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AFRICA'S TRADITIONS AND CULTURE OF MARRIAGE: a look at the
role that African woman plays.

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Abstract

Nella storia della civiltà umana, il matrimonio è stato una delle istituzioni sociali più antiche e critiche. L'Encyclopedia Britannica definisce il matrimonio come un'unione fisica, giuridica e morale tra un uomo e una donna per creare una famiglia. La capacità legale di sposarsi, il consenso reciproco e un contratto di matrimonio definito dalla legge sono i tre elementi cruciali di un matrimonio. Questo documento analizza come il matrimonio nel sistema africano tradizionale ha contribuito alla relativa pace nelle loro società, più precisamente lasciamo vedere quale ruolo occupano le donne all'interno dei matrimoni nei paesi africani e il valore che viene detto alla donna sposata. Questo abstract esplora la complicata relazione tra cultura e tradizioni africane, concentrandosi sui ruoli delle donne nella vita familiare, nel benessere della comunità e nella conservazione del patrimonio culturale. Le culture e le tradizioni africane sono caratterizzate dalla loro ricca diversità e dal loro profondo significato, che modellano la vita e l'identità degli individui in tutto il continente. Le donne svolgono ruoli fondamentali nella vita familiare, nel benessere della comunità e nella conservazione del patrimonio culturale. L' abstract fornisce un'esplorazione concisa della complessa relazione tra cultura e tradizioni africane e i ruoli delle donne all'interno di questo quadro dinamico.

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Introduction

Marriage is a universal institution that has been practiced in various cultures and societies throughout history, serving as a foundation for family formation and social bonds. However, the concept of marriage varies across regions and ethnic groups, each with unique traditions and customs. In African societies, marriage is seen as a communal affair, with vibrant celebrations, elaborate rituals, and community involvement. It is a sacred bond that marks the beginning of a union between two individuals committed to building a life together. In Africa, marriage not only marks a partnership between individuals but also cements a bond between families and clans. Traditional customs and practices are often involved in African weddings, emphasizing the importance of marriage as a unifying force within the larger social fabric. These customs and practices vary across different regions and ethnic groups, showcasing the rich diversity of African cultures. From the exchange of dowries to colorful attire and traditional dances, every aspect of an African wedding reflects the values and traditions that have been passed down through generations. The involvement of the community in these celebrations further strengthens the sense of belonging and support for the newlyweds, making it a truly joyous and memorable occasion. But is it all truly joyous?

African women have historically played significant roles in marriage, preserving traditions and cultures by being custodians of community values and morals. They pass down knowledge and skills related to marriage, such as cooking, childrearing, and household maintenance. Additionally, African women often serve as mediators and peacemakers within their communities, ensuring harmony and resolving conflicts within marriages or between families.

In this piece, we will explore the experiences and struggles faced by African women in the context of marriage and their rights. From traditional practices to modern dynamics, we will delve into the societal expectations, cultural norms, and legal

frameworks that shape the lives of African women within the institution of marriage, highlighting the challenges they encounter and the movements for change that have emerged.

This essay explores the different cultural factors that contribute to the role of African women in marriages across Africa. It also examines the various traditions of marriage, cultural practices that have evolved over time in Africa, and the significance of these practices.

By understanding the cultural factors, we can gain insight into the complex dynamics of gender and power within African societies. Furthermore, analyzing the evolution of marriage traditions and cultural practices in Africa allows us to appreciate the diversity and richness of African cultures while also recognizing the challenges and opportunities faced by African women in their marital roles.

Moving on, we also discussed the brutality of some African cultural practices regarding marriage, which have been used to oppress and marginalize women, as well as the necessity of greater awareness and action to address these issues. Specifically, we focused on how these practices have been used to force women into early marriages. For instance, in some African cultures, the practice of female genital mutilation is used as a means to control and restrict women's sexuality, ultimately leading to early marriages. Additionally, the dowry system in many African societies places a high value on young brides, leading families to marry off their daughters at a young age. Early marriages have detrimental effects on women's lives in multiple ways. Firstly, they often result in the discontinuation of education for girls, limiting their opportunities for personal and economic growth. Secondly, early marriages frequently lead to increased health risks for young brides, including complications during pregnancy and childbirth. Finally, these marriages perpetuate gender inequality and reinforce patriarchal norms, denying women their autonomy and agency.

The analysis reveals the progress made in African countries regarding women's rights, particularly young adults, and their roles in marriage. The introduction of legal instruments, such as the Maputo Protocol, by the African Union in 2003, has significantly improved the empowerment of African women. This protocol addresses issues like violence against women, discrimination, and harmful practices, providing a framework for legal protection and promoting gender equality. This has significantly contributed to the empowerment of African women.

This article investigates the cultural and traditional aspects of marriage in Africa, as well as the changes that have occurred as a result of globalization, modernity, and a change in social attitude. Through increasing access to knowledge and information brought about by globalization, women now have the ability to question conventional gender norms and exercise their rights within the context of marriage. The passage of time has brought about modifications to legal frameworks as well as societal standards, which have resulted in the recognition of women's rights to inherit property and to make choices about their own lives. A shift in social thinking has also brought to an increased acceptance of non-traditional marriages and various family arrangements, such as marriages between people of the same gender. An examination of the effect that traditional marital customs have on women's rights may assist in identifying areas that need more development in the pursuit of gender equality in Africa and contribute to a more inclusive and multicultural view on the world.

1. CHAPTER I: MARRIAGE IN AFRICAN CULTURAL AND TRADITION

Across the diverse cultures, traditions and societies of Africa, marriage is a intricate and multifarious institution with significant influence on social dynamics, identities and responsibilities. With deeply rooted connections to Africa's rich history, pre-colonial African societies had unique customs that were reflective of their distinct cultural values and belief systems.

African societies experienced notable shifts in marriage customs due to the arrival of European colonial powers during the late 1800s. Colonial governments frequently imposed their own legal and religious norms, thus impacting African marital traditions. These interventions included Christian missionaries promoting monogamous marriages while discouraging polygamy - which was a prevalent practice across numerous African cultures.

The numerous marriage customs and traditions in Africa illustrate its rich cultural diversity. Typically, arranged marriages are facilitated by families and elders who take into account social status, family reputation, as well compatibility when matching individuals. Moreover, polygamy- the practice of a man having multiple wives - has been prevalent historically across several African cultures; this tradition highlights concepts like familial ties to fertility issues or societal hierarchy ideals. Additionally customary is bride price where the groom's family pays an agreed-upon amount or gifts for the hand of their future wife from her respective household in some regions dowry is observed too.

African nuptials are distinguished by ornate customs and traditions, distinctive to each community's way of observing these meaningful affairs. The impact of religious beliefs on matrimonial protocols fluctuates across territories. Contemporary changes in African matrimony comprise education and empowerment initiatives, updated legal systems, urbanization alongside wider

access to the world through globalization as well as heightened understanding and participation towards social causes concerning marriage practices alike.

1.1. The concept of marriage

Marriage is an important institution that entails not just emotional and social commitment but also legal ramifications. It provides a framework for the division of property and inheritance rights, as well as financial stability for both spouses. However, it is important to recognize that cultural practices and societal norms can sometimes override these legal rights, resulting in unequal treatment of individuals, particularly widows. For example, in certain regions such as Nigeria, widows may face difficulties inheriting property from their deceased husbands. Despite legal safeguards that allow widows to inherit property, cultural practices and social norms sometimes overrule these rights. Due to traditional beliefs or pressure from extended family members, widows may be driven out of their marital houses or refused access to their husband's assets in certain situations. This disparity in treatment might expose widows to financial instability and limit their capacity to fend for themselves and their children. Regardless of these differences, the basic principles of marriage attempt to create a relationship in which both people have equal rights and duties. Marriage is a social, legal, and religious union that entails the formation of a family unit. It is a covenant partnership in which two people vow to love, honoring, and cherishing one other. Marriage is a fundamental social institution that offers security and support for people and their progeny. It is a lifetime adventure that represents the union of two families as well as the continuance of cultural legacy.

Marriage rites and traditions change throughout cultures, reflecting the distinctive beliefs and values of each society. Marriage is a contract in certain cultures that guarantees social, economic, and political connections between families or clans. In others, it is a sacrament that commemorates the union of two people before God.

Marriage is frequently viewed as an important milestone in one's life, reflecting commitment, love, and companionship, regardless of the exact traditions.

It is also a means for people to build their own identities within the framework of their cultural heritage and customs. Marriage is a societal connection that significantly impacts individuals' growth and self-realization. It fulfills biological, social, psychological, and motivational needs, and is universally meaningful to society.

It is a foundation for new generations, societal belonging, security, cooperation, confidence, and smooth sex life. Despite changes in size and substance over time, family and marriage institutions have maintained their universality and continue to form the core of society. Marriage is recognized in many civilizations as an institution of intimacy and community, where children are nurtured, adults can have sex, and opportunities for emotional growth exist.

