
***'WHAT CAN SHE SAY?'* EXPLORING THE NEGATIVE IMPACT OF CHILD
MARRIAGES ON WOMEN'S MEANINGFUL PARTICIPATION IN THE PUBLIC
SPHERE IN ZIMBABWE**

**By
Mildred Mashozhera**

Supervisor: Dr Rosalie Katsande

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Abstract

Inspired by her child bride mother who married at 15, the researcher (born into a family of 13, 10 girls and 3 boys) uses this research to explore the negative impact of illegal child marriages on women's participation in the public sphere in Zimbabwe. The abuse, oppression and denial of education which accompany child marriage make it one of the factors that diminish women's capacity and agency which leads to their ineffective participation. Focusing on girls and women caught up in child marriages in Epworth, an informal settlement just outside Zimbabwe's capital, Harare, the researcher shows that the failure on numerous fronts to protect girls from child marriages is directly preventing their development into valuable adult participants and leaders of their community in contravention of both children's and women's human rights contained in Zimbabwe's Constitution, local legislation and various international human rights instruments to which Zimbabwe is a party. Furthermore, she found that a lack of resources, the trivialisation of the scourge by law enforcement agents, the courts and other state institutions and lack of political will is actually fuelling the illegal practice of early marriages in Epworth. Culture and traditional beliefs and practices that encourage child marriage regard the public sphere as a place for men and not women who should participate according to the roles assigned to them in the family and society. Different methodological approaches were employed in the field research which included the women's law, grounded and the human rights approaches as they unearthed women's lived realities through one-on-one interviews, focus group discussions, key informants interviews and observations. The interviews revealed that most child brides do not meaningfully participate in the public sphere. Most of them drop out of school, are abused, oppressed and forced into submission. Their capabilities are deformed and most of them have resorted to vegetable vending and sex work as a way of living. Law enforcement agents have trivialised the child marriage practice and the lack of effective implementation of 'the best interests of the child' principle has exposed girls to sexual abuse and exploitation which eventually leads to child marriages. The cultural practice of payment of *lobola* (bride wealth) and poverty has reduced girls to commodities for sale and this pushes them into early marriage.

While Zimbabwe's Constitution, Education Policy and Education Act between them provide that children are entitled to a free education, the realisation of this right is dependent on the availability of resources which the state is currently directing to the Ministry of Defence and the Ministry of Indigenization. This leaves little for state funded education for the poorest of Zimbabwe's children. It is recommended that the government effectively implements local and international human rights provisions that protect girls from child marriages and increases its investment in its education and social welfare sectors.

Dedication

I dedicate this work to My Mother, Docas Chabvuta Mubaiwa, who lived a life of abuse. She sacrificed all in her mission to make me a better woman and for me to have a better life.

Amai, I Love You and I know Thank You is not enough.

To My Husband, Stephen Tazvitya Mashozhera, thank you for your unfailing love and unwavering support. You were send from above.

To My Children Sheryl, Tadiwa and Tawana, I love you and thank you for all your prayers.

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To all my lecturers and SEARWL members of staff, you made me a better person and I thank God for the good times we had.

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To my classmates, I will treasure the moments we shared and I thank God I met you.

List of acronyms

ACHPR	African Charter of Human and Peoples' Rights, 1981
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women, 1979
CRC	Convention on the Rights of the Child, 1989
NGO	Non-governmental organisation
ICCPR	International Covenant on Civil and Political Rights, 1966
SADC Protocol Women's Protocol	SADC Protocol On Gender and Development Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa, 2003

List of human rights instruments

African Charter of Human and Peoples' Rights, 1981 (ACHPR)

Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa, 2003 (Women's Protocol)

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

Convention on the Elimination of all forms of Discrimination Against Women, 1979 (CEDAW)

Convention on the Rights of the Child, 1989 (CRC)

International Covenant on Civil and Political Rights, 1966 (ICCPR)

SADC Protocol On Gender and Development (SADC Protocol)

List of local legislation

Children's Act [Chapter 5:06]

Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution)

Criminal Law (Codification & Reform) Act [Chapter 9:23] (the Criminal Law Code or the Code)

Customary Marriages Act [Chapter 5:07]

Domestic Violence Act [Chapter 5:16]

Education Act [Chapter 25:04]

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Executive summary

Women's participation in the public sphere is important for the advancement of children's and women's rights. The right to participation is recognised in international, regional instruments and the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution). Women's meaningful participation is hindered by many factors and child marriage is one of them which affects women's capacity and agency which then leads to their ineffective participation. The Constitution of Zimbabwe has outlawed child marriages but this has not stopped the prevalence of the practice.

This dissertation will explore the impact of child marriages on women's agency and capacity. Field research was conducted and limited to Epworth which is one of the biggest slum settlements near Zimbabwe's capital city, Harare. The objectives of this study included assessing and investigating the impact of child marriages on women's participation in the public sphere and assessing the link between the best interest of the child and women's meaningful participation. The assumptions focused mainly on child marriage as an intentional tool used by those who practice it to hinder women's participation in the public sphere. Methodological approaches such as the women's law approach assisted in getting the data from child brides as the approach takes women as the starting point and focuses on women's lived realities. Other approaches, i.e. the grounded, masculinity and human rights approaches were also engaged. The in-depth one-on-one interview, focus group discussions and key informants interviews assisted in gathering information from different groups and individuals in Epworth. The different groups of women interviewed included one old woman who got married very young, mothers-in-law and aunts who become related to young girls as daughters- and sisters-in-law. Men were also interviewed and revealed that the marrying of young girls is a matter of power and control for them. Observations at the Victim Friendly Unit at Domboramwari Police Station and legal aid advice were also methods employed so as to gather a large pool of data.

The findings for the study revealed that unequal gender relations within child marriages incapacitate women. Due to the abuse, oppression, subordination and forced submission that child brides are exposed to, this affects their self-respect and self-assertion. They then become too dependent and lack initiative. Most of them are refused their right to education

and have their capabilities deformed. Most interviewed child brides and women from a child marriage background revealed that they were either vegetable vendors or sex workers. Some former child brides have resorted to child prostitution as a way of living. Culture and religious beliefs regard the public sphere as a place for men and that women are to participate according to the roles assigned to them by their families or society and not according to their abilities or capacity. The cultural practice of payment of *lobola* and poverty has reduced most young girls into commodities for sale and pushes/pulls them into early marriage.

The inadequate implementation of the Constitutional provisions that ought to protect girls from child marriage and the trivialisation of the practice by law enforcement agents (who assign police volunteers who are not salaried to investigate and effect arrests of child marriage perpetrators) fuels child marriages. The failure to effectively implement the best interests of the child principle exposes girls to sexual abuse and exploitation and to early marriages which incapacitates them and negatively affects their participation in the public sphere. This indicates the inseparable link between the best interest of the child and women's meaningful participation.

In conclusion, child marriages affect women's agency and capacity which then leads to their ineffective participation in the public sphere. The law is only a starting point and reforming it is not enough to eradicate child marriage. This paper recommends that the state of Zimbabwe needs to put resources into its education policy, Social Welfare Department and provide compulsory free primary and secondary education for girls as they are the ones who are mostly affected by child marriage and forced to drop out of school. There is also an urgent need for the speedy alignment of the marriage laws, the Children's Act [Chapter 5:06] and the Criminal Law (Codification & Reform) Act [Chapter 19:23] (the Criminal Law Code or the Code) with the Constitution so as to have a uniformed definition of a child and make 18 years of age the minimum age for marriage. Mentoring and media strategies should be employed as a way to capacitate women and to raise awareness of the negative impact of child marriages on individuals, children, society and the country at large. Lastly, a multi-sectoral approach to child marriages should be adopted in order to place as many girls as possible in school. There they will receive the critical opportunity to develop physically, mentally and psychologically so that they can grow into independent, valuable adults of society and less likely to fall victim to child marriage.

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CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Why I chose this topic

She was only 15 when she got married and gave birth to 13 children, 10 girls and 3 boys. Stark distressing flash-backs of her on the floor being kicked and trampled on or locked out of the house to endure cold, wet nights all alone are still fresh in my mind. I remember one day she came back home around 7 p.m. from a political meeting where she was the Chairperson of the Women's League. We were having supper. The moment that she walked into the house the atmosphere changed. In no time our plates were on the floor and the dining room became a live boxing ring in which she was the punch bag - receiving blow after blow, powerless to fight back.

She eventually lost her position in the political party because she was unable to read and write and she stopped attending evening meetings to avoid the violence at home. She turned to cross-border trading. If it was not for her lack of education, the abuse she suffered and her forced absence from meetings, my mother, Docas Chabvuta Mubaiwa, could today have been a powerful political leader. The effects of an early marriage shattered her dream of becoming a politician. She had no choice but to settle for less, a lot less: 25 years as a cross-border trader and working as a maid in South Africa. From a politician to a maid – her dream was shattered!

