

# Translation of Human Rights Law according to Local Context: A Solution to Child Marriage in Africa?

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## Abstract

In Africa, despite decades of campaigns to restrict child marriage through legislation and the adoption of minimum age laws, the practice is still very common and the continent is predicted to have the largest global share of child brides by the year 2050. This begs the question whether human rights law, as it stands, is the appropriate strategy against child marriage. On the one hand, law can create an “enabling environment” and strengthen those who seek the elimination of child marriage; but, on the other hand, vigorous enforcement of such legislation may result in counter-intuitive effects, leaving the girls more vulnerable instead of the law fulfilling its protective role. This article uses a socio-legal approach to argue that the solution to child marriage might lie in a form of translation and enforcement of human rights. It makes a case for the need for human rights to be translated according to local conditions in order to deal effectively with child marriage in Africa. In this case, “translation” refers to the reinterpretation and reframing of human rights in line with specific local conditions, leading towards assimilation and acceptance while maintaining its core foundations.

**Keywords:** child marriage; human rights; translation of human rights; local context; Africa



## Introduction

Today, marrying before the age of 18 is defined by international organisations as child marriage (Horii and Grijns 2018, 2). Child marriage is considered to be a global problem that cuts across countries, cultures, religions and ethnicities. It is considered both a developmental problem and a question of human rights (Horii and Grijns 2018, 2). The region with the highest overall rates of child marriage today is South Asia, with 45.4 per cent of women marrying below the age of 18 (Horii and Grijns 2018, 2). Sub-Saharan Africa is next, with 38.5 per cent (Horii and Grijns 2018, 2). In the developing world, one in three girls is now a child bride and the actual numbers are rising in step with population growth. Child marriage has been declining over time, but only very slowly, especially in Asia and Africa (Wodon and Gemignani 2015, 42). In Africa in particular, despite decades of campaigns to restrict child marriage through legislation and the adoption of minimum age laws, the practice is still very common and the continent is predicted to have the largest global share of child brides by the year 2050. Current statistics show that ten million girls under the age of 18 marry each year (UNICEF 2014, 2). That amounts to around 83.3 a month, 192.3 a week, 27.3 a day, 19 every minute or around one girl every three seconds (Addaney and Azubike 2017, 116).

The argument put forward by this article is that studies suggests that child marriage has many causes that play a role in the persistence of the practice, such as deep socio-cultural and religious roots, gender roles and social expectations, the fear of pregnancy before marriage, and others (Wodon and Gemignani 2015, 42). It is also important to note that there are differences in the drivers of child marriage between communities, suggesting that policy and human rights interventions to eradicate child marriage should take into account local conditions. There is also a lot of heterogeneity in conditions, practices and beliefs between communities, which means that there are systematic differences in the causes of early marriage and the expected ages of early marriage among people in the same community (Wodon and Gemignani 2015, 47). It is this heterogeneity that demands a human rights-based approach to the elimination of child marriage (Adeola 2016, 52), but any approach should deal specifically with particular local conditions in the translation of human rights into them, because a “one approach fits all” kind of solution might not work. Therefore, local differences should inform the approach to be implemented in a specific locality. In this article, “translation of human rights” means trying to combine human rights with existing elements of the cultural repertoire of a locality and also connecting in a variety of ways the dialogue on human rights law and that of particular organisations working in specific contexts using other discourses of social justice (Merry 2006a, 38).

The article starts by discussing briefly the common causes of child marriage, including the need to keep an open mind about the array of drivers of child marriage and the need to move away from the limited perception of the causes of child marriage. This is

followed by an account of the international and regional measures to regulate child marriage and then a discussion on translation and translators and a critical exploration of whether there is a need for translating human rights in dealing with child marriage in Africa. Next, the present author considers how to translate human rights into communities to reduce the occurrence of child marriage and the challenges such an attempt would face. The article ends with some final concluding thoughts.

## **Drivers of Child Marriage**

Factors that have been identified as drivers of child marriage include poverty, gender norms and culture, protection and the nature of the law. Studies have shown that child marriage is linked to poverty and that families' economic status strongly indicates whether their daughters will be married early or not (Birech 2013, 101). The countries with the lowest average age at first marriage for girls and adolescents have extremely low levels of socio-economic development (Bunting 2005, 25). Where there is acute poverty, a young girl may be seen as an economic burden, which, when purchased, will relieve the family financially and socially (ICRW 2007). Marriage is therefore considered to be a transaction and a significant economic activity. This transaction involves the exchange of a girl for a certain sum of money or goods such as livestock, or both – what is termed as “bride price”, “bride wealth” or “dowry”. In most African communities, bride wealth is a precondition of marriage (Birech 2013, 99). In the context of poverty, this practice may encourage child marriage because it is a source of wealth and prestige when given in the form of livestock such as cattle, goats and sheep. The more livestock one has, the wealthier one is; therefore, the more respect one earns (UNICEF 2014, 2). Moreover, grooms have unspoken but well-established rates for bride wealth (Birech 2013, 98). In some communities, the bride price decreases as the girl gets older (Birech 2013, 98). This implies that parents would want to marry off their daughters as early and as fast as possible (Birech 2013, 98).