The institution of marriage has been present throughout human history, dating back to the earliest civilizations. The spectrum of intimate partnerships includes a variety of forms, ranging from a monogamous union between two individuals to an arranged matrimony between a man and a woman, primarily aimed at procreating offspring. Throughout history, the practice of marriage in Europe and North America mostly included the arrangement of unions between affluent men and economically disadvantaged women. Consequently, the prevailing perception of marriage in Western societies is often associated with this particular dynamic, which remained customary until the 19th century. In spite of challenging circumstances, a significant number of couples residing in Africa and other regions choose to enter into matrimony. There is a prevailing belief among a significant portion of the population that under certain conditions, opting for a "love marriage" is indicative of a progressive approach towards the future.

According to the Encyclopaedia Britannica, marriage is a formal and legally recognized partnership between a man and a woman that includes physical, legal, and moral dimensions with the main goal of creating a family. There are three essential components that are required: the legal capacity to enter into marriage, mutual consent, and a marriage contract that has legal validity. The first marriage ceremonies involving a woman and a man were reported in Mesopotamia around 2350 B.C.; as stated previously, the union of two opposite sexes has existed since antiquity, and it grew into a widespread institution over the next several hundred years, being welcomed by the ancient Hebrews, Greeks, and Romans. In contrast, passion and religion had nothing to do with marriage back then. In the ancient world, monarchs and other members of the governing class married their daughters to establish alliances, secure property, and produce legal successors. Even in the lowest strata, women had little influence over their marriage partners. As indicated by the Latin word *matrimonium*, ¹which is derived from *mater*, the purpose of marriage was to produce offspring. By marriage, a woman becomes a man's property. In ancient Greek betrothal ceremonies, a father would hand over his daughter with the words, "I promise my daughter for the sake of producing legitimate offspring."

The woman was expected to service her spouse in any manner he desired, including food preparation, clothing, and other personal requirements, as well as caring for the house and the needs of the children, including their education. Men were permitted to take multiple spouses among the ancient Hebrews, whereas married Greeks and Romans were free to gratify their sexual desires with concubines, prostitutes, and even young male partners, while their wives were required to care for the household. This characteristic is still prevalent in contemporary culture: if women are unable to bear children, their spouses may divorce them and marry someone else.

¹ MATRIMÒNIO: *matrimònio* s. m. [from lat. *matrimonium*, der. of *mater* -*tris* «mother», on the model of *patrimonium*]. – 1. a. Legal institution (or, according to the Catholic Church, sacrament) through which [...] legal form (and respectively sacred character) is given to the physical and spiritual union of the man (husband) and the woman (wife) who establish to live in a community of life in order to find a family: m.

Women have traditionally been responsible for childbirth, infant rearing, and domestic food production. In contrast, men are responsible for providing for a woman's family in African culture. As a consequence, women are viewed while engaging in economic activities to support themselves; they are not expected to own property or obtain its benefits because they are viewed as appendages of their spouses. Because of the ancient concept that property and its income belong to the spouse, the wife is believed to belong to him. Women are often regarded to be husbands' property, and as a result, wives do not inherit their husbands' property after his demise, which is passed to the husband's family. Widows are frequently evicted from their spouses' properties in many regions of Nigeria. Partners have the legal right to share property, make joint decisions, and be each other's lawful next of kin, although marriage laws vary by country. Marriage is generally engaged into voluntarily, but it can also be arranged by families, religious authorities, or traditional matchmakers in diverse cultures and nations. It is a sacred institution that is deeply rooted in numerous cultures and religions, and it is a fundamental aspect of social and cultural life, providing stability to families and communities. Marriage is fundamental to the majority of African cultures and societies. Marriage customs differ from country to country, but there are many similarities across the continent. In a number of African cultures, marriage is a social contract between families, not just individuals. It consists of ornate ceremonies and rituals designed to unite families and communities.

In some cultures, marriage is viewed as a rite of passage that signifies the passage from infancy to maturity, whereas in others, it is a means of forging alliances between lineages or tribes. In traditional African societies, marriage is often polygamous, and a man may have more than one wife, particularly if he is affluent or maintains a high social status. This practice persists in many regions of Africa, though it is less prevalent in urban areas and among the educated elite. Finally, marriage is a complicated and multidimensional institution that is fundamental to the social and cultural life of many countries. It has both legal and social components,

and it can take many different forms depending on the country and culture. In African societies, marriage is a significant aspect of social and cultural life, embodying the community's values, beliefs, and traditions. It is essential to venerate and preserve the rituals and traditions that define marriage in each culture and civilization.

1.2. African Culture and Tradition About Marriage

Dr. Lynne Brydon, from the University of Birmingham's Department of African Studies and Anthropology, discussed the significant cultural and symbolic significance of marriage in African culture: “Marriage in Africa *was* the means of ensuring reproduction, but things change”². Marriage is a fundamental pillar for the unity and collective identity of societies, and its practice varies across the continent. Various cultural practices, such as arranged weddings and polygamous relationships, provide valuable perspectives on the dynamics between love, family, and community norms. African culture is characterized by a broader understanding of love that extends beyond the romantic bond between two persons, including the integration of families and the perpetuation of lineage.

Matrimonial ceremonies can exhibit high levels of intricacy and liveliness, with customary rites and practices that promote cultural values and traditions within society. The engagement ceremony, often associated with the payment of the dowry or bride's price, is crucial for fostering familial unity and mutual acquaintance between different factions within the family unit. It serves as a formal declaration of the impending matrimonial union, signifying the dedication and aspirations of both familial units. In Ghana, an engagement ceremony includes a customary practice known as "kokoo ko,"³ or "knocking," which requires the groom and his family to visit the bride's parents to formally request their consent for the union. This phase is of utmost importance as it facilitates the convergence of both families, enabling them

² Marriage in africa: BRIHC Scholar Carmen Thompson reports on the Cadbury Conference 2017.

³ Kokoo ko: Ghana twi word meaning knocking. tradion in the Ghanaian culture

to engage in discussions about significant things such as dowry, wedding arrangements, and other expectations.

The traditions and cultures of other nations have influenced African marriage customs throughout history, resulting in modern practices that occasionally feature elaborate ceremonies and ostentatious displays of wealth. Females wear resplendent costumes adorned with intricate jewels, while males wear gorgeously embroidered robes. Visitors enjoy a wide variety of foods and beverages while listening to live music performances and viewing impressive fireworks displays.

In regions of West Africa, particularly in the northern section of Nigeria, the maidugiri ⁴ceremony is one of the most prominent distinctions between a Nigerian wedding and a traditional African wedding. This type of union involves the husband apprehending and confining his wife within a matrimonial bond, fostering a more profound connection between them.

Arranged marriages are prevalent in some African nations, particularly in the Arab region. These marriages involve a couple engaging in direct interpersonal interaction, often through coffee consumption. The decision to marry is made after a period of courtship, with compatibility, shared ideals, and mutual appeal being key factors. Women traditionally choose a partner after he has committed to providing financial and social assistance. Loveless marriages are more socially acceptable in Arab culture than love marriages, but they face disapproval from some segments of society. In Arab countries, romantic affection is often seen as having a higher level of social status than financial considerations.

However, societal disapproval is diminishing as more people recognize its advantages. In some regions, young women engage in arranged marriages with older

⁴ Maidurigi: in the Nigerian language it meant Thousand Kings
So literally Maiduguri (Mai+Duwuri) means "Thousand Kings" thus Maiduguri is a land of a "Thousand-Kings."

men to secure improved conditions for themselves and their families. This practice is often referred to as dowry. In some communities, brides and their female companions participate in a "henna" ⁵rite or gathering before the wedding. This event can last from two days to a week and includes rituals such as washing and perfuming the bride's hair and applying henna body decorations.

Traditional African wedding ceremonies often involve elaborate rituals and customs that vary across different regions and cultures. The bride and groom wear resplendent costumes, while guests enjoy live music performances and dance. Some ceremonies incorporate aspects of African mysticism and beliefs, creating a unique amalgamation of customs and practices. The traditions and cultures of other nations have significantly influenced African marriage customs, with pagan or Catholic rituals becoming rare. Modern African weddings sometimes feature elaborate ceremonies and ostentatious displays of wealth, with females wearing resplendent costumes and males wearing embroidered robes.

Lobola,⁶ also known as bride payment, is a traditional ceremony observed in the Sub-Saharan African area, whereby the groom's family offers a symbolic token of respect and appreciation to the bride's family. The aforementioned activity symbolizes the groom's dedication to the bride and her family, rather than a direct transaction centered on the acquisition of the bride. The customary practice of bride price encompasses both monetary and non-monetary forms of recompense, including cattle, clothes, and household things. The bride price's fluctuation is contingent upon factors such as the ethnic background, social standing, and educational achievements of both the bride and groom.