1.2 Description of the area of research

Situated about 12km east of Harare, Epworth is probably the biggest slum settlement near the capital city. In Harare, the mere mention of the name Epworth invokes images of a poverty-stricken, drug-infested, high crime and deplorably dirty place. This is however not an exaggeration. As I walked up and down the narrow dust roads of Epworth, passing through 'match-box' houses made from unbaked bricks, no piped water, no electricity and no sewage system and quite a number of Blair toilets, I concluded that Epworth is a 'Forgotten City'. According to Zindoga and Kawadza (2014), Epworth was established in the 19th Century by

Methodist church missionaries. In 1983 the church handed control of the settlement over to the Ministry of Local Government because it had expanded beyond the church's control. According to Biti *et al.* (2014), the population of Epworth was about 130,000 and after Operation *Murambatsvina*,¹ in 2005 the population increased to about 156,000. In one of the areas known as Magada,² residents bath and do their laundry in the river. Biti *et al.* (2014) stated that by 2010, more than 6,500 families had settled in the Magada area. From morning till night the streets are packed with people but from around 7 p.m. the number of women and young girls seem to double on the streets. Dialogue on Shelter (2012) notes that about 70% of Epworth residents are employed in the informal sector, most of them involved in vending and small-scale home industries. According to Medecins Sans Frontiers (2015),³ the HIV positive rate in Epworth is just below 20%, which is higher than reported at the national level of 15%. In 2014, Medecins Sans Frontiers placed 165 HIV positive patients (mostly girls under 20) on anti-retro viral drugs in Epworth. 8% of these patients were under the age of 15. Epworth does not boast any big shops or supermarkets. It has mostly tuck-shops and vendors who sell their food and other wares on its streets. People do not shop with trolleys and baskets. What they buy they carry in their hands because they buy just enough for each day. The most commonly sold items are cooking oil, sugar, salt, meat and mealie-meal which is sold in small quantities and priced at less than a dollar and just enough for a meal. Medecins Sans Frontiers (2015) state that the majority of the population in Epworth live below the poverty datum line.⁴

1.3 Where is the problem?

Zimbabwe has signed a number of both regional and international instruments which advocate for equal representation and participation of women in positions of decision making. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa, 2003 (the Women's Protocol), African Charter of Human and Peoples' Rights, 1981 (ACHPR), the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the SADC Declaration On Gender and Development (SADC Protocol) all

¹ Operation *Murambatsvina* ('Clean up the dirt') was conducted by the government in 2005 during which the makeshift shelters of people's homes, which were considered 'illegal structures', were destroyed.

² *Magada* is a *shona* term which can be loosely translated 'as we please' referring to the unplanned and unauthorised nature of the settlement.

³ 'Doctors Without Borders' is an international independent medical humanitarian organization.

⁴ This means, according to the Merriam Webster dictionary, that personal or family incomes fall into what may be classified as poor according to governmental standards.

advocate for women's participation in the public sphere.⁵ Articles 12 and 13 of the SADC Protocol⁶ oblige the State to ensure that at least 50% of decision making positions in the public and private sectors are held by women and that there is equal participation of women and men in decision making.

The Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution) provides for equality and non-discrimination of persons,⁷ equal opportunities in political, economic and social activities for men and women,⁸ election of senators, every list should be headed by a female candidate⁹ and provision of an additional sixty women members in parliament,¹⁰ all of which promote and encourage for women's participation in the public sphere.

Effective implementation of these instruments and national provisions is a challenge due to practices such as child marriage¹¹ which affects mainly women¹² and impacts negatively on women's capacity and agency and prevents them from effectively participating in the public sphere.

Child marriage is prevalent in Zimbabwe.¹³ A child is defined in the Constitution as anyone below the age of 18¹⁴ and yet the Children's Act¹⁵ defines a child as anyone below the age of 16. The Criminal Law (Codification & Reform) Act [Chapter 19:23] (the Criminal Law Code or the Code) defines a minor as any one below the age of 16.¹⁶ These contradictory definitions of 'a child' in Zimbabwe's laws has exposed girls below the age of 18 to sexual abuse which results in teenage pregnancy and loss of virginity which factors have pushed most young girls into early marriage.

⁵ Refers to public space where people gather and articulate society's needs with the state (Habermas, 1991).

⁶ Signed and ratified by Zimbabwe in 2008.

⁷ Section 56 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution).

⁸ Section 80(1) of the Constitution.

⁹ Section 120(b) of the Constitution.

¹⁰ Section 124(1)(b) of the Constitution.

¹¹ It is the marriage of a girl or boy who is below the age of 18 years of age.

¹² Girls are more affected by child marriage because of their biological make-up.

¹³ According to Cisse Mahomed, the African Union's Co-ordinator of the African Committee of Experts on the Rights and Welfare of the Child.

¹⁴ Section 81(1) of the Constitution.

¹⁵ Section 2 of the Children's Act [Chapter 5:06].

¹⁶ Section 61 of the Criminal Law (Codification & Reform) Act [Chapter 19:23] (the Criminal Law Code or the Code).

The 2015 Constitutional Court judgment in the case of *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others*¹⁷ outlawed child marriages in Zimbabwe as the court ruled that 18 years was the minimum age of marriage and that all other cultural and religious practices/beliefs that authorised child marriage were inconsistent with section 78(1)¹⁸ of the Constitution. The court further stated that a teenage pregnant girl is still entitled to her children's rights, the right to parental care and schooling. Thus a teenage pregnant girl is entitled to claim maintenance from her parents for schooling and her upkeep. Despite the progressive nature of the Constitutional Court judgment, reality on the ground is that even after the Constitution came into force on 22 May 2013 and outlawed child marriages, the practice has not stopped in Epworth. Most of the child brides interviewed married after May 2013.

Girls who enter or who are forced into child marriage for religious, cultural and economic reasons have their rights to education and health taken away. They are forced to drop out of school and are exposed to early pregnancies. Because their bodies have not fully developed, they are at a high risk of dying while giving birth or giving birth prematurely and or they may develop complications with their health, such as fistula.¹⁹ All this has a massive negative impact on the well-being of girls who become women which in turn harms their capacity and agency. Meaningful participation²⁰ of women in the public sphere is key and central to the advancement of women's rights globally. Article 19(b) of the Women's Protocol provides for the participation of women at all levels including decision-making and political life of the country.²¹

1.4 Objectives of the study

- To assess and investigate the impact of child marriage on women's participation in the public sphere
- To assess the link between child marriage and women's participation in the public sphere

¹⁷ Constitutional Court judgment No. CCZ-12-2015 (unreported).

¹⁸ Provides that 'every person who has attained the age of 18 years has the right to found a family.'

¹⁹ A fistula is a hole between the vagina and rectum or bladder that is caused by long hours of labour which has the effect of leaving a girl or woman incontinent with urine or faeces or both (Fistula Foundation).

²⁰ Refers to one's ability to be able be empowered to making informed decisions about their lives, social, family and political development.

²¹ Articles 9 and 13.

- To assess the implementation of children's and women's rights in the Constitution and the impact of both on the implementation and non-implementation of women's participation
- To investigate the patriarchal system's²² views and voices in regards to child marriage and its impact on women's participation in the public sphere
- To devise legal and non-legal strategies to address the problem of child marriages and women's participation in the public sphere

1.5 Research assumptions

1. Child marriage perpetuates unequal gender relations within marriage which incapacitates women's potential to participate in the public sphere.
2. Cultural and religious practices that fuel child marriage discourage women's/girls' participation in the public sphere.
3. Societal expectations of marriage that a man should be older than his wife in order to dominate her, hinders her participation in the public sphere.
4. The inadequate implementation of protective Constitutional provisions exposes girls to child marriages.
5. There is a need for legislative and other measures to address child marriages in order to ensure the full and meaningful participation of women/girls in the public sphere.

1.6 Research questions

1. Does child marriage perpetuate unequal gender relations within marriage which incapacitates women's potential to participate in the public sphere?
2. Do cultural and religious practices that fuel child marriage discourage women's/girls' participation in the public sphere?
3. Do societal expectations of marriage that a man should be older than his wife in order to dominate her, hinder her participation in the public sphere?
4. Does the inadequate implementation of protective Constitutional provisions expose girls to child marriage?
5. Is there a need for legislative and other measures to address child marriages in order to ensure the full and meaningful participation of women/girls in the public sphere?

²² It is a system where men are in and have authority over women in all aspects of society (McCallister). The system also includes women who push or encourage male dominance.

1.7 Limitations

This research is limited to Epworth a peri-urban settlement outside Harare and is focused on child marriage as a tool which is intentionally used to incapacitate women and hinder their meaningful participation in the public sphere. The research is concentrated on those rights of children which are violated by child marriage and how that violation negatively affects or impacts on women's capacity and agency. In this dissertation, references made to education refer to basic primary and secondary schooling.