In addition, a child may be forced to be married off as a “protection” mechanism against the “shame” which would be brought upon a household should a girl engage in pre-marital sexual activities and become pregnant out of wedlock. This cause is heavily linked to gender stereotypes about women's position and roles in society. Rather than confront teenage sexuality and encourage safe and protected sex, elders, parents and religious leaders promote early marriage for girls (Bunting 2005, 28).

Gender norms and culture also play a significant role in fostering child marriage. In many communities, social norms dictate that women must be married at a young age, preferably by men who are older than them. The age disparity at marriage between men and women is rooted in stereotypical gender norms and roles that remain in most

cultures; these hold that women are to be mothers and wives and men to be providers for the family unit (WHO 1998). Women are therefore deemed to be ready for marriage at an earlier age than men, who ought to finish their professional training and ideally be financially secure (WHO 1998).

In many countries, the disparity between when women and men are married is reflected and codified in law. It is common to find that the marriageable age for girls is less than that for boys (WHO 1998). The nature of the law also influences the prevalence of child marriage. International human rights law (IHRL) prescribes that the minimum age of marriage be set at 18 years (CEDAW Committee, CRC Committee 2014; ACRWC 1990, Article 21; Maputo Protocol 2003, Article 6). Research has found that countries with laws that set the minimum age of marriage at 18 are more effective than other countries at reducing the rates of child marriage over time (Kaufman 2015). Research has also shown that the nature of the law matters: countries with laws that provide exceptions to international standards – such as allowing earlier marriage with parental consent – were less successful at reducing early marriages than countries with laws that adhered strictly to those standards (Kaufman 2015).

It is important to note that these causes are not neat categories of explanation but that they overlap with one another (Bunting 2005, 29). For example, gender stereotypes about women's roles in society manifest themselves in legal provisions along with cultural norms about sexuality, virginity and community (Bunting 2005, 29). Similarly, poverty intersects with gender dynamics in the family (Bunting 2005, 29), and so on.

### **Limited Perception of Causes of Child Marriage**

A common depiction of child marriage in the media involves a typical narrative which begins with a father or uncle's marriage plans for a girl, followed by a brief explanation of her narrow escape and concludes with the girl happily ever after in pursuit of an education (Archambault 2011, 632–633). This story line is usually framed by a set of prevailing binaries that distinguish violators from victims, patriarchy from female empowerment, tradition from modernity and collective culture from individual rights (Archambault 2011, 632–633). Rescue centres and rights activists have played a key role in perpetuating this particular narrative of early marriage that circulates both locally and transnationally (Archambault 2011, 634). This prevailing narrative form is characterised by the use of a storyline structure and the framing of issues through morally unambiguous and emotionally charged dichotomies (Archambault 2011, 634). Young women are cast in the role of innocent victims fighting against the evil intentions of fathers or uncles whose actions are propelled by the force of “deeply rooted” and “patriarchal” “traditions” and “customs” in which wives and daughters “acquiesce”,

having no say. This storyline has, for example, been put forward by the United Nations Population Fund (UNPF): that young women are struggling against child marriage because, after all, it is still a man's world (UNFA 2005). A simple story becomes a battle waged against patriarchy in the name of women's rights, against tradition in the name of modernity and progress (Archambault 2011, 634). There is, therefore, no doubt about who should win (Archambault 2011, 634). Action is imminent, inaction is morally reproachable (Archambault 2011, 634).

Such narrative frames have their advantages. Stories which appeal to the emotions are likely to move the targeted audience. However, they also run the risk of obscuring and rendering irrelevant the larger and more complicated context giving rise to early marriage (Archambault 2011, 634). Furthermore, the narrative frames go against the goal of ethnographic investigations of human rights practices that aim to restore subjectivity and contextualise rights violations by exploring their local interpretations and vernacularisation (Merry 2006a, 38–51). Anthropologists have been at the forefront of criticising representational frameworks in the human rights discourse (Wilson 1997). This is because legalistic accounts of human rights violations are said to strip events of their social meanings and subjectivities and conceal the ambiguities and contingencies that are at the heart of acts of injustice (Archambault 2011, 634). Therefore, although such a framework may be effective in mobilising public support, it obscures the real underlying structural factors that give rise to the practice of early marriage and it deflects attention from important policy interventions that could more effectively consider the issue (Archambault 2011, 633). It has also been found that the lens of victim versus violator is limiting in its neglect of the range of subjectivities and historically situated positions people embody (Mitchell and Wilson 2003). That binary framework also deflects attention from human rights abuses that are not perpetrated by individuals but, rather, by broader economic, political or social forces (Archambault 2011, 638).

Research conducted in the Maasai community in Kenya challenges the tradition–modernity dichotomy. The research showed that, even though it is presented as such, child marriage is historicised and is situated not as a relic of an age-old tradition among conservative pastoralists but, on the contrary, as a modern phenomenon: a shift downwards in the age of marriage in response to cultural change and increasing poverty and marginalisation (Archambault 2011, 638). It identifies the root cause of child marriage as economic insecurity and a lack of confidence in the ability of the education system to provide for the well-being of Maasai children (Archambault 2011, 640). In this light, it is suggested that rather than just enacting legislation to ban child marriage, policy initiatives should focus on securing better livelihoods for Maasai by responding

to the challenges that impinge on arid-land livelihoods and in particular on extensive animal husbandry (Archambault 2011, 640).

Greater economic security would enable parents to hire labour for domestic and herding needs, giving children the opportunity to attend school and focus on their education (Archambault 2011, 640). Parents could then afford an education for their children and could non-discriminately send both their sons and their daughters to primary school and support them through expensive secondary schooling and onwards (Archambault 2011, 640). Greater economic security would reduce the pressure on the institution of marriage as a means of enhanced financial security and preclude the need to marry daughters into more supportive homes (Archambault 2011, 640). So there are limitations to the (trans)national and local discourses in understanding and dealing with the practice of early marriage (Archambault 2011, 640), discourses that depict early marriage as a violation of a girl's right to education by fathers who are motivated by tradition, culture, patriarchy and greed. From this perspective, the solutions to early marriage target fathers and focus on enforcing the law through fines and imprisonment. But, when contextualised, in some areas – for example, in this Maasai community – in reality the practice of early marriage is brought about by growing poverty and marginalisation. According to this interpretation, marriage is understood as creating a powerful link to new resources and obligations of mutual social and economic support (Archambault 2011, 636–637). For example, there is probably no greater gift, in the view of the Maasai, than having been given a daughter (Archambault 2011, 636–637). Daughters do not disappear from their natal homes into their new families but remain central nodes of sociality and security between these families (Archambault 2011, 636–637).

Consequently, choosing early marriage may be understood as a decision taken by parents who have lost confidence in the education system or in the economy or who do not trust their daughters' future in the hands of the state (Archambault 2011, 638). So, contrary to popular belief, early marriage is sometimes a decision made not out of a “deeply rooted custom” and “patriarchy” but, rather, out of love, concern, and insecurity (Archambault 2011, 638). As expressed by Nour (2006), these are not necessarily heartless parents but, rather, parents who are having to survive under heartless conditions. This standpoint is supported by the findings of research that was conducted in Tanzania which concluded that early marriage in urban Tanzania is less a “traditional” choice of parents than an aspiration that emerges as a result of high unemployment and poverty (Stark 2018, 898).

The local and national discourses on early marriage accordingly confine and stabilise complex and dynamic subjectivities (Goodale 2009). The pervasive human rights

dualisms of violator–victim, tradition–modernity and collective rights–individual rights, in contrast, limit our understanding of social phenomena that are intrinsically unbounded, fluid and permeable. Questioning this binary framework and recognising the ambiguities and contingencies of social life can lead to productive insights. This is because, as stated above, the popular binary frameworks of early marriage sometimes obscure structural processes that give rise to early marriage. These structural processes demand important policy attention (Goodale 2009).

Bunting (2005, 18) supports this line of thinking, arguing that the strategy of using law to categorically prohibit marriage below the age of 18 is misinformed by the binary frameworks. She maintains that the socio-economic conditions in which girls, adolescents and young women live and marry need to be examined and resolved in order to develop relevant and culturally appropriate international strategies. It has been pointed out that countries with very low levels of socio-economic development have a very high incidence of early marriage or of low median age at first marriage (Bunting 2005, 18). Thus, socio-economic development is also a determining factor of a girl's age at first marriage (Bunting 2005, 18). Bunting (2005) adds that the problem of children's physical and psychological welfare in developing contexts cannot simply be solved by simplistic solutions, such as banning all child labour and placing these children, like their Western counterparts, in a position of social, economic and physical dependency. In ignoring the socially constructed character of childhood through promulgating a culturally specific version, such an approach can have potentially devastating consequences for children (James 1998). James (1998) cites data on the number of children who are heads of households to argue that banning child labour would only deepen children's poverty, not alleviate it. Similarly, to ban early marriage risks exacerbating, not alleviating, the underlying socio-economic problems facing girls and adolescents in developing countries (James 1998). In the light of these findings, the discursive binaries do not give a full picture of the practice of early marriage. This research proposes that a sole focus on culture, traditions and patriarchy obscures other important underlying forces that perpetuate such inequalities (Archambault 2011, 640).

### **Why Culture should not be ignored as a Driver of Child Marriage**

Despite the research showing that child marriage is an outcome of a multiplicity of factors, the role of culture as a driver of child marriage should not be taken lightly. This is because, in an attempt to eliminate child marriages, some countries – for example, Bangladesh – have implemented various strategies informed by the notion that child marriage is driven mainly by the level of socio-economic development. Yet, child marriage persists. Bangladesh has the highest prevalence of child marriage in the world (Alam 2015, 122), with 77 per cent of women having married before the age of 18

(Deepali, Hotchkiss and Gage 2013, 554). Bangladesh has implemented various strategies towards the elimination of child marriage – from amending the law to implementing various female-empowerment programmes. The law today in Bangladesh provides that the legal minimum age of marriage is 18 (Rottach and Schuler 2011, 254). Beginning in the late 1980s and the early 1990s, the Bangladeshi government implemented various programmes to empower women which it believed would diminish the incidence of early marriage (Luckenbaugh 2016): for example, microcredit programmes and greater access to healthcare and education. The microcredit programmes provided small loans bearing little interest to impoverished people to encourage them to be self-employed, and they were spread across the rural regions (Luckenbaugh 2016). Access to both healthcare and education was also dramatically improved, and, as a result, by 2004 female enrolment exceeded male enrolment in every grade through secondary education, which led to a drop in the total fertility rate (Luckenbaugh 2016). However, despite all these efforts, the child marriage rate has remained high, because child marriages are customary across the nation (Luckenbaugh 2016).

In sub-Saharan Africa, despite decades of campaigns to restrict or forbid it through legislation, child marriage is still very common and the African continent is predicted to have the largest global share of child brides by the year 2050 (UNICEF 2015, 6). Child marriage persists despite the potential dangers of the practice – for example, the health risks that communities are being educated about – and forceful international and local laws. This is because there are factors entrenched in culture which lead people to continue this practice despite the potential dangers. While the Convention on the Rights of the Child (CRC 1989) mentions health risks and feelings of financial stress, the social harm that can arise from a woman staying unmarried is not prioritised (De Silva-de-Alwis 2008). For example, the cultural norm in Morocco is to marry before the legal age of 18; moreover, it is seen as an obligation, not a choice, to marry young (Abdallaoui 2015, 139). A girl who is not married by 18 is viewed as shameful in many nations and is often considered to have been wasted by this age (Luckenbaugh 2016, 8). If the cultural entrenchment of this practice is not dealt with, even improved socio-economic conditions and the security that will enable parents to let their girl children attend school will do little to make a difference.

Various analyses suggest that child marriage has many causes which play a role in the persistence of the practice: poverty, deep socio-cultural and religious roots, gender roles and social expectations, the fear of pregnancy before marriage, and others (Gemignani and Wodon 2015, 42). But it is important to keep in mind that child marriage is caused by multiple factors and that what encourages child marriage in one place may not



necessarily be the motivation for child marriage in another. It is from this background that this article argues that, in order to deal with this phenomenon, there is a need for a holistic analysis of the drivers of child marriage in a specific locality, and that this necessitates the translation of human rights and that a particularist approach should be adopted.

## **International and the African Regional Framework against Child Marriage**

The Universal Declaration for Human Rights (UDHR 1948) states that men and women of “full” age are entitled to equal rights regarding marriage, during marriage and at its dissolution. The declaration uses the word “full” without specifying what the full age for marriage is. Articles 1, 2 and 3 of the 1962 UN Convention of Consent to Marriage, Minimum Age for Marriage and Registration of Marriages oblige state parties to institute a minimum age for marriage and provide that all marriages should be registered. The CRC (1989) does not have a provision specifying the minimum age for marriage, but it does define a child to mean a person below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. This provision provides leeway for state parties to set their own definitions of a child, which could have affected the minimum age of marriage to be set by the different state parties. However, the Committee on the Rights of the Child (2003) has rectified this by pronouncing that adolescents up to 18 years old are holders of all the rights enshrined in the CRC. This position was cemented by the Committee on the Rights of the Child (CRC Committee 2014) and the Committee on the Elimination of Discrimination against Women (CEDAW Committee 2014) when they issued a General Recommendation/General Comment on harmful practices by specifically stating that child marriage (early marriage) is any marriage where at least one of the parties is less than 18 years of age and therefore state parties to both the CRC and CEDAW have an obligation to implement appropriate measures to eliminate harmful practices in their jurisdictions, including child marriage.

CEDAW (1979) itself states that the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage. The CEDAW Committee (1994), bearing in mind the Vienna Declaration and Programme of Action (1993), has also stipulated that notwithstanding the definition provided by the CRC, it considers that the minimum age for marriage should be 18 years for both men and women. The International Covenant on Economic, Social and Cultural Rights (ICESCR 1966), through its Committee (2001), has also established 18 as the minimum age for marriage. This minimum age has also been set by the African Charter on the Rights and Welfare of the Child

(ACRWC 1990) under Article 21(2). Thus, it is safe to argue that the position of the ACRWC on the minimum age for marriage is a progressive one and it complements international instruments to strengthen the protection mechanism in order to promote the rights and welfare of children in Africa (Addaney and Azubike 2017, 116). The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol 2003), under Article 6, establishes the same position. The African Court on Human and Peoples Rights cemented this position in the case of *Association Poir le Progres et la Defense Des Droits Des Femmes Maltennes (APDF) and The Institute for Human Rights and Development in Africa (IHRDA) v Republic Of Mali* (Application No 046/2016), where it held that having the minimum age for marriage below the age of 18 for girls is a violation of Article 6(b) of the Maputo Protocol and Articles 2, 4(1) and 21 of the ACRWC. Article 8 of the African Youth Charter (2006) provides in addition that young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities. Moreover, the Special Court for Sierra Leone (SCSL) in 2008 held that forced marriage can constitute a crime against humanity (Scharf 2013, 193).

## **Translation and Translators of Human Rights**

The translation of human rights falls within the framework of the localisation of human rights. The localisation of human rights, among other things, involves learning the processes and mechanisms through which global or international normative standards get implemented and/or adapted to local contexts (Gemignani and Wodon 2015, 47). According to Merry (2006b, 4), the localisation of human rights is part of the vastly unequal global distribution of power and resources that channel the way in which ideas develop in global settings and are picked up or rejected in local places. Learning these processes and mechanisms is imperative because the way in which international human rights standards are implemented in and/or adapted to local contexts can affect their acceptance and hence their relevance at the local level. The process by which human rights language is extracted from the universal and adapted to national and local communities is what Merry terms the *vernacularisation* of human rights (Merry 2006a, 39). According to Merry, the process of vernacularisation involves local communities' appropriating and adopting international human rights ideas. In this process, when human rights ideas connect with a locality, they take on some of the ideological and social attributes of the place but also retain some of their original formulation (Levitt and Merry 2009, 446). This means that human rights become "particular" to a specific locality.

Vernacularisation is therefore more than a simple transfer of ideas or practices to a new location: it involves modifying ideas or practices first so that they are rendered more

acceptable to the recipients and then transferring them (Levitt and Merry 2011, 91). It also involves reinterpreting and reframing issues and ideas with the aim of having them assimilated and accepted. Reframing involves strategically combining elements of the existing cultural repertoire of a locality with specific pieces of the “package” being introduced (Levitt and Merry 2011, 91). In the case of human rights, it means trying to combine human rights with existing elements of the cultural repertoire of a locality. Specifically, this entails connecting in a variety of ways the discourse of human rights law and that of particular organisations working in specific contexts, also using other discourses of social justice as necessary (Levitt and Merry 2011, 91).

As stated above, the principal aim of vernacularisation is to make human rights more acceptable to local recipients. This is necessary especially when human rights contradict practices that are deeply rooted in cultural and/or religious beliefs, such as child marriage, because even in areas where laws have been changed to promote human rights, some rights remain hindered by cultural practices (Rivera 2011, 75). This demonstrates the power that traditional practices have over societies. This would indicate a need to develop strategic approaches to the reinterpretation and reframing of human rights towards assimilation and acceptance in order to reach out to communities that insist on perpetuating harmful cultural practices such as child marriage (Rivera 2011, 51).

Such approaches are best developed and implemented by intermediaries such as community leaders and welfare officers, non-governmental organisations (NGOs) and social movement activists who understand both the world of transnational human rights and that of local cultural practices and who can consider both regimes (Merry 2006a, 38). Intermediaries can and do play a critical role in interpreting the cultural world of transnational modernity for local claimants (Merry 2006a, 38). They appropriate, translate and remake transnational discourses into the vernacular. At the same time, they take local stories and frame them in the language of national and international human rights (Merry 2006a, 38), a process Merry terms “translation” (2006a, 38); the intermediaries are referred to as “translators”. Translators refashion global rights agendas for local contexts and reframe local grievances in terms of global human rights principles and activities (Merry 2006a, 38). They reframe local grievances by portraying them as human rights violations. This means that they reinterpret local ideas and grievances in the language of national and international human rights (Merry 2006a, 42). However, it is important to note that translation requires the preservation of the core fundamentals of human rights.

Intermediaries are also key to abolishing harmful cultural practices. Through these various strategies, intermediaries educate and create awareness in order to accomplish sometimes even what the law stipulates but what it often fails to enforce (Merry 2006b, 64), the law alone usually falls short of convincing a traditional group that their practices are wrong (Merry 2006b, 64). For this reason, persuasion is fundamental in educating those who lack the understanding of what to others appears to be “common sense” (Merry 2006b, 64). It is imperative, therefore, that the intermediaries learn the different persuasion techniques in order to accomplish their mission, including learning what works and what does not when it comes to abolishing child marriage.

Keck and Sikkink (1998, 25) have documented the solution to another, similar harmful practice, that of female circumcision in Kenya. They found that in order to end female circumcision, networks had to find a way to approach this practice and effect a change in both policy and tradition. Part of their approach involved using terms that had an impact on public opinion and the government (Keck and Sikkink 1998, 25). Their using the appropriate terms, they were able to persuade people to view this practice as a violation of human rights, in this case women’s rights (Keck and Sikkink 1998, 25). At first, networks used the term “female circumcision”. This term was simply equated to male circumcision and could not convince either the government or the society that it was wrong and a violation of human rights. Later, the networks replaced the term with “female genital mutilation” and this started to attract some attention from both the government and the society.

In essence; their approach had to change slightly to resonate with the cultural aspect of the practice (Keck and Sikkink 1998, 25). They had to rephrase and use a term that would not be too dramatic in order to draw the government’s attention and not too common, so that women who practised it could understand that it was a violation to their bodies and rights (Keck and Sikkink 1998, 25).

### **Is there a Need for Translation and Particularism of International Human Rights when dealing with Child Marriage?**

IHRL on child marriage risks failure if it is perceived to be imposing foreign values on local communities. This is why it is important to ponder on the question whether there is a need for translation and particularism when dealing with child marriage. As discussed above, translation involves appropriating, translating and remaking transnational discourses in the vernacular, which means taking into account the particular elements of a locality while applying human rights (Merry and Wood 2015, 210). At the same time, translation also involves taking local stories and reframing them in national and international human rights language (Merry 2006a, 38). Particularism

simply means that local circumstances must be taken into consideration when human rights are applied locally (Dembour 2006, 177). So why is there a need for translation and particularism? Why can international law not set the minimum age of marriage at 18 years and simply require state parties to amend their laws so as to abide by the minimum age requirement? And why can international and national law not be effective in all contexts to support the elimination of child marriage?

On the one hand, formal law can create an “enabling environment” and strengthen those who seek the elimination of child marriage (Horii and Grijns 2018, 12). But, for those who are against a fixed marriage age, such legislation will only serve to promote underground practices of child marriage. In this regard, the solution proposed by the Girls Not Brides civil society platform is a reasonable one: not to condemn all traditions, but to work with communities to change traditions from within. As Dembour (2006, 179) asserts, we should strike to seek unity while accommodating diversity.

In so far as international human rights regulation in this area maintains its emphasis on the amendment of laws and their strict enforcement, it will ignore the particularities of place and deny the potential of holistic analyses (Bunting 2005, 34). This means that global regulation must take into account the culturally diverse causes and consequences of early marriage. This is not to advocate relativism in the universalism–relativism debate. In the universalism or cultural relativism of the human rights debate, the universalists claim that human rights are powerful because of their universality and should be adopted in all cultural contexts despite differences from local normative systems. On the other hand, the relativists argue that human rights ideas should not be imposed on societies with different value systems. The translation of human rights is therefore an attempt to transcend both facile universalism and facile relativism by mediating between claims to universalism and cultural specificity and to find an accepted middle ground (Bunting 2005, 34).

As Freeman (2002, 40) asks:

Is it not possible to express such norms in universal terms and yet apply them in ways which are responsive to local context? For example, we can condemn child marriage but be sensitive to different understandings of the concept of child in different cultures.

Facile universalists lack the moral authority to speak to the particular cultural experiences of girls and young women and as a result they risk reinscribing Western norms (Bunting 2005, 34). The attempt to transcend both facile universalism and facile relativism in favour of particularism is also advocated by Dembour (2006, 179), who asserts that both approaches are problematic. This is because facile relativism can lead

to tolerance where intolerance is called for, whereas facile universalism leads to exactly the contrary problem: it allows intolerance when tolerance is called for (Dembour 2006, 180). The danger inherent in the former doctrine is indifference; in the latter, it is arrogance. Therefore, as human rights law strives to attain the universal, it must accommodate the particular (Dembour 2006, 180). Failing that, it will inevitably appear rigid, inadequate and unjust (Dembour 2006, 180). This is because in not every cultural or national context will the use of legal norms, in particular international legal norms, be the best strategy for social engineering; this makes particularism and the translation of human rights the better approach. In some places, a small-scale theatrical approach will be most appropriate (Bunting 2005, 34); in others, the law-reform initiatives will go hand in hand with programmes to improve the status of women and girls, depending on the socio-cultural context. But, all in all, all these strategies need to be informed by the specific conditions of the locality, including the actual causes of child marriage in that particular locality.

## **How Human Rights can be translated in order to deal with Child Marriage**

The process of translation requires three kinds of change in the form and presentation of human rights ideas and institutions (Merry 2006b, 220). First, they need to be framed in images, symbols, narratives and religious or secular language that resonate with a local community (Merry 2006b, 220). Second, they need to be tailored to the structural conditions of the place where they are being deployed, including its economic, political and kinship systems (Merry 2006b, 220). Third, the target population needs to be defined and the programmes tailored accordingly (Merry 2006b, 220).

When human rights are framed in images, symbols, narratives and religious or secular language that resonates with local community, the framing is determined by the nature of the local community. For example, in the case of someone who has been a Muslim their whole life and who believes that they are under a religious obligation to marry a younger girl (perhaps 13 or 14 years of age) it would be difficult to confront them on the ground that international law says that the minimum age for marriage is 18 years. This may elicit a defensive reaction, because people may feel that one is simply attacking their culture, religion and beliefs. An example of this kind of kneejerk reaction is a strategy by women's transnational NGOs to end child marriage via the global reproductive rights advocacy. The response to their efforts was a backlash from devout women in northern Nigeria, who argued that critics of early marriage (the NGOs) were hypocritical in that they were "promoting promiscuity" through sex education and reproductive rights projects while condemning early marriage (Bunting 2005, 33). So, in a community like this, refashioning the human rights package to fit in with the strong

Islamic beliefs of the locality is required in order to be able to get the message across – and accepted. This is because to frame child marriage bluntly or as only a violation of women’s reproductive rights would not be successful. But if the focus of the public education and policy efforts were, for example, the health repercussions of early marriage, in particular vesico-vaginal fistulae, then there is a greater chance of a positive response (Bunting and Merry 2007, 332).

Furthermore, translation requires that structural conditions and systems, be it economic, political or kinship, be considered when designing an intervention strategy against child marriage. This is because of the heterogeneity of reasons for child marriage that can arise from one place to another, which means that what works in one locality might not work in another. For example, the research on early marriage conducted in the Maasai community in Kenya revealed that the current root cause of child marriage there is economic insecurity and a lack of confidence in the ability of the educational system to provide for the well-being of Maasai children (Bunting and Merry 2007, 640). This means that the (trans)national and local discourses on understanding and dealing with the practice of early marriage in children (Bunting and Merry 2007, 640), which depict early marriage as a violation of a girl’s right to education by fathers who are motivated by tradition, culture, patriarchy and greed, do not provide the full picture of what is actually happening in this community.

Considering that the solutions to early marriage by these discourses target fathers and focus on enforcing the law through fines and imprisonment, these attempts will not succeed in communities such as these. This requires the practice of early marriage first to be contextualised: situating it as a recent phenomenon brought about by growing poverty and marginalisation. And marriage is understood to create powerful linkages to new resources and obligations of mutual social and economic support through and for children (Bunting and Merry 2007, 636–637). For such communities, public education and policy efforts directed at securing economic security would be more suitable because more economic security would allow parents to hire labour for domestic and herding needs, freeing children to attend school and focus on their education (Bunting and Merry 2007, 636–637). Parents could then afford education and could send all their children – both sons and daughters – to primary school and support them through the high costs of secondary education and beyond (Bunting and Merry 2007, 636–637). Greater economic security would reduce the pressure on the institution of marriage as a means of enhanced security and preclude the need to marry daughters off into more supportive homes (Bunting and Merry 2007, 636–637).

Political systems and conditions also need to be considered when designing intervening strategies against child marriage. This is because not every national context will be conducive to a strategy involving the use of legal norms, in particular international legal norms, for social engineering. In some contexts, demanding that the law be changed so as to set the minimum age for marriage at 18 years because IHRL says so may be perceived as an unwelcome imposition of foreign values. However, the same community might be more receptive if efforts were to be directed at protecting the health of girl children, the prevention of maternal mortality and morbidity, and so on.

Moreover, defining the target population is another way of facilitating the translation of human rights. This involves translators' having to design their strategies for getting their message against child marriage across, depending on the target population so as to make their message more culturally acceptable. This sometimes makes it necessary to connect the discourse of human rights law with other discourses of social justice (Bunting and Merry 2007, 636–637). For example, the Muslim Sisters Organization (MSO) and the Federation of Muslim Women's Associations of Nigeria (FOMWAN) target a profoundly Muslim population using the Qur'an and the Hadiths and not IHRL to educate Muslims against child marriage (Bunting and Merry 2007, 636–637). They contend that the obligations in CEDAW can all be found in the Qur'an and the Hadiths. They believe that their strategy will work because, even though they do not use a children's rights perspective, the language of rights is not a concept that came from the West but rather it has always been espoused by Islam (Bunting and Merry 2007, 340). Others ground their strategies in Muslim teachings and the Qur'an but marry the religious with the international. For example, the Women Farmers Association (Bunting and Merry 2007, 340) in northern Nigeria. According to them, when they also refer to religion in their rhetoric, their audience becomes more receptive to the message they are delivering compared to when they seem antagonistic towards religion.

### **Challenges of translating International and Regional Human Rights in combating Child Marriage in Africa**

The translation of human rights into localities is not without its challenges. Translators face several challenges in their work. The first is the fact that if they present human rights in ways that join readily with the existing issues and strategies of the locality – for example, religion – they are more readily accepted but represent less of a challenge to the status quo (Merry 2006a, 41). But if they rely on ideologies and tactics that are more ambitious and challenging, they may have more difficulty in establishing local support and enthusiasm but are more likely to bring about dramatic change (Merry 2006a, 41). It is only their capacity to challenge existing power relations that offers radical possibilities. Usually, an organisation can follow this more challenging path if it



has external sources of support, inspiration and funding (Merry 2006a, 41). Therefore, translators must assess to what extent they can challenge existing modes of thinking and must conceal radical ideas in familiar packages (Merry 2006a, 41). Levitt and Merry (2009, 457) refer to this challenge as an advocacy dilemma. For example, in the case of early marriage in a profoundly religious cultural locality, if one approaches it head on, one might not make a strong impact because the locals might feel that you are encroaching on their religion or culture (Bunting and Merry 2007, 341). Women's NGOs such as the Women's Federation of Women Lawyers (FIDA) and the League of Democratic Women (LEADS Nigeria), which have decided to problematise early marriage and frame it as a women's human rights issue, have not been able to make a very loud noise. However, this quiet strategy is not unintentional because they are aiming to make radical changes (Bunting and Merry 2007, 341).

A second challenge facing translators is the fact that, on the one hand, they have to speak the language of international human rights preferred by international donors to obtain funds and global media attention (Merry 2006a, 42); on the other hand, they have to present their initiatives in cultural terms that will be acceptable to at least some of the local community (Merry 2006a, 42). As they scramble for funds, they need to select issues that international donors are interested in (such as female genital mutilation, women's empowerment or the trafficking of women and children) and connect these agendas to problems that interest local populations, such as clean drinking water, more jobs or good roads (Merry 2006, 42). For example, in 1994 Women in Nigeria (WIN) and the VVF Task Force invited Human Rights Watch (HRW) to research early marriage in northern Nigeria (Bunting and Merry 2007, 333). The organisations' work was more focused on the health consequences of early marriage than early marriage per se for the purposes of cultural acceptance (Bunting and Merry 2007, 340). The health focus in their advocacy created a dilemma for HRW because its organisational mandate did not yet include socio-economic rights (Bunting and Merry 2007, 340). It was clear that, in order to tackle early marriage in northern Nigeria in a way that reflected the local efforts, rights to health, education and poverty had to be considered (Bunting and Merry 2007, 340). This was one of the reasons that the report did not see the light of day (Bunting and Merry 2007, 340). This is in line with Merry's (2015, 210) assertion that translators are both powerful and yet vulnerable as they circulate between and try to respond to the varied agendas and expectations of governments, donors and local people. Another example from the research done by Merry and Bunting in northern Nigeria is the organisation FORWARD, an international organisation which believes that early marriage is a women's rights issue and has participated in research funded by UNICEF on the topic of early marriage as a human rights issue (Bunting and Merry 2007, 340). However, their work in northern Nigeria is focused on the health

consequences of early marriage, which shows that there is a local definition that informs their work (Bunting and Merry 2007, 341) and also how translators sometimes need to be two-faced, as proposed by Merry.

## **Conclusion**

This article has debunked the misconception that there is only one main cause of child marriage across all states and even within some. It has shown that there are multiple causes of child marriage and that the causes in one locale might not be the causes in another. It is therefore important for IHRL to be informed by this conception, which demands that IHRL revises its abolitionist approach of introducing and imposing forceful laws and rigid standards to end child marriage. The revision is important because the abolitionist approach risks driving child marriage underground, which has perverse and unintended effects, and the abolitionist approach also leaves girl children with even less protection than before and the prohibition remains merely symbolic legislation. This in turn delegitimises the law – human rights law in particular – because the challenge is then seen as a mere implementation gap and the standard itself is not scrutinised. Therefore, IHRL should be aware of local differences and make room for the translation of human rights that adopts local images, symbols and stories or adapts human rights programmes to the structural conditions under which they operate and tailors programmes according to defined target populations as a way of accommodating diversity in order to promote universal acceptance and the legitimacy of human rights. Furthermore, approaches to early marriage should represent historically and regionally specific strategies that should not be generalised. Global human rights strategies need to be attentive to the national and regional dynamics and consequences of such transnational activism to avoid global regulatory efforts aimed at early marriage producing multiple and even contradictory effects.

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