



COLLEGE OF LAW AND MANAGEMENT STUDIES SCHOOL OF LAW

AN ASSESSMENT OF CHILD MARRIAGE AND ITS HUMAN RIGHTS
IMPLICATIONS ON THE GIRL CHILD IN ZIMBABWE

By

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A dissertation submitted in partial fulfilment of the requirements for the degree of

MASTERS OF LAW

In

CHILD CARE AND PROTECTION

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DECLARATION

By submitting this dissertation, I declare that the entire work contained herein is my work, except for instances indicated otherwise, that I am the author thereof, and the work, in its entirety or in part, has not been previously submitted in this or similar form at this University or any other work, for the purposes of obtaining an academic qualification. This paper is my original piece of work

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DEDICATION

I dedicate this work to my ever-loving mother, Hosana Rabeck Machingauta (nee Chimuna) for propelling me to the sky and beyond. I love you.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
AU	African Union
CEFM	Child, Early and Forced Marriage
CEDAW	Convention on the Elimination of all forms of discrimination against Women
CRC	Convention on the Rights of Children
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
RCMA	Recognition of Customary Marriages Act
UNAIDS	United Nations Programme on HIV/AIDS
UDHR	Universal Declaration of Human Rights
UNFPA	United Nations Fund for Population Activities
UNICEF	United Nations International Children's Emergency Fund
UNCRC	United Nations Convention on the Rights and Welfare of the Child
WHO	World Health Organization

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Chapter One:

Introduction

1.1 Background and outline of research problem

Despite ratifying the United Nations Convention of the Rights of the Child 1990, (CRC), the constitutional provisions, national legislation and court judgments indicate that child marriages are deeply embedded in Zimbabwean society. Although this dissertation primarily concerns itself with Zimbabwe it would be adept to suggest that the problem is in effect, global.

Zimbabwe is among four Southern African countries with the highest rate of child marriages.¹ Estimates reveal that one out of three girls in Zimbabwe is married before the age of 18,² and one in nine, gets married before the age of 15.³ Child marriages, also known as early child marriage or early marriage, is defined as any formal marriage or informal union, where one or both parties are below 18 years of age.⁴ The emerging consensus of the international human rights standards is that the minimum age of marriage should be set at 18 years. The practice of child marriage affects mostly girls and it coincides with other human rights violations, including domestic violence and access to reproductive health care and education. Child marriages often occurs in the shadows of poverty, gender inequality and harmful cultural practices, amongst other factors.⁵

In Zimbabwe, economic considerations are fundamental to the practice of child marriage. Zimbabwe was previously colonised by the British government and in 1980 it emerged as an independent nation.⁶ After independence, inequalities existed and there were considerable pockets of poverty in several parts of the country.⁷ In the year 2000, the government of Zimbabwe introduced the land reform programme where land was reallocated to black

¹UNFPA, 2012 Child Marriage Country Profile: Zimbabwe Factsheet <http://www.girlsnotbrides.org/reports-and-publications/unfpa-child-marriage-country-profile-zimbabwe/> (Accessed 07-10-16).

²Girls not brides, Child Marriage around the World: Zimbabwe <http://www.girlsnotbrides.org/child-marriage/zimbabwe/> (Accessed 01-10-16).

³Varia, N., Ending Child Marriage: Meeting the Global Development Goals' Promise to girls. *Human Rights Watch World Report 2016* <https://www.hrw.org/world-report/2016/ending-child-marriage> (Accessed 07-10-16).

⁴Girls not brides, Child Marriage around the World: Zimbabwe <http://www.girlsnotbrides.org/about-child-marriage/zimbabwe/>(Accessed 06-12-16).

⁵Stone, L., Ending child marriage and meeting the needs of married children: the USAID vision for action. p.i.

⁶Moyana, H. and Sibanda, M., 1990. African Heritage. History for Junior Secondary Schools.: Book 2, p.2.

⁷Madzingira, N., 1997. Poverty and ageing in Zimbabwe. *Journal of Social Development in Africa*, 12, p5.

Zimbabwean nationals. This became known as the “fast track” land reform programme.⁸ The land reform programme is the key factor in Zimbabwe’s economic meltdown and has left many citizens living in poverty.⁹ Zimbabwe’s economy was based on commercial agriculture, the land reform programme awarded farms to farmers who did not have enough training on farming, and this resulted in low agricultural output production.¹⁰ Moreover, a large number of who lived and worked on these farms were left jobless. This resulted in an increase of school drop outs due to poverty. Child marriages are prevalent in impoverished areas, where there are limited educational and economic opportunities for girls, which increased their dependency on male breadwinners.¹¹ Furthermore, marriage is regarded as a solution to poverty, where poor families marry off their daughters to increase their own economic stability.¹²

Child marriage is a human rights violation, which deprives children of their rights and goes against basic humanity. The Convention on the Rights of the Child is the most widely recognised children’s rights treaty in history, ratified by Zimbabwe in 1992 without reservations.¹³ The African Charter explicitly highlights that child marriage and the betrothal of girls and boys shall be prohibited and that effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years.¹⁴ Zimbabwe has failed to domesticate and implement these laws resulting in the violation of various children’s rights.

Child marriages in Zimbabwe can be attributed to the government’s failure to provide women and girls adequate rights and protection to empower them. One of the factors which lead to child marriages is lack of educational opportunities. If there are no opportunities for girls to attend school, they get married and are unable to continue with their education.¹⁵ The end result is that they continue to be subordinate and invisible in society. Therefore, the consequences of child marriage do not only affect the girls in childhood, but it follows them to adulthood; affect their families, communities; and the nation at large. Child marriages in Zimbabwe are fuelled

⁸Matondi, P.B., 2012. Zimbabwe's fast-track land reform. p.1.

⁹Munangagwa, C.L., 2009. The Economic Decline of Zimbabwe. *Gettysburg Economic Review*, 3(1), p.115.

¹⁰ Zimbabwe: Focus on economic impact of land reform <https://reliefweb.int/report/zimbabwe/zimbabwe-focus-economic-impact-land-reform>.

¹¹Vogelstein, R.B., 2013. *Ending child marriage: How elevating the status of girls advances US foreign policy objectives*. Council on Foreign Relations. p.9.

¹²Ibid p.7.

¹³UNICEF Birth registration in Zimbabwe, can we do more? https://www.unicef.org/zimbabwe/media_15175.html (Accessed 07-10-16).

¹⁴ Girls not Brides <https://www.girlsnotbrides.org/articles/using-african-charter-rights-welfare-child-address-child-marriage/> (Accessed 07-10-16).

¹⁵UNICEF Girls' education <https://www.unicef.org/education/girls-education> (Accessed 07-10-16).

by the absence of an efficient and effective legal framework, which protects and promotes the rights of children regarding early marriages.¹⁶

Culture is another contributing factor. The Zimbabwean culture in general is predicated historically and traditionally on a patriarchal¹⁷ system of society where the males dominate as the kings, chiefs, headman and heads of the families. Traditionally women were classified as property of their male counterparts in such a manner that they did not have a say in their own welfare. Women were generally dominated by men in all spheres of life. This subordination and lack of societal, economic and personal emancipation contributed to the girl child being exposed to early marriages since they were gagged by cultural hegemony.¹⁸

Historically, religion has also played a significant role in perpetuating the scourge of child marriages.¹⁹ The advent of colonialism in Zimbabwe brought with it a religion which was new to the people. The apostolic sect which emerged in the late 1930's in the form of the Johane Mazowe and Johane Marange subsects is believed to wield a significantly huge influence on almost a 3rd of the Christian population in Zimbabwe and are a key influence in the arena of child marriages.²⁰ Thus, while it would seem that the law has made some strides in outlawing the nuisance of child marriage the problem persists because of the prevalence in the Apostolic sects. In these sects girls as young as nine or ten years old or even new born babies can be given away into marriage to older man. This is done with the consent of the parents of the child and not the consent of the child herself.²¹ The culture of marrying young girls in the said apostolic sects is that parents plan with the church elders and the husband- to-be in return for payment of money and recognition in church structures. This is done without the consent of the girl child who is forced to be intimate with man or husband. Because of the gruesome

¹⁶ Bhaiseni, B. 2016. Zimbabwe Children's Act Alignment With International And Domestic Legal Instruments: Unravelling The Gaps

¹⁷ Patriarchy, for the purposes of this study, means 'a set of social relations between men, which have a material base, and which though hierarchical, establish or create interdependence and solidarity among men that enable them to dominate women.' While men of different ranks, classes, ages, races, and ethnic groups occupy positions of varying status within the structure, all men 'are united in their shared relationship of dominance over their women; they are dependent upon each other to maintain that domination.' Heidi Hartmann, 'The Unhappy Marriage of Marxism and feminism; Towards a More progressive union, in Women and Revolution; A discussion of the unhappy marriage of Marxism and Feminism. Ed. Lydia Sargent (Boston, 1981) pp.14 – 15.

¹⁸ Sultana, A., 2010. Patriarchy and women's subordination: a theoretical analysis. *Arts Faculty Journal*, pp.1-18.

¹⁹ Bhaiseni, B., 2016. Zimbabwe Children's act alignment with international and domestic legal instruments: unravelling the gaps. *African Journal of Social Work*, 6(1), pp.3-6.

²⁰ Ndlovu-Gatsheni, S.J., 2007. Re-thinking the colonial encounter in Zimbabwe in the early twentieth century. *Journal of Southern African Studies*, 33(1), pp.173-191.

circumstances surrounding some if not all of these arranged unions some sections of the legal fraternity have questioned whether “child marriage” is the appropriate term to describe these unions that involve violence, kidnapping and rape.²²

It would not be an exaggeration to suggest that all factors that are at the centre the child marriage conundrum in Zimbabwe are all interconnected in one way or the other through historical prejudice, patriarchy, cultural ideology, education, religious affiliations and economic exclusion amongst others. The major catalyst, concordantly, being the fact that culturally a girl was considered valuable as a virgin and therefore most likely to fetch a higher bride price if married young and unspoiled. The religious practices mentioned above regarding child marriages also show that there are remnants of patriarchy within the church.

The issue of child marriages in Zimbabwe dates back to the state system where child marriages were fostered by cultural norms such as “*musengabere*”. *Musengabere* is a practice whereby a man would ambush a young woman and drag her home against her wish, automatically that woman would become his wife.²³ This was regarded as a type of marriage and the girl’s parents could not object but accept the bride price.²⁴ Furthermore, there was no age restriction as result a girl child would get married before attaining 18 years of age.

Zimbabwe adopted a new constitution in 2013 obliging the state to ensure that “no children are pledged into marriage.”²⁵ Pledging of children into marriage is the act of reserving the rights to marry of a certain girl by a particular man and this is one of the main causes of child marriages in Zimbabwe. In support of this, a landmark decision was made by the Zimbabwean Constitutional Court in the case of *Mudzuru and another v Minister of Justice*.²⁶ The court declared all laws allowing girls under the age of 18 to get married, with or without their parents’ consent, unconstitutional.²⁷ Regardless of the adoption of the Constitution and the above Constitutional Court ruling, there remain grey areas in Zimbabwean law on the age of consent

²² UNICEF. <https://www.unicef-irc.org/publications/pdf/digest7e.pdf>

²³ Bhaiseni, B., 2016. Zimbabwe Children's act alignment with international and domestic legal instruments: unravelling the gaps. *African Journal of Social Work*, 6(1), pp.3-6.

²⁴ Dube, R., 2013. Till death do us part? Marriage in Zimbabwe. *Research Advocacy Unit*.

²⁵ Section 26 (b) of the Constitution of Zimbabwe Amendment Act No 20 of 2013.

²⁶ Const. Application No. 79/14 [2015] ZWCC 12.

²⁷ “*Mudzuru & Another v Ministry of Justice, Legal & Parliamentary Affairs (N.O.) & Others* (Const. Application No. 79/14) [2015] ZWCC 12 (20 January 2016).

to marriage, there are other factors that contribute to child marriages such as religion, culture and education, among others.

Despite the outlawing of child marriages by Zimbabwe and efforts by non-governmental organisations, child marriages are still prevalent in Zimbabwe. The decline in child marriages is dawdling, which indicates that the methods of prevention are ineffective and inefficient. Therefore, the main argument in this study is that early child marriage is a violation of the fundamental human rights of the girl child. The study aims to provide an assessment of child marriages in Zimbabwe, providing its impact on the rights of the girl child in Zimbabwe.

1.2 Literature review and reasons for choosing the topic

From a jurisprudential standpoint Zimbabwe has made considerable changes to its laws regarding the issue of child marriages. The marriage of young people under the age of 18 years has been abolished in a 2016 Constitutional Court ruling that was passed after a campaign against child marriages was launched in the celebrated case of *Mudzuru and Anor*. The ruling states that, “that child marriage is a particularly egregious form of child abuse, with most of these girls being married to much older men.”²⁸ The Constitution had set the tone by abolishing the practice and the judgment reinforced the position through the invalidation of the offending provisions in the Marriages Act [Chapter 5:11] and the Customary Marriages Act [Chapter 5:07].

The court accepted that children were among vulnerable groups of society particularly the poor, the marginalised and deprived sections of the community. The court clarified that while in many conventions marriage must be entered into freely between consenting parties, there was no recognition of the special vulnerabilities of children where “consent” could easily be or unduly influenced by adults. These legal achievements are not complemented by proper education and dissemination of information by the government which leaves most of the work to the civic society organisations with the result that despite the existence of these strong mechanism the children in the areas identified by the Constitutional Court the practice remains rampant.

²⁸ Jeater, D. 2017. From Child Pledging to Child Abuse: How Girl Marriage Changed in Zimbabwe.

Child marriage is the practice of marrying a female, below the age of 18, to an adult or to a male, below the age of 18.²⁹ Child marriage is a considerable barrier to social and economic development in many countries, and a primary concern for women's health. The African Charter on the Rights and Welfare of the Child (1990) is clear regarding the illegality of child marriages. Article 21 of the Charter prohibits child marriages and the betrothal of boys and girls. These instruments recognise the evils of child marriage and the need to protect the girl child from marrying.

Research undertaken by child rights organisations, such as UNICEF, indicates that the practice of child marriages is prevalent in many parts of Africa and Asia.³⁰ According to UNICEF, an estimation of more than 60 million children in the world, are affected by child marriages.³¹ However, the exact number of child marriages is difficult to establish, because many of them are unofficial and not registered.

The right to free and full consent to a marriage is provided in for in article 21(3) with the appreciation, that consent cannot be “free and full”, when one of the parties does not have the capacity to make a well-informed decision.³² The Committee on the CRC, in its General Comment No. 4, sturdily recommends that, “state parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.”³³

Notwithstanding these strong legal frameworks, traditional and forced marriages still occur. On a daily basis, girls around the world are forced to leave their families, marry against their will, endure sexual and physical abuse and bear children, while still in childhood themselves.³⁴ According to Ras-Work, in Africa and Asia, early marriages entails marrying girls as young as

²⁹UNFPA. Ending child marriage: A guide for global +policy action <http://www.unfpa.org/sites/default/files/pub-pdf/endchildmarriage.pdf> (Accessed 07-12-16).

³⁰UNICEF, 2014. *Ending Child, early and forced marriage: Progress and Prospects*, <http://www.update.un.org/rights/dpi1765e.htm> (Accessed 14-05-16).

³¹UNICEF, 2014. *Ending Child, early and forced marriage: Progress and Prospects*, <http://www.update.un.org/rights/dpi1765e.htm> (Accessed 14-05-16).

³²Universal Declaration of Human Rights of 1948, Article 16.

³³CRC Committee, 2003. *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child CRC*.

GC/2003/4, <http://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC4.pdf> (Accessed 11-05-16).