This dissertation will establish the link between child marriage and women's meaningful participation in the public sphere. Since girls are the country's future women, the research will explore how the failure to effectively implement children's rights negatively impacts their capacity and agency, which ultimately leads to the ineffective participation by women in the public sphere. It will establish how child marriage has a negative impact on women's agency and capacity²³ and the extent to which the State of Zimbabwe has fulfilled its threefold obligations²⁴ which are designed to eradicate child marriage and capacitate girls/women.

Chapter 2 will discuss how I conducted the research in my quest to answer the research questions, i.e., the different methodological approaches and methods that I used to gather and make sense of relevant research data. Two feminist theories, the dominance theory as propounded by MacKinnon and the Nego-feminist or African feminist theory shall be discussed in a bid to explore why child marriage is prevalent in Epworth. The effectiveness of the methods used and challenges encountered in the field shall also be outlined. Chapter 3 will discuss the field findings and reveal different reasons and factors why child marriage has an impact on women's capacity and agency. The capability theory²⁵ will also be discussed so as to establish the impact of child marriage on women's capacity and agency. Chapter 4 will discuss the impact of the inadequate implementation of Constitutional provisions that protect girls from early marriage and the threefold state obligation under international human rights law. Chapter 5 reveals and discusses the link between child marriage and women's meaningful participation in the public sphere. Human rights principles such as equality in

²³ It is one's ability to be able to be or to do what they desire which will have an impact on their quality and freedom of life.

²⁴ These are state obligations under international law to protect, promote and fulfil.

²⁵ What one is able to do or has the capacity to do given their background or the environment they grew up in.

marriage, women's participation, and best interest of the child will be discussed to show how these principles, if properly implemented, all prohibit child marriage and advance women's participation in the public sphere. Chapter 6 is the concluding chapter and focuses on the way forward, legal strategies and other measures that should be put in place to capacitate women and effectively do away with child marriage.

CHAPTER TWO

2.0 HOW I RESEARCHED: INFORMATIVE SIGNS ON MY PATH!

2.1 RESEARCH METHODOLOGIES/APPROACHES

2.1.1 *'It starts with the women'*

When I went into the field, I targeted women because my focus was to establish whether there is a link between child marriage and women's meaningful participation in the public sphere. It was also my intention to ascertain whether child marriage incapacitates women which then leads to their ineffective participation. Women were my starting point. This methodology of taking women as the starting point was influential in exploring the lived realities of child brides in Epworth and how child marriage has impacted on women's agency and capacity. Engaging with the women first assisted me to gather information on whether women in and from child marriages are able to participate meaningfully in the public sphere and what impact child marriage has made on their capacity and agency. My assumptions were that child marriage incapacitates women's potential to participate in the public sphere (first assumption) and that societal expectations of marriage that a man should be older than his wife in order to dominate her (third assumption), negatively affects her capacity and agency as a woman. According to Dahl (1987), the women's law approach focuses on examining and understanding the position of women in the law and how the law corresponds to women's lived realities.

Using the women's law approach, theories that make clear the push and pull factors that cause girls to enter into early marriage; why women's participation is negatively impacted, and why the practice of early marriage has continued for generations in Epworth materialized as I researched. One such issue which materialised was the trivialization of the practice of child marriage by law enforcement agents in Epworth which leads to the inadequate implementation of protective Constitutional provisions that have outlawed child marriages. I drew upon different aspects of feminists' theories which revealed the position of women in the society and how the local legislation (law), on the one hand, effectively encouraged child marriage yet, on the other, stimulated women's participation in the public sphere.

For instance, section 22 of the Marriages Act [Chapter 5:11] permits girls below the age of 18 to get married while the Customary Marriages Act [Chapter 5:07] is silent on the age at which parties may marry. Although these laws have been outlawed by the Constitution, they have not yet been aligned with it. These marriage laws are not based on liberal feminism which is concerned with attaining equality between men and women and excluding gender bias from the law. The marriage laws discriminate against women by protecting boys from child marriage. The liberal feminist solution to achieving women's meaningful participation in the public sphere is to eliminate laws and practices (cultural or religious) that deny women's access to the public sphere; it therefore demotes them to the private sphere. While this may be so, section 56 of the Constitution provides for equality before the law and the right to equal protection of the law, section 75(1)(a) guarantees everyone's right to education, section 78 provides 18 years as the minimum age for marriage for both boys and girls and section 80 guarantees the rights of every woman to full and equal dignity of person with men. These provisions are based on the liberal feminist principle of striving to achieve equality between men and women by making the rules of the game fair. However it is one thing to make the rules of the game fair, but it is quite another to level the playing field so that both men and women enjoy equal outcomes.

Despite the outlawing of child marriage, the practice is still prevalent in Epworth. According to MacKinnon (1987), the dominance of women is as a result of sex inequality which takes the form of gender, the subordination role assigned to women by society. She notes that gender is a question of power, specifically of male supremacy and female subordination. My third assumption was that societal expectations of marriage that a man should be older than his wife in order to dominate her, hinders her participation in the public sphere. According to MacKinnon (1987), the dominance approach centres on the most sex-differential abuses of women as a gender, abuses that sex equality law in a difference garb cannot confront. Mackinnon (1987) further notes that gender emerges as a congealed form of sexualised inequality between men and women and so long as this is socially the case, the feelings or acts and desires of particular individuals, notwithstanding gender 'inequality', divide society into two communities of interest. The male is centrally featured in the hierarchy of control while the female's subordination is sexualised in such a way that dominance is for the male.

Applying this dominance theory to the research data, I found that in Epworth, most men interviewed admitted that child brides do not challenge instructions and orders given to them;

they do exactly what they are instructed to do and even when they grow to be older women, they are very submissive and do not challenge authority. This then explained why domination in marriage incapacitates women's potential to participate in the public sphere, because if one is forced into submission at a young age through domination in marriage, it is difficult for that individual to then think or act out of their own will or to fulfil their capabilities. Domination then becomes one of the reasons/factors why men marry young girls and why most child brides' and women's speech is not just differently articulated but it is totally silenced. Mackinnon (1987) states that the explanation for women's social relegation to inferiority as a gender is that most of the abuse they suffer is not done to men.

I also took several leaves out of the pages of African feminism (Gaidzanwa , undated) which observe a common feature of how African women recognise male dominance in their different societies but decide to work with rather than do away with it. Nego-Feminism helped me to understand why mothers allowed their young daughters to enter into early marriages, even though they knew the abuse, oppression and challenges they would inevitably face having themselves been child brides. Even though most women in Epworth knew that the law protects girls from early marriage (by the criminalization of sex with a girl below 16), they preferred to negotiate with their male counterparts in order to prevent their young daughters from being married off. Nnaemeke (2004) describes nego-feminism as 'no ego' feminism which hints at the concept of negotiation which lies behind it. It involves the weaker party, the women, negotiating with men, i.e., those in power or in positions of authority. In this way the women who realise the permanence and hegemony of male authority do not directly challenge it. Instead, they are willing to negotiate with and around men even in very difficult circumstances (Nnaemeke, 2004). In other words, these women do not try to wrestle power from the hands of men (Hudson-Weems, 2004), they rather negotiate with them to exercise their power in order to achieve better outcomes. Mrs Chin'anga (42) explained:²⁶

'Ini pandakaona kuti mwana ava nepamuviri uye panga potaurwa nevakumurume vacho zvokuda kuroora, ndakanyengetedza baba vake kuti vambofanotambira mari yedamage asi mwana kana apedza chikoro wozorora zvavo.'

²⁶ Interviewed at Overspill Shops on 17/12/2015.

(Meaning: ‘When I saw that my young girl was pregnant, and that negotiations about the paying of her bride price were now going on, I talked to her father for him to receive money for damages²⁷ for now and after she is done with her schooling, they can then go ahead with marriage arrangements.’)

Women negotiating with men gave them the opportunity to advance their concerns without threatening men’s power base. Such an approach maintains rather than disrupts women’s family and societal relations which women see as a source of strength rather than oppression (Bonthuys and Albertyn, 2007) and which strongly influence their choices and decisions. This helped me to understand why women are in the position that they occupy in marriages in Epworth and who makes the decisions for them to get married and remain so.

My fifth assumption that there is a need for legislative and other measures to address child marriage in order to ensure women’s full and meaningful participation in the public sphere, recognised that within the power hierarchy of African society, women do not want to unsettle relations using the law so choose rather to negotiate, accommodate and compromise their interests in order to co-exist with men. So while the law has outlawed early marriage²⁸ and encouraged women’s participation, it falls short by failing to address the different power dynamics in the African family set-up or to recognise and consider the various push and pull factors such as poverty and societal attitudes and beliefs. Hellum and Katsande (2015) note that interrogating power is critical because power relations affect how change is brought about. Sanday (1981) defines power as the ability to act effectively on persons or take things, to take or secure favourable decisions which are not of right allocated to the individual or their roles. Interrogating and understanding the power relations and structures revealed that the law is not enough to end early marriages. Other measures, such as dialoguing with men, traditional and religious leaders, was necessary as it emerged that most child brides and women in Epworth did not want to use the law but preferred settling matters privately within their families.

