution House.

that, “No person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being, the opinion of the child being given due weight in accordance with the age and maturity of the child.”. This section can be said to relate to the best interest of the child. If the opinion of the child is sought in decision making, the decision arrived will have an opinion of the child and this will make the child accept whatsoever consequences that comes with that decision. Section 14 also provides that, “(1) No person shall force a child: (a) to be betrothed; (b) to be the subject of a dowry transaction; or (c) to be married. These provisions are some of the main traditional ways through which children are married in the Northern Region of Ghana. These practices according to the Act is a violation of the rights of the child.

The South African Children’s Act of 2008 in article 12 provides that,(1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being. These Practices include forced and early marriages in which the consent of the child was not sought and which would leave negative effects or impacts on the child. These Practices in South Africa include the practice of Ukuthwala, which violates the rights of the child as well as some negative impacts such as teenage pregnancy, HIV AIDS, health issues and among others.

## **4.5 CUSTOMARY LAW AND MARRIAGE ACT**

### **4.5.1 SOUTH AFRICA**

Customary Marriage in South Africa is the main way through which girls are married off. The law regulating customary marriages allows them to be registered and persons who are above 18 only are allowed to get married. The problem here is, when the customary law is read in conjunction



with the Marriage Act, allows for marriage of minors with the permission or consent of their parents and legal guardians, but not the consent of the children. This is one of the reason why child marriages are on the rise. Parents force the children into marriages and because they give their approval, the marriages are granted standing and the children have no say in the decision.

#### **4.5.2 GHANA**

The registration of customary marriages in Ghana is not mandatory<sup>76</sup>. The Provisional National Defense Council law 112, which allowed for the registration of customary marriages was amended in 1991,<sup>77</sup> which made their registration optional. Many child marriages are done customarily and this amendment makes it easier for children to get married. This increases the rates of child marriages and this gap in the law is the reason. Customary marriage registration, should be mandatory to prevent minors from getting married.

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<sup>76</sup> '(PDF) LEGAL REGULATION OF THE ACTIVITY OF COURTS OF CUSTOMARY LAW IN THE REPUBLIC OF GHANA' (*ResearchGate*)

<[https://www.researchgate.net/publication/338985807\\_LEGAL\\_REGULATION\\_OF\\_THE\\_ACTIVITY\\_OF\\_COURTS\\_OF\\_CUSTOMARY\\_LAW\\_IN\\_THE\\_REPUBLIC\\_OF\\_GHANA#fullTextFileContent](https://www.researchgate.net/publication/338985807_LEGAL_REGULATION_OF_THE_ACTIVITY_OF_COURTS_OF_CUSTOMARY_LAW_IN_THE_REPUBLIC_OF_GHANA#fullTextFileContent)> accessed 5 June 2020.

<sup>77</sup> 'Tribunal Decisions' (n 40).

## CHAPTER FIVE

This chapter will look at the various policies and programs in both jurisdictions that are targeted to the elimination of child marriage. Programs by the governments, Non-governmental agencies, child protection units as well as organizations that seek to protect the rights of women and children of both jurisdictions will be assessed. Finally, suggestions about how to further enhance these programs including new ideas will be critically evaluated.

### 5.1 GOVERNMENTAL EFFORTS TO END CHILD MARRIAGE

Over the years, there have been numerous programs, campaigns and policies in various African countries to end child marriage. Some of these programs and initiatives had support from international organizations such as United Nations children's fund, Human rights watch, girls not brides, World Vision, Action Aid<sup>78</sup> and others who share the aim of ending child marriage. Some of these initiatives and campaigns consisted of defending the rights of child brides as well as the protection and provision of assistance to victims. Others also included empowering these victims. According to the report on the African Union campaign initiated by girls not brides<sup>79</sup>, the aim was to determine the socio economic impacts of child marriage, promote effective implementation of the African Union legal and policy instruments and remove any barriers and bottlenecks to law enforcement<sup>80</sup>. These aims set by the organization are very important because they were able to mobilize a lot of African countries into starting their own national campaigns aimed at either

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<sup>78</sup> These are agencies and organizations who have the aim of protecting the human rights of people to avoid violations. They have a special interest on child marriage and propose campaigns and other initiatives in order to minimize the practice.