³⁴Vogelstein, R.B., 2013. *Ending child marriage: How elevating the status of girls advances us foreign policy objectives*. Council on Foreign Relations. p.1.

seven years old to adult men.³⁵ In many countries marriage automatically confers adult status on a child, which renders protection of the child by the CRC powerless.³⁶ The postulation is that people will have access to protection and rights under these treaties and laws. This supposition overlooks local contexts and the infused relations of power which hollow out the real value of legal provisions.³⁷ In essence, legislative power is contextual.

The causes of child marriage differ from one country to another. In many cases young girls are forced into early marriage by their parents or societies, and religion and tradition are used to justify such acts.³⁸ In conflict ridden areas child marriages are worsened, as families marry off their girls in an attempt to avoid rape, abduction and for safety reasons.³⁹ In Africa, the major cause of child marriage is poverty. Research shows that girls living in poor households are almost twice as likely to marry before the age of 18, than those in higher income households.⁴⁰ Social anticipation and family poverty often put intense pressure on girls to marry early. Parents and communities consider girls commodities through bride price and dowries paid by their husband-to-be.⁴¹

Zimbabwe has been characterised by child marriage in Southern Africa. A non-governmental organisation, *Girls not brides International* asserts that approximately one in three children get married before their 18th birthday.⁴² According to research conducted by the Legal Resources Foundation, it is largely established that child marriage in Zimbabwe predominately affects

³⁵Ras-Work, B., 2006, September. The impact of harmful traditional practices on the girl child. In *Expert paper prepared for the Expert Group Meeting on Elimination of All Forms of Discrimination and Violence against the Girl-Child*, EGM/DVGC/2006/EP (Vol. 4), p 2.

³⁶World Health Organisation. 2006. *Married adolescents: No place of safety*. Geneva, Switzerland: World Health Organisation. p.6.

³⁷Toyo, N. 2006. Revisiting equality as a right: the minimum age of marriage clause in the Nigerian Child Rights Act, 2003. *Third World Quarterly*, 27(7), p.1230.

³⁸Goonsekere, S., 2006. The elimination of all forms of discrimination and violence against the girl child. In *Background paper prepared for Expert Group Meeting on the Elimination of All Forms of Discrimination and Violence against the Girl-Child*, EGM/DVGC/2006/BP (Vol. 1), p.14.

³⁹United Nations. Secretary-General, 2002. *Women, Peace and Security: Study Submitted by the Secretary-General Pursuant to Security Council Resolution 1325 (2000)*. United Nations Publications. <https://www.un.org/ruleoflaw/files/womenpeaceandsecurity.pdf> (Accessed 21-08-16).

⁴⁰International Centre for Research on women: Child Marriage Facts and Figures <http://www.icrw.org/child-marriage-facts-and-figures> (Accessed 16-08-16).

⁴¹Ashraf, N., Bau, N., Nunn, N. and Voena, A., 2016. *Bride price and female education* (No. w22417). National Bureau of Economic Research. p.3.

⁴²Girls Not Brides, Child Marriage around the world: Zimbabwe <http://www.girlsnotbrides.org/child-marriage/zimbabwe/> (Accessed 13-08-16).

children living in poverty in remote areas.⁴³ Girls living in poverty have no access to education, and are therefore, likely to marry during their childhood.

Despite laws advocating 18 as the legal minimum age for marriage, child marriage has become a worldwide problem, cutting across countries, cultures, religions and ethnicities.⁴⁴ Zimbabwe is a multicultural state, which consists of different religions and cultures. Child marriage is deeply entrenched in tradition, culture and religion. In the apostolic sector, religion is used as a tool to persuade young girls to marry much older men at a very tender age.⁴⁵ Previously child marriages were accepted as a traditional, cultural and religious practice. Although governments around the world have attempted to eradicate child marriage, it continues to exist to a significant extent, as a traditional practice in rural areas and amongst people living in poverty.⁴⁶ Although Zimbabwe has made what one may term significant strides legally, not everybody has access to the latest developments because of the remoteness of many rural areas where the problem is still prevalent. Furthermore many societies like those affiliated to the apostolic sects do not send their children, especially the girl child to school with the result that the potential victims are not only ignorant of the existence of protective legal instruments but also of their corresponding rights⁴⁷.

Early marriage creates a precarious, premature transition from childhood to adulthood. It is alleged that when a girl marries, her childhood comes to an abrupt and premature end, and is likely unaware of what is happening.⁴⁸ Moreover, a typical child bride knows little of her new husband or new life. She has little control over her destiny and is unaware of the health risks that she faces.⁴⁹ The United Nations International Children's Fund (UNICEF), describes early child marriage as the most prevalent form of sexual abuse and exploitation of girls.⁵⁰ Every

⁴³ The legal resources foundation Child Marriages: No more!, Urgent need to align all the laws that affect children to the Constitution 28 January 2016 <http://www.zimlji.org/content/child-marriages-no-more> (Accessed 20-08-16).

⁴⁴ Brides, G.N., 2016. The Role of Parliamentarians in Ending Child Marriage. p.6.

⁴⁵ UNICEF., 2016. *State of the world's children*, www.girlsnotbrides.org/childmarriage/zimbabwe (Accessed 21-08-16).

⁴⁶ The Population Council, 2002 "Adolescent and Youth Sexual and Reproductive Health: Charting Directions for a Second Generation of Programming, *The Population Council* <http://www.popcouncil.org/pdfs/adolsrh.pdf> (Accessed 21-08-16).

⁴⁷ UNICEF 2020. <https://data.unicef.org/topic/child-protection/child-marriage/>

⁴⁸ Lackovich-Van Gorp, A.N., 2014. *Positive deviance and child marriage by abduction in the Sidama Zone of Ethiopia* (Doctoral dissertation, Antioch University).p.1.

⁴⁹ World Health Organisation. 2006. *Married adolescents: No place of safety*. Geneva, Switzerland: World Health Organisation. p 4.

⁵⁰ UNICEF., 2006. *The state of the world's children 2007: women and children: the double dividend of gender equality* (Vol. 7). UNICEF. p 1.

day, an estimated 39,000 girls become child brides.⁵¹ Early child marriage represents a rupture of girlhood and is a violation of human rights, which impacts every aspect of the girl child's life.⁵²

Zimbabwe is one of the countries that has recently set the minimum age for marriage at 18, which marks a positive step towards the abolition of this practice in both the Marriages Act [Chapter 5:11] and the Customary Marriages Act [Chapter 5:07].

In Zimbabwe, child marriage is a form of gender based discrimination, mainly affecting girls in rural areas and farm resettlements. It often occurs in the obscurities of poverty, harmful religious and cultural practices and gender inequality, thereby hindering efforts to empower girls to achieve long-term, sustainable development.⁵³ Young girls in Zimbabwe marry at a tender age to escape poverty. Some are forced by their families, on a religious or cultural basis to marry early, before they are ripe for marriage. Girls are considered as a source of income rather than family members.⁵⁴ The practice of early marriages has subjected girls to acute poverty and the risk of health challenges.⁵⁵

The major drive for choosing this topic is the need for the protection and promotion of children's rights. Children are the most vulnerable members of society and deserve the best interventions, when their rights are being violated. Child marriages have become an extremely global, complex problem, which requires more research. The rights of the girl child continue to be trampled upon by child marriage, regardless of the current laws prohibiting child marriage. In the case of *Mudzuri and Anor*, the Constitutional Court of Zimbabwe declared child marriages unconstitutional thereby outlawing them. However, this did not bring an end to it. The practice is still prevalent in the country.

⁵¹UNFPA., 2013. *Motherhood in childhood: Facing the challenge of adolescent pregnancy*. New York. para 1.

⁵²Ibid.

⁵³Sibanda, M. 2011. Married Too Soon: Child Marriage in Zimbabwe. *The Research and Advocacy Unity Journal*/Vol. 12.

⁵⁴Jabson.,F. Jan 30, 2015., Young girls in Zimbabwe opt for Marriage to escape poverty <http://waccglobal.org/articles/young-girls-in-zimbabwe-opt-for-marriage-to-escape-poverty>

⁵⁵Kyari, G.V. and Ayodele, J., 2014. The socio-economic effect of early marriage in North Western Nigeria. *Mediterranean Journal of Social Sciences*, 5(14), p.586.

1.3 Research objectives

The objectives of this study are to:

- 1.3.1 Identify the main causes of early child marriages in Zimbabwe.
- 1.3.2 Determine whether child marriages impact on the rights of the girl child in Zimbabwe.
- 1.3.3 Determine the measures that have been taken by Zimbabwe in addressing child marriages.

1.4. Research questions

The following questions will be addressed in this dissertation:

- 1.4.1 What are the main causes of child marriage in Zimbabwe?
- 1.4.2 Do child marriages impact on the rights of the girl child in Zimbabwe?
- 1.4.3 What measures have been taken by Zimbabwe in addressing child marriage?

1.5 Research methodology

This research shall be based on documented facts and literature on child marriage. Due to the deficiency of literature on child marriages in Zimbabwe, this paper will utilise information from studies in Africa and across the world. This will be achieved through library and desk research. Data will be collected through literature material researched from academic books, articles, research reports and news on the subject being explored.

1.6 Structure of dissertation

Chapter One: Introduction

Chapter one introduces the paper, thus the basic research design, the objective of the research, methodology, research questions and purpose.

Chapter Two: An international, regional and national legislative analysis of child marriages

Child marriage is a global problem, which needs much attention and effective measures to combat it. This chapter looks at the international, regional and national legislative frameworks available for the protection of children against child marriages. This chapter provides efforts made by Zimbabwe in combating child marriage, which includes adopting legislation and enforced programmes, together with the challenges thereof.

Chapter Three: Conceptualisation of Child marriage in Zimbabwe

This chapter seeks to explore child marriages in-depth. It gives a definition of child marriages and looks at the causes of child marriage in Zimbabwe.

Chapter Four: The impact of Child marriages on the girl child in Zimbabwe

Child marriage is a human rights violation, which is regarded as, a violent and abusive practice that stems from and sustains discrimination against women and girls.”⁵⁶ Child marriage subjects girls to other human rights violations, such as domestic violence, trafficking, exploitation, child labour, curtailed education and other violations. The implication of child marriages are severe and long-lasting, disturbing girls’ education, affecting their health, and physical and emotional well-being. This chapter unpacks the devastating effects of child marriage on the girl child in Zimbabwe.

Chapter Five: Recommendations and conclusion

The final chapter serves as the closing chapter. It summarises the literature review, presents the conclusion and recommendations, resulting from experience drawn from this research.

⁵⁶Now, E., 2014. Protecting the Girl Child. Using the law to end child, early and forced marriage and related human rights violations. p.7.

Chapter Two

An international, regional and national legislative analysis of child marriages

2.1 Introduction

Child marriage is a global problem, which needs much attention and effective measures in order to combat the scourge. The chapter discusses the international, regional and national legal frameworks on child marriages. Despite attempts to combat child marriages in Zimbabwe the problem persists. However, according to the United Nations Populations Fund, the rate of child marriage rate in Zimbabwe has declined from 34 per cent in 2006 to the current 31 per cent.⁵⁷

2.2 International and regional laws on child marriage

Globally child marriages have been declared illegal and it has been a priority on the international agenda, even though there is no specific legal instrument defining it. Numerous international conventions, laws and policies have been put in place for the specific protection of girls, against child marriages. Most of these stipulate the age at which a human being is considered a child, the minimum age for marriage and places a duty on states to abolish child marriages. The section below provides an analysis of some of the international, as well as regional laws and policies on child marriages.

2.3 International instruments

2.3.1 The Universal Declaration of Human Rights of 1948 (UDHR)

The practice of child marriage is contrary to the United Nations Children's Education Fund (UNICEF) recommendations on the rights of children⁵⁸. These include the right to free and full consent to a marriage, as recognised in the Universal Declaration of Human Rights (UDHR) of 1948.⁵⁹ The UDHR is the first instrument to regulate human rights worldwide

⁵⁷UNFPA, 2012 Child Marriage Country Profile: Zimbabwe Factsheet <http://www.girlsnotbrides.org/reports-and-publications/unfpa-child-marriage-country-profile-zimbabwe/> (Accessed 07-10-16).

⁵⁸ UNICEF.2020. Child marriage is a violation of human rights, but is all too common. <https://data.unicef.org/topic/child-protection/child-marriage/> (Accessed 07-10-16).

⁵⁹UDHR Article 16.

which was ratified by Zimbabwe in November 1989.⁶⁰ The UDHR states that entry into a marriage must be voluntary and parties must be of full legal age.⁶¹ It can be asserted that the drafters of the UDHR by using the term “full legal age”, meant a person reaches sexual maturity or the age of majority, which is normally 18 years of age.⁶² Thus, anyone below the age of 18 is considered a child and cannot enter into a valid and legal marriage in terms of the UDHR.

Furthermore, where consent to marriage by one party is not “free and full”, there is a violation of the UDHR.⁶³ Several child marriages have the element of coercion involved. The UDHR does not specifically outlaw child marriages but Article 16 (2) provides that marriage shall be entered into only with the free and full consent of the intending spouses. By “making it a requirement that parties to a marriage must voluntarily and freely consent to such marriage, the provision seeks to protect parties against forced marriages. In cases of the “girl child protection arises where parents or guardians consent to their daughter’s marriage, or where certain domestic legislation allows the marriage to take place with the consent of parents or guardians.”⁶⁴

Additionally, discrimination on the grounds of sex amounts to unfair discrimination in terms of the UDHR and provides an equal protection clause.⁶⁵ The practice of child marriage is discriminatory in that girls are more affected than boys, and marriage laws and customs seek to protect boys rather than girls. Child marriage is a violation of human rights, particularly those of girls, who are often the victims. The UDHR provides in Article 16 the following regarding child marriages:

- “(a) Men and women of full age....have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (b) Marriage shall be entered into only with the free and full consent of the intending parties. Similar provisions are included in 1966 International Covenant on Economic, Social and Cultural Rights and the International Covenants on Civil and Political Rights.”

⁶⁰Human Rights Ratification of International Human Rights Treaties- Zimbabwe. <http://hrlibrary.umn.edu/research/ratification-zimbabwe.html> (Accessed 11-03-17).

⁶¹UDHR Article 16(2).

⁶²UDHR Article 16(1) & (2).

⁶³UDHR Article 16(2).

⁶⁴ UDHR Article 16 (2) provides that “Marriage shall be entered into only with the free and full consent of the intending spouses.

⁶⁵ UDHR Article 7.

In other words the convention recognised that a person must have full and free consent to marriage and when one of the parties is negatively affected by the lack of capacity to make an informed decision about a life partner then the resultant union is in direct violation of the said convention. Zimbabwe by outlawing child marriages gives effect to the UDHR however the practice continues to thrive. Government ought to equip its stakeholders and responsible ministry with adequate resources to reach every remote corner of the nation. This is not the case and the problem continues to haunt vulnerable parts of the Zimbabwean society.

2.3.2 United Nations General Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of 1962

The UN General Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of 1962 (Marriage Convention) was designed to ensure that marriages are entered into voluntarily and to eliminate child marriages.⁶⁶ Zimbabwe ratified the Convention on the 23rd of November 1994. The Marriage Convention obliges states to implement legislative measures to stipulate a minimum age for marriage, and in addition any marriage entered into by any person below that age, shall be regarded as illegal, unless there are strong reasonable grounds for allowing such a marriage to take place.⁶⁷

In its preamble, the Marriage Convention asserts that it aims to allow a person the freedom to choose a spouse. Thus, it aims to eliminate arranged and forced marriages where girls are told who and when to marry, despite their age and personal interests.⁶⁸ The Marriage Convention further provides that there must be a national civil register recording all marriages. This will prevent a marriage entered into with a minor from being registered. It can therefore be asserted that the convention seeks to overcome and challenge the practice of child marriages by requiring states to take legislative measures, which will eliminate child marriage. The Zimbabwean legal framework has largely been influenced by the decision in *Mudzuru and Anor* which effectively invalidated sections of the Marriages Act and the Customary Marriages Act to the extent that these laws allowed the marriages of girls under the age of 18. This was

⁶⁶Warner, E., 2011. Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls. *Journal of Gender, Social Policy & the Law*, 12(2), p.249.