However negotiating with those regarded to be in power, proved to be difficult, especially in cases where the women were so terrified by the men to the extent that they dared not ask for anything. Negotiating with those in power requires a level of boldness and confidence in the

²⁷ This is money that is paid to the girl’s father by the man (or his family) who has slept with his daughter without first having paid the bride price. It is called ‘damages’ because the girl has lost her virginity and this has the effect of reducing her bride price if she is subsequently marries another man.

²⁸ Section 78(1) of the Constitution.

women so that they are able to articulate their concerns to men. Some women however lacked such confidence and boldness and so could not advance their concerns. The different aspects of the abovementioned theories helped me to understand the different factors that push and pull young girls into early marriage and why there is such a prevalence of child marriages in Epworth.

2.1.2 The gathering of information

Conducting interviews in Epworth made me understand the sensitivity of my topic and realised that the law was not enough to stop the practice of child marriages. My fourth assumption was to the effect that the inadequate implementation of protective Constitutional provisions exposes girls to child marriages. Upon interacting with some child brides, I found that most of them would lie about their age and claim that they did not have birth certificates in order to protect their ‘husbands’ from being arrested. This then made me ask myself why these brides would protect the very men who had robbed them of their education, shattered their dreams and routinely abused them? I found that what Bentzon (1998) says about the grounded theory approach very helpful in this respect. It is an interactive process in which data and theory, lived realities and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect in order to answer questions that arise during the research process. So, in answer to the above question, some child brides explained that by getting married they felt that they were helping their families economically through the bride price their ‘husbands’ paid for them to their families.

My second assumption was to the effect that cultural and religious practices that fuel child marriage discourage women’s participation in the public sphere. One, Mr Ngoro (46) of the Apostolic sect said:²⁹

‘Musikana anokurudzirwa kuroorwa kana Mweya Mutsene wataura, zvemakore ake hazvina basa asi kuterera Mweya.’

(Meaning: ‘A girl is encouraged to be married if the Holy Spirit has said so, her age is not of much importance but obedience to the Holy Spirit is.’)

As a result of analysing the data I collected and considering its implications, I was able to determine what data to collect next and from where and from whom. Being on the ground

²⁹ Interview conducted on 15/10/2015 at Domboramwari Mufudzi Apostolic Sect.

made me engage with my assumptions constantly and in response to the challenges I experienced and observed I had to find ways of getting data especially from the child brides. There was an incident in which I was interviewing a man's child bride outside their home. He heard us and shouted at me, threatening me and saying that if I had not left by the time he came outside he would beat me up. In fear, the young girl whispered to me:³⁰

'Tizai nehupenyu hwenyu mukoma!'

(Meaning: 'Run for your life!')

Fearing that I might be attacked by 'husbands' and men who thought I might be a police officer in plain clothes, I devised a strategy to meet the child brides by the river where they bathed and did their laundry and at boreholes where they were queueing for drinking water. I also decided that in instances when the 'husbands' of the child brides were around, I would first negotiate with them and ask for their permission to talk to their child brides. According to Nnaemeka (2004), African Feminism challenges through the process of negotiation. It teaches with whom, how, where and when to negotiate. Most men's hostile reaction to my presence made me aware that men knew that it was against the law to take child brides in marriage but were nevertheless doing so. This then made me turn my focus to the law enforcement agents in order to establish whether they were enforcing the law that criminalises child marriage. According to Bentzon (1998), the grounded research process is one in which the researcher collects data, sifts and analyses it, considering the implications of her findings, and then determines what to collect next to meet her needs and continues the collection and cycle of analysis.

2.1.3 *The voices of men*

According to Nkiwane (2011), we also need to focus on men in addressing gender issues and that the masculinity approach helps us to understand why patriarchy and other hierarchies that oppress women are so resilient and continue to be produced at all levels of gender relations from generation to generation. My third assumption was that societal expectations of marriage that a man should be older than his wife in order to dominate her, hinders her

³⁰ Interview conducted on 6/10/2015 in Magada.

participation in the public sphere. I interviewed Amos, 28 years old, who married a 14 year old girl and stated:³¹

'Ukarooro mukadzi mudiki haanesti, anoterera nokuita zvaunenge wamuudza. Chawataura ndochanoita, anogara ari pamba.'

(Meaning: 'If you marry a young girl, she will not be a problem, she listens and does whatever you have told her to do. What you tell her is what she will do, and she will always be at home.')

Thus, by interviewing men I unearthed why they marry girls and found that it is often an issue of control, domination and power because young girls are easy to control and manipulate.

2.1.4 Engaging with institutions and the role of decision makers

Having gathered that child marriage is prevalent in the Epworth and that most girls and women in and from child marriage are variously orphans, from poor families and running away from abusive relatives, I focused on government institutions and their agents who either enforce or implement state policies. I engaged with the Department of Social Welfare to see what they as a government department do to assist orphans, the poor and children facing abuse in order to keep them in school and provide them with basic food, clothing and shelter. In the field it emerged that poverty was one of the factors pushing girls into early marriages.

I discovered as a result of my constant engagement with women and child brides in Epworth that most of them were vendors, some were prostitutes and a few were cross-border traders and this led me to approach the Ministry of Gender and Women's Affairs to find out if women in Epworth were meaningfully participating in the public sphere.

I also interviewed law enforcement agents in Epworth to find out the extent to which the law protecting girls from sexual abuse and child marriage was being implemented and, if not, what was hindering their efforts. It then emerged that these law enforcement agents were trivialising child marriages by leaving child sexual abuse cases and child marriages to be investigated by community volunteers. In this respect I believe Moreau (2004) correctly observes that oppressive power relations are often the indirect effect of institutional structures, structures that were not deliberately designed to harm the individuals in question,

³¹ Interviewed on 15/10/2015 near Domboramwari Police Station.

or to express contempt for them, but, nevertheless perpetuate the social or political domination of certain groups.

The volunteer Victim Friendly Unit police officers said that most child brides did not have birth certificates which meant that the police could not affect arrests or open a docket because they could not determine the age of the girls and that the government did not have the funding to cover age estimate tests. I discovered that non-governmental organizations (NGOs), such as PADARE and Justice for Children Trust (JCT), had worked with the police in the past by assisting with financial support to pay for these tests. Their assistance stopped however in 2013. This was due to the fact that the exercise was expensive. It cost \$80 for a girl to be age estimate tested. The donors decided to shift their attention to paying school fees for children in rural areas. Since \$80 could pay school fees for 4 children, they decided that it was better to educate four children than to assist just the one.

2.1.5 Applying elements of human rights

The main focus of my research was on the impact of child marriage on women's participation in the public sphere and this led me to look at human rights elements such as, women's participation, equality in marriage, and the best interest of the child. Zimbabwe has signed and ratified regional and international human rights instruments which abolish child marriage and guarantee equality in marriage and women's participation in the public sphere. The human rights based approach focuses on the obligation of the state to ensure that measures are put in place so that people enjoy their rights. The threefold obligation on the state under international law to protect, promote and fulfil calls for the state to take measures such as resourcing policies and programmes that advance women's and children's rights.

My fourth assumption was to the effect that the inadequate implementation of the protective Constitutional provisions exposes girl children from child marriages. Using the human rights based approach, I investigated whether the law enforcement agents were arresting perpetrators and accomplices of child marriages considering the high prevalence of the practice in Epworth. The human rights based approach directed me to explore the measures that are in place to protect girls from early marriage and encourage women's participation in the public sphere. Considering that the country's marriage laws, the Children's Act and the Criminal Law Code have not yet been brought into harmony with the Constitution (to reflect that 18 as the minimum marriageable age and its definition of a 'child'), the human rights approach made me shift my focus to the state's policy makers since they have a duty under

international human rights law to put in place essential measures to accomplish the full realization of human rights. An important step here is to ensure that the state's laws conform to the principles of equality and non-discrimination embraced by the human rights enshrined in the country's Constitution, its supreme law.

The Constitution of Zimbabwe provides for the equality of persons and sets up a quota system³² to ensure women are represented in parliament and other government bodies. It also protects children's rights³³ which include the rights to education, to be protected from sexual abuse, to appropriate care and parental care. In Epworth, however, many girls get married before their 18th birthday which means that they are removed from parental care, lose their right to education and become exposed to sexual abuse at a young age. Shaba (2000?) correctly notes that the relation between women and the state is reflected by the extent to which the state implements the rights of women. This can be measured by the seriousness in the form of the actual steps the state takes to fulfil its international human rights obligations that directly benefit its women citizens.

2.2 THE COURSE I TOOK! RESEARCH METHODS

2.2.1 Focus group discussions

Child marriage was a heated topic³⁴ when I conducted my research in Epworth. When I mentioned '*kuroorwa kwevana vadiki*' (meaning 'child marriage') in any public space such as market places and at bus terminals the attention of people was immediately attracted and they started gathering and offering their opinions or shouted them from wherever they were, making sure they could be heard. Focus group discussions involve interviewing a group of people with the specific intention of finding out a wide range of views from those who have or are considered to have knowledge on the research question(s) (Stewart, 2002). This method of gathering data helped me to discover the views of both men and women on the research topic.