The contention exists that the practice of paying the bride price perpetuates gender inequity and the objectification of women. However, it is largely recognized by

⁵ Henna: Designs vary from region to region and have different meanings for each culture. Meanings include good health, fertility, wisdom, protection and spiritual enlightenmen.

⁶ Lobola: (among southern African peoples) a bride price, traditionally one paid with cattle. the practice of paying a bride price.

Africans as an intrinsic element of their cultural legacy. The ritual serves several functions, including the demonstration of respect for the bride's family and community, the cultivation of social relationships, and the promotion of familial togetherness. Furthermore, it serves as a protective measure in the event of marriage divorce, whereby the bride's family bears the responsibility of reimbursing the groom's family for the equivalent bride's price.

The custom of bride price serves to alleviate inter-family discord by promoting enhanced comprehension between families and resolving possible issues via dialogues facilitated by esteemed members of the society. Despite facing criticism from some groups, the practice of bride price continues to have important importance within the context of African marriage customs and cultural traditions. Africa's modernization and assimilation into current social standards are anticipated to drive its evolution, all the while preserving its prominent role in the region's cultural history.

1.3.African Marriage System

Marriage in African ethnic groups hold various expressions, reflecting the extensive diversity of customs. Although some traditions limit certain marriage types, all aim to strengthen family bonds and uphold equitable property distribution while creating social structures that recognize individual responsibilities towards fellow members of society. The practice of polygamy is widespread throughout Sub-Saharan Africa and principally benefits men by allowing them to participate in multiple marriages simultaneously. Polygamous ⁷households are said to have greater familial capacity as well as economic productivity; they also signify the head-of-household's elevated status and authority within their community.

⁷ marriage in which a spouse of either sex may have more than one mate at the same time compare polyandry, polygyny. 2.: the state of being polygamous.

Throughout African history, there have been four unique marriage customs. Each grouping is identified by the specific people that a man or woman may marry either voluntarily or due to societal expectations. One popular matrimonial practice involves marriages between close family members like cousins and nieces. For example, it's customary for men to take brides from their extended relatives such as half-sisters, granddaughters and first cousins within this particular group category.

The second group is made up of marriage connections that involve individuals who are related through previous marriages or in-laws. A man can legally marry his niece-in-law, if she happens to be the daughter of his wife's brother. Levirate takes place when a man marries the widow of his elder sibling. Sisterhood occurs under circumstances where a widower enters into matrimony with their deceased spouse's younger sister after her death or simultaneously with it. Several civilizations in Central and Southern Africa actively promote cousin marriage, which results in a transfer of bride money between the respective households of the siblings. This matrimonial arrangement is common among pastoralist communities that offer livestock as dowries to preserve connections between siblings and ensure retention of financial resources within kinship groups. Some ethnic groups prefer services over monetary or livestock contributions for wedding presents; for example, Bemba community members traditionally acquire prospective spouses through laborious service given to their families. Certain marriages use women instead of assets as compensation.

In Nigeria's central region, women are compelled to enter into polygamous marriages with men from several clan groupings unless they choose otherwise upon marrying or remarrying later on. Young children at first tend to follow their mother but then shift allegiance towards male relatives such as biological fathers, maternal uncles or previous stepfathers once mature enough. One Nigerian cultural practice involves married men presenting sisters as gifts to individuals from their brides' family units via exchange spouse institutions since it offers mutually beneficial support

alternatives if no close female relative exists within one party's lineage. African men have a low inclination for divorcing their marriages, since divorce entails relinquishing both their personal possessions and their social connections. There are instances when women express a desire to initiate divorce proceedings. In some instances, individuals may choose to terminate a legally recognized first marriage and then enter into a second marital union due to personal motivations. Nevertheless, courts often deny divorced mothers the right to retain custody of their children.

Islam, which is the dominant religion in North Africa, advocates for marriage as a suitable means to regulate sexuality and establish familial structures. Cousin weddings are widely accepted in many cultures due to their ability to foster familial connections and preserve ancestral property within the broader kinship network. In the context of wedding planning, it is common for the first stages of the process to be initiated by the female members of the family. However, it is noteworthy that the ultimate decision-making authority rests with the senior men within the family unit. The groom or his relatives provide monetary gifts to the bride, which are then transferred to the bride's family, who in turn provide the bride with a dowry. Wedding ceremonies sometimes take place in the residence of the groom's family. Islamic law provides men and women with distinct rights and advantages pertaining to marriage and divorce, which are derived from the Qur'an, the revered scripture of Islam.

In accordance with prevailing legal frameworks, it is within a man's prerogative to use his legal entitlement to dissolve his marital union unilaterally, irrespective of the concurrence or dissent of his spouse. The dissolution of marriage for a woman is contingent upon certain circumstances. In the context of embracing polygamy, it is possible for men to concurrently maintain up to four wives. Polyandry, the practice of women having many husbands, is considered illegal. Polygamy has historically been seldom practiced among the population of North Africa, and in recent years, there has been a significant decline in its prevalence.

Furthermore, under the framework of Islamic law, males are granted the prerogative to assume the responsibility of providing financial assistance to their wives and families. Moreover, it is crucial to acknowledge that while polygamy is sanctioned in Islam, it is not an obligatory custom, and some Muslims choose for monogamous unions driven by individual inclination and societal conventions. The inhabitants of Africa's burgeoning urban centers have experienced a disconnection from their traditional rural kinship networks.

In the context of matrimonial unions, individuals residing in urban areas tend to exhibit a greater inclination towards asserting their own preferences throughout the process of arranging a marriage. Conversely, those residing in rural regions may still exhibit a tendency to seek familial consent and approval in such matters. African women now experience enhanced opportunities for work and education, along with heightened levels of power and autonomy in decision-making processes. The individuals in question have a lower propensity for procreation and tend to get into matrimony at a more advanced stage of their lives.

The institution of marriage has undergone transformations as a result of the process of modernity. In contemporary times, an increasing number of families have adopted the practice of accepting monetary contributions as bride price, deviating from the conventional means of bride price acquisition, such as livestock or other tangible assets. The aforementioned alteration has facilitated the process of marriage for young males from the working-class demographic residing in urban areas. Moreover, the proliferation of media platforms, including television and movies, has resulted in increased exposure to Western relationship dynamics among persons residing in urban areas.

The marriage systems in Africa, like other forms of social structure, are undergoing changes as individuals try to reconcile the pressures of modern life with the preservation of cultural customs. For a more comprehensive analysis, please refer to

the sections on Family, Gender Roles, and Sexual Roles. Marriage and sexuality, which exhibit a strong interconnection, have seen notable transformations within African communities. The ongoing processes of urbanization and globalization have had significant influence on cultural norms, resulting in increased diversity and open-mindedness in views towards sexuality. Consequently, there has been an increased level of societal acceptability towards non-conventional partnerships and diverse sexual orientations, which in turn has posed a challenge to the conventional gender roles and expectations that are often associated with marital unions.

1.4. Influence on African Marriage System

The significance of the interplay between African culture and European import law has great importance throughout West African civilizations, particularly in reference to practices like as polygamy, dowry, traditional marriages, age of consent for sexual interactions, and marriage. Polygamy is a prevalent phenomenon seen in several regions of Africa, whereby individuals belonging to diverse professions, including affluent medical practitioners, enterprising businesspersons, agricultural cultivators, and practitioners of traditional medicine, engage in the practice of having numerous wives. In the context of Benin, the Code of Persons and Family only acknowledges monogamous marriage, despite the prevalence of individuals maintaining several wives throughout both Benin and Nigeria

During the era of colonization, a system known as the "double track" was implemented, whereby French courts and laws were accompanied by the establishment of "customary courts". The field of family law remained mainly unaltered, although, upon the attainment of independence, the dual legal framework persisted, affording couples the option to choose either the Coutumier du Dahomey or the French Civil Code for application. Nevertheless, the practice of polygamy continues to be accepted, but without providing legal protection for spouses who are not officially recognized.

In contrast, Togo exhibits a higher degree of openness when it comes to the examination of local legal traditions. This is evident in the recognition and implementation of the premarital period within the legal code, as well as the allowance of polygamy. The frequency of criminalizing sexual interactions between teenagers in many African nations has been extensively studied, as emphasized by the United Nations Population Fund (UNFPA).⁸ As a result, there has been a concerted effort to safeguard individuals under the age of majority, with the objective of mitigating detrimental conduct and reducing the prevalence of sexually transmitted illnesses. Nevertheless, the advent of technology has also resulted in the emergence of societal shame and enduring penalties for those who are implicated.