⁶⁷United Nations General Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of 1962 Article 2.

⁶⁸Warner, E., 2011. Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls. *Journal of Gender, Social Policy & the Law*, 12(2), p.249.

in violation of the new Constitution and the various international conventions against the discrimination of women and children's rights.

However, the Convention does not stipulate the exact minimum age for marriage, which all member states must comply with. It gives state parties room to set their own minimum age for marriage. This results in states setting the minimum age as low as sixteen years of age. Moreover, the Marriage Convention creates exceptions, allowing girls below the age of 18 to get married, with the approval of government officials. The effect of this provision is that once a girl is married, she becomes an adult under domestic law, and child protection laws cannot protect her. As an instrument on marriage, the convention must stipulate the exact age of marriage or explain what is meant by the phrase "of full age" so as to ensure consistency.

2.3.3 United Nations Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW)

The major objective of CEDAW is to address issues related to children, particularly girls and women. The CEDAW contains provisions that explicitly deal with marriages, which can be used to address the issue of child marriage. The Convention states that child marriage and the betrothal of young girls before puberty shall be prohibited, and effective 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.⁶⁹ This provision clearly outlaws child marriage.

States are also obliged to eradicate the discrimination of women in matters concerning marriage, and afford women the same rights as men, to enter marriage voluntarily.⁷⁰ The aim of this provision is to ensure that neither women nor girls are forced to marry without their full consent, and advocates for equality between men and women.

2.3.4 United Nations Convention on the Rights of the Child of 1989 (CRC)

The CRC was adopted by the United Nations General Assembly in November 1989 and became the first universal legal instrument, providing a wide range of children's rights.⁷¹ The CRC does not directly address child marriages, but child marriages are linked to other rights,

⁶⁹CEDAW Article 16(2).

⁷⁰ CEDAW Article 2 (f) as read together with Article 16.

⁷¹Nhenga-Chakarisa, T.C., 2010. Who does the law seek to protect and from what? The application of international law on child labour in an African context. *African Human Rights Law Journal*, 10(1), p.176.

such as the right to freedom of expression, the right to have their views respected, the right to be protected from all forms of abuse and harmful traditional practices, amongst other rights.⁷² The CRC requires governments to abolish traditional practices prejudicial to the health of children, as well as to protect children from “all forms of sexual exploitation and sexual abuse.”⁷³

The CRC supports the replacement of the notion of parental rights over children with parental responsibilities, “ensuring that the child’s best interests are the parents’ basic” concern.⁷⁴ The principle of the “best interests of the child”, forms the basis for the protection and promotion of children’s rights, and must be considered in all matters affecting children.⁷⁵ Child marriage violates the rights of the girl child. Zimbabwe has outlawed” child marriages however socio-economic factors such as poverty, inadequate educational systems as well as religious and cultural practices impacts on the protection and enforcement of the rights of the child. Thus the best interest of the child must be considered when dealing with issues of child marriages.

2.4 International Call on Child Marriage

The United Nations General Assembly in November 2014 adopted Resolution 69/XX on Child, Early and Forced Marriage (CEFM), which is a strong firm commitment by the international community to address child marriages worldwide.⁷⁶ The resolution recognised that CEFM is a harmful cultural practice that violates or impairs human rights and is linked to and perpetuates other harmful cultural practices and human rights violations, further these violations have a disproportionate negative impact on women and girls, and underscores the rights and fundamental freedoms of women and girls and prevents and eliminates the practice of child, early and forced marriage.⁷⁷ It is further noted that poverty and insecurity are the root causes of CEFM, hence, poverty must be eradicated and remains a high priority for the international community.⁷⁸ The resolution *inter alia* urged states to:

⁷²UNCRC Articles 4, 12, 13 and 19.

⁷³UNCRC Article 4.

⁷⁴UNCRC Article 18.

⁷⁵UNCRC Article 3.

⁷⁶UN General Assembly, *Child, early and forced marriage: resolution / adopted by the General Assembly*, 22 January 2015, A/RES/69/156.

⁷⁷ Ibid PP7.

⁷⁸ Office of the United Nations High Commissioner for Human Rights. *Child and forced marriage, including in humanitarian settings*

- Enact, enforce and uphold laws and policies to end the practice of CEFM.⁷⁹
- Promote and protect the rights of women and girls including their right to decide freely on matters that affect them.⁸⁰
- Collaborate with stakeholders and other civil societies to develop and implement holistic, comprehensive and coordinated responses and strategies to eliminate CEFM and support married girls.⁸¹

On 19 December 2016, the United Nations General Assembly adopted the 2nd Resolution 71/175 on Child Early and Forced Marriage. The new resolution differs from the old one in that it:

- Expands existing language around CEFM such as recognising gender inequality as a root cause of CEFM.
- Outlines the specific roles and responsibilities of member states in ending CEFM by urging governments to include an update on the progress towards ending CEFM in their national reports to international treaty bodies.
- Confirms previous commitments on CEFM by all member states.⁸²

The adoption of the 2nd Resolution on CEFM indicates the international community's willingness to curb child marriages. The resolution, together with other instruments, like the United Nations Convention on the Rights of the Child, and the Convention on the Elimination of all forms of discrimination against women, are used as tools for fighting child marriages in Africa. The resolution calls upon all states, including Zimbabwe, to support girls and women who are at risk or have been subjected to child, early and forced marriage.⁸³

⁷⁹Ibid OP1.

⁸⁰Ibid PP12.

⁸¹Ibid OP2.

⁸²UN General Assembly, *Child, early and forced marriage : resolution / adopted by the General Assembly, 19 December 2016, A/RES/71/175*, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/175&referer=http://www.un.org/en/ga/71/resolutions.shtml&Lang=E (Accessed 19 April 2017).

⁸³Ibid.

2.5 Regional instruments

2.5.1 African (Banjul) Charter on Human and Peoples' Rights, 1981 (Banjul Charter)

The Banjul Charter is the foundation on which the African human rights system is founded.⁸⁴ The Banjul Charter is the most important human rights instrument, which aims at protecting and promoting human rights and basic freedoms in Africa. The Banjul Charter does not expressly address child marriage and fails to provide adequate protection to children, but it compels all state members to ensure the elimination of discrimination against women and also ensure the protection of the rights of women and children, as stipulated in international declarations and conventions.⁸⁵ Girls are one of the most vulnerable groups in society, hence, the provision provides protection for girls against cultural and traditional practices like child marriage, which unfairly discriminates against girls.

2.5.2 African Charter on the Rights and Welfare of the Child of 1990 (ACRWC)

Soon after the adoption of the CRC, Africa became the first continent to adopt a treaty, specifically addressing children's issues within the continent.⁸⁶ Zimbabwe ratified the ACRWC on 1 January 1995 without any reservations. The ACRWC explicitly forbids child marriages by stating that child marriages and the betrothal of girls and boys shall be prohibited and effective action, including legislation shall be taken to specify the minimum age of marriage to be 18 years and makes registration of all marriages in an official registry compulsory.⁸⁷ This is the most powerful and explicit provision concerning child marriages.

The ACRWC protects girls from harmful social and cultural practices, which include child marriage. The drafters of the ACRWC were very aware, that there are some religious and cultural activities like child marriages, which infringe upon the rights of children, hence, the

⁸⁴Mutua, M., 2000. *The African human rights system: A critical evaluation* (No. HDOCPA-2000-15). Human Development Report Office (HDRO), United Nations Development Programme (UNDP), p.1.

⁸⁵ ACHPR Article 18 (3).

⁸⁶African Committee of the Experts on the Rights and Welfare of the Child Concept Note of the 25th Day of the African Child (DAC) 2015 Ending Child Marriage Now <http://www.repssi.org/download/DAC%20CONCEPT%20NOTE%20CHILD%20MARRIAGE.pdf> (Accessed 03-03-17).

⁸⁷ACRWC Article 21(2).

ACRWC states that such laws or customs must be discouraged.⁸⁸ In addition, it advocates education for all, by instructing states to take suitable measures to ensure that pregnant girls continue with their education.⁸⁹

The ACRWC establishes the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), which monitors and reports on the realisation of child rights in Africa.⁹⁰ The ACERWC adopted the ‘Addis Ababa Declaration on Ending Child Marriage in Africa during its 23rd session held in April 2014.’⁹¹ The declaration requires all members of the African Union (AU) to harmonise their laws and policies with universal rights and standards on child marriage, and sets the minimum age for marriage at 18 years.⁹²

2.5.3 The Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples’ Rights 2003 (The Maputo Protocol)

The Maputo Protocol was adopted in Maputo, the capital city of Mozambique, on the 11th of July 2003. Zimbabwe ratified it on 15 April 2008. Ayeni notes that one of the reasons for its adoption was to improve the implementation of the African Charter.⁹³ The protocol addresses problems faced by children in Africa, such as child marriages and harmful traditional practices. According to the Maputo Protocol, for a marriage to be legally binding, there must be free and full consent of both parties.⁹⁴ Furthermore, it strictly stipulates that the minimum age of marriage for women must be at least 18 years of age, and member states are obliged to enact national legislation with such provisions.⁹⁵ Article 2 calls upon states to eliminate all forms of harmful traditional practices.

⁸⁸ACRWC Article 1.

⁸⁹ Human Rights Watch 2018. Leave No Girl Behind in Africa: Discrimination in Education against Pregnant Girls and Adolescent Mothers

⁹⁰ACRWC Articles 32-42”

⁹¹ African Committee of Experts on the Rights and Welfare of the Child (ACERWC), ‘The Addis Ababa Declaration on Ending Child Marriage in Africa (23rd session of the African Committee of Experts on the Rights and Welfare of the Child, Addis Ababa, Ethiopia 11 April 2014) <https://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/ACERWC-Declaration-on-EndingChild-Marriage-in-Africa.pdf> (Accessed 10-02-17).

⁹² Ibid.

⁹³Ayeni, V.O., 2016. The impact of the African Charter and the Maputo Protocol in selected African states. p.8.

⁹⁴United Nations Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples’ Rights Article 6 (a).

⁹⁵ Ibid Article 6(b).

2.5.4 The SADC Protocol on Gender and Development 2008 (SADC Gender Protocol)

The SADC Gender Protocol aims at achieving gender equality regarding the members of the SADC. Article 8 prohibits marriage of children below the age of 18, and it allows such marriages to take place in cases, where it is in the best interests of the child. The question arises as to when it is in the best interests of a child to get married. In an attempt to answer this, Manalula stresses that the provision may be inspired by the need to accommodate circumstances, in which marriage is the best option, for instance where a teenager falls pregnant.⁹⁶ States are called upon to adopt laws which eliminate all forms of discrimination,⁹⁷ protect girls from harmful cultural practices⁹⁸ and economic exploitation.⁹⁹

From the above analysis of the relevant conventions it is evident that child marriages are expressly prohibited despite this child marriages continue to exist due to socio-economic factors.

2.6 Analysis of regional and international instruments on child marriage

Nations pledged to treat their members with the highest level of decency. However, there is a deadlock between children's rights and culture. Academics concede that, the only way out of a deadlock between opposite and fixed positions about women's human rights and culture is to engage in an intercultural or cross-cultural dialogue.¹⁰⁰ In support of this Holmart states:

“Even if a State is willing to bow its head under international pressure or is voluntarily willing to accept international human rights standards, it may be very difficult for it to effectively implement these norms in the internal legal order as well as at the horizontal level (i.e. between private parties or citizens among themselves). This is particularly so when an international norm requires a change of well-established patterns of conduct that are based on tradition, religion, custom or culture of many of its inhabitants, as is the case with Article 5. In order to be able to implement this norm, it is necessary that the State is legally and culturally legitimised to enforce or even promote such change.”¹⁰¹

⁹⁶Munalula, M.M., 2011. SADC Protocol on Gender and Development: Road map to equality? *SADC Law Journal*, 1(1), p.194.

⁹⁷ SADC Protocol on Gender and Development 2008 Article 11(1) (a).

⁹⁸Ibid Article 11(1) (c).

⁹⁹Article 11(1) (d).

¹⁰⁰Holtmaat, H.M.T., 2015. CEDAW: A Holistic Approach to Women's Equality and Freedom.

¹⁰¹Ibid page 119.

It can be asserted that although States have laws and policies on the prohibition of child marriage, many face resistances particularly due to various reasons such as religion and culture. Numerous States including Zimbabwe have enacted laws, which prohibits child marriages and outlaw harmful cultural practices, infringing upon the rights of the girl child. Chirawu provides that Zimbabwe enacted the Customary Marriages Act and the Domestic Violence Act [Chapter 5:16], in an attempt to prohibit child marriage.¹⁰²

One of the mandates of the ACRWC is to ensure that all members' states submit reports on child rights in their states. Zimbabwe, in its first initial report, reported the establishment of the Zimbabwe Human Rights Commission (ZHRC) in terms of section 242 of the new Constitution, to ensure the protection and promotion of children's rights in the country.¹⁰³ Zimbabwe further undertook to establish children's rights mechanisms in its effort to protect and promote children's rights.

Zimbabwe has made efforts to introduce laws on the prohibition of child marriage. Section 81(2) of the Constitution of Zimbabwe Amendment No. 20 Act 2013 states that a child's best interests are paramount in every matter concerning the child and Section 81(e) protects every child from economic and sexual exploitation and any form of abuse. However, the implementation of these laws is a challenge. One of the major problems, which hinder the implementation of laws and policies in Zimbabwe is the economic status of the country¹⁰⁴. The Zimbabwean Initial ACRWC report indicates that, the Government had experienced some financial constraints that have compromised the capacity of programmes and institutions aimed at protecting the best interests of the child.¹⁰⁵ Another challenge facing the country is the conflict between cultural beliefs and the law. Most citizens in the apostolic sect endorse early child marriages. They view the practice as a way of upholding their religion, hence, it becomes a challenge for government to eradicate such beliefs. Thus it has to be noted that the observance and upholding of the girl child's rights cannot be achieved merely by ratification

¹⁰²Chirawu-Mugomba, S., 2016. A reflection on the Domestic Violence Act [Chapter 5: 16] and harmful cultural practices in Zimbabwe. *Zimbabwe Electronic Law Journal* 2016 p.5.

¹⁰³Zim Report p.11 Available at <https://www.cottmatrix.net/files/jet-engine-forms/2/2021/04/ACRWC-Zimbabwe-Initial-State-Party-Report-2013-ENG-1.pdf>

¹⁰⁴ Chibememe. G 2015. Review Of National Laws & Policies That Support Or Undermine Indigenous Peoples And Local Communities.

¹⁰⁵Zim Report p.24. <https://www.cottmatrix.net/files/jet-engine-forms/2/2021/04/ACRWC-Zimbabwe-Initial-State-Party-Report-2013-ENG-1.pdf>

of the international human rights conventions without proper domestication and implementation procedures. Scholars and human rights activists attribute this to the lack of representation in key government position by women and the social cultural system of the Zimbabwean society hinders government from fully furnishing women with their basic rights including the rights of the girl child.¹⁰⁶ The above has resulted in notable gaps in the implementation of women's rights. Zimbabwe has a distinctly dualistic legal system with the general law on one hand and customary law on the other. The government has shown a notable willingness to protect cultural practices and the application of customary law in which all these practices that perpetuate child marriages are abound¹⁰⁷.