³² Section 124(1)(b) of the Constitution.

³³ Section 81 of the Constitution.

³⁴ It was a heated topic because at the time there was the on-going Constitutional Court case of *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* (above) which was challenging the constitutionality of marriage laws which permitted child marriage. There were also some talk shows on the radio and campaigns being carried out by different NGOs against child marriage and its impact on young girls.

I noticed how women expressed their opinions without fear of the men around them. They spoke their minds freely and were quicker to respond to questions than men. They made it very clear how they did not want their daughters to get married before finishing secondary school; that bride price mainly benefits men and not the whole family in that most of it is given to the father of the girl bride who then decides what he wants to do with the money.

Most men emphasised the importance of virginity and that nowadays girls are becoming sexually active at a very early age. They therefore thought it better for girls to be married off at an early age before they started bringing home many children from different fathers. Most men also claimed that educating a girl mainly benefits the family she will be married to.

What I found interesting about conducting focus group discussions was just how easily and unrestrained people were willing to make their contributions and how they allowed discussions to be held among themselves. I then took the information and views gathered and triangulated them with different Government Ministries and NGOs. This was in accordance with Bentzon's (1998) observation that discussion groups give pointers to the kinds of problems and views that are manifest in the community and they also give some information which then will need to be triangulated.

2.2.3 Individual interviews

I mainly held individual interviews with girls and women from and in child marriages. These were lengthy interviews where girls and women explained why and how they got into child marriage and what they were doing now professionally and what they aspired to do prior to marriage. These were conducted privately and were very informative. They were in-depth interviews in which respondents felt free to express themselves and to be emotional at times.

2.2.4 Targeted key respondents interviews

I also held interviews with key respondents as shown in Table 1.

Key respondents	F	M	Total
President of the Chiefs' Council		1	1
Apostolic sect religious leaders		4	4
Deputy Director Children's Trust		1	1
Ministry of Gender and Women's Affairs, Gender Officers	2		2
Social Welfare, Harare District		1	1
Victim Friendly Unit volunteers	1	2	3
Gender Focal Persons in the Ministry of Constitutional and Parliamentary Affairs	2		2
Total	5	9	14

Table 1: Showing details of the key respondents

I targeted my key respondents after having gathered data on the ground and so I used them to triangulate what I had already collected. My second assumption which stated that cultural and religious practices that fuel child marriage discourage women's participation in the public sphere needed me to focus on traditional and religious leaders as respondents who had knowledge of the different beliefs and practices that encourage child marriage and discourage women's participation in the public sphere and they also had the capacity to influence the change of such beliefs and practices.

My fourth assumption on the inadequacy of the implementation of protective Constitutional provisions needed me to focus on policy makers and implementers for the provision of information as to why there was an inadequate implementation of Constitution provisions that protect girls from early marriage.

2.2.5 ‘Who did I research?’

Table 2 shows all the respondents who were interviewed and their different positions in society.

Description of all respondents	Number	Female	Male
Girls in child marriage	42	F	
Girls from child marriage	18	F	
Women in child marriage	14	F	
Women from child marriage	10	F	
Mothers-in-law	5	F	
Men in child marriage	6		M
Public transport conductors and touts	11		M
Second hand clothes vendors	5		M
Vegetable vendors	6	F	
VFU Police Constable	1		M
VFU volunteers	3	F	2 M
Ministry of Gender and Women’s Affairs	2	F	
Ministry of Justice, Constitutional and Parliamentary Affairs	4	F	
President of the Chiefs’ Council	1		M
Padare (men’s forum) advisor	1		M
Deputy Director, Justice for Children Trust	1		M
Department of Social Welfare	1		M
Johanne Marange Domboramwari Apostolic church leaders	4		M
Domboramwari Clinic nurses	3	F	

Table 2: Showing details of all the respondents

2.2.6 Use of technology

The use of a video camera and audio recordings helped to gather a lot of data in a short period of time. This method was mostly effective during focus group discussions because I managed to collect all the contributions and then I sat down afterwards and listened to them over and over again making sure I had captured all their voices. Listening to the voices more than once assisted me in my data analysis and the video recording gave me visuals of the

surroundings which allowed me to observe all the different types of body language, especially between child brides and their ‘husbands’. The more I played the videos, the more I felt in touch with my research.

My first assumption was to the effect that child marriage perpetuates unequal gender relations within marriage which incapacitates women’s potential to participate in the public sphere. As I video recorded child brides and their ‘husbands’ I was able to capture just how terrified and uncomfortable child brides looked. I was also able to capture just how the older ‘husbands’ dominated their child brides during interviews even when I was asking questions of their young brides. Watching the videos kept bringing the field back to me, so that even when I was in the comfort of my home, the video recordings instantly took me back into the field.

2.2.7 Legal advice as a research method

After I introduced myself as a lawyer and a Masters of Women’s Law student conducting research for my dissertation, the VFU police officers and volunteers saw an opportunity for me to do some legal aid work at the station. I managed to talk to some child brides who had come to report domestic violence and I got to know the reasons why they entered into early marriage. One girl shared how she was forced into marriage at the age of 13 to a 25 year old man who had raped her one evening in her home when her parents were out. She explained that her ‘husband’ was a close next door neighbour and that when she was raped instead of the matter being reported to the police, the rapist’s family negotiated with her parents and paid them her bride price.

Another woman shared how she got married when she was only 15 years of age to a 36 year old man who was abusive toward her right from the start of the marriage. She then took the opportunity to advise her daughter of 14 whom I was interviewing and she said to her:³⁵

‘Kuroorwa sandimhinduro, uchiri mwana mudiki unobatwa semuranda kwaiti uko, murume anoita zvaonada newe ndakabva neko haisinyore budamo uchirikukwanisa.’

(Meaning: ‘Marriage is not the answer, you are still young and you will be treated as a slave where you are, your “husband” will do as he pleases with you, I have been there and it’s not easy, get out while you still can.’)

³⁵ Interviewed at Domboramwari police station on 22/10/2015.

I had to tread with caution when I invoked this method because I did not want to fall into the trap of gathering similar data by virtue of by being at one place and dealing only with women or girls who had come to the police station with the specific intention of filing criminal charges. Hence I decided not to report to the VFU Office frequently but only to go there when it was necessary to do so or to triangulate data I had already collected. I wanted to prevent people from gaining the impression that I was always there giving advice because, as stated by Bentzon *et al.* (1998), that would have resulted in the acceptance of certain happenings as being normal and the possible omission of important information.

2.2.8 Observations of the VFU

On my first day at Domboramwari Victim Friendly Unit Office (VFU), I arrived at about 8 a.m. and the office was packed with mostly women and children. Some were standing and others seated outside waiting to be served. I found myself outside for about 30 minutes because only two officers were assisting women on that day. It was a Monday morning and I gathered that some women had come to report their ‘husbands’ for domestic violence over the weekend and Monday, being the day on which their ‘husbands’ are taken to court, a number of these women had specifically come to withdraw charges against them. Because I did not want to interrupt the busy officers, I decided to sit and just observe what was going on in and around the office. The Victim Friendly Unit officers did not recognise me and this allowed me to gather information on how they assisted the child brides and women who had come to make their reports of domestic violence. My ‘unknown’ presence permitted me to gather information on how the police advised women to solve problems within the family. I also observed some women sharing advice with and encouraging each other before reporting their complaints to the police.

2.2.9 Impact of methodologies on findings

The methods I employed to collect data were effective. Interviewing both men and their child brides together was challenging. The men would dominate the interviews while the child brides would not confidently contribute to discussions and would give one word answers. The targeted key respondents, especially the law enforcement agents and those in the different governmental Ministries, explained and gave indicators³⁶ as to why there is inadequate implementation of the Constitutional provisions which protect girls from child marriage. The

³⁶ Such as, lack of political will and lack of government funding to advance women’s and children’s rights.

different religious leaders³⁷ and even the ordinary men interviewed made it clear that if a girl is married at a young age she is submissive to and dependent on her 'husband'. Engaging with the different human rights laws and instruments and how or if they have been effectively implemented by the state reflected on the seriousness of the state's commitment in pursuing its international human rights obligations of advancing women's and children's rights.

2.3 Challenges

My main challenge was my personal experience of having witnessed the abuse and oppression my mother went through and the fact that she was refused participation in the public sphere. The research became emotional for me at times because I could relate to the abuse that the child brides were suffering which they shared during the in-depth interviews. Despite this, I still managed to focus on establishing the link between early marriage and women's participation and whether child marriage incapacitates women and negatively affects their participation in the public sphere.

Getting the correct age of some of the child brides also proved to be difficult as some would lie about their age because they feared that their 'husbands' would be arrested for marrying under aged girls.³⁸ I therefore devised the strategy of asking them the year they were born and then calculating their ages myself. Some of the child brides believed I was a plain-clothes police officer conducting undercover investigations and refused to be interviewed.