In several African nations, divergent results have arisen from the application of same concepts and legal systems. An example of this may be seen in the case of the Constitutional Court of South Africa, whereby it identified discrepancies within the legislation that criminalizes sexual relationships involving minors. Consequently, this resulted in the conviction of two juveniles who were sentenced to a 15-year imprisonment term for engaging in a sexual connection with their respective partners. In the context of Zimbabwe, a court from the country granted a third-degree reversal of a sentence imposed on a teenager. This decision underscores the need for adopting a more structured strategy towards addressing criminal conduct, particularly in relation to the societal stigma surrounding acts of sexual assault.

Cultural systems exhibit variations in the construction and regulation of sexuality, while colonial laws have imposed regulations pertaining to sexual conduct based on chronological age and associated restrictions. Although criminal restrictions may provide some level of protection for vulnerable kids, they are insufficient in

⁸ The goal of UNFPA is to ensure sexual and reproductive rights and choices for all, especially women and young people, so that they can access high-quality sexual and reproductive health services, including voluntary family planning, maternal health care and comprehensive sexuality education.

addressing the underlying issues related to the absence of social interventions, training, and comprehensive sexual education.

In rural areas, customary marriages are common and hold cultural significance. These unions follow traditional customs and involve ceremonies with the exchange of gifts and payment of a bride price known as lobola. Although recognized under the law, they differ from formal civil marriages that are officiated by government-appointed marriage officers or religious leaders registered with the Registrar General's Office. Civil marriages provide legal recognition to couples where their union is overseen through registration procedures hence don't always include traditional rituals associated with customary weddings. Couples who opt for religious wedding ceremonies such as Christian weddings may receive both spiritual blessings alongside legal validation depending on denomination practiced.

2. CHAPTER II: AFRICAN COUNTRIES CHALLENGES IN WOMEN AND GIRLS MARRIAGE

Culture, tradition, and societal norms are responsible for the hurdles women and girls in African marriages often encounter. The issue of child marriage stands out as a paramount concern with Sub-Saharan Africa boasting one of the highest rates globally. Consequently, young girls are thrust into marital roles prematurely; before they can cope mentally, emotionally, or physically. As such, domestic violence becomes unavoidable and so is limited access to education plus complications during childbirth coupled with early pregnancies.

The enforcement of legal structures aimed at countering child marriage encounters various hurdles, such as limited resources, societal acceptance and the quandary of monitoring informal unions. Additionally, gender inequality in Africa poses a substantial challenge - customs like dowries/be bride prices mark women as commodities traded off for matrimony. Polygamous marriages where one man has numerous wives may incite inequalities/strains between spouses; issues around

unequal allocation/divisions of properties emerge along with inheritance & guardianship conundrums related to children could arise too.

For numerous African girls, the fundamental right to education is impeded by poverty, cultural biases and underage marriage--circumstances that hinder their capacity to escape gender-based constraints or economic hardships. An alarming concern among many African countries is violence against women within wedlock which include forms of mutilation such as female genital cutting coupled with physical/verbal domestic abuse.

Adequate healthcare and information related to health and reproductive rights are crucial for women and girls in marriage. However, numerous African countries face challenges in providing these services effectively. Women may experience unintended pregnancies due to high maternal mortality rates or the lack of access to family planning facilities; this can limit their power over making important decisions about reproduction while also perpetuating cycles of poverty and disempowerment.

A comprehensive strategy that encompasses legal reforms, awareness campaigns, education initiatives and community involvement is required to tackle these challenges.

2.1. The institution of marriage in West and Central Africa

In West Africa, marriage plays a crucial role in maintaining social stability and ensuring economic security. However, the nature of marital dynamics has evolved over time due to factors such as education, urbanization, and exposure to different cultures. This transformation has led to a redefinition of what constitutes marriage; it is now no longer solely focused on reproduction or financial benefits but places greater emphasis on companionship and personal fulfilment. In addition, there has been an upsurge in interfaith and interethnic unions indicating society's growing acceptance for diversity at present times.

Child marriage is a significant issue in West and Central Africa, particularly concerning women's involvement. This practice has detrimental effects on the personal growth of adolescents and young individuals as well as their education, health including reproductive well-being. Furthermore, child marriages perpetuate gender inequality and infringe upon adolescent girls' fundamental rights since they are often forced into matrimony without consent. To address this problem appropriately, legal frameworks have been established to prohibit underage weddings while campaigns aimed at modifying societal beliefs about early matrimony have also taken place alongside educational programs.

The prevalence of child marriage is highest in West and Central Africa, where approximately 60 million underage girls are forced into marital unions.

As many as 40% of young females in this region experience early marriage, which deprives them of their childhood rights. This practice not only hinders personal development but also exposes children to a range of health risks. To combat these issues and empower adolescent women, governmental bodies, and NGOs⁹ must collaborate on support structures that include healthcare services, counseling sessions, vocational training opportunities alongside other necessary components. The protection and promotion efforts towards the well-being & rights for future generations can lead to securing a more prosperous tomorrow free from such malpractices like child marriages globally.

The harmful effects of early marriage take a toll on both genders, although it has a more profound impact on girls. Gender disparity is largely responsible for the prevalence of this practice. Young girls are stripped off their education, subjected to early childbirth and suffer from social and psychological consequences as they enter into wedlock at an immature age. The West and Central Africa region consists mostly in seven out ten countries globally with high rates child marriages. Numerous nations

⁹ NGO: abbreviation for non-governmental organization: an organization with social or political aims that is not controlled by a government: Co-operation between NGOs and governments is not always easy.

struggling with health crises also grapple escalating humanitarian emergencies caused by varying factors such as climate change or food shortages or even rampant violence- magnifying security threats especially across Sahel regions. In fact, about 70% young women marry before eighteen years old prevailing within central Sahel territory posing significant risk due to prevalent underage wedding trends primarily observed among impoverished families who lack educational opportunities living mainly rural areas.

African Union's primary goal entails eliminating minors' marriages significantly present throughout most African communities concerning gender equity restoration objectives seeking resolution across these vulnerable populations through eradicating the

One of the eight key outcomes for children identified by UNICEF's West and Central Africa ¹⁰Regional Office is eliminating child marriage. Our approach to achieving this goal encompasses diversity, multidisciplinary collaboration, and cultural sensitivity. We rely on empirical evidence to drive strategies that prioritize increased investment in high-quality education access for girls alongside structural changes aimed at transforming societal attitudes towards them while empowering women with greater participation opportunities across social-economic spheres. UNICEF remains actively engaged in eradicating child marriage within these regions through financial assistance from both the UNFPA-UNICEF Global Program dedicated to Ending Child Marriage as well as support extended via The Spotlight Initiative program.

This collaborative effort encompasses working closely with government bodies, local officials, religious and traditional leaders, non-profit organizations, civil society groups as well as girls and young women from various communities. The project

¹⁰ UNICEF: the United Nations International Children's Emergency Fund
The United Nations Children's Fund (UNICEF), originally known as the United Nations International Children's Emergency Fund, was created by the United Nations General Assembly on 11 December 1946, to provide emergency food and healthcare to children and mothers in countries that had been devastated by World War II.

aligns with Goal 17 of the African Union Agenda 2063 ¹¹promoting full gender equality across all societal areas and Sustainable Development Goal (SDG) 5.3 which aims to eliminate harmful practices by year-end in 2020. Although West & Central Africa have experienced relatively slower economic growth than other regions, there has been positive development evident over the preceding decade through increased engagement of multiple countries focusing on leadership concentrating efforts in this area today .

The promotion of societal progress requires the adoption of National Development Strategies and significant investments in women and their families. To achieve this, both the African Union and Economic Community of West Africa prioritize eliminating child marriage as a way to advance children's rights while protecting vulnerable members within their regions.

2.2.Situation Regarding Marriage in Burkina Faso

The primary legislative framework regulating marriage in Burkina Faso is the Burkina Faso Family Code, which acknowledges civil marriage as the only legally recognized and enforceable form. Nevertheless, it is worth noting that within the realm of matrimonial unions, both conventional and religious forms persist, sometimes failing to provide enough safeguards for women. In some instances, there may be an overlap between these categories of marriages, especially within metropolitan settings.

In Burkina Faso, civil weddings are very few compared to traditional or religious marriages, mostly due to the prevalence of rural settlements where the latter forms of marriage are more prevalent. The legal age of consent for marriage is established at 20 years for males and 17 years for females. However, civil courts possess the authority to give permission and authorize a marriage involving a man aged between

¹¹ African Union Agenda 2063: Agenda 2063 encapsulates not only Africa's Aspirations for the Future but also identifies key Flagship Programmes which can boost Africa's economic growth and development and lead to the rapid transformation of the continent.

18 and 20, and a female aged between 15 and 17. In contrast to the stipulations mentioned in the Burkina Faso Family Code, it is observed that in Burkinabe traditional customs, the practice of marrying girls as young as 10 or 12 years old is not uncommon.

The persistence of forced and underage marriages in Burkina Faso, despite legal prohibitions, may be attributed to entrenched customary and religious traditions and beliefs. These practices have significant ramifications for the well-being of girls and their families. According to customary legal practices in Burkina Faso, there exists a cultural norm that promotes the marriage of girls prior to reaching the legal age of 17. Additionally, the Burkina Faso Family Code permits the marriage of girls as young as 10 years old in the context of Muslim weddings, and 12 years old inside the framework of conventional legal practices.

The Burkina Faso Family Code permits an individual to seek annulment of their civil marriage for various reasons including fraud, age gap or lack of consent. However, if the married couple has continued to live together without interruption and there have been incidents of violence or deceit exposed within six months from that moment onwards, then they cannot legally dissolve their union.

In Burkina Faso, child marriage ¹²is a prominent issue as almost half of its female population (52%) get married before turning 18. This results in significant negative impacts on their academic progress, physical health, and overall welfare.

Burkina Faso, located in West Africa and without access to the sea, currently has a population of more than 16.2 million people. However, there is significant concern about an expected increase in population growth by up to 64% over the next decade and a half. This expansion could exacerbate existing challenges such as increased demands for critical resources like healthcare facilities, education opportunities, and job prospects that are already scarce. Unfortunately, the country's high incidence of

¹² Child marriage: formal marriage or informal union between a child under the age of 18 and an adult or another child. Despite a steady decline in this harmful practice over the past decade, child marriage remains widespread, with approximately one in five girls married in childhood across the globe.

child marriage complicates this situation further since it can trap young women into cycles of poverty while limiting their future potential impact on society greatly. Unfortunately, rural regions bear particular significance regarding early marriages with almost two-thirds (62%) of girls aged between twenty years old married off before they become eighteen. There is also notably alarming data from Smeler region where one-in-five girl-children will have experienced forced marital arrangements, (19%). With 46% of the population under the age of 15, there are additional struggles in addressing these issues. Early marriage among girls is driven by cultural traditions and societal expectations within families as well as limited access to education before reaching legal adulthood at age 17. This unfortunately limits their opportunities for education and personal growth, leaving them with little agency or authority when it comes to advocating for themselves - especially if they serve as second- or third-spouses to much older partners who exert greater control over decision-making processes impacting their rights and welfare overall. The lack of access to reproductive health care and information for teenage girls exacerbates the dangers and difficulties they encounter, prolonging the cycle of injustice and destitution. Society places pressure on newly wed women to commence childbearing soon after marriage, with childbirth expected within 20 months. Adolescent females who become pregnant are at risk of complications during delivery such as prolonged labor or obstruction leading them ultimately into developing a fistula.

The 2010 State of the World's Mothers report ¹³by Save the Children revealed that Burkina Faso ranked among the least-developed countries, particularly in terms of maternal health and overall development. To improve prospects for adolescent females and their children in this area, it is crucial to prioritize comprehensive efforts addressing early marriage along with essential healthcare services, education

¹³ The Save the Children State of the World's Mothers report (SOWM report) is an annual report by the Save the Children USA, which compiles statistics on the health of mothers and children and uses them to produce rankings of more than 170 countries,

opportunities, and social support. A major obstacle resulting from concentration of health facilities mainly in urban areas disproportionately affects rural girls who face mobility restrictions as they must travel longer distances to reach clinics or hospitals nearby.

To improve the physical safety of adolescent girls who are either about to be married or currently married, a pilot program called "Eliminating Child Marriage in Burkina Faso: A Plan for Protection, Reinforcement and Community Action" was launched by Population Council along with UNFPA, UNICEF and Ministry of Social Action. This initiative aims at tackling early marriage's root causes while supporting unmarried as well as wedded young females. The plan features various measures including providing educational opportunities to them, vocational training programs coupled with economic possibilities to empower them further.

2.3.Marriage in Niger

Growing awareness about the issue of child marriage and its impacts has taken root among adolescent females in Groumdji, a rural community located in Maradi. Childhood friends Olabisi (17) and Aminata (18) chose to sustain their companionship despite this social challenge. However, when a male resident desired to take Olabisi's hand in marriage, her family agreed without considering her opinion or that of her two devoted friends who refused customary rituals on the eve of the wedding ceremony.

With the help of UNICEF, Olabisi and Aminata informed the Child Protection Committee in Maradi about their friend's forced marriage. The two sought supports from local officials including members of the village committee to intervene. After conducting several negotiations with her parents and raising awareness on related issues, they were successful in convincing her father not to proceed with his daughter's coerced union for some years later instead.

Olabisi and Aminata collaborate with a group of teenage girls to address the prevalent problem of child marriage in Niger. They are also part of their village's Child Protection Committee, supported by UNICEF. Their primary goal is to educate at-risk adolescent females who may not attend school about the dangers associated with early marriage.

In Niger, the society is patriarchal, and this can be seen in its traditional gender roles and marriage practices. The domestic responsibilities such as housekeeping, cooking and child rearing have always been attributed to women. Furthermore, they are also anticipated to prioritize their husbands' needs while being submissively obedient towards them.

Families in Niger frequently arrange marriages without significant involvement from the individuals concerned, as this tradition is deeply ingrained within their culture. Social status, wealth, and family connections are often prioritized over personal compatibility or affection. Additionally, it's commonplace for men to have multiple wives at once (polygamy).

In Niger, there is widespread practice of early marriage wherein a considerable number of girls are wedded off prior to their 18th birthday. Such an act can lead to adverse effects on these young ladies' education and general welfare. The custom perpetuates gender disparity as it reduces the chances for women's learning, career prospects, and personal growth.

2.4. The cultural phenomenon of ukuthwala in South Africa

Ukuthwala is a customary practice in South Africa that involves young women being taken from their homes without their consent by someone who wishes to marry them. This practice has become highly contentious due to its potential for violence and abuse, such as child trafficking or violent acts. Despite being recognized by the South African Constitution under customary law, authorities are currently working on

legislation to regulate it due to documented evidence of the high risk associated with these practices.

Ukuthwala was initially seen as a collaborative strategy used by romantic partners to initiate conversations about marriage. However, it has become increasingly controversial due to its violation of fundamental rights, such as personal freedom, safety, equality, and life, especially for girls and women affected by this practice.

Although Ukuthwala¹⁴ is recognized by the South African Constitution under customary law, authorities are working on creating legislation to regulate it due to documented evidence of the high risk associated with these practices. Different variations of Ukuthwala are now being used in consent discussions, incorporating informed consent from the woman and her parents. However, abduction without parental approval is inconsequential, as it violates her basic human rights for sexual health and dignity loss.

In recent years, there has been a noticeable increase in the practice of Ukuthwala among older males, who enter into marriages with young girls as young as twelve years old, often from economically disadvantaged families who offer them up as compensation. The detrimental effects on these female students' education have been staggering, with over twenty students discontinuing their studies monthly since 2009.

To combat this issue, both local and federal governmental entities have taken steps to address harmful traditional practices. However, overcoming socio-economic obstacles like poverty, greed, ignorance, and cultural attitudes is crucial to eliminate such harmful practices. Reports on current events have classified these acts as instances of early or forced marriages and human trafficking.

¹⁴ Ukuthwala: Among the Xhosa and Zulu people, ukuthwala was once an acceptable way for two young people in love to get married when their families opposed the match (and so actually a form of elopement).

The Prohibition of Forced Marriages and Child Marriages Bill ¹⁵ was established in South Africa in 2015 to address the issue of ukuthwala related offenses. The bill aims to prohibit all types of coerced marriages, including those related to Ukuthwala practices. The Gender Directorate has expressed concern over the physical health problems and mental pressure faced by females involved in such practices. The bill aims to incorporate international legal frameworks and constitutional principles of human dignity to ensure that weddings are entered into freely and without coercion.

Ukuthwala is a cultural tradition that involves the removal of a young woman from her home by a prospective partner to negotiate an alliance for marriage. In traditional African communities, it is usually initiated by the groom's family who seeks permission to court and marry their daughter. If negotiations fail, abducting the bride and transporting her against her will is not uncommon unless she consents in exchange for monetary offerings. The customary process of preparing for marriage begins with lobola, bartering livestock between families as dowry payment on behalf of the groom-to-be.

However, without parental endorsement, situations involving coercion remain prevalent, jeopardizing personal rights relating to dignity, sexual and reproductive health, and overall human freedoms. The Ubuntu ideology places significant emphasis on principles of solidarity and mutual assistance, which has resulted in instances where females are involuntarily taken to participate in marriage negotiations. This practice is sometimes seen as a romantic tradition, akin to a clandestine marriage, but has garnered widespread criticism for its flagrant infringement of fundamental rights of women and girls, including equality, the right to live, independence, and personal safety.

¹⁵ Marriage is allowed for girls under 15 years subject to certain conditions, but this contradicts provisions of the Children's Act on statutory rape. The Draft Prohibition of Forced Marriages and Child Marriages Bill will contain provisions on conviction and sentencing for those who force children into marriage.

In recent years, there has been a noticeable rise in the utilization of ukuthwala by older males, mostly targeting young girls, some as young as twelve years old. Since 2009, an average of more than 20 female students have been discontinuing their education due to their involvement in this particular activity. The South African government has enacted several legislative measures, including the Children's Act, the Sexual Offenses and Related Matters Act, and the Domestic Violence Act, to address detrimental traditional and cultural practices that adversely affect women and children.

2.5. Association between FMG and Child Marriage

In numerous African countries, forced and early marriage of women is a prevailing issue. The acronym "FGM" can mean Female Genital Mutilation or Cutting, which are other destructive practices against women in certain parts of Africa. Although there might not be an explicit link between FGM and the marriage of females in African nations, both customs stem from gender inequality and detrimental cultural norms.

Gender inequality is evident in both FMG and early or forced marriages. These harmful practices are rooted in deeply ingrained societal inequalities based on gender, which enforce traditional gender roles while subjugating women.

Harmful cultural norms contribute to the continuation of female genital mutilation (FMG) and early or forced marriages. Traditions and beliefs that place a high priority on upholding family honour, controlling female sexuality, or ensuring social status frequently serve as justifications for these practices. Unfortunately, these harmful norms perpetuate gender inequality in society by marginalizing women further.

Both female genital mutilation (FMG) and early or forced marriages pose significant health risks for women. FMG can lead to severe physical and psychological

consequences, including infection, infertility, complications during childbirth, and trauma.

Early or forced marriages often result in girls being subjected to sexual violence; higher maternal mortality rates due to early pregnancies; limited access to education and economic opportunities; as well as overall poor mental health outcomes.

Human-rights violations: Both practices violate fundamental principles of human rights, such as the right to life, liberty, security of person; freedom from torture or cruel treatment; equality before the law; and freedom from discrimination based on sex or gender.

Efforts for Change: Several organizations are working towards ending both FGM and early/forced marriages through advocacy campaigns, initiatives to raise awareness, legal reforms, community engagement programs that promote education for girls/women empowerment.

It is essential to recognize that although these problems may exist in certain regions or communities within particular African countries, they do not always occur together everywhere or have a direct causal relationship with one another. Each issue necessitates individual attention and intervention methods for dealing with the root causes while protecting women's rights.

2.6. The Effect of Child Marriage

Child marriage is a significant issue that violates the fundamental rights of individuals, affecting young girls' access to education, maintaining optimal health, and fostering social connections. Poverty contributes to various health repercussions in girls, including increased susceptibility to sexually transmitted diseases, cervical cancer, malaria, maternal mortality, and obstetric fistulas. Preterm birth and neonatal, infant, or child mortality among female offspring are also higher. To prevent child marriage, policies and initiatives should prioritize community education, heightened

awareness, active involvement of local and religious leaders, parental inclusion, and empowerment of girls through education and work opportunities.

Since 1948, the United Nations and other international organizations have been actively engaged in efforts to eradicate child marriage. Article 16 of the Universal Declaration of Human Rights stipulates that an individual must have reached the age of majority to enter into marriage without coercion or constraint. The International Conference on Population and Development advocated for the increase and rigorous implementation of the minimum age for marriage, emphasized the importance of voluntary and equitable participation in marital unions, and promoted girls' engagement in education and the labour market.

Poverty significantly influences the prevalence of underage marriages, as girls are often perceived as financial liabilities due to the significant expenses associated with providing sustenance, clothing, and education. The practice of receiving a dowry for a daughter's marriage may serve as a means for families to recoup their investment in her. Concerns over the sexual purity and moral integrity of daughters also cause anxiety for parents. Child marriage is often seen as a strategy to mitigate premarital sexual activity, unintended pregnancies, and the transmission of sexually transmitted diseases, particularly in the context of the HIV/AIDS epidemic.

In African communities, child marriage has been found to elevate the susceptibility of married females to sexually transmitted diseases (STDs), including HIV and the human papilloma virus (HPV). In the sub-Saharan African region, there is a notable disparity in HIV contraction rates between girls aged 15 to 19 and their male counterparts of the same age. Early marriage, particularly at the age of 20, has emerged as a significant contributing factor to the heightened vulnerability of young and adolescent girls to HIV infection.

Child marriage is a substantial concern for teenage girls due to its detrimental effects on their immune system, rendering them more vulnerable to infections such as malaria. The yearly fatality rate caused by malaria worldwide exceeds one million

persons, with 90% of these deaths concentrated in Africa. Pregnant women are more susceptible to malaria during the first stage of pregnancy, and the countries with the greatest frequency of co-infection include the Central African Republic, Malawi, Mozambique, Zambia, and Zimbabwe. Individuals who are HIV-positive have a notably heightened vulnerability to infection caused by *Plasmodium falciparum*. Additionally, pregnant women have greater levels of malaria parasitemia in the placenta, which increases the probability of developing severe medical conditions.

3. CHAPTER III: JURIDICAL INSTRUMENT: PROTECTING WOMEN AND GIRLS

Protecting the rights of African women and girls in marriage is essential, given the distinct challenges presented by diverse cultural traditions throughout Africa. The key legal frameworks established by institutions like the African Union (AU), including the Maputo Protocol and African Charter on Human and Peoples' Rights, serve a critical function in both upholding their fundamental rights while promoting gender equality across various regions of this continent.

The regulations and laws that provide governance to marriages and safeguard women's rights in Africa are referred to as national legislation. Numerous African countries have shown initiative towards aligning their legal frameworks with global principles for achieving gender parity within marriage. This has been achieved by adopting measures such as setting the minimum age of marriage at 18 years, alongside enacting statutes forbidding forced or child marriages across a range of jurisdictions.

In numerous African communities, marriage is regulated by customary and religious laws that hold great importance. Legal measures strive to uphold cultural and religious diversity while preventing any violation of fundamental human rights through a delicate balancing act.

Despite international instruments like the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Child (CRC), African women and girls still face challenges in marriage due to entrenched social norms, traditions, and a lack of awareness. Although laws exist for their protection, enforcement is often inconsistent while access to justice remains a significant concern particularly when it comes to rural areas.

By increasing awareness, offering legal assistance and interacting with lawmakers to guarantee the judicial measures are effectively enforced, civil society organizations contribute significantly in advocating for the rights of African women and girls regarding wedlock.

Safeguarding the rights of African women and girls in marriage necessitates leveraging judicial tools both at national and international fronts. The effective enforcement of these instruments mandates a collaborative approach from governments, civil society organizations, along with global stakeholders to align legal guidelines with practical outcomes. Whilst legislative amendments are imperative for promoting marital equity among African females, it is also fundamental to work towards changing ingrained societal conventions through transformative measures.

3.1. African Charter on The Rights and Welfare of the Child

The African Charter on Human and People's Rights¹⁶, approved by the Organization of African Unity (OAU) in 1990, emphasizes the importance of human rights and guarantees equal opportunities for all children in Africa, regardless of their background or current situation. The Charter aims to eliminate prejudice and involve children in decision-making processes to improve their overall quality of life. It was

¹⁶ The African Charter on Human and Peoples' Rights (ACHPR) from 1981, which entered into force in 1986, is Africa's oldest human rights instrument. Article 8 of the ACHPR states: "Freedom of conscience, the profession and free practice of religion shall be guaranteed.

implemented on November 29, 1999, and is a regional human rights document that addresses topics of special relevance to children in Africa. The Charter has been accepted by 50 member states, with five remaining states, Morocco, the Sahrawi Arab Democratic Republic, Somalia, South Sudan, and Tunisia, and three member states, Egypt, Mauritania, and Sudan, making reservations about certain articles. The Charter addresses topics of special concern to children in Africa and aims to improve their overall quality of life.

Article 21 of the 19th African Charter outlines the protection against harmful social and cultural practices that negatively impact children's well-being, dignity, and normal growth. Countries must eradicate harmful practices that harm children's health or life and discriminate based on sex or status. The rights and welfare of children are outlined in the 19th African Charter. Child marriage and betrothal of girls and boys should be forbidden, and legislation should be introduced to define the minimum age of marriage at 18 years. All weddings must be registered in an official registry.

3.2. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights, adopted by the General Assembly on December 10, 1948, article 16 asserts that men and women of full age, regardless of race, nationality, or religious beliefs, have the right to marry and have a family without any qualification or restriction. They have equal rights before, during, and after marriage. Legal marriage requires the free and unrestricted agreement of both prospective spouses. The family has the right to receive protection from society and the state, as it is the essential group unit.

3.3. The African (Banjul) Charter on Human and Peoples the African (Banjul)

Charter on Human and Peoples' Rights, ¹⁷1981, outlines the state's responsibility to eradicate discrimination against women and protect their rights as outlined in international declarations and conventions. The Protocol to the African Charter on Human and People's Rights (ACHPR) on the Rights of Women in Africa was approved in Maputo in 2003, eight years after its drafting in Lomé, Togo, in 1995. Togo became the fifteenth nation to ratify the Protocol, which became legally binding on November 25, 2005.

Article 6 of the Charter outlines the obligations of parties to ensure equal rights and treatment of women and men in marriage. Parties must establish national legislative measures to ensure that no marriage is performed without the free and complete agreement of both parties, and that marrying someone without their will is against the law. The minimum age for a woman to be married is 18 years old, and marriages should be based on age rather than physical development or growth.

The ideal situation for a man is monogamy, but the state party must establish measures to protect women's rights in households with multiple wives, also known as polygamy.

3.4. The Southern African Development Community (SADC)

The Southern African Development Community (SADC) has adopted the SADC Protocol on Gender and Development,¹⁸ aiming to integrate gender issues into the SADC Programme of Action and Community Building Initiatives for sustainable development. The protocol supports the creation and implementation of gender-responsive laws, policies, programs, and projects to empower women, eradicate discrimination, and achieve gender equality. It also serves as a tool for creating realistic objectives, time frames, and indicators to promote gender equality and

¹⁷ The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent.

¹⁸

equity. The protocol covers issues related to constitutional and legal rights, governance, education, training, productive resources, employment, gender-based violence, HIV/AIDS, and conflict resolution.

Marriage and family rights are protected under Article 8, which requires state parties to legislate and implement measures to ensure equal rights for women and men in marriage. This includes ensuring no person under 18 can marry unless specified by law, ensuring free and full consent, registering marriages in accordance with national laws, and ensuring reciprocal rights and responsibilities during marriage.

3.5. The Vienna Declaration and Program of Action

The Vienna Declaration and Program of Action from 1993 emphasizes the crucial role of national institutions in promoting and protecting human rights. These institutions play advisory roles to competent authorities, remedy human rights violations, disseminate information on human rights, and educate on human rights. The World Conference on Human Rights, held every three years and hosted by the United Nations, encourages the establishment and strengthening of national institutions while respecting the principles relating to the status of national institutions. Each state has the right to choose the best framework for its specific needs.

3.6. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Slavery Convention), 1956

Article 2 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Slavery Convention), which was signed in 1956, states that "the term 'slavery' shall not be used in any form whatever." In order to put an end to the institutions and practices outlined in Article 1(c) of this Convention, the States Parties have agreed to the following obligations: to

prescribe, where appropriate, suitable minimum ages of marriage; to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority; and to encourage the registration of marriages. All of these obligations are intended to bring about the abolition of these institutions and practices.

3.7. Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, 1964

The Convention on Consent to Marriage, enacted on December 9, 1964, aims to promote universal respect for human rights and basic freedoms for all people, regardless of differences such as race, sex, language, or religion. The General Assembly of the United Nations (GA) has decided that all people of full age, regardless of race, country, or religion, have the right to marry and have a family without qualification. They have equal rights before, during, and after the marriage. A marriage can only be contracted with the free and informed agreement of both individuals.

Resolution 843 (IX) of the United Nations in 1954 stated that certain traditions, ancient laws, and practices related to marriage and family were incompatible with the principles outlined in the Charter of the United Nations and the Universal Declaration of Human Rights. The Committee on Economic, Social, and Cultural Rights (ECOSOC) of the United Nations has adopted a resolution reaffirming the need for states to abolish such customs, laws, and practices.

Parties to the Convention must pass laws setting a minimum age for marriage. Anyone younger than this age cannot legally get married unless a competent authority gives a special exception for important reasons that are in the best interests of both people.

3.8. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 Article 16(1): States Parties shall 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 Compiled by the African Child Policy Forum www.africanchildforum.org (May 2013) Page 4 and to enter into marriage only with their free and full consent Article 16(2): 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

3.9. Committee on the Elimination of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations, 1994

The Committee on the Elimination of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations, 1994, urges states to repeal existing laws and regulations that discriminate against and cause harm to girls. The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held in Vienna from 14 to 25 June 1993, precludes marriages between persons who have not reached their majority. The Committee believes that the minimum age for marriage should be 18 years for both men and women, as marriage should not be permitted before they have attained full maturity and capacity to act.

Some countries provide different ages for marriage for men and women, assuming incorrectly that women have a different rate of intellectual development from men or that their physical and intellectual development at marriage is immaterial. States

parties should abolish these provisions and require the registration of all marriages, whether contracted civilly or according to custom or religious law. This will ensure compliance with the Convention, establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy, and protect the rights of children.

3.10. The Maputo Protocol

Incorporating the Maputo Protocol, which was ratified by African Union Heads of State and Government in 2003 as a gender-focused addition, the African Charter on Human and People's Rights intends to put an end to discrimination against women based on their sex while protecting their basic rights. To date, forty-four member states have granted approval for the Protocol with eleven administrations pledging ratification before 2020 comes to an end. By July of that same year will mark this accomplishment.

The Protocol acknowledges the significant role of women in upholding African values based on ideals such as impartiality, liberty, unity, democracy, fairness, and peace within national government. It stresses the fundamental right to respect for women and mandates governments to counteract discrimination against females through appropriate legislation and the establishment of adequate institutions. This involves the integration of gender equality into legal frameworks including constitutions alongside consideration for gender when implementing policies at regional or continental levels while supporting local efforts towards ending prejudice against women. The Protocol also prohibits harmful practices like female genital mutilation (FGM), scarification among others denouncing medicalization and para-medicalization FGM . Member states are required to enhance public awareness regarding these ill practices via different methods that include information dissemination campaigns, formal & informal education initiatives coupled outreach programs whilst ensuring provision effective support is granted victims thereof.

The Maputo Protocol aims to ensure gender parity by affording both men and women equal rights and protections within the context of marriage. These rights include the freedom to choose their preferred marital regime and place of residence, the entitlement to maintain their maiden name and nationality, and the exercise of the entitlement to get property while in matrimony and to independently oversee and control it.

Member states are obligated to establish suitable laws to ensure that marriages are not entered into without the voluntary and complete permission of both individuals involved. The minimum age for women to marry is set at 18 years, and every matrimonial union must be formally documented and officially registered in written form. The treaty further ensures gender equality within the context of marriage and family, including polygamous unions.

The Maputo Protocol is a comprehensive agreement between the African Union (AU) member states and the United Nations, aimed at ensuring gender equality by providing women with equitable access to employment, professional growth, and other economic prospects. It emphasizes the importance of peace, including the enhanced involvement of women in peace initiatives, prevention, management, and settlement of conflicts at various levels. The protocol also advocates for the safeguarding of women during armed conflicts, including the eradication of gender-based stereotypes within educational materials, curricula, and media outlets.

The protocol aims to enhance literacy rates among women, particularly in scientific and technology disciplines, as well as their enrollment and persistence in educational institutions. It also promotes the equitable enforcement of tax regulations for both genders, and the rights of paid women to receive the same benefits and allowances as their male counterparts for their dependents.

The protocol highlights the importance of women's entitlements to health and reproductive rights. This includes their right to control fertility, make choices about

having children, regulate the number and timing of offspring, choose contraceptive methods as well as protect themselves against sexually transmitted infections through comprehensive family planning education. Additionally, it pledges to provide affordable access for rural populations towards adequate healthcare services that are always conveniently available.

It is crucial to acknowledge that women have the right to access food without fear of contamination, safe drinking water, reliable fuel resources for their homes and land where they can cultivate wholesome sustenance. Additionally, this protocol guarantees fair opportunities for housing and acceptable living conditions specifically designed with women's needs in mind.

The protocol highlights the significance of women's rights as a key factor in attaining sustainable development. It advocates for integrating a gender perspective into procedures related to national development planning and guarantees that women are actively engaged at every stage, including conceptualizing, deciding on, carrying out, and assessing developmental policies and initiatives.

It is mandatory for member states to ensure that any violation of a woman's rights or freedoms receives suitable compensation through competent judicial, administrative, or legislative measures. In June 2018, a desk review revealed that in 78% of Member States, both males and females must be at least 18 years old to marry. However, despite this legal age requirement, 63% of these jurisdictions have provisions allowing child marriage under certain circumstances such as parental consent or judicial approval. Eleven Member States do not stipulate a minimum age for marriage for either gender while ten allow exceptions lowering the age to as young as ten for females. In addition, there are some states with varying ages between genders ranging from 14-15 years old and one state has no minimum required age limit at all. Unfortunately, recent permission granted for child marriages brought the total

percentage up to almost two-thirds resulting in an alarming rise accounting today making up over three-quarters (39%/71%) overall respectively).

Child marriage is permitted in various situations within the legal framework of African countries. These exemptions include obtaining parental or judicial approval, receiving signatures from senior public officials or ministers, a child requesting it with representation from their guardian, consensus being reached between both spouses and their parents for compelling reasons to allow early marriage deemed best for all parties involved. Countries like Algeria, Angola, Benin, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Comoros and Congo have these provisions. The cities worthy of mention are Brazzaville Cote d'Ivoire Djibouti, Eritrea, and Ethiopia-which can be studied further academically. Apart from them, Gabon Guinea, Guinea-Bissau Lesotho Libya Madagascar Mauritius Mali Morocco Mozambique Namibia Niger Nigeria Saharawi Arab Democratic Republic São Tomé and Príncipe Senegal Seychelles Somalia South Africa Sudan Tanzania Togo Tunisia Zambia, and Zimbabwe make up the rest on this list.¹⁹

4. CHAPTER IV: CHANGING DYNAMICS: WOMEN EMPOWERMENT AND PROGRESS

The position of women in African countries varies significantly depending on the specific country, region, and cultural factors. While there have been advancements in women's rights and gender equality in many African nations there are still some aspects that are yet to be improved in some countries.

Certainly, legal reforms in African countries aimed at protecting women in marriage and ensuring equal rights have been a part of promoting gender equality and women empowerment:

¹⁹ Marriage Laws in Africa - A Compendium from 55 African Union Member States

- I. The Marriage Act of South Africa (1961): South Africa introduced legal reforms that grant equal rights to spouses within marriage. This includes provision for equal property rights and shared parental responsibilities, promoting gender equality in marriage.
- II. The Family Code of Mali (2011): The Mali family code was revised to grant women equality rights within marriage, including equal say in family matters, the right to work and engage in economic activities, and protection from harmful traditional practices.
- III. The Marriage Act of Ethiopia (2000): Ethiopia's legal reforms aimed to prohibit child marriages and set the legal age of marriage at 18 for both men and women, ensuring that individuals enter into marriage with full consent.
- IV. The Customary Marriage Act of Ghana (1985): Ghana introduced legal reform to protect women's rights, inheritance rights, and protection from discriminatory practices within customary marriage systems.
- V. The Marriage and Divorce Act of Tanzania (1971): Tanzania implemented legal reforms that provided for equal grounds for divorce property rights and shared parental responsibility within marriage.

4.1. Development of Women's role in African Society

There has been a tremendous change in the roles that women play in marriage all over Africa over the course of the previous several decades. Access to education has increased, which has made it possible for more African women to continue their education and seek professions in professional fields. Because of this, they now possess the knowledge and abilities necessary to become economically independent, to exercise decision-making power within their marriages, and to contribute to the revenue of their households. This contributes to the advancement of women's rights. According to the findings of a research that was carried out in Ghana, women who had completed secondary school were far more likely to have decision-making power inside their marriages than those who had only completed elementary education. In

addition, research conducted in Kenya revealed that women who attained higher levels of education had greater degrees of economic autonomy and made greater contributions to the income of their households.

African women now have a higher degree of freedom in their relationships, playing an active part in the decision-making processes connected to family-related concerns such as economics, healthcare decisions, and marriage choices. Now's African women also have a larger degree of access to education and employment opportunities. This trend demonstrates a shift away from the conventional patriarchal relationships toward the egalitarian connections that are more prevalent nowadays. Several African countries have made changes to their legal systems in order to better protect the rights of married women. These changes cover issues such as property ownership, inheritance rules, the prevention of domestic violence, child custody rights, divorce procedures, and spousal support. With this acknowledgment comes the guarantee that women will be provided legal protection against activities that are discriminatory.

The emergence of new types of information technology has substantially impacted the way people in Africa communicate information. As a result, more African women now have access to information on reproductive health, legal rights, financial management, chances for entrepreneurship, and personal development. On the other hand, patriarchal norms and gender stereotypes are still widely practiced throughout the continent, which limits the prospects for women's personal growth and independence.

In today's modern marriages, African women continue to confront issues such as domestic violence, pay disparities, limited access to credit facilities, and unequal employment possibilities. It might be difficult to find a happy medium between the conventions of ancient cultures and the aspirations of modern society. Education, growing autonomy, recognition of legal rights, and access to information technology have been important driving forces behind the progress achieved toward the

empowerment of African women in modern marriages. Other factors that have contributed to this achievement include access to information technology.

In spite of the fact that there has been some progress achieved in the empowerment of women in Africa, it is essential to recognize that there are still many substantial obstacles to face. The prospects for women's personal growth and independence that are hampered by deeply ingrained cultural standards and gender stereotypes will not improve any time soon. In certain areas, there may be opposition to the adoption of legislative changes, or there may be insufficient enforcement of such reforms.

But issues such as uneven gender roles, domestic violence, economic inequality, and striking a balance between traditional values and contemporary expectations remain significant challenges that governments, civil society organizations, and communities need to keep in mind. By addressing these issues as a community, enacting thorough reforms, and providing support for attempts to achieve gender equality, African cultures have the potential to establish an environment in which women and men may coexist in marriages that are both happy and prosperous. While progress has been made in women's empowerment in Africa, it is important to acknowledge that there are still significant challenges to overcome. Deep-rooted cultural norms and gender stereotypes continue to limit women's opportunities for personal development and freedom. Additionally, the implementation of legal reforms may face resistance or lack of enforcement in some regions.

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Conclusion

Marriage and the family unit are essential social structures that must coexist and thrive. In recent decades, marriage has evolved from a conventional necessity for conception to a complete and more legal bond, with same-sex marriage being legalized in many countries. Marriage is crucial in the transmission of cultural values from generation to generation, providing a framework for children's socialization and ensuring cultural heritage survival.

Modernization and globalization have significantly impacted the marriage institution in Africa, with technology and social media providing new communication opportunities but also presenting challenges. Modern couples face the complexities of maintaining long-distance relationships, internet infidelity, and societal expectations to provide an idealized depiction of their relationship through social media platforms. Economic developments, such as urbanization and decreasing traditional farming techniques, have also influenced marriage dynamics.

A growing trend among women is pursuing education and professional endeavors outside their domestic sphere, challenging conventional gender norms and societal expectations. The changing power dynamics within African marital unions have resulted in significant transformations, with historically males holding power and authority within the domestic sphere. This shift has led to increased autonomy and opportunities for women but may lead to disputes and problems as couples manage new expectations and negotiate decision-making.

African women are now assuming more tasks and obligations within their marital and familial relationships, pushing for their rights, and questioning established norms and expectations. However, this may lead to problems when it comes to conventional values and societal norms, as they may encounter societal expectations that prioritize their duties as spouses and mothers, overshadowing their own development and satisfaction.

In conclusion, the dynamic nature of African matrimonial unions presents numerous obstacles and prospects for women. Supporting women's empowerment and reforming conventional gender norms and hierarchical structures is crucial for fostering a fairer and more comprehensive framework that benefits both females and males.

African marriage has evolved from primarily focusing on household chores and child-rearing to encompass more diverse roles. Many women are now active in the workforce, contributing to their families' financial stability and pursuing professional ambitions.

Some women even hold leadership positions in politics and the corporate world, challenging long-held stereotypes and paving the way for future generations. African women are increasingly participating in decisions related to marriage and family matters, with a growing trend toward love marriages and greater agency for women in choosing their partners. This shift is especially pronounced among younger generations, who prioritize compatibility, shared values, and mutual respect in their relationships.

However, challenges persist in African marriage and women's role within it. Traditional customs and norms continue to shape marital dynamics, while gender-based violence, economic disparities, and limited access to healthcare and education hinder women's empowerment in many regions. Child marriage remains a pervasive issue, robbing girls of their childhood and opportunities for personal growth. In many African countries, the legal framework to protect women's rights within marriage is often inadequate or poorly enforced. There is a need for more comprehensive legal reforms that address issues like marital rape, property rights, inheritance, access to quality healthcare, family planning services, and reproductive rights to enable women to make informed choices about family size and timing.

The future of African marriage and the role of women in it will depend on a continued commitment to gender equality, education, and the elimination of harmful practices. African marriage traditions have long been an integral part of the continent's rich cultural tapestry, and there is a growing focus on improving and developing these roles to empower women and promote gender equality.

African countries and organizations have recognized the need for improvement and development in women's roles within marriage and society at large. There is a growing emphasis on gender equality, education, and economic empowerment. Many countries have revised legal frameworks to protect women's rights and have taken steps to eradicate harmful practices. Efforts to improve and develop women's roles in African marriage and society have yielded promising results, with women increasingly participating in political leadership, entrepreneurship, and education. By embracing their cultural heritage while adapting to changing societal norms, African societies can create more inclusive, just, and equitable marriages and communities, ensuring a brighter future for all.

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