<sup>79</sup> Girls Not Brides, 'The African Union Campaign to End Child Marriage: What next? Girls Not Brides Members from across Africa Speak as One' (*Girls Not Brides*, 26 October 2016) <<https://www.girlsnotbrides.org/african-union-campaign-end-child-marriage-next-girls-not-brides-members-across-africa-speak-one/>> accessed 5 June 2020.

<sup>80</sup> '30359-Wd-Tor\_cso\_reference\_group.Pdf' <[https://au.int/sites/default/files/newsevents/workingdocuments/30359-wd-tor\\_cso\\_reference\\_group.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/30359-wd-tor_cso_reference_group.pdf)> accessed 5 June 2020.

ending or minimizing child marriage on the African Continent. Countries like Senegal, Eritrea, Kenya, Ghana, Liberia, Serra Leone and other African Countries participated by starting this campaign in their respective countries, using the aims of the International organization as a benchmark. The campaign targeted the key areas which are affected in with this practice such as education, health, and empowerment of women and the protection of their human rights.<sup>81</sup>

In Ghana and South Africa, similar campaigns approved by the government have been put in place. Other Non-governmental organizations such as the Hats community empowerment program-Ghana, the heaven blue foundation, global fund for children and many others are putting in so much efforts end child marriage. Most of these organizations are mainly into empowering and giving assistance to these victims and or potential victims of child marriage. Almost none of these organizations talk about how to address the issue of culture, when it comes to child marriage. The government of Ghana supports these projects and policies but unfortunately there is no effort on culture, which is another factor increasing the issue of child marriage and a focus of this paper as well.

The government of Ghana, with the ministry of gender, children and social protection initiated a program known as the National strategic framework on ending child marriage in Ghana<sup>82</sup> which came into form on 2017 and set to end all forms of child marriage by 2026. This project is aimed at providing vocational and educational opportunities to girls. The Ministry is currently working with other Non-governmental organization such as the HACEP foundation, who takes care of the

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<sup>81</sup> *ibid.*

<sup>82</sup> '2017-2026-National-Strategic-Framework-on-ECM-in-Ghana.Pdf' <<https://www.girlsnotbrides.org/wp-content/uploads/2017/05/2017-2026-National-Strategic-Framework-on-ECM-in-Ghana.pdf>> accessed 5 June 2020. National Strategic Framework on Ending Child Marriage in Ghana is a documented policy. The Ministry initiated a process that lasted a period of one year towards the development of a comprehensive ten (10) years framework along with a two (2) year work plan

education of girls from primary till the senior high school. There are other agencies and non-governmental groups, putting in measures to end any form of child marriage, such as the Hats community Empowerment program, Ghana NGO coalition on the rights of the child, Human rights development foundation, Ghanaian association for women's welfare and among others who are taking child brides back to school as well as creating employment and training opportunities for victims and potential child brides. These organizations for many years, empowered women and tackled the issue of poverty and gender inequality.

The Practice of Ukuthwala in South Africa has to be criminalized. This practice is not health and mostly does not seek the approval of the girl. This sometimes lead to kidnapping, sexual violation, assault and Bodily harm as according to the case of *Nvumeleni Jezile v. The State and 7 Others*,<sup>83</sup> where the court found the Appellant guilty of trafficking and assault, even though he was trying to justify using the culture of Ukuthwala. This practice has negative impacts on the victims, thus if the victim agrees to marry her suitor as established by the court, there should be no offense with the practice but if the girl does not agree, she should not be forced anyone who forces her should be punished.

Individuals who are fighting to eliminate child marriage should be given the adequate support from the government and international organizations. In South Africa, there are women who have been victims of child marriage who are trying their best to promote the effects of child marriage and taking care of girls who are likely to be forced into marriages. These people should be given some form of assistance like funds, educational materials as well as building materials for shelters to accommodate girls are not accepted into their houses due to their refusal to get married. In Ghana,

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<sup>83</sup> 'Lg-14-Jezile-Child-Customary-Marriage-Rape-s-Africa.Pdf'  
<[https://www.law.utoronto.ca/utfl\\_file/count/documents/reprohealth/lg-14-jezile-child-customary-marriage-rape-s-africa.pdf](https://www.law.utoronto.ca/utfl_file/count/documents/reprohealth/lg-14-jezile-child-customary-marriage-rape-s-africa.pdf)> accessed 7 June 2020.

the Hacep foundation, which is an NGO currently putting girls who have refused marriage due to poverty, back to school, has no shelter to accommodate these girls.

Individuals can also help by creating awareness through campaigns and peaceful demonstrations about the dangers of child marriage. world vision uses children through performances to draw people together and talk to them. This teaches the people and in the long run have a positive impact in the decline numbers or rates .

## **5.2 LEGAL RECOMMENDATION**

First, the PNDC law 112, which was amended in 1991 has to be reviewed in relation to child marriage. The registration of customary marriages should be made mandatory. This is to make the law clear and understanding to all (educated and uneducated). The minimum age set for marriage to be 18 and this should clearly be stated, to avoid confusion by partners and representatives.

The inconsistency with regards to the customary law and Marriage act in South Africa should be critically assessed. Conflicting dual systems of customary and statutory law weaken enforcement through lenient penalties and inconsistencies in administering justice. This should be strictly enforced in the country to avoid conflicting opinions.

Now is the time to bring all actors together and tackle the issue of early child marriage across the continent. After all, we can neither keep the promise of the African Children's Charter, nor attain the new Sustainable Development Goals if young girls and women continue to suffer early child marriage.

### 5.3 TRADITIONAL RECOMMENDATION

The Traditional leaders in charge of officiating or performing the marriage in areas with high child bride numbers can refuse to perform marriages of persons or a party below 18 years. This will go a long way to stop the practice because of the respect people have for these traditional leaders. These leaders can support victims and seek for assistance from other agencies.

Secondly, traditional leaders can use their occasional gatherings, during festivals, durbars, traditional heads meetings, communal meetings to advice the people on the bad effects of child marriage. They can do this by speaking to the people, or inviting experts to talk to them.

Again, traditional leaders can also recreate or restructure parts of customs that allow marriage for persons under 18, by using influential and effective governmental institutions as well as provide way of punishing of punishing people who do not obey the laws.

### 5.4 CONCLUSION

Culture is our way of life and defines our true self. This includes the material, social and cognitive. In Africa, respect for the elderly and the valued placed on culture is very high regardless. It is clearly seen from the above study that, there are certain cultures that produce unhealthy results such as child marriage. Culture is so powerful that, it sometimes overrides legal framework to stand on its own.

Certain Cultural practices such as the Ukuthwala in South Africa, even though has been in existence for a while, has been the inhumane ways some girls in the Eastern Cape of South Africa violating their rights to movement, while causing bodily harm, sexual violations and assault. Child

betrothal and other forms of cultural ways through which girls are given out to men, do these girls more harm than good, intruding in their education, health and sometimes poverty due to illiteracy.

The very important thing to note from this study is that, culture is unique, and according to the International Covenant for social, economic and cultural rights, everyone has the right to partake in cultural life, but when this culture is hindering development and a threat to the lives of the people involved, it should be changed to make to beneficial for all.

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# **PRACTICAL CAPSTONE ANALYSIS**

## **EARLY EDUCATION TO END CHILD MARRIAGE IN**

### **NORTHERN GHANA –**

Hats Community Empowerment Program Ghana.

Children are to be trained, educated and catered for to become responsible adults, contributing to the development of the country and the world at large. It is always said, if you educate a woman, you educate a whole nation. It is unfortunate that this is not the story of girls in the Northern region of Ghana. In Ghana, the Northern Region to be precise, most girls are not found in school due to the low value placed on the education of the girl. Young girls who are supposed to be in School are forced into situations they know nothing about- marriage. The question that usually comes to mind is “what is pushing the children into such situations?”

Child marriage in the Northern region is gradually increasing despite the many governmental interventions, policies and programs aiming to mitigate the practice. The Ministry for children, Gender and social protection in Ghana, has for the past five years supported the cause to end child marriage, working with other international organizations like United Nations children’s fund (UNICEF) and the United Nations Populations Fund (UNFPA), World Vision International and other legal instruments that seek to protect children.

Hats Community Empowerment Program (HACEP) is a Non- governmental Organization, located at Yapala in the Northern Region of Ghana with the mission of promoting the rights of girls and empowering the youth by ending child marriage and female genital mutilation. The foundation was established in 2008 as a youth movement to address issues of youth unemployment and empowerment, but over the years the foundation has enlarged its aims and objectives to cover the rights of girls in the Northern Region who have been subject to culturally biased practices like female genital mutilation and child marriage.

HACEP- Ghana, a Non- governmental organization, currently has two on-going projects. The first project is “Protecting 5,000 girls from child marriage in Ghana”<sup>84</sup>. This was initiated in 2015 after

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<sup>84</sup> ‘Protect 5,000 Girls from Child Marriage in Ghana’ (*GlobalGiving*) <<https://www.globalgiving.org/projects/end-child-marriage-in-ghana/>> accessed 6 June 2020.

the report of the United Nations Children's fund on the possibility of an increase in child brides to at least 120 million at the end of 2030<sup>85</sup>. The main purpose of this project is to provide the necessary basic education needed by girls who are targets of early and forced marriages as well as victims of this practice. According to Abass Hamza, the founder of the group, most girls in the Northern Region are given out as child brides due to poverty and traditional practices. Ghana has since 2017 launched the free education policy, which allows children to attend schools from primary to senior high school. The Organization pays provides the girls with the needed educational materials, and victims who are forced to leave their homes are currently made to stay with some of the pioneers of the organization. The organization believes that, when girls are educated, it makes them independent and firm in decision making especially when handling the issue of child marriage.

The second project was launched during the global Pandemic. This project is aimed at providing necessary assistance to beneficiaries and their families especially, those who earn less than the minimum wage rate which is \$2.16<sup>86</sup>. This project aims at providing personal protective equipment such as hand sanitizer, nose masks, soaps, detergents and among others.

The aim of HECAP Ghana is to enroll 5,000 girls, mostly victims and potential victims of child marriage into school to address the issue of gender inequality and poverty.

### **Problem.**

A discussion with the HACEP foundation, showed that, the foundation has been able to provide many girls in the Northern Region of Ghana with Basic and secondary education as well as shelter through individual who are moved by the issue of child marriage to help these girls. Unfortunately, the foundation is only able to sponsor the girls to the senior High schools only. This means that, once a girl is able to complete her senior high school, she has to leave the shelter to take care of herself. The foundation believes that, according to the 1992 constitution of the Republic of Ghana, the legal age to be considered as an adult is 18, of which many of the girls who are able to successfully complete senior high school at the age of 18. Some girls are "lucky" to get donor who

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<sup>85</sup> 'EndingChildMarriage\_Brochure\_English-Web-Final(1).Pdf'

<[https://www.unicef.org/protection/files/EndingChildMarriage\\_Brochure\\_English-Web-Final\(1\).pdf](https://www.unicef.org/protection/files/EndingChildMarriage_Brochure_English-Web-Final(1).pdf)> accessed 6 June 2020.

<sup>86</sup> 'Ghana GDP Per Capita 1960-2020' <<https://www.macrotrends.net/countries/GHA/ghana/gdp-per-capita>> accessed 3 June 2020.

are willing to sponsor their education to the University, but others do not. The ones who are not so lucky tend to go back into forced marriages while others end up on the streets of the capital cities in search of green pastures. Unfortunately, the girls who end up in the capital cities are exposed to social vices such as rape and assault leading to teenage pregnancy and street children, eventually affecting the economy of the State.

HACEP Ghana, has faced certain challenges during the execution of this project such as:

- Inadequate sponsors to help girls after Senior high school.
- No proper shelter to house the girls.
- Occasional fights or quarrels by family members who want their children back.

### **Weakness**

The Organization is not able to deal with issues relating to culture and tradition. This is because, the practice is deeply rooted among the people and it is difficult to make the people change their minds.

### **Success**

With the help of the National strategic framework project by the Ministry of children, gender and social protection as well as the government of Ghana for the free Senior High school policy, a lot of the girls have been successfully sent to school and individual and organizational donors have been able to provide educational material for these girls. Some of these girls have decided to become advocates spreading the word to end child marriage. They organize programs which attract people and use that opportunity to educate them on the dangers of child marriage. These according to Abass Hamza has got some people especially mothers, who come to the facility center to ask questions on how to end the practice.

The organization hopes to achieve its target of sending the girls to school to enable them fight for their rights as well as donors who would sponsor the girls through some form of empowerment such as helping the girls learn a vocation from which they can earn a living to break the cycle of poverty which is one of the main drivers of child marriage.