Most of the streets in Epworth are not named or well planned which made it difficult for me to locate places or conduct follow ups visits with some of the child brides and women I had interviewed. It was difficult to locate their houses, vending sites or where they worked as sex workers.

Another challenge was that I failed to get permission from the Ministry of Education to interview school heads in Epworth to get statistics of girls who had dropped out of school for reasons such as early pregnancy or marriage.

³⁷ From the Apostolic Sect.

³⁸ Girls below the age of 18 years.

2.4 Conclusion

This chapter covered discussions surrounding the approaches that influenced how I conducted the research and determined the data collection methods I invoked in order to thoroughly explore the link between child marriages and women's meaningful participation in the public sphere. And the research journey will allow us to answer the question whether child marriages incapacitate women and whether this, in turn, leads to their ineffective participation in the public sphere. This is now the ideal point to focus on the impact of child marriage on women's agency and capacity and this will be discussed in the next chapter.

CHAPTER THREE

3.0 THE IMPACT OF CHILD MARRIAGES ON WOMEN'S CAPACITY AND AGENCY

3.1 Introduction

Capacity and agency are important elements in an individual because they allow them to effectively participate both in the private and public sphere. Effective participation by an individual is centred on many elements which if negatively impacted will lead to incapacitation which ultimately leads to ineffective participation. It is thus important to focus on participation in order to understand why child marriage has a negative impact on women's effective participation and whether one's capacity and agency is affected by child marriage.

3.2 Participation

According to Miranda (2005), every human being has the right to participate in decisions that define her or his life. This right is the foundation of the ideal of equal participation in decision-making among women and men. This right argues that since women know their situation best, they should participate equally with men to have their perspective effectively incorporated at all levels of decision-making, from the private to the public spheres of their lives, from the local to the global. Article 9 of the Women's Protocol emphasises women's right to participation in politics and decision making process. Article 19(b) of the Protocol obliges states to ensure the participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes. Article 13 of the SADC Protocol focuses on participation of women and, unlike the Women's Protocol, goes further by requiring that states parties ensure that policies, strategies and programmes are put in place in order to build women's capacity for them to participate effectively.

At the national level, section 80(1) of the Constitution of Zimbabwe provides that women, like men, enjoy the same right to full and equal dignity of their person and this includes equal opportunities in political, economic and social activities. This emphasis on women's participation has its foundation in the human right principle of equality. According to the mission statement of the Beijing Platform for Action, equality between women and men is a

matter of human rights and a condition for social justice and also a necessary and fundamental prerequisite for equality, development and peace. A transformation partnership based on equality between women and men is a condition for people-centred development. Section 56(1) and (2) of the Constitution of Zimbabwe provides for equality of all persons and that women and men have the right to equal treatment, including the right to equal opportunities in the political, economic, cultural and social sphere.

Participation is not an event but a process. It involves an individual having his/her voice heard in matters that will affect them either directly or indirectly. Misra (1984) defines participation as collective, continuous efforts by people themselves in setting goals, pooling resources and taking actions which aim at improving their living conditions. According to 'Pathways Through Participation' (2010), participation means many things to many people. It has three categories namely, individual,³⁹ social⁴⁰ and public participation. Individual participation has a bearing on how one participates socially and publicly. Public participation, which is the main focus of this dissertation, involves the engagement of individuals with the various structures and institutions of democracy.

Public participation means that an individual should be able to freely articulate issues and concerns without fear or intimidation. Literacy in the form of basic education is of great value as it gives an individual the confidence and capacity to understand and interact with various structures and institutions (including state institutions). Ara (2006) wrote that women's equal participation in public life plays a pivotal role in the general advancement of women. It is not only a demand of simple justice or democracy but can also be seen as a necessary condition for women's interests to be taken into account.

The UN Fourth World Conference on Women (1995) recognised that without the active participation of women and the incorporation of women's perspectives at all levels of decision making, the goals of equality, development and peace cannot be achieved. Miranda (2005) observes that since women comprise half of any society, they must exercise their right and responsibility to participate equally with men. The participation of women is also important for the advancement of both children's and women's rights. The traditional

³⁹ It is defined as the individual choices and actions that people make as part of their daily lives and that are statements of the kind of society they want to live in (Pathways Through Participation, 2010).

⁴⁰ It is the collective activities that an individual is or may be involved in, for instance, being a member of a church or a community group.

stereotyping of roles which regard women as nurturers and caregivers in the private sphere all too often leaves women with the burdens resulting from the state's failure to implement and protect children's rights. Hence, women's participation in decision making is more likely to give priority to social concerns and to the relatively disadvantaged population groups because women themselves are usually socialized into more nurturing values (Miranda, 2005). Women's participation, according to Madan (2014), has an impact on every realm of social life, leadership, administration, social status, economic empowerment, literacy and education and health and hygiene.

The participation of most women however is mainly limited to their family environment. Madan (2014) states that women have always been in an inferior position. The girl child continues to confront discrimination on the ground of sex. Child marriage which mainly affects girls⁴¹ has been one of the many factors that affect women's participation. According to 'Girls not Brides' (undated), child brides are often disempowered, dependent on their 'husbands' and deprived of their fundamental rights to health, education and safety. With little access to education because they often drop out of or are forced out of school, child brides have less economic opportunities and are mainly limited to the family environment. According to Ara (2006), education is the strongest factor to influence control of a child's own future. Tsimpo (2015) notes that child brides have less decision making ability in their households, in their individual lives and this then negatively affects their public participation. Once individual participation is compromised, it affects one's capacity and agency which eventually leads to ineffective participation.

In conclusion, it is important to have women capacitated so as to be able to effectively participate in the public sphere. Women's participation is central for the advancement of women's rights. Child marriage however incapacitates women which then negatively affects their participation. Child brides are abused and oppressed by their 'husbands'. According to Smith (1993), oppressed individuals are known for their abilities to anticipate the orders and desires of those who have power over them, to comply with an obsequiousness that is then used by the dominant individuals to justify their own dominance. as a result of the abuse and oppression in marriage, child brides do not act or think out of their own initiative, they wait

⁴¹ According to 'Girls not Brides', while boys are sometimes subjected to early marriage, girls are disproportionately affected by it and form the vast majority of the victims of child marriage. <http://www.girlsnotbrides.org/what-is-the-impact/>.

to be given orders on what to do and to say and hence participation in the public sphere by women from a child marriage background is difficult as most of these women lack agency and capacity. They also all too often live a life of shattered dreams.

3.3 ‘Shattered dreams!’ Unequal gender relations in child marriage

According to Nussbaum (2003), ‘to measure...a nation’s quality of life, it is important to look at capabilities, what people are actually able to do and to be.’ It was important for my research to find out from women the impact of child marriage on their professional lives. Knowing what one is and wanted to be is an indicator of whether one made a choice or is simply the result of an unjust background. Nussbaum (2003) states that if we ask what people are actually able to do and to be, we come much closer to understanding the barriers that societies have erected against full justice for women. Thus asking about what one wanted to be revealed to me the barriers that are placed on girls and women because of child marriage which then negatively impacts their participation in the public sphere. According to Nussbaum (2003), there is a need to look at what one could have been. Most women, for example, frequently display ‘adaptive preferences’, preferences that have adjusted to their second-class status.

The preferences that most women have are as a result of preferences which have been shaped and these are shaped by unjust background conditions such as child marriage and abuse. Nussbaum (2003) notes that women’s current preferences often show distortions that are the result of unjust background conditions. My first assumption was that child marriage perpetuates unequal gender relations within marriage which incapacitates women’s potential to participate in the public sphere. According to George *et al.* (2007), unequal gender relations are relations that have been built or have occurred on an unequal basis between a man and a woman. The gender relations are however based mainly on the structure that governs how much power is embedded in social hierarchy.

The capabilities approach focuses on what people, or, in this research, what ‘women’ were able to be or could have been if it were not for the inequalities they suffer and have suffered inside the family because of their biological set-up. In the field I interviewed women who have settled for undesired professions because of an unjust background which has robbed them of their capacity to participate in the public sphere. In Epworth women/girls are viewed

more as objects, slaves rather than subjects. Most child brides and women in child marriages explained how their ‘husbands’ control the number and spacing of their children and when and how to have sex. According to George (2007), gender inequality damages the physical and mental health of most women and girls and benefits men through resources, power, authority and control. Unequal gender relations manifest themselves through behaviours, norms and practices. According to Moreau (2004), unequal gender relations perpetuate oppressive power relations. This has the effect of further entrenching or reinforcing power imbalances that are unacceptably large and that leave certain individuals without sufficient social or political influence. Robeyns (2003) states that what is important is that a person has capabilities (freedoms) to lead the kind of life they want to lead, to do what they want to do and be the person they want to be. Once they effectively have these freedoms, they can choose to act on those freedoms in line with their own ideas of the kind of life they want to live. Below are four different case studies from the field which illustrate how child marriage negatively affects women’s capabilities (freedoms) which then unconstructively impacts their potential to participate in the public sphere.