27 Zimbabwe's response to the international and regional calls on child marriage

The Constitution is viewed as the supreme law of the Republic of Zimbabwe and "any law or policy practice, custom or conduct inconsistent with the same is invalid to the extent of the inconsistency".¹⁰⁸ Zimbabwe enacted section 78(1) of the Constitution which provides that, "Every person who has attained the age of eighteen years has the right to found a family". This provision was enacted in compliance with the obligations under Article 21(2) of the African Charter on the Rights and Welfare of the Child,¹⁰⁹ to enact by legislation 'eighteen years' as the minimum age for marriage for both sexes and to abolish child marriage. Section 78(2) further provides that, "No person may be compelled to enter into marriage against their will

The Constitutional Court of Zimbabwe has had opportunity to interpret section 78(1) of the Constitution in the case of *Mudzuri and Another*. The court noted that the section was enacted for the purposes of complying with the obligations of Zimbabwe under international laws in particular article 21(2) of the ACRWC to specify by legislation eighteen years as the minimum age for marriage and abolish child marriage. The court concluded that it would be absurd to

¹⁰⁶ Women's Rights Situation In Zimbabwe in the context Of the Reigning Environment (are we there yet) a paper by G Maziva and N. Ndlovu submitted to the citizens-manifesto.org 2019.

¹⁰⁷ Martin, P. 2011. An exploratory study on the interplay between African customary law and practices and children's protection rights in South Africa

¹⁰⁸ Section 2 of the Constitution of Zimbabwe 2013.

¹⁰⁹ African Charter on the Rights and Welfare of the Child 1990, Article 21(2) which provides that Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

interpret the section as not prohibiting child marriages because founding a family is based on marriage, which in turn is exclusively available to adults¹¹⁰. The absurdity, argued the court, would manifest itself in the contention that whilst persons under the age of eighteen would be able to marry they would not have the right to found a family. In other words the Constitution abolishes child marriage by implication rather than by expression.

Zimbabwe has made attempts to comply with the obligation imposed by Article 21 of the ACRWC to observe 18 as the minimum age to marry. However the Customary Marriages Act (Chapter 5:07) has no age limit for marriage and the Marriages Act (Chapter 5:07) allows in section 21, marriage of minors with the written consent of their legal guardians. This is problematic as to regulate the prohibition of child marriage a minimum age for marriage ought to be prescribed.

The Children's Act [Chapter 5:06] of 1971, defines a child as a person under the age of 16.¹¹¹ To comply with the provisions of the CRC, which was the first international instrument to define a child, as any human being below the age of 18, the Constitution of Zimbabwe section 81 now defines a child as any human being below the age of 18 years of age. It can be argued that while the Constitution of Zimbabwe does not expressly prohibit child marriages, this was an attempt to provide wider protection for the fundamental rights of the girl child against child marriage.

Zimbabwe has attempted to combat child marriages with the promulgation of the Domestic Violence Act [Chapter 5:16] 2007. The Domestic Violence Act specifically classifies forced marriages, child marriages, forced wife inheritance and pledging of girls for the appeasement of spirits, as acts of domestic violence. The promulgation of these Acts outlawing harmful cultural practices like child marriages, was in compliance with instruments, which calls upon states to abolish such practices and promote gender equality.

2.9 Strategic litigation in fighting child marriages in Zimbabwe

According to Geary 'strategic litigation' sometimes called 'impact litigation' involves selecting and bringing cases to court with a goal of creating broader changes in society. People who

¹¹⁰ Law Reform Series - Child Marriage and the SADC Model Law Part I 2016 <https://www.veritaszim.net/node/2119>

¹¹¹Section 2.

bring strategic litigation want to use the law to leave a lasting mark beyond just winning the matter at hand.¹¹² Strategic litigation was employed in *Mudzuru*¹¹³ where the Constitutional Court of Zimbabwe outlawed child marriages, which had become prevalent in Zimbabwe. In this case, strategic litigation was employed to challenge laws, which violated the rights of girls with regard to marriage. Such laws were abolished, forcing the government of Zimbabwe to alter its laws and policies to be in line with the international standards on the rights of the girl child.

In *Mudzuru*, two female applicants Loveness Mudzuru and Ruvimbo Tsopodzi who were once child wives, acting in the interests of the public, approached the Constitutional Court, alleging that the fundamental rights of the girl child were being infringed upon by the Marriages Act Chapter 5:11 of 2004 and the Customary Marriages Act [Chapter 5:07] of 1997. Loveness Mudzuru, who was married at the age of 16 years of age, averred that life was hard for her, having to raise a child when she was also a child.¹¹⁴ Ruvimbo Tsopodzi, who was married at the age of 15, alleged that she endured domestic violence and she could not continue with her studies, because her husband would not allow her.¹¹⁵ These are some of the effects of child marriage, which pushed the applicants to approach the court and seek justice for girls.

The applicants challenged the court to declare 18 years as the minimum age of marriage in Zimbabwe. They relied on section 78(1) of the Constitution, which asserts that “every person who has attained the age of 18 has the right to found a family”, read together with section 81 of the Constitution, which accords special protection to children under the age of 18, regardless of sex. The applicants contended that the Constitution defines a child as anyone below the age of 18 years of age, therefore, marriage with either party below the age of 18 is invalid. They further argued that section 22 of the Marriages Act [Chapter 5:11] of 2004, which allowed marriages of a male person above the age of 18 years and marriage of a female person above the age of 16 years, violates the Constitution in that girls and boys are treated differently.

¹¹² GEARY, P., 2009. Children’s Rights: A Guide to Strategic Litigation [11. 12. 2011]. *Online: www. crin.org/docs/Childrens_Rights_Guide_to_Strategic_Litigation.pdf*.

¹¹³ CCZ 12-15.

¹¹⁴Emma Batha, 24 March 2015, *Child brides take Zimbabwe govt to court over marriage laws* http://news.trust.org/item/20150324184754-rsz7n/?utm_medium=email&utm_campaign=Weekly+Digest+250315&utm_content=Weekly+Digest+250315+CID_4997166414bcb788f6f00433691445ad&utm_source=Campaign+Monitor&utm_term=Child+brides+take+Zimbabwe+govt+to+court+over+marriage+laws (Accessed 13-10-17).

¹¹⁵Ibid.

However, the application was opposed on the basis that section 78(1) of the Constitution provides for the right to found a family, which must not be treated the same with the right to marry, hence, the court should adopt a literal meaning of that phrase. On the other hand, the applicants argued that section 78(1) cannot be subjected to a strict, narrow and literal interpretation to determine its meaning. They claimed that the issues were being raised “in the public interest” in terms of section 85(1) (d) of the Constitution. The Court adopted a broad, generous and purposive interpretation of the text of the Constitution. Purposive interpretation entails that the language of the law should be interpreted in the way, which best serves to promote its purpose.¹¹⁶ The court held that where an application is brought in the interests of the public, the effective protection of the public interest must be shown to be the legitimate aim or objective sought to be accomplished by the litigation and the relief sought.¹¹⁷ The decision of the court on this point clearly shows the willingness of law enforcement officers to protect and promote the rights of the girl child.

The respondents raised a *point in limine* and argued that the applicants did not have *locus standi* to act in the interests of the public. The Court looked at the *applicants’ locus standi* to align the application in the interests of the public. It held that the concept of ‘public interest’ includes cases where the alleged infringement has the effect of prejudicially affecting or potentially affecting the community at large or a significant section or segment of the community, and cases of marginalised or underprivileged persons in society who, because of sufficient reasons such as poverty, disability, socially and economically disadvantaged positions, are unable to approach a court to vindicate their rights.¹¹⁸ The court came to the conclusion that the two young girls were acting in the interests of other girls, who may be subjected to early child marriage or who are victims of child marriage.

In determining the matter, the court ruled out the government’s submission that the phrase “to found a family” in section 78(1) of the Constitution meant anything different, than entering into a marriage. The court highlighted that if such an interpretation is accepted, it would mean that persons under the age of 18 can marry but not found a family and persons over that age may found a family but have no right to marry.¹¹⁹ According to the court, this was an absurd

¹¹⁶Barak, A., 2007. *Purposive interpretation in law*. Princeton University Press.

¹¹⁷*Mudzuru & Anor v Minister of Justice, Legal & Parliamentary Affairs N.O. & Ors* CCZ 12-15.

¹¹⁸*Ibid.*

¹¹⁹ *Ibid*

interpretation of the law as ‘entering into marriage’ is by definition one of the ways of founding a family.

The court declared that section 22(1) of the Marriages Act [*Chapter 5:11*] or any law, practice or custom authorising a person under eighteen years of age to marry or to be married is inconsistent with the provisions of section 78(1) of the Constitution and therefore, invalid to the extent of the inconsistency.¹²⁰ The law was struck down. However, the court stated that it would not be just and equitable to make the ruling retrospective, because of the immense disruption, which may be caused by a retrospective declaration of invalidity. The order was granted to be effective from the date of issue. The Court held that, “...with effect from 20 January 2016, no person, male or female, may enter any marriage, including an unregistered customary law union or any other union including one arising out of religion or religious rite, before attaining the age of eighteen (18) years.”¹²¹

In the same case, pregnancy was held not to be an excuse for child marriage. The court highlighted that the issue of teenage pregnancy is a societal problem, which needs cooperation amongst all stakeholders to solve. Marrying off a girl child because of pregnancy, was regarded as a form of abuse. The landmark judgment outlawing child marriages in Zimbabwe can be regarded as a judicial milestone.

2.10 Conclusion

For years the girl child has been abused in various ways. However, full implementation of these laws and policies on the ground does not occur overnight. Zimbabwe needs more time for the absolute abolition of child marriages in the country. The next chapter provides some of the recommendations, which can be adopted by Zimbabwe, in the fight against child marriage.

¹²⁰ Ibid

¹²¹ Ibid.

Chapter Three

Conceptualisation of child marriage in Zimbabwe

3.1 Introduction

Marriage is considered an important and sacred institution for both the individual and society, which must be entered freely and voluntarily.¹²² It ushers an individual into adulthood by adding more responsibilities.¹²³ Marriage unifies different individuals, as well as families, within society. However, it becomes problematic when a child at an early age, is forced into a marriage unwillingly, amounting to a child marriage.

3.2 Definition of child marriage

The term “child marriage” may be defined by considering the meaning of the words ‘child’ and ‘marriage’ separately. The Convention on the Rights of the Child of 1989 (CRC) defines a child as any human being who is below the age of eighteen years.¹²⁴ In the African context, anyone who has reached puberty and can do physical chores ceases to be a child, and thus, becomes an adult capable of starting a family, despite the fact that the African Charter on the Rights and Welfare of the Child Article 2 defines a child as every human being below the age of 18 years.”¹²⁵ Marriage may be referred to as a legally or formally recognised union of a male and a female as partners in a personal sexual relationship.¹²⁶ The terms “child marriage”, “early marriage” and “early child marriage” are mostly used interchangeably.¹²⁷ Some scholars argue that the term “early marriage” is vague and does not necessarily refer to children.¹²⁸ The reason behind this argument is that what is considered early for one person might not be for another.

¹²²Kyari, G.V. and Ayodele, J., 2014. The socio-economic effect of early marriage in North Western Nigeria. *Mediterranean Journal of Social Sciences*, 5(14), p.582.

¹²³Palamuleni, M.E., 2011. Socioeconomic determinants of age at marriage in Malawi. *International Journal of Sociology and Anthropology*, 3(7), p.224.

¹²⁴UNCRC Article 1.

¹²⁵Panos Institute Southern Africa 2015 Media Brief on ending child marriage in Zimbabwe http://www.africanchildinfo.net/index2.php?option=com_sobi2&sobi2Task=dd_download&fid=1639&format=html&Itemid (Accessed 11-03-17).

¹²⁶Jaya Sagade ‘Child Marriage in India, Socio-legal and Human Rights Dimensions’ (Oxford University Press 2005), p.xxvi.

¹²⁷Davis, A., Postles, C. and Rosa, G., 2013. A girl’s right to say no to marriage: Working to end child marriage and keep girls in school.

¹²⁸Nour, N.M., 2006. Health Consequences of Child Marriage in Africa. *Emerging Infectious Disease journal-CDC*, 12(11), p.1.

Girls Not Brides (GNB), a non-profit organisation, which focuses on global elimination of child marriages, defines a child marriage as a formal or an informal union in which at least one of the parties is a child.¹²⁹ Child marriages can thus, occur when a girl below the age of 18 marries an older male person, or when both parties (male and female) are both below the age of 18 with the consent of the parents or guardians.¹³⁰ The United Nations Fund for Population Activities (UNFPA) extends the definition of child marriage or early marriage to any marriage entered into before she is physically, physiologically and psychologically ready to bear the responsibilities of marriage and childbearing.¹³¹

Gimba asserts that child marriages involves either one or both spouses being children and may take place with or without formal registration, and under civil, religious or customary laws.¹³² However, human rights activists and some academic scholars argue that a universal age of a marriage is not appropriate because societies have a different understanding of what it means to be a child.¹³³

Forced marriage can also fall within the concept of child marriages. Forced marriage is where the consent of the child is not considered before the consummation of the union.¹³⁴ From the above definitions one can denote that a child marriage is a marriage where one or both parties are below the age of 18 years.

3.3 Prevalence of child marriages in Zimbabwe

Child marriages is not limited to a specific religion, region or race, as it is global and its causes are countless and complex.¹³⁵ There is no accurate data on the current extent of child marriages in the world. This may be accredited to the fact that child marriages is dominant in countries without the necessary resources to collect reliable data and the unwillingness of various

¹²⁹G.N., 2015. The Role of Parliamentarians in Ending Child Marriage, p.5.

¹³⁰UNICEF 2005: Early marriage: A Harmful traditional practice. UNICEF New York USA www.unicef.org/childmarriage (Accessed 03-03-17).

¹³¹Marriage, E.C., 2006. A Guide for Global Policy Action IPPF. *Young Positives et GCWA*.

¹³²Kyari, G.V. and Ayodele, J., 2014. The socio-economic effect of early marriage in North Western Nigeria. *Mediterranean Journal of Social Sciences*, 5(14), p.584.

¹³³ Ibid.

¹³⁴Speech by Babatunde Ahonsi, UNFPA Representative, Ghana at The Capacity Building Session for African Parliamentarians On Addressing Child, Early And Forced Marriages - Hosted By Parliament of Ghana on Wednesday, 3rd March 2016 At Parliament of Ghana available at <http://www.pgaction.org/pdf/activity/2016-Statement-by-Bawa-Amadu-unfpa.pdf> (Accessed 03-03-17).

¹³⁵Care Report: Vows of Poverty Child Marriage Report <http://insights.careinternational.org.uk/publications/vows-of-poverty-26-countries-where-child-marriage-eclipses-girls-education> (Accessed 09-03-17). Spacing

parties, including governments, to admit that the problem exists. However, Girls not Brides estimates that a total number of 14 million girls are married before the age of 18 every year.¹³⁶ Research undertaken by the United Nations Populations Fund further indicate that three in ten girls marry before the age of 18 in Zimbabwe, as a means of re-establishing or preserving family honour or debt settlements, and to obtain financial favours.¹³⁷

According to the Zimbabwe National Statistics Agency (ZIMSTAT), between 2009 and 2014, there was an increase of child marriages from 21 per cent to 25 per cent.¹³⁸ In the same year Zimbabwe was among one of the top countries with the uppermost number of child marriages in the world.¹³⁹ Statistics show that in 2015, 31 per cent of children mostly girls in Zimbabwe, married before the age of 18.¹⁴⁰

A 2016 United Nations Children's Fund (UNICEF) report provided statistics showing that child marriage is widespread in Zimbabwe, estimated at 34 per cent.¹⁴¹ Research undertaken by Plan International, a development and humanitarian organisation that advances children's rights and equality for girls, indicates that the child marriage rate in Zimbabwe differs from one province to another.¹⁴² In 2016 the prevalence of child marriage was high in Mashonaland Central at 50 per cent, followed by Mashonaland West obtaining a 42 per cent rate of child marriage.¹⁴³ Masvingo province was at 39 per cent; Mashonaland East province at 36 per cent; Midlands province at 31 per cent; Manicaland province at 30 per cent; Matabeleland North province at 27 per cent; Harare at 19 per cent: and Bulawayo had the lowest rate at 10 per cent.¹⁴⁴ These statistics indicate that child marriage continues to be predominantly high in the

¹³⁶Girls not Brides, G., 2014., Theory of change on Child Marriage, Girls Not Brides, London UK. p.4.

¹³⁷Child marriage | UNFPA - United Nations Population Fund <http://www.unfpa.org/child-marriage> (Accessed 09-03-17).

¹³⁸UNICEF Zimbabwe. 2016. Extended Analysis of Multiple Indicator Cluster Survey (MICS) 2014: Child Protection, Child Marriage and Attitudes towards Violence http://www.zimstat.co.zw/sites/default/files/img/publications/Health/Child_Protection.pdf (Accessed 03-03-17).

¹³⁹Multiple Indicator Cluster Survey, MICS (Key Findings Report), 2014, UNFPA/ZimStat, https://www.unicef.org/zimbabwe/MICS_Key_Findings_Report_2014_Zimbabwe.pdf (Accessed 03-03-17).

¹⁴⁰United Nations Children's Fund (UNICEF) State of the World's Children Report (2015).

¹⁴¹United Nations Children's Fund (UNICEF) "State of the World's Children" Report (2016).

¹⁴²Plan 18+ Programme On Ending Child Marriage In Southern Africa: Ending Child Marriage In Zimbabwe: Gaps And Opportunities In Legal And Regulatory Frameworks Policy Brief http://www.girlsnotbrides.org/wpcontent/uploads/2016/11/PLAN_18_policy_brief_zimbabwe_final.pdf (Accessed 04-03-17).

¹⁴³ Plan 18+ Programme On Ending Child Marriage In Southern Africa: Ending Child Marriage In Zimbabwe: Gaps And Opportunities In Legal And Regulatory Frameworks Policy Brief http://www.girlsnotbrides.org/wpcontent/uploads/2016/11/PLAN_18_policy_brief_zimbabwe_final.pdf (Accessed 04-03-17).

¹⁴⁴ Ibid.

poor rural areas of Zimbabwe, whereas its prevalence is low in urban areas. Despite the outlawing of child marriages the rate has not decreased.

3.4 Causes of child marriage in Zimbabwe

3.4.1 Poverty and economic insecurity

Poverty is the primary factor, which triggers child marriages in Africa. Scholars, activists and various organisations have often considered family poverty as the single most important cause of child marriages in Africa.¹⁴⁵ Poverty is one of the most urgent and profound problems facing Zimbabwe and makes a girl more vulnerable to child marriage.¹⁴⁶ Zimbabwe is currently facing serious droughts and poverty caused by the serious economic breakdown, due to the land reform programme, which was introduced in 2000.¹⁴⁷

Girls are considered as sources of income rather than family members. Lauro asserts that where poverty is acute, giving a daughter in marriage allows parents to reduce family expenses by ensuring they have one less person to feed, clothes and educate¹⁴⁸. In communities where a dowry or bride price' is paid, it is often welcome income for poor families.¹⁴⁹ This supports the notion that due to poverty, girls are viewed as economic burdens, hence, parents marry off their young girls early to reduce their expenses.

Child marriage is a strategy for economic survival for families with low income, as they marry off young girls to lessen their economic burdens. The economic status of a family determines the age of marriage. It has been observed that where poverty is severe, parents may feel that giving a daughter in marriage will lessen family expenses or even provisionally increase their income where a bride price is paid.¹⁵⁰ Most parts of Zimbabwe are hard hit by poverty, which is more prevalent in communal farming areas, rural areas, low rainfall areas and low-density

¹⁴⁵Girls not Brides: About Child marriage <http://www.girlsnotbrides.org/themes/poverty/> (Accessed 10-02-17).

¹⁴⁶Mawere, M., 2013. Coping with poverty in rural communities of third world Africa: The case of Mukonoweshuro cooperative gardening in Gutu, Zimbabwe. *The International Journal of Humanities & Social Studies* (1), 2, p.7.

¹⁴⁷Chitsike, F., 2003, December. A critical analysis of the land reform programme in Zimbabwe. In *2nd FIG Regional Conference* (p.9).

¹⁴⁸ The Economics of Child Marriage. 2018. <https://econreview.berkeley.edu/the-economics-of-child-marriage/>

¹⁴⁹Lauro, Giovanna: Margaret E. Greene. 2013 Child Marriage: A Universal Issue or Greene, M.E., 2014. Ending Child Marriage in a Generation. *What Research is Needed*.

¹⁵⁰Girls Not Brides. Ending Child Marriage in Africa <http://www.girlsnotbrides.org/wpcontent/uploads/2015/02/Child-marriage-in-Africa-A-brief-by-Girls-Not-Brides.pdf> (Accessed 05-09-16).

areas. Droughts have made it worse, as communities face food shortages and poor living standards, thereby facilitating problems like child marriages.

United Nations Population Fund in its report on child marriage, asserts that in African culture girls are regarded as an economic burden or a commodity, or a means of settling financial debt or disputes, or securing social and economic alliances.¹⁵¹ Girls seek economic refuge by eloping with their potential husbands.¹⁵² Therefore, young girls get married because of coercion by desperate family members in a bid to escape poverty.

3.4.2 Religion or tradition

Every society has its own basic customs and principles, which guide individuals in their day-to-day lives. Child marriage in Africa is believed to be rooted in religious and cultural traditions.¹⁵³ Just like many other African countries, cultural practices are often regarded as driving forces behind child marriages in Zimbabwe.¹⁵⁴ Child marriage is a harmful traditional practice, which happens simply because it has been practiced for generations.¹⁵⁵ Early marriages are believed to preserve the value of virginity, fears regarding pre-marital sexual activity and reduce promiscuity of the girl among others.¹⁵⁶

Girls are forced into marriage due to religious and cultural practices. Some church elders and traditional leaders assume that they have a religious and traditional obligation, from the spirit above, to marry young girls in church.¹⁵⁷ The practice is common in the apostolic sector, where girls below the age of 18 are forced into marriages, mostly polygamous marriages.¹⁵⁸ Furthermore, the apostolic sector and other religions in Zimbabwe believe that girls are not

¹⁵¹UNFPA inputs to OHCHR's report pursuant to Human Rights Council resolution A/HRC/RES/24/23 entitled, "Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps." p.1. www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/UNFPA.docx (Accessed 15-03-17).

¹⁵²Frank Jabson on January 30, 2015. Young girls in Zimbabwe opt for marriage to escape poverty. <http://www.waccglobal.org/articles/young-girls-in-zimbabwe-opt-for-marriage-to-escape-poverty> (Accessed 10-10-16).

¹⁵³Rodgers, B., 2012. Child marriage in Ethiopia and its associated human rights violations. *UW Bothell Policy Journal*. p.5.

¹⁵⁴Zimbabwe Human Rights NGO Forum Human Rights Bulletin Number 98 Aug 2014: Child marriages. <http://www.hrforumzim.org/wp-content/uploads/2014/09/Bulletin-98-Child-marriages.pdf>

¹⁵⁵G.N., 2015. The Role of Parliamentarians in Ending Child Marriage, p.7.

¹⁵⁶Kyari, G.V. and Ayodele, J., 2014. The socio-economic effect of early marriage in North Western Nigeria. *Mediterranean Journal of Social Sciences*, 5(14), p.582.

¹⁵⁷Sibanda, D., 2011. Married too Soon: Child Marriages in Zimbabwe. *The Research and Advocacy Unit*, p.3.

¹⁵⁸Zimbabwe Human Rights NGO Forum Human Rights Bulletin Number 98 Aug 2014: Child marriages. <http://www.hrforumzim.org/wp-content/uploads/2014/09/Bulletin-98-Child-marriages.pdf> (Accessed 11-03-17).

supposed to go to school.¹⁵⁹ Girls are taught basic house roles performed by a wife, equipping them with all the skills expected from a housewife.

In some traditions, it is believed that the role of the spirit medium is to instruct who is going to marry whom, hence, this results in young girls being forced into marriage. Failure to comply with the instructions from the spirit mediums means straying from tradition and can mean exclusion from the community.¹⁶⁰

Preservation of the family's name is very important in the African culture. It has become normal for children to enter into a marriage at a young age, and the act is justified as a tradition or customary practice essential to preserving a family's honour and a girl's virginity.¹⁶¹ Traditional norms and cultural beliefs are the primary causes of child marriages in Zimbabwe despite being outlawed. Below is a discussion of some of these practice.

a. Mombe yechimanda

In the Zimbabwean culture, it is traditionally accepted that if a man has sexual intercourse with a girl or impregnates her, he must marry her regardless of their age or marital status.¹⁶² Virginity is valued mostly when it comes to marriages in Zimbabwe. Girls are expected to keep their virginity and upon marriage the groom is expected to give his in-laws a cow appreciating the girl's virginity known as '*mombe yechimanda*'.¹⁶³ The cow is regarded as a token of appreciation for ensuring that the girl preserved her virginity.¹⁶⁴ Young girls are likely to be sexually inactive and are expected to be virgins upon marriage. This raises the family status, as well as the bride price to be paid by the husband.¹⁶⁵ Girls who engage in pre-marital sexual

¹⁵⁹Makhubele, J.C., Chimbera, A.P., Mutema, E.T. and Mabvurira, V., 2016. Religious beliefs and practices contributing towards child abuse and neglect: The case of Johanne Masowe Yechishanu Apostolic sect, Harare, Zimbabwe. *Child Abuse Research in South Africa*, 17(2), p.38.

¹⁶⁰Zimbabwe Human Rights NGO Forum Human Rights Bulletin Number 98 Aug 2014: Child marriages. <http://www.hrforumzim.org/wp-content/uploads/2014/09/Bulletin-98-Child-marriages.pdf> (Accessed 11-03-17).

¹⁶¹Giving what we can Child Marriage: Causes, Effects and interventions 2014 <https://www.givingwhatwecan.org/sites/givingwhatwecan.org/files/attachments/childmarriage-causeseffectsandinterventions.pdf> (Accessed 15-12-16).

¹⁶²Dodo, O., 2014. Societal conflicts: Marriage as a possible conflict resolution mechanism in the Zezuru culture of Chikomba district. *Journal of Social Science for Policy Implications*, 2(1), p152.

¹⁶³Zimbabwe Human Rights NGO Forum Human Rights Bulletin Number 98 Aug 2014: Child marriages. <http://www.hrforumzim.org/wp-content/uploads/2014/09/Bulletin-98-Child-marriages.pdf> (Accessed 11-03-17).

¹⁶⁴Kambarami, M., 2006. Femininity, sexuality and culture: Patriarchy and female subordination in Zimbabwe. *South Africa: ARSRC*. https://resourcecentre.savethechildren.net/node/8608/pdf/femininity_masculinity_and_sexuality_in_zambia.pdf (Accessed 09-03-17).

¹⁶⁵ Ibid

activity and break their virginity may find their reputation compromised to such an extent that their chances of getting married become very slim and their families may be socially stigmatised.¹⁶⁶ Hence, to safeguard a girl's virginity for marriage, girls are forced to marry at an early age.

b. Kuzvarira – Levirate marriages

Girls living in the rural areas in Zimbabwe are particularly prone to early child marriages due to unfair and oppressive traditional practices. *Kuzvarira* (daughter pledging) is one of these practices, where a girl child can be married off before she is born.¹⁶⁷ Mawere asserts that the practice involves marrying a minor or unborn child without her consent to a rich man who already has another wife or wives in exchange for money, food and other material possessions which guarantees the girl's family will not suffer acute economic deprivation.¹⁶⁸ The practice is most common among the *Ndau* tribe found in the South- Eastern region of Zimbabwe.¹⁶⁹ It is believed that *kuzvarira* was widely practiced among the Shona speaking people before the colonial era.¹⁷⁰ However, due to starvation and continuous droughts, poor families out of desperation have revived this old tradition of *kuzvarira*, in order to survive the economic and food crisis.¹⁷¹ This increases the number of forced and illegal marriages of poor young girls.

c. Kuripa ngozi (appeasement of avenging spirits)

Another traditional practice in Zimbabwe, which facilitates child marriages is *kuripa ngozi*, whereby young virgin girls are married in order to appease the spirit of a dead person.¹⁷² This practice is often termed "homicide bride" by some academics.¹⁷³ The term *ngozi* can be defined as avenging, an angry spirit of the deceased that returns to haunt its murderers and their

¹⁶⁶Birech J. (2013) Child Marriage: A Cultural Health Phenomenon, *International Journal of Humanities and Social Science*, 3 (17), p.98.

¹⁶⁷ Mawere, M. and Rambe, P., 2012. Violation and abuse of women's human rights in the customary practice of 'kuzvarira' among the Ndau people of Mozambique. *International Journal of Politics and Good Governance*, 3(3), p.2.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid 4.

¹⁷⁰D Jeater 'Marriage, perversion and power: the construction of moral realm in Southern Rhodesia 1894 – 1930 (1993), p.21.

¹⁷¹Hanzi, R., 2006. Sexual abuse and exploitation of the girl child through cultural practices in Zimbabwe: A human rights perspective. (Doctoral dissertation, Faculty of Law, Makerere University-Kampala, Uganda), p.33.

¹⁷²Mapuranga, T.P., 2010. A phenomenological investigation into the effects of traditional beliefs and practices on women and HIV & AIDS, with special reference to Chipinge district, Zimbabwe. (Doctoral dissertation, University of Zimbabwe), p.72.

¹⁷³Rwezaura, B., 1998. Competing 'images' of childhood in the social and legal systems of contemporary sub-Saharan africa. *International Journal of Law, Policy and the Family*, 12(3), p.259.

families into admission of guilt and paying compensation.¹⁷⁴ The avenging spirit is one of the most dangerous spirits in the Shona society, which may cause unnecessary illness, death or bring misfortune to the family.¹⁷⁵ The traditional Shona people hold on to the belief that, “*mushonga wengozi kuripa*” meaning the cure for avenging a spirit is to pay.¹⁷⁶ The payment is usually in the form of a large herd of cattle and a young virgin girl or money.¹⁷⁷ Young virgin girls (as young as ten years old or newly born) are handed over for marriage as payment for the murder committed by a family member in the belief that the girl will bear a child to replace the victim. The traditional custom of *kuripa ngozi* involving forced or coerced marriage of girls is still rampant in some areas of Zimbabwe.¹⁷⁸

d. Chimutsa mapfihwa

Chimutsa mapfihwa is a custom whereby a young girl substitutes a dead sister’s or aunt’s marital position by marrying the bereaved husband.¹⁷⁹ The practice involves the young girl protecting the legacy of the family upon the death of her sister or aunt, by inheriting the children and the husband.¹⁸⁰ The practice still occurs in some parts of Zimbabwe, but to a lesser extent, when compared to the past.¹⁸¹ Elders of the family instruct the girl to take over as a wife to the bereaved husband. Young girls cannot refuse, because it is part of their culture, hence, they must comply.¹⁸²

Chimutsa mapfihwa may also refer to situations whereby families, “offer young girls as second wives to help bear children for the husbands of older relatives who have failed to bear

¹⁷⁴Benyera, E., 2015. Presenting ngozi as an important consideration in pursuing transitional justice for victims: the case of Moses Chokuda. *Gender and Behaviour*, 13(2), p.6761.

¹⁷⁵Shoko, T. and Chiwara, A., 2015. Mukondombera: HIV and AIDS and Shona Traditional Religion in Zimbabwe. *Journal for the Study of the Religions of Africa and its Diaspora*, 1, p.7.

¹⁷⁶Moyo, H., 2015. Pastoral care in the healing of moral injury: A case of the Zimbabwe National Liberation War Veterans. *Hervormde Teologiese Studies*, 71(2), p.9.

¹⁷⁷Shoko, T. and Chiwara, A., 2015. Mukondombera: HIV and AIDS and Shona Traditional Religion in Zimbabwe. *Journal for the Study of the Religions of Africa and its Diaspora*, 1, p.7.

¹⁷⁸Benyera, E., 2015. Presenting ngozi as an important consideration in pursuing transitional justice for victims: the case of Moses Chokuda. *Gender and Behaviour*, 13(2), p.6770.

¹⁷⁹Muridzo, N.G. and Malianga, E., 2015. Child sexual abuse in Zimbabwe: prevention strategies for social workers. *African Journal of Social Work*, 5(2), p.49.

¹⁸⁰Chidhakwa, K., 2015. Tichaona Talent Chidakwa 2015. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 20(1), p.48.

¹⁸¹Chinyoka, K. and Naidu, N., 2013. The Impact of Poverty on Girl Learners’ Cognitive Capacity: A Case of Zimbabwe. *J Soc Sci*, 35(3), p.200.

¹⁸²Mapuranga, T.P., 2010. A phenomenological investigation into the effects of traditional beliefs and practices on women and HIV & aids, with special reference to Chipinge district, Zimbabwe (Doctoral dissertation, university of Zimbabwe), p.70.

children”.¹⁸³ Such practices undoubtedly increase the risk of young girl’s vulnerability to child marriages.

e. Chiramu or Sibale

Chiramu (in Shona) or *Sibale* (in Ndebele) is a practice whereby a man has sexual rights over his wife’s younger sister.¹⁸⁴ Hlupo and Tsikira defines *chiramu* or *sibale* as culturally sanctioned sexually suggestive play between brothers-in-law and sisters-in-law.¹⁸⁵ The purpose of this practice is to teach young girls how to take care of a husband as she will be doing it for the brother-in-law.¹⁸⁶ This is a detrimental practice which normally ends with the brother-in-law impregnating the wife’s young sister and ultimately marrying her despite her age.¹⁸⁷ Many girls have been abused as a result, despite the abuse most of these offences have gone unreported. Such practices have resulted in the increase of child marriage cases in Zimbabwe.

3.5 Inadequate legislative framework / legislative failures

Weak marital laws and their inadequate implementation encourages the occurrence of child marriages in Zimbabwe. Zimbabwe has failed to domesticate international laws on child marriages. Marriage laws in Zimbabwe are not clear on the minimum age for marriage and unfairly discriminate against girls. The Marriages Act [Chapter 5:11] of 2004, allow girls to marry at the age of 16, while the minimum marriage age for boys is 18.¹⁸⁸ The Marriages Act allows for exemptions like consent from parents, whose decisions and actions may be governed by the local customs and tradition.¹⁸⁹ The provisions in the said Acts that allowed child marriages have since been outlawed by the celebrated case of *Mudzuru (supra)*.

The Customary Marriages Act [Chapter 5:07] of 2001 does not specify a minimum age of marriage and has been abused to justify child marriages.¹⁹⁰ The absence of a specific Act of

¹⁸³Ending Child Marriage in Africa: A Brief by Girls not Brides <http://www.girlsnotbrides.org/wp-content/uploads/2015/02/Child-marriage-in-Africa-A-brief-by-Girls-Not-Brides.pdf> (Accessed 05-03-17).

¹⁸⁴Machingura, F., 2012. A look at the struggle of Zimbabwean married women regarding safe sex. *Africana*, 6(1), p.45.

¹⁸⁵Joseph, T., and Takesure, H., 2012. Still caught-up in the cultural abyss: The plight of the girl child. *Journal of Emerging Trends in Educational Research and Policy Studies*, 3(3), p.235.

¹⁸⁶herzimbabwe ‘Chiramu’: Cultural Practices that Compromise Women’s Rights <http://herzimbabwe.co.zw/2016/04/chiramu-cultural-practices-compromise-womens-rights/> Accessed 09-03-17).

¹⁸⁷Kanchense, J.H.M., 2007. Urologic and gynaecologic health problems among Zimbabwean women: What is the role of poverty? *Urologic Nursing*, 27(5), p.378.

¹⁸⁸Marriage Act Chapter 5:11 Section 22(1).

¹⁸⁹Ibid Section 20 and 21.

¹⁹⁰Customary Marriages Act Chapter 5:07.

Parliament on the minimum age for marriage makes it difficult for courts to handle child marriage cases. The enforcement of laws in Zimbabwe is difficult due to several reasons such as corruption, ignorance and other factors, which are addressed in more detail in Chapter 4. Additionally, there is currently no legislation that directly outlaws child marriages other than the provisions in the Constitution of Zimbabwe section 19.

It is commendable that the Constitutional Court has finally outlawed child marriage and struck down section 22(1) of the Marriage Act, which for years had allowed children under the age of 18 years to marry. The landmark ruling can be seen as a major victory in the fight against child brides and poverty and though there are still a few bumps that are ahead, legislation highlights the progress that is being made in the law of the country. This law adheres to the definition of the child highlighted in the Convention on the Rights of the Child and the Constitution of Zimbabwe.

3.6 Lack of access to education

Child marriage is also a consequence of a country's socio-economic situation. An unstable economy, such as that of Zimbabwe, often results in widespread unemployment of adults, forcing them to remove their children from school and entering into early marriages. There is a close link between education and marriage age. Girls in school are likely to resist early marriage than those out of school. Research indicates that the duration of schooling has a strong connection with the age of marriage.¹⁹¹ Thus, the less education a girl receives, the more likely she is to marry before she reaches 18 years of age.

In some cultures, and families, educating the girl child is not a priority and it is the lack of education, which often drives the girl child into early marriage.¹⁹² Poor parents often find schools inappropriate in meeting their needs. Sending a child to school can be a significant monetary burden to some families. Poor families are less likely to educate children, and if girls are not in school, they are more likely to get married early.¹⁹³ Due to the inability to pay school fees, uniforms, transport to and from school and other needs of a scholar, the girl child

¹⁹¹Sah, N., 2008. How useful are the demographic surveys in explaining the determinants of early marriage of girls in the Terai of Nepal? *Journal of population research*, 25(2), p.211.

¹⁹² Spouses.C. 2001. Early Marriages. <https://www.unicef-irc.org/publications/pdf/digest7e.pdf>

¹⁹³Plan International 2013 Child marriage in Bangladesh <https://plan-international.org/da/file/1014/download?token=ODEvOWm9> (Accessed 09-03-17).

inevitably stays out of school.¹⁹⁴ Parents will then allow the girls to marry early, as a way of deterring them from falling pregnant while staying with them.¹⁹⁵

In rural areas and newly created farm resettlements, affordable secondary schools are few and not within walking distance.¹⁹⁶ Many children find it very difficult to walk long distances to school. A strong appetite for school can be weakened by the lengthy walk to school.¹⁹⁷ Fatigue, which is caused by a long walk to school, leads to loss of concentration and application in class, resulting in poor performance.¹⁹⁸ This creates the impression that there are failures and they cannot continue with school, thereby exposing them to early marriage.

Furthermore, many girls marry early due to unplanned pregnancy, which is caused by a lack of education regarding family planning. Family planning in most parts of Zimbabwe is for adults only and teenagers are denied the right to such education.¹⁹⁹ At clinics, teenagers are denied access to contraceptives and sometimes they are teased by nurses to such an extent that they give up on using family planning methods and engage in high risk sexual activities, which result in unplanned pregnancies.²⁰⁰ Girls drop out of school due to the stigma and pressures of pregnancy attached to being a school going mother.²⁰¹ Therefore, one can denote that a lack of education disempowers children, reducing their employment opportunities and consequently, driving them into early marriages.

¹⁹⁴ Human Rights Watch. 2016. School fees. <https://www.hrw.org/reports/2005/education0905/4.htm>

¹⁹⁵Ending Child Marriage in Africa: A Brief by Girls not Brides <http://www.girlsnotbrides.org/wp-content/uploads/2015/02/Child-marriage-in-Africa-A-brief-by-Girls-Not-Brides.pdf> (Accessed 05-03-17).

¹⁹⁶Mutale Q., 2015. Challenges facing school children in Rural Zimbabwe: A case of Tyunga and Luunga Wards of Binga District. *Research on Humanities and Social Sciences*, 5(9), p.35.

¹⁹⁷Care Report: Vows of Poverty Child Marriage Report <http://insights.carenternational.org.uk/publications/vows-of-poverty-26-countries-where-child-marriage-eclipses-girls-education> (Accessed 09-03-17).

¹⁹⁸Panos Institute Southern Africa 2015 Media Brief on Ending Child Marriage in Zimbabwe http://www.africanchildinfo.net/index2.php?option=com_sobi2&sobi2Task=dd_download&fid=1639&format=html&Itemid (Accessed 11-03-17).

¹⁹⁹Margaret Chogugudza 11 July 2017 “Government should protect young people’s sexual and reproductive health rights” <http://chitownews.com/2017/07/11/government-should-protect-young-peoples-sexual-and-reproductive-health-rights/> (Accessed 12-08-17).

²⁰⁰Ibid.

²⁰¹Chigona, A. and Chetty, R., 2007. Girls’ education in South Africa: Special consideration to teen mothers as learners. *Journal of Education for International Development*, 3(1), p.9.

3.7 Gender inequality

Research indicates that gender inequalities across Africa also drives child marriages. Gender discrimination is a cause and a consequence of child marriages.²⁰² Child marriage is said to be extremely deep-rooted in the social norms of many African communities.²⁰³ In many communities where child marriage is prevalent, girls are not appreciated as much as boys. Girls are seen as a burden or liability to the family.²⁰⁴

Both Shona and Ndebele cultures are based on the patriarchal system, where males are superior to females. They have a strong preference towards the male child, so much so that women and girls are considered as useless objects within society. Views of women and girls are not taken into consideration during decision-making processes, because they believe that only men can decide on matters affecting the family and society at large. Therefore, girls cannot decide on whom to marry, and neither are they allowed to express their views regarding marriage. Their rights to consent to marriage and to enter voluntarily into marriage are infringed upon.²⁰⁵

Parents often decide to educate their sons over their daughters. This is based on the belief that upon marriage, daughters will not contribute to the family's income, rather they will contribute to their husband's family. One can therefore, denote that social and cultural beliefs continue to override laws and policies forbidding child marriages.

3.8 Political instability

The political situation of a country may also be said to be a direct cause of child marriages. Marrying off a girl child is regarded as a safety measure in areas where girls are at a high risk of physical or sexual assault.²⁰⁶ Care International, a major international humanitarian agency, helping girls to fulfil their potential, states that girls are among the first casualties of war, with kidnapping, rape and trafficking amongst frequent dangers.²⁰⁷ In Zimbabwe, some members

²⁰²Working, P., 2008. Child Marriage and the Law, p.33.

²⁰³Rodgers, B., 2012. Child marriage in Ethiopia and its associated human rights violations. *UW Bothell Policy Journal*, p.1.

²⁰⁴G.N., 2015. The Role of Parliamentarians in Ending Child Marriage, p.7.

²⁰⁵Manyonganise, M. 2015. Oppressive and liberative: A Zimbabwean woman's reflections on Ubuntu. <http://dx.doi.org/10.4102/VE.V36I2.1438>

²⁰⁶Ending Child Marriage in Africa: A Brief by Girls not Brides <http://www.girlsnotbrides.org/wp-content/uploads/2015/02/Child-marriage-in-Africa-A-brief-by-Girls-Not-Brides.pdf> (Accessed 05-03-17).

²⁰⁷Care International, VOP 2015 Report https://www.careinternational.org.uk/sites/default/files/VOP%202015%20Report_CARE.pdf (Accessed 09-03-17).

from opposition parties receive several death threats, and some are even brutally assaulted and kidnapped by members of the ruling party.²⁰⁸ These threats push parents into marrying off their young daughters to men, who they hope will protect their child from such pressures.

Child marriage in some areas is viewed as a defence mechanism against premarital sexual activity, unplanned pregnancies, wars, and sexually transmitted diseases, amongst others.²⁰⁹ Due to political threats, parents abandon their families in search of safe places to stay, thereby leaving children alone without adult supervision. Such situations place the girl child at a high risk of getting married or having an unplanned pregnancy, which escorts her to early marriage.

3.9 Conclusion

Various international and regional rights agreements protect the girl child from child marriages. They all call for a minimum age of marriage of eighteen years of age and for full and free consent by both parties to marry. Despite these laws and policies forbidding child marriage, this practice still prevails in Zimbabwe. The major drivers being poverty, which affect most parts of the country, religion, traditional practices and inadequate legislation to protect girls from harmful cultural practices like child marriage.

Chapter Four

The impact of child marriages on the girl child in Zimbabwe

²⁰⁸The Zimbabwean: Political Abductions in Zimbabwe: 2000 to 2016 <http://www.thezimbabwean.co/wp-content/uploads/2016/03/Abductions-in-Zimbabwe-2000-2016.pdf> (Accessed 09 – 03- 17).

²⁰⁹Nour, N.M., 2006. Health Consequences of Child Marriage in Africa-Volume 12, Number 11—November 2006-Emerging Infectious Disease journal-CDC, p.2.

4.1 Introduction

Child marriage is a human rights violation, which affects the girl child more than the boy child, and with more intensity.²¹⁰ It is regarded as a violent and abusive practice that stems from and sustains discrimination against women and girl children.²¹¹ Child marriage leaves the girl child vulnerable and susceptible to all forms of abuse. Research indicates that..girls..who are..married early are socially isolated from..their..friend..and peers.²¹² Young girls in marriages are burdened with roles and responsibilities of wives and mothers without adequate support, resources and capabilities.²¹³ In a nutshell, it can be said that child marriages in Zimbabwe fuels the violation of several human rights. This chapter unpacks the effects of child” marriages on the girl child in Zimbabwe.

4.2 Effects of child marriage on the rights of the girl child

4.2.1 Right of a child to consent and participate in decisions relating to marriage

The UDHR, together with other international legal instruments, states that a marriage must be entered into with free and full consent by both parties.²¹⁴ This right is afforded to all human beings including girls, child marriages however violates this right.

The Zimbabwean traditional marriage practices of *kuzvarira*, *chigadza mapfihwa* and *kuripa ngozi* infringes upon the right of the girl child to consent to marriage. These marriages can be considered as forced marriages, because girls are coerced into marriage against their will, without making any contribution and under duress.²¹⁵ Girls are told whom to marry, whether they love the person or not, and their consent is irrelevant. The practice does not allow the girl child to give her consent, instead they come with an instruction, which the girl child is expected to comply with.

²¹⁰UNICEF: Child marriage is a violation of human rights, but is all too common <https://data.unicef.org/topic/child-protection/child-marriage/#> (Accessed 20-10-16).

²¹¹Now, E., 2014. Protecting the Girl Child. Using the law to end child, early and forced marriage and related human rights violations. *New York: Equality Now.*, p.7.

²¹²Haberland, N., Chong, E.L. and Bracken, H.J., 2004. *A world apart: The disadvantage and social isolation of married adolescent girls: Excerpted from a paper.* Population Council., p.6.

²¹³International Planned Parenthood Federation, 2006. Ending child marriage: A guide for global policy action., p.5.

²¹⁴Article 16(2) of the UNCRC.

²¹⁵Sabbe, A., Temmerman, M., Brems, E. and Leye, E., 2014. Forced marriage: an analysis of legislation and political measures in Europe. *Crime, Law and Social Change*, 62(2), p.175.

The right of children to participate in decisions highlighted by Save the Children International on matters affecting them is also violated, because the child is not allowed to participate during the marriage negotiations, and her opinions and wishes are not taken into account.²¹⁶ The Children's Act [Chapter 5:06] section 3 awards the right for children to participate in matters concerning them. Moreover, child marriage violates the right of the child to freedom of expression.²¹⁷ The right to freedom of expression states that a girl child must be free to express her views concerning marriage, if she wishes to, and she must not be pressured, controlled or prejudiced in ways, which might stop her from freely conveying her views, or leave her feeling manipulated. This is also supported by the provisions made in Section 19 of the Constitution of Zimbabwe that highlights the abomination that is child marriage. The Zimbabwean Constitution explicitly grants the child the right to be heard.²¹⁸ This presumes that girls are competent enough to have their own views on marriage and must be given the platform to do so, therefore, such opinions must be considered. Thus, if a young girl does not want to get married, she must not be forced into marriage, and her wishes must be respected.

According to section 18 of the Marriages Act a child below the age of 16 may not consent to a marriage. The Zimbabwean legal system itself infringes upon the right of a child to consent to marriage as the Marriages Act allows for marriage of girls below the age of 16 to take place with the consent of parents or guardians.²¹⁹ It ignores the legal requirement that, for a marriage to take place, both parties must give full and free consent, and must be in accordance with the law.²²⁰ Furthermore, in the Johane Marange Apostolic sect it is normal for marriages to take place without the consent of the bride-to-be.²²¹ The father of the bride-to-be, together with other church members, negotiates the marriage and decides whether it must take place or not.²²² This implies that women and girls are not given room to make decisions on marriage. These practices and laws infringe upon the right of the girl child to give full and free consent to marriage, the right to participate in matters affecting her and her right to freedom of expression.

²¹⁶Article 12 of the UNCRC.

²¹⁷Article 13 of the UNCRC.

²¹⁸Section 81 (1) (b) of the Constitution of Zimbabwe Amendment No 20 of 2013.

²¹⁹Section 20 the Marriage Act Chapter 5:11.

²²⁰ Marriages Bill 7. 2019. <https://www.parlzim.gov.zw/component/k2/marriages-bill-h-b-7-2019> (Accessed on 19-03-17).

²²¹ Vengeyi, E., 2013. Gender-based Violence in the Johane Marange Apostolic Church in Zimbabwe: A Critique. *Justice Not Silence: Churches Facing Sexual and Gender-Based Violence*. Stellenbosch: EFSA. [Links], p.65.

²²² Ibid.

4.2.2 Right to education

Education plays a crucial role in the development of children. Children make future societies, and if their education is disturbed, the future of the country is ruined. The CRC, together with the Constitution of Zimbabwe, states that every child has the right to education.²²³ However, the right to education is subject to violation by cultural practices, such as child marriages. Child marriage often means an end of education for girls, as they cease to be school children and become wives and mothers. Married girls are denied access to education and they find themselves in the cycle of poverty. Child marriage prevents the girl child from obtaining an education and securing her future.

Child marriage is a significant challenge to the right to education in Zimbabwe, which sees many girls dropping out of school.²²⁴ Research indicates that in the Mutasa District of the Manicaland province of Zimbabwe, nearly fifty girls drop out of school yearly and marry very old men.²²⁵ Married girls, who are eager to return to school, may be both practically and legally barred from doing so.²²⁶ Young married mothers cannot continue with their education, because of their husbands' or relatives' condemnation concerning the combination of their education and household responsibilities after marriage.²²⁷ In most rural parts of Zimbabwe, once a girl is married, she is expected to stay home and bear children. This places young married girls in difficult positions, as they cannot go against their elders and traditions.

The educational policy in Zimbabwe allows school heads to expel or suspend learners from school for misconduct, and pregnancy is regarded as one of the grounds of misconduct.²²⁸ An exception can be made for girls who fell pregnant in school, but it differs from the

²²³Article 28 of the UNCRC and Section 27(1)(a) of the Constitution of Zimbabwe Amendment No. 20 Act of 2013.

²²⁴Mutale Q., 2015. Challenges facing school children in Rural Zimbabwe: A case of tyunga and Luunga Wards of Binga District. *Research on Humanities and Social Sciences*, 5(9), p.34.

²²⁵ Kanjanda, O. and Chiparange, G.V., 2016. The Effects of Early Girl-Child Marriage in Mutasa District-Manicaland Province: A Cases of Samanga 'A' Ward in Honde Valley. *European Scientific Journal, ESJ*, 12(11), p.542.

²²⁶Black, M., 2001. Early Marriage: Child Spouses. *Innocenti Digest No. 7.*, p.11.

²²⁷World Vision., 2011. Before she's ready: 15 places girls marry by 15 [www.worldvision.org/resourcesnsf/main/early-marriage.pdf/\\$file/early-mrriage.pdf](http://www.worldvision.org/resourcesnsf/main/early-marriage.pdf/$file/early-mrriage.pdf) (Accessed on 19-03-17).

²²⁸Government of Zimbabwe (1999). *Director's Circular No.35 of 1999*. Harare: Ministry of Education Sports and Culture.

circumstances of each individual case.²²⁹ Thus a child who is subject to a child marriage and is pregnant may be expelled from school. This adds to the exploitation and violation of the rights a child. The question arises as to the criteria, which must be used when deciding whether or not to expel a pregnant child from school. This provision in the Education Act allows school heads to unnecessarily expel pregnant girls, despite the fact that the Education Act [Chapter 25:04] of 2004, calls for compulsory primary education.²³⁰ However, the Education Act does not provide for compulsory secondary education, which is a violation of children's rights to education, as they are supposed to be at school, instead of being married off. It is apparent that after being married, the girl child is now at the mercy of the husband, who generally do not see the value or need to send their young wives to school.

4.2.3 Right Not to be subjected to exploitative work (prohibition of child labour)

Child marriage is not only a harmful cultural practice, but also a form of child labour in its worst form. Child labour is prohibited by several international instruments, however, the practice remains widespread due to poverty and other factors.²³¹ The CRC protects children from performing any work that is likely to be hazardous or to interfere with the child's education, to be harmful to the child's health, mental, spiritual, moral or social" development.²³² Child marriage is another form of child labour, because its characteristics meet some of the elements of the worst form of child labour" in the ILO which include:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.²³³

²²⁹Tatenda Gumbo 15 September 2010 "Zimbabwe Education Ministry clarifies Policy on Pregnant Students" *Voice of Africa* <http://www.voazimbabwe.com/a/ministry-of-education-maintains-policy-for-pregnant-school-girls-102989719/1462612.html> (Accessed 20-03-17).

²³⁰Section 5.

²³¹Article 32 of the UNCRC and the Article 3 and 6 of the International Labour Organisation (ILO), Convention Concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour Convention C182, 17 June 1999.

²³²Article 32 of the UNCRC.

²³³Ibid.

According to the ILO hazardous work is any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.²³⁴ Child brides, instead of enjoying their sleep, just like their peers, endure sleepless nights caring for their babies and are confined as domestic servants and sex slaves in the marriage.²³⁵ This amounts to sexual exploitation, which the CRC together with other human rights instruments, forbids. Zimbabwe's Labour Act [Chapter 28:01] prohibits employers from hiring a person under 18 to perform hazardous work or any work that may hinder development of that child and the Children's Act [Chapter 5:06] makes it an offence to exploit children through employment. Further the young bodies of women may not be ready for the risky and energy sapping process of child birth resulting in their death or compromised future health.

Young wives find household chores exploitative and difficult. In an interview conducted by Offard Kanjanda in the Manicaland province of Zimbabwe, it is reported that one of the girls alleged that she was only 13 years old, and she was in a polygamous marriage.²³⁶ Being the youngest of the four wives, she was expected to do all the household work and help the other wives in the banana field. She revealed that this pains her a lot, because the work load was too much and heavy for her age.²³⁷ This can be regarded as child labour, because it is exploitative and affects the physical well-being of the girl child, as she was not physically mature for such work.

Child marriage is one of the most 'harmful traditional practices' which promotes child labour in Zimbabwe. Due to the economic hardships in Zimbabwe, young brides are forced to work in the farming and mining sectors, where living conditions are extremely harsh.²³⁸ Many young mothers and their children were involved in the Chiyadzwa diamonds, where they were

²³⁴ Ibid.

²³⁵ Aids-free world. 2015. Child marriage is child labour: The disappearance of girls from child labour statistics. <http://aids-freeworld.org/Our-Issues/Child-marriage/~media/Files/Child%20Marriage/Child%20Marriage%20Is%20Child%20Labour%20-%20AIDS-Free%20World%20Report%20May-2015.pdf> (Accessed on 19-03-17).

²³⁶ Kanjanda, O. and Chiparange, G.V., 2016. The Effects of Early Girl-Child Marriage in Mutasa District-Manicaland Province: A Cases of Samanga 'A' Ward in Honde Valley. *European Scientific Journal, ESJ*, 12(11), p.549.

²³⁷ Ibid.

²³⁸ United States Department of Labour., 2013. Findings on the Worst Forms of Child Labour. Zimbabwe Minimal advancement. <https://www.dol.gov/sites/default/files/images/ilab/child-labor/Zimbabwe.pdf> (Accessed 29-03-17).

involved in mining activities and some were vendors at the mine.²³⁹ Young mothers engaged in extramarital affairs, some engaged in the illegal sale of dagga and others even joined the illegal diamond miners as their assistants.²⁴⁰ Poverty was the major drive for this, hence, they sought a livelihood.²⁴¹ Children working in hazardous conditions on farms, mines or in factories sustain physical injuries and mutilations, mainly caused by poorly maintained machinery.²⁴² Apart from physical injuries, young wives working with dangerous chemicals acquire long-term health problems, such as respiratory diseases and a variety of cancers.²⁴³

The major drive of child labour is poverty, where young mothers are looking for a means of survival. Young mothers from poverty wracked households are often recruited as domestic workers.²⁴⁴ From this one can denote that child marriage triggers child labour, because young girls are found in the labour market working for their children, instead of going to school.

4.2.4 Right not to be exposed to violence

Article 19 of the CRC protects children from all forms of violence and abuse. The CRC obliges states to take the relevant appropriate measures to ensure that children are free from any form of violence and abuse. In Zimbabwe, the law protects children from maltreatment, neglect, abuse and degradation.²⁴⁵ Despite the law protecting children from abuse, child marriage exposes girls to all forms of abuse such as physical, mental and sexual abuse, as well as domestic violence.

Child marriage is alleged to fall within the broad topic of gender-based violence. According to the General Recommendation Number 19 of the Committee on the Elimination of All Forms of Discrimination against Women, gender-based violence (GBV) is “violence that is directed against a woman because she is a woman or violence that affects women disproportionately”. Mashiri claims that GBV,

²³⁹Chimonyo, G.R., Mungure, S. and Scott, P.D., 2011. The social, economic and environmental implications of diamond mining in Chiadzwa. *Centre for Research and Development*. Mutare: Southern Africa Resource Watch, p.9.

²⁴⁰ Ibid 11.

²⁴¹ Ibid 26.

²⁴²Chinyoka, K. and Naidu, N., 2014. Underage and unprotected: Psychosocial effects of child labour on the academic performance of learners in Zimbabwe. *J Psychology*, 5(1), p.69.

²⁴³ Ibid.

²⁴⁴ Nhenga, T.C., 2008. *Application of the international prohibition on child labour in an African context: Lesotho, Zimbabwe and South Africa* (Doctoral dissertation, University of Cape Town), p.4.

²⁴⁵Section 81 (1) (e) of the Constitution of Zimbabwe Amendment No. 20 Act of 2013.

“...encompasses a wide range of abuses that range from sexual threats, exploitation, humiliation, assaults, molestation, domestic violence, incest, involuntary prostitution, torture, insertion of objects into genital openings to attempted rape. Female genital mutilation and other harmful traditional practices, including early marriage, which substantially increases maternal morbidity and mortality, are forms of gender-based violence against women that cannot be overlooked nor justified on the grounds of tradition, culture or social conformity.”²⁴⁶

From the above definition, it can be concluded that child marriage encompasses all the elements of GBV, because it exposes the girl child to sexual exploitation, violence, physical and sexual abuse. The Research Unit on child marriage in Zimbabwe alleges that child marriage amounts to socially licensed sexual abuse and exploitation of the girl child, and is one of the most persistent forms of sanctioned sexual abuse of girls and young women.²⁴⁷

As a result of the patriarchal nature of Zimbabwean society, GBV persists within the households in Zimbabwe.²⁴⁸ In the Shona culture, married women, including child wives, face physical abuse for disagreeing with their partners, refusing to have sex or making any decisions without telling their husbands.²⁴⁹ This position exposes young wives to physical, emotional and psychological abuse and as a result of the age differences between the girl child and their husbands, they are powerless and cannot fight back. Additionally, child brides are susceptible to domestic abuse, because they are not economically active, and are financially dependent on their husbands, and cannot therefore make demands or suggestions.²⁵⁰

In an interview with *Human Rights Watch*, Confidence, a girl who was forced into marriage at the age of fourteen reported that her husband would beat her up for not cooking properly and force her to have sexual intercourse against her will.²⁵¹ During the same interview another girl alleged that she had to leave her husband, because he was violent to the extent that he broke

²⁴⁶Mashiri, L., 2013. Conceptualisation of gender based violence in Zimbabwe. *International Journal of Humanities and Social Science* 3(15), p.95.

²⁴⁷Sibanda, M., 2011. Married too soon: Child Marriages in Zimbabwe. *The Research and Advocacy Unit.*, p.12.

²⁴⁸ZimStat., 2012. Zimbabwe Demographic and Health Survey 2010-2011.

²⁴⁹Schmidt, E., 1999. Peasants, traders and wives: Shona women in the history of Zimbabwe. *SAFERE: Southern African Feminist Review* 3(1), p.21.

²⁵⁰Nour, N.M., 2006. Health consequences of child marriage in Africa. *Emerging infectious diseases*, 12(11), p.1644.

²⁵¹ Human Rights Watch Child Marriage in Zimbabwe <https://www.youtube.com/watch?v=TXkaF0G2JTk> (Accessed 25-05-17).

her arm. He was also irresponsible, as he did not provide the basic necessities, such as food and clothes for her and their child.²⁵² Most of these young married girls do not see anything wrong with beatings from their husbands, and they tend to believe that GBV is justified.²⁵³ They cannot leave such abusive marriages, because they are unable to repay the “*roora*” or dowry and their husbands believe that they own their wives, since they paid the bride price. Thus, girls in marriages suffer prolonged gender-based violence, compared with those that are unmarried.²⁵⁴

4.2.5 Prohibition of the sale, abduction and trafficking of children

Article 35 of the CRC obliges states to take all possible measures to ensure that children are not sold, abducted or trafficked for any purpose or in any form. The Optional Protocol on the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC) defines the sale of children, as any act or transaction whereby a child is transferred by one person or a group of persons to another for remuneration or any other consideration.²⁵⁵ Child marriages falls within the elements of the above definition and can be considered as selling of children. In Zimbabwe, the practice of paying “*roora*” can be considered as the sale of children, because it involves the payment of dowry or bride price, in exchange for a girl child.²⁵⁶ It is considered illegal or against cultural norms for a man and a woman” to live together as husband and wife, without the man paying the bride price. This position may be considered to be a violation of the right of the girl child not to be sold. Section 81 (e) of the Constitution provides that children may not be exposed to economic exploitation among other forms of exploitation.

4.2.6 The principle of the best interests of the child”

The principle of the best interests of the child forms the basis for the protection and promotion of children’s rights. According to this principle, the interests of the child must be of primary concern in any matter, or when making decisions, which affect the child.²⁵⁷ The Zimbabwean

²⁵² Human Rights Watch. 2015. Zimbabwe: Scourge of Child Marriage <https://www.hrw.org/news/2015/11/25/zimbabwe-scourge-child-marriage>

²⁵³Jensen, R. and Thornton, R., 2003. Early female marriage in the developing world. *Gender & Development*, 11(2), p.21.

²⁵⁴Mashizha, S., 2013. The Prevalence and Factors Associated with Gender Based Violence among Zimbabweans Deported through Beitbridge District, Matabeleland South Province, Zimbabwe, 2013, p.33.

²⁵⁵Article 2 of the OPSC.

²⁵⁶Joseph, T., and Takesure, H., 2012. Still caught-up in the cultural abyss: The plight of the girl child. *Journal of Emerging Trends in Educational Research and Policy Studies*, 3(3), p.236.

²⁵⁷ Article 3 of the UNCRC.

Constitution recognises this principle by stipulating that the state must adopt reasonable policies and measures to ensure that in matters relating to children the best interests of the children are paramount.²⁵⁸ By using the term “paramount”, the Constitution strongly encourages everyone, including traditional leaders and church elders, to prioritise the interests of children in all matters affecting the girl child, against those of other” parties involved.

It is submitted that the illegal practice of child marriage is not in the best interest of a child, as the practice is abusive, exploits young children and results in the violation of numerous rights. The principle of the best interest of the child is infringed upon by the practice of child marriages, as parents and guardians further their personal interests and beliefs by marrying off their young daughters to older men. This principle must be used to guard against harmful traditional practices like child marriage, which violates the girl child’s rights and poses negative effects on the health and physical fitness of girl children who are forced to have sex with older men, when their bodies are not physically fit for sexual intercourse.

4.3 Health consequences of child marriage

Child marriages have numerous serious consequences on the health of young girls. Obstetric fistula, “a hole that forms in the vaginal wall communicating into the bladder or the rectum, or both as a result of prolonged labour or obstructed labour”,²⁵⁹ is one of the most devastating consequences of child marriage.²⁶⁰ In most of the Zimbabwean cultures there is a belief that once one gets married, she must bear children. Child wives, soon after marriage, are forced to have children, yet their bodies are not developed to carry and deliver babies. In an interview with News Day, Dr Calvin Fambirai, the executive director of the Zimbabwe Association of Doctors for Human Rights, highlighted that the health of girls who enter into early marriages has largely been compromised.²⁶¹ Victims of child marriage are more likely to experience pregnancy complications, deliver premature infants, miscarry or even lose their lives during labour.²⁶² Research by UNICEF concluded that girls below the age of 15 are likely to die from medical reasons, such as obstetric fistula, and those between the ages of 15 and

²⁵⁸ Section 19 (1) of the Constitution of Zimbabwe Amendment No 20 of 2013.

²⁵⁹ Cottingham, J., Royston, E. and World Health Organisation, 1991. Obstetric fistulae: a review of available information. p.3.

²⁶⁰ Nour, N.M., 2006. Health consequences of child marriage in Africa. *Emerging infectious diseases*, 12(11), p.1646.

²⁶¹ Report done by Newsday on Laws exist, why do child marriages persist? <https://www.newsday.co.zw/2016/10/27/laws-exist-child-marriages-persist> (Accessed 27 -10-16)

²⁶² Hampton, T., 2010. Child marriage threatens girls’ health. *Jama*, 304(5), p.510.

19 are twice likely to die of pregnancy and child birth complications unlike women between the ages 20 and above.²⁶³ From this, one can denote that child wives face a high risk of experiencing dangerous life-threatening complication during pregnancy and birth.

Children born from young mothers are prone to malnutrition, unlike those born by adult mothers.²⁶⁴ In a report by Copenhagen Consensus, educated women are alleged to have healthier children with reduced undernutrition, because they have more health knowledge, more income and more bargaining power and they promote the education of future generations.²⁶⁵ Thus, adult mothers who are educated and mature are able to take care of their children, thereby preventing early child deaths.

One of the reasons why girls are forced into early marriage is to prevent premarital sexual activity, protect girls from promiscuity and sexually transmitted diseases. However, married women are more likely to get infected, than unmarried sexually active women.²⁶⁶ This is because child wives have limited power to negotiate safe sex and are pressurised to prove their fertility. Young married girls experience physical or sexual violence from their partners. This prevents them from negotiating safer sex, leaving them vulnerable to sexually transmitted infections and putting them at a higher risk of HIV infection.²⁶⁷ Due to physical immaturity, their bodies are not yet ready and strong enough for sexual intercourse, such that they get injured during sex.²⁶⁸

²⁶³UNICEF (2006). Child Protection Information Sheet: Child Marriage, UNICEF, New York Google this and page number or United Nations Population Fund. (2005). Child marriage advocacy programme: Fact sheet on child marriage and early union. New York: United Nations. Retrieved from http://www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm (Accessed 27-10-16).

²⁶⁴Hampton, T., 2010. Child marriage threatens girls' health. *Jama*, 304(5), p.509.

²⁶⁵King, E.M., The Challenge of Women and Development http://www.copenhagenconsensus.com/sites/default/files/cp_womenanddevelopmentcc08.pdf (Accessed 26-03-17).

²⁶⁶UNAIDS, 2015. Focus on location and population. Geneva: UNAIDS http://www.unaids.org/sites/default/files/media_asset/WAD2015_report_en_part01.pdf (Accessed 26-03-17).

²⁶⁷ UNICEF Ending Child Marriage Progress and prospects https://data.unicef.org/wp-content/uploads/2015/12/Child-Marriage-Brochure-HR_164.pdf (Accessed 20-10-17)

²⁶⁸Panos Institute Southern Africa 2015 "Media brief on Ending Child marriages in Zimbabwe http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&sobi2Id=1522&Itemid=0&lang=en (Accessed 26-03-17).

4.4 Conclusion

This chapter explored the impact of child marriage on the rights of the child in Zimbabwe and the consequences of child marriage on the child. From the above discussion, it is clear that child marriage violates several rights of the girl child. It subjects the girl child to poverty, violence, child labour, and sexual exploitation. It further brings an unpredicted and unnatural end to the girl's childhood by imposing adult roles and responsibilities on her, before she is physically, emotionally and psychologically ready. Furthermore, child marriage denies young married girls their right to a family and childhood. Married girls are socially secluded from their family and friends, before they are old enough to stay away from them.²⁶⁹ They are denied a decent childhood and general bonding with members of their nuclear family. They automatically stop attending school once they get married, and their social relations become limited to the husband's social circle.²⁷⁰ Their right to leisure and play, which is essential for their development, is inevitably denied.²⁷¹ They are confined to their homes by household and child rearing responsibilities, or because their husbands limit and control their movements.

Moreover, child marriage puts the girl child in an unbearable situation, which she cannot fight. Due to the huge age difference in marriage, married girls cannot challenge their older husbands and cannot handle the pressure in marriage, hence, they are affected psychologically and emotionally.²⁷² Massive spousal age gaps also limits the girls' autonomy and decision-making in matters concerning her marriage. Also, young married girls are prone to early widowhood and divorce, which leads them to desperate situations. According to a UN report, child brides who fall victim of early widowhood may experience additional discrimination, denial of property rights, loss of status and a range of other abuses.²⁷³ This is a clear indication of the psychosocial, psychological and emotional consequences of child marriage on the girl child.

Finally, one can assert that child marriage prevents girls from obtaining an education, thus, limiting their financial opportunities to lift them and their families out of poverty. The outcome

²⁶⁹Haberland, N., Chong, E.L. and Bracken, H.J., 2004. *A world apart: The disadvantage and social isolation of married adolescent girls: Excerpted from a paper*. Population Council.

²⁷⁰ Ibid.

²⁷¹ UNCRC Article 31.

²⁷²Panos Institute Southern Africa 2015 "Media brief on Ending Child marriages in Zimbabwe" http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&sobi2Id=1522&Itemid=0&lang=en (Accessed 29-03-17).

²⁷³Laws, W.L.U.M., 2013. Child, early and forced marriage: A multi-country study. *A submission to the UN Office of the High Commissioner on Human Rights (OCHCR), Dakar: Women Living Under Muslim Laws* <http://www.wluml.org/resource/child-early-and-forced-marriage-multi-country-study> (Accessed 16-05-17).

of this is a cycle of intergenerational poverty, as child wives fail to provide for their own children and the cycle continues for forthcoming generations.²⁷⁴ Thus, poverty is a cause and a consequence of early child marriage.

Chapter Five:

Recommendations and Conclusion

5.1 Introduction

Although the international community is advocating the abolishment of child marriages, the practice remains prevalent in most parts of the world, particularly in Zimbabwe. The final chapter serves as the closing chapter. It addresses challenges faced by Zimbabwe in combatting child marriages, and proposes recommendations and a conclusion. Addressing child marriage requires the identification of numerous factors, behind the perpetuation of the practice. The diversity and complexity of the effects of child marriage on the girl child calls for government, local initiatives and other interventions from all stakeholders, and the community at large.

²⁷⁴Panos Institute Southern Africa 2015 “Media brief on Ending Child marriages in Zimbabwe” http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&sobi2Id=1522&Itemid=0&lang=en (Accessed 29-03-17).

Commitment from the community in general, parents together with the government, and other responsible authorities, should work together to redress the issue of early child marriages.

5.2 Summary

The study looks at the implications of child marriages on the rights of the girl child in Zimbabwe. Child marriage is a practice whereby, girls or boys under the age of 18, are forced to get married without their consent. In most cases, young girls are forced to marry older men, without their consent. In Zimbabwe, child marriage is common in poverty-stricken areas, where girls are regarded as economic commodities. Religion and tradition have proven to be one of the causes of child marriage in Zimbabwe. There are some Shona practices, which expose girls to early marriage, which include *kuzvarira*, *kuripa ngozi*, *chimutsa mapfihwa*, *chiramu*, among others. Some of the causes of child marriage include inadequate legislative frameworks, lack of access to education, gender inequality and financial and political instability. The practice negatively affects the rights of the girl child, which include the right to free and full consent to marriage, the right to education, and the right to health, among other rights. The Zimbabwean Constitutional Court delivered a landmark decision towards curbing child marriage by outlawing child marriage.

5.3 Recommendations

The success of Zimbabwe's efforts to curb child marriages requires the collaboration between government, different stakeholders, the media and non-governmental organisations. Two forms of recommendations have been formulated which include

- Recommendations for improving the lives of children subjected to child marriages in Zimbabwe.
- Recommendations on how to control child marriages in Zimbabwe.

5.3.1 Recommendations for improving the lives of child marriage victims

- There is a need to ensure that the victims of child marriage in Zimbabwe do not continue to experience the harmful effects of child marriage. One of the challenges faced by the Zimbabwean community mostly in remote areas, is the lack of development-oriented approaches, to empower the girl child. Thus, government must create policies and programmes, which empower the girl child, immediate families and

the community at large. These include basic training on catering, administering first aid, dressmaking amongst others, to equip the girl child.

- There is an inherent need to educate the communities and schools and create awareness on the negative connotations of child marriages.
- There is also the need to support and protect girls who are already married, by providing them with options for re-entry into school, sexual and reproductive health information and services, livelihood skills and opportunities, as well as providing safe spaces and support networks for them to discuss the challenges” they face at home.
- Increasing education opportunities for children is another means through which we can prevent child marriage.

5.3.2 Recommendations on curbing child marriage in Zimbabwe

- The study has established that poverty is the major cause of child marriages in Zimbabwe. To circumvent the issue of early child marriage, the government should empower the girl child. Parents are marrying off their daughters to reduce family expenses, hence the government must intervene and help such families with food, clothing, school fees and other expenses, so as to keep the girl child in school. The longer the girl child stays in school, the less likely she is to be married before the age of 18.
- In most rural areas people are still embedded in practicing unfair cultural and traditional practices, which perpetuate child marriage. Such practices need to be abolished.. For instance, in Malawi a female traditional senior chief, Inkosi Kachindamoto, confronted the practice of child marriage by annulling about 330 child marriages and sending the children to school.²⁷⁵ If such individuals are to be found in Zimbabwe, fighting child marriage will not be difficult.
- Furthermore, there is a need to construct customary laws and practices in such a way, that they are compatible with legislation. This will prevent the clash between culture and children’s rights.
- The Constitution of Zimbabwe of 2013 states that children should have access to appropriate education and training.²⁷⁶ The lack of access to education has proven to be

²⁷⁵UN Women, Malawi Chief annuls 330 child marriages available at <http://www.unwomen.org/en/news/stories/2015/9/malawi-chief-annuls-330-child-marriages> (Accessed 14 -10-17).

²⁷⁶Section 19 (2) (d).

one of the major drivers of child marriage in Zimbabwe. Keeping girls in school can be the most effective tool for the prevention of early child marriage. Research indicates that educated women marry at a later age, than uneducated women.²⁷⁷ If there are no opportunities for girls to go to school, they resort to marriage, and they are not able to further their education, hence they continue being subordinate and invisible in society.

- Educate all on the evil of child marriage. Education enhances creativity and productivity.
- Addressing the needs of orphans and vulnerable children, mostly those living in child-headed households, government should create mechanisms, which broaden the scope of choices for orphaned children, and the creation of foster homes to care for orphans.
- Laws can be passed and people may be educated on the evils of child marriages, but all these measures are useless, until the issue of poverty has been addressed in the country. It is important to address the root cause of child marriage which is poverty. Poverty must be addressed from an individual level, household level and community level. Such an approach improves sustainable development, which is the solution for the girl child's emancipation. Success is only possible when issues like socio-economic issues are addressed.
- The laws should not only be on paper, but should be enforced by raising awareness via campaigns and providing strict punishment for offenders. In Zimbabwe there is also the need to strengthen birth and marriage registration systems.

However, it must be noted that child marriage is a practice, which cannot be eradicated overnight. There is the need for more time, resources and strategies for the complete abolishment of child marriage around the world.

5.3 Conclusion

This study managed to look at the causes and effects of child marriage in Zimbabwe. The prevalence of early child marriage in Zimbabwe is greatly perpetuated by poverty and traditional practices, which unfairly discriminates against girls and women. Despite laws and policies advocating for the abolishment of child marriage, the practice still prevails in Zimbabwe. The major causes of child marriage, identified in the study, were poverty, economic insecurity, religion and tradition, an inadequate legislative framework, the lack of access to

²⁷⁷ Marphatia, A. 2020. How Much Education Is Needed to Delay Women's Age at Marriage and First Pregnancy?

education and gender inequality. There are numerous challenges, which are being faced by Zimbabwe as a country, in combatting child marriage.

In Zimbabwe child marriage is eroding the foundation of society and destroying the future of the girl child. Child marriage continues to perpetuate inequality, because girls are unable to go to school. Young married girls find themselves working in abusive environments, which impede their health and physical well-being.

Moreover, the study established that victims of child marriage in Zimbabwe are plagued with various challenges, which affect their health, physical and mental well-being, among others. Child marriage results in child labour, and paves the way for both domestic and sexual violence, and creates a pathway to commercial exploitation of young married girls. The effects of child marriage are far-reaching, in that they do not only affect the childhood of girls, but they track them to their adulthood, affecting their families, communities and the nation at large.

Furthermore, the study identified the various rights violated by child marriage in Zimbabwe, which include the right to full and free consent to marriage, the right to education, the right to be subjected to exploitative work (prohibition of child labour) and the right to not be exposed to violence. The study further identified the social, health and physical consequences of child marriage on the girl child in Zimbabwe.

In conclusion, child marriage in Zimbabwe is epidemic, destroying the future of the girl child. It does not only affect the girl child, but extends to her children, who often experience numerous hardships and ailments, and to the nation at large. It is a harmful practice, which deprives the girl child of her rights, including the right to choose whom and when to marry, and kind of family to create.

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