Case number 1

Esnat Chimedza (26) (Figure 1) got married at the age of 13 because of teenage pregnancy and is now a mother of two. She ran away from her ‘husband’ after 3 years of an abusive marriage and became a commercial sex worker. She has done this for 11 years and charges \$1 for short time⁴² and \$5 for gang sex.⁴³ As a child she wanted to be a lawyer. Her ex-‘husband’ did not want her to continue with her schooling and or even permit her to get a passport so that she could at least earn money doing cross-border trading. She described sex in her marriage as rape because her ex ‘husband’ would always use force against her and would sometimes hit her during sexual intercourse. She explained that she could have been a lawyer if she had gone back to school but no one wanted to pay her fees and look after her children. When she ran away from her ‘husband’ her family did not accept her so she moved into the streets and became a commercial sex worker to make a living and send her children to school. She regards sex work better than marriage because when she was married she was forced to have sex for nothing, now she can choose with whom to have sex and get paid for it.

⁴² Short time is when she has sex with a man for less than 5 minutes. She referred to it as ‘in and out’.

⁴³ This is when she has sex with a group of 3 or more men.

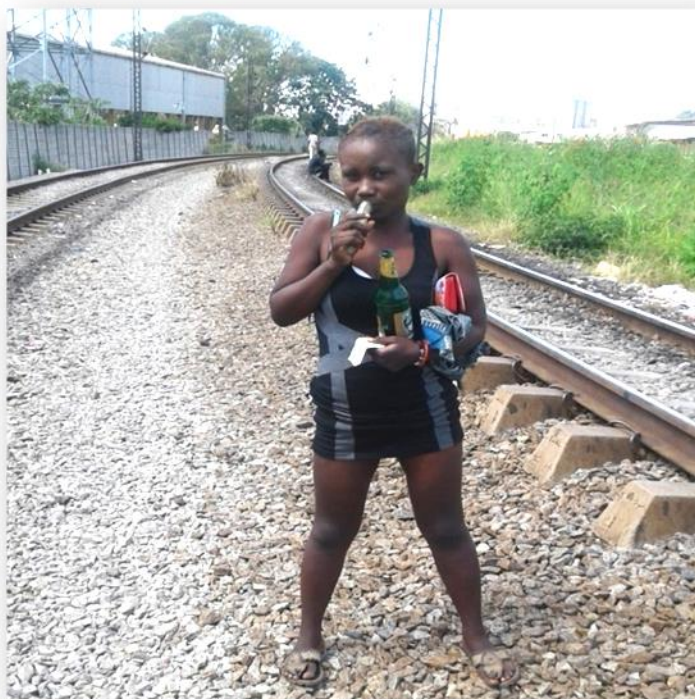


Figure 1: Esnat (26) wanted to be a lawyer but became a child bride at 13 and mother of 2. She left her abusive ‘husband’ and became a sex worker.

According to Baber (2010), individuals are always worse off for being unable to achieve states they prefer. Individuals whose preferences are deformed⁴⁴ are satisfied with a fruitless state of affairs, they are incapable of satisfying [redacted] range of nearby possible preferences, that is, preferences they could easily have had.

Case number 2

Nyarai⁴⁵ (14) (Figure 2) married at 13 and at the time of interview was 7 months’ pregnant. She is an orphan and looking after three other siblings. She decided to get married because she was no longer in school and thought a ‘husband’ would help her look after her siblings. She wanted to be a medical doctor but could not proceed with school because there was no one to pay for her school fees and look after her siblings. When she got married her ‘husband’ said it was not his duty to send her back to school that there was no one but her to look after the home and his children⁴⁶ while she is in school. She is now a vegetable vendor.

⁴⁴ According to Baber (2010), these preferences could have been deformed by poverty and oppression.

⁴⁵ Not her real name.

⁴⁶ Nyarai’s was a second wife and the first wife had died leaving 3 children.



Figure 2: Nyarai (14) an orphan who wanted to be a doctor but became a child bride at 13 and is now a mother of 6 and a vegetable vendor.

Robeyns (2003) states that to measure a person's capability, there is a need to evaluate whether an individual has access to quality education, sufficient food supplies, shelter and access to good health. Robeyns also notes that there are some social constraints that influence and restricts an individual which then deforms their preferences. In Nyarai's case, her social constraint was the fact that as the eldest girl in the family she had to look after her siblings and early marriage was the only option for her so as to be able to provide for them.

Case number 3

Ellah Chakonesa (82) (Figure 3) married at the age of 14. She was denied the privilege of continuing with her schooling because she had to be married off in order to raise money for her older brother to marry.⁴⁷ She had 11 children and 4 miscarriages.⁴⁸ She could not proceed with school even when she got married because her 'husband' did not see the need to educate her and also her children were young and not well spaced so she had to be at home all the time to look after them.

⁴⁷ She explained that it was a *Shona* custom to have a girl child married off in order to raise money for the bride price for the boys in the family to marry.

⁴⁸ In the research, miscarriages were common among child brides.



Figure 3: Ellah (82), wanted to be a nurse, was forced to marry married at 14, is now an unpaid midwife.

Case number 4

Mavis Chinembiri (63) (Figure 4) married at 14 has 9 children and had 3 miscarriages. Forced into child marriage because of poverty was married off for two 50kg bags of maize and 1 cow. She was a 4th wife and went to school up to grade 5. She suffered physical abuse in her marriage which resulted in the miscarriages and her losing her two front teeth. She did not proceed with school because she was so far behind her contemporaries. She could not run away from an abusive marriage because she was taught by her elders that a man physically abusing you was a sign of love and he did not want to be attached to the stigma of being a single parent. She narrated that at school she was the best at sewing. Nussbaum state that victims of adaptive preferences are badly off even though they have successfully 'adjusted' to deprivation and oppression.



Figure 4: Mavis (63) wanted to be a school teacher, was forced to marry at 14, had 9 children, became a vegetable vendor & casual farm labourer.

In conclusion, drawing from the professional lives of the women I interviewed, I considered Nussbaum's (2003) observation that 'capabilities are held to be important for each and every person: each person is treated as an end, and none as a mere adjunct or means to the ends of others.' Women's participation in the public sphere has been greatly negatively impacted because of child marriage as women/girls were 'means to the ends for others'. As a result of child marriage, most women are unable to reason, imagine and to think (which should be cultivated by basic adequate education)⁴⁹ so as to produce works and make informed choices about their professional lives. Most women and girls interviewed showed that their emotional development was shattered by fear which then undermines their participation. There is a need to look at the environment, cultural and religious practices that an individual is exposed to so as to address and be able to judge whether his or her capabilities were deformed by their background.

3.4 'She must know her place!' Culture and religious beliefs

My second assumption was that cultural and religious practices that fuel child marriage discourage women's participation in the public sphere. According to Moore (1990), patriarchal society defines women's roles and behaviour in some very specific ways. These social expectations are relayed by family members, religion and traditions. It is important to note that culture and religion have such great power over the lives of many and are often believed to be the forces responsible for women's oppression and subordination. Sibanda (2011) states that tradition, religion and poverty continue to fuel the practice of child marriage. According to Musembi (2013), discrimination against women is produced by stereotypes and beliefs contained in moral codes such as community customs and religious norms. She further states that religious and customary laws and practices on family relations have been regarded as the primary source of ideas about the superiority or inferiority of women and men.

The Human Rights Committee in 2000⁵⁰ commented that 'the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes.' According to Hicks (2002), some religious beliefs and practices play a part in perpetuating the unequal treatment of women. When I interviewed one of the leaders of the

⁴⁹ Note, most of the girls and women interviewed only had primary level education.

⁵⁰ The UN Human Rights Committee in General Comment Number 28 on Equality of Rights Between Men And Women (2000).

Apostolic church, *Madzibaba* Joseph explained that in their church, children and women are encouraged to obey the head of the family. He stated that whatever the man says as the head is final and he should not be quarrelled with because he was ordained by God to be the head. *Madzibaba* Joseph said:⁵¹

'Kana baba, semusoro wemba, vakati mwanasikana wavo aroorwe, izvozvo hazvisi zvekupikisa nokuti panenge paine zvavaratidzwa semusoro wemba.'

(Meaning: 'If the father, as the head of the family, says his daughter should get married, it should not be refused because he would have received a vision as the head of the house.')

Talking to child brides from the Apostolic sects, they emphasised how they were created by God to be helpers and to be submissive and 'good women' to their 'husbands'. According to Moore (1990), moral agency means the actions that women take to respect and care for themselves. These actions include a girl or woman fulfilling her own life's desires. It is about an individual doing what makes them happy rather than doing what pleases their partner. Moore (1990) further states that moral agency however requires that one challenges 'the good woman' expressed in prevailing social norms. Most women believe that morally good women are those who fulfil well familial roles such as 'the good mother', 'the caretaker', or 'the dutiful wife' regardless of the negative consequences these roles have for women's own self-respect or well-being. Social roles for all women are based on the norm of women who remain in the private sphere caring for a family.

Most women and child brides, especially those from the Apostolic sects, shared how as helpers they should know their place in the family and that for them any decision making position in or outside the family, even in church, is not for them. Most women explained that a helper should never be above her head ('husband'). According to Mackinnon (1987), a women's place is not only different but inferior, it is not chosen but enforced. The belief and the doctrine that women are helpers has forced them into submission and deformed their capabilities by the thinking that as long as they are not in any decision making position in or outside the home, they are good women following God's Word.

⁵¹ Interview on 18/10/2015 at Muzinda WaJehovha Apostolic shrine, Overspill. *Madzibaba* is a term of respect.

Paidamoyo⁵² (15), mother of one, explained that in her church, Johanne Marange Apostolic sect, women are not permitted to do any work apart from vending. She added:

‘Kuchechi kwedu hatikuridzirwi zvechikoro, zvekudzidza kusvika kuma form 6 kana kuenda kuuniversity nokuti vakadzi vanoenda mberi nechikoro zvinozovanetsa kuti varorwe muchechi nokuti vanonga vakuda kutonga.’

(Meaning: ‘In our church we are not encouraged to be educated, it is not encouraged for women to go up to form 6 or university because those that do so it will be difficult for them to be married in the church because such women would want to be bosses.’)

According to Sibanda (2011), the belief in the Apostolic sects is that girls should only have a minimum amount of schooling and therefore as soon as girls reach puberty they are married off. The lack of education often disempowers the girls. It takes away a certain level of self-confidence and self-assertion which is the ability to make plans and carry them out to envision new possibilities (Moore, 1990). This will affect one’s ability to make decisions even regarding personal health and future plans.

Madzibaba Joshua noted:⁵³

‘Mukadzi anofanirwa kudzikama ne kuteerera murume wake. Zvokushanda mabasa ekuti munhu anoswera asipo iye ariye akapihwa chibereko anoti zvinhiyo zvake zvochengetwa nani munhu ngaazive zvaakarorerwa oita saizvozvo.’

(Meaning: ‘A woman should be submissive and listen to her “husband”. Going to work and spending the whole day away from home and yet she is the one who was given the womb whom does she think will look after her children. She should know why she got married.’)

According to Moore (1990), a certain quality of relationship is essential to develop self-respect and self-assertion. This certain quality of relationship includes a loving environment, an environment free of abuse and oppression, and an environment where one is able to develop their abilities and achieve self-set goals (Moore, 1990). However in most child marriages the quality of relationship is that in which child brides are dominated, oppressed

⁵² Not her real name, interviewed in Magada, Epworth on 10/10/2015.

⁵³ *Madzibaba* Joshua (56) is one of the prophets in Johanne Marange Domboramwari sect and is married to 4 wives and he married all of them before they were 16 years old and has 14 children. Interview at Domboramwari church shrine on 26/11/2015.

and forced into submission. This has the effect of diminishing one's self-respect which is the centre of one's agency. Self-respect, according to Moore (1990), is an important factor in an individual's life because it allows them to develop one's abilities and achieve self-set goals, while self-assertion is the ability to identify one's own needs and seek ways to meet those needs. Moore (1990) notes that abused women's moral agency is limited by abuse and by their internalization of the effects of the abuse. They distrust their judgments in the moral domain as well as in other areas. Hence it is difficult for such an individual to participate in decision making in both the private and public arena.

In relation to culture, the President of the Chiefs' Council stated that there are some cultural practices that used to encourage child marriage such as betrothal of girls,⁵⁴ pledging of young girls as compensation,⁵⁵ wife inheritance⁵⁶ and though they have been outlawed, some families are privately continuing with these practices. Mackinnon (2008) states that 'the law alone cannot change our social condition. It can help, so far it has helped remarkably little.' Sibanda (2011) states that legal reform whilst useful, is not always effective because people do not easily give up their customs and traditions.

The cultural practice of payment of *lobola* (bride price) was noted by the President of the Chiefs' Council as a positive part of culture which brings two or more families together. In Epworth, due to poverty, young girls were and are being married off for as little as a \$100. As stated by Sibanda (2011), the cultural practice such as payment of *lobola* exposes the girl child to child marriage. It is one of the causes of child marriage. The practice has reduced women to commodities or objects for sale because of the commercialisation of the practice. Thus young girls are pushed into early marriage so that their families can gain financially from the transaction. Smith (1993) states that once an individual is reduced to an object or commodity, that person is expected to be submissive, there is no longer any right to self-autonomy which is important for one to be able to make decisions concerning their lives, family and the society at large.

⁵⁴ This is the practice in which a girl is promised in marriage while she is still growing up.

⁵⁵ According to Tsanga (2011), this is when a murder is committed by a person in her family and then a girl from the culprit's family is then given to the family of the deceased to avenge his spirit.

⁵⁶ This is the practice in which a young sister is forced, in most instances, to become a wife of her late sister's 'husband'.

The President of the Chiefs' Council explained that if culture is to be applied in a strict sense, a girl is not the one who decides when she wants to get married and to whom. He further stated that under culture a woman remains a minor, no matter what her age or her level of education and she should always be under the authority of a man. According to Sibanda (2011), in many societies, men are expected to control every aspect of women's relationships. This includes decision-making as to when and to whom a girl will marry and when and how she will have sexual relations. A woman's capacity to voluntarily enter into marriage and to dissolve a marriage is essential to her ability to control her life and make voluntary and informed reproductive choices, states Legal Grounds (2010). According to Degler (1980), a patriarchal family structure requires that women subordinate their needs to those of the men and the children. The use of violence to enforce control is intrinsic to patriarchal culture.

The President of the Chiefs' Council explained that at the traditional Chief's Court, women do not participate or contribute without first seeking permission to speak and most of the time their male counterparts speak on their behalf. The Chief's Court is male-dominated and women only make contributions when they have been asked to do so and without being asked women are encouraged to be quiet during proceedings. Morna (2011) states that culture and tradition are major barriers to women accessing decision-making positions. Some women councillors⁵⁷ stated in their interview that the culture that women should not speak in public has resulted in their not being listened to and being booed at during Council meetings when they want to make contributions; hence, some of them have resorted to being quiet in meetings which then affects their meaningful participation. The women councillors also shared that most men in Council meetings have the attitude that politics or being a councillor is not the place for a woman. Thus most women shy away from participating in politics.

Meaningful participation when one is considered a child no matter her age or level of education is a challenge, and it is made even worse when one is a child bride. According to the Gender Focal Person in the Ministry of Gender and Women's Affairs,⁵⁸ child brides and older women at community meetings hardly participate even if the topic of discussion affects them more because of gender roles. She also stated that at community meetings the moment a woman wants to say something, if her 'husband' just looks at her, she quickly withdraws her statements and keeps quiet. The Gender Focal Person in the Ministry of Gender also stated

⁵⁷ Interviewed at the Ministry of Gender and Women's Affairs Offices on 23/10/2015.

⁵⁸ Interviewed on 23/10/2015 at the Ministry of Gender Offices.

that the fear that child brides and most women have of their ‘husbands’ is as a result of the age difference between them in which the women and girls actually see their ‘husbands’ more as their fathers who should not be challenged but rather obeyed.

The President of the Chiefs’ Council explained that under culture women only participate in so far as their roles given to them within their family structures allow. He stated that under culture, women’s participation is very structured, women only participate within the particular role assigned to them. Under culture there is no public sphere for women. He explained that women’s participation in the public sphere is an idea of western culture because in an African setting a women’s place is at home with her children. Sibanda (2011) states that culture is one of the obstacles to the enjoyment of children’s and women’s rights in Africa as communities do not always observe the relevant human rights instruments that protect children from harmful cultural practices or they are not aware of such instruments.

Section 80(3) of the Constitution outlaws all laws, customs, traditions and cultural practices that infringe the rights of women conferred in the Constitution which rights include the right to free and full consent to marriage⁵⁹ and the right to equal opportunities with men in political, economic and social activities.⁶⁰

In conclusion, some cultural and religious practices and beliefs fuel child marriages and hinder women’s participation in the public sphere. Although culture is generally not static, it does very strongly appear to be so in regard to child marriages and women’s participation in the public sphere. Important decisions such as when and to whom one should marry are decisions left to men to decide for women. The practice of the payment of bride price has resulted in some families pushing young girls into early marriage where most child brides are dominated and this has a massive effect on women’s agency.

3.5 ‘What is he moulding?’ Effects of domination in child marriage on women’s agency

Agency is the ability of persons to act for change towards their valued ends (Hicks, 2002). Agency freedom was defined by Sen (1985) as what an individual is free to do and achieve in pursuit of whatever goals or values she or he regards as important. The capability approach

⁵⁹ Section 78(2) of the Constitution.

⁶⁰ Section 80(1) of the Constitution.

on the other hand emphasizes that the well-being of a person is fundamentally dependent upon his/her ability to be an active participant in society and freedom in its various forms requires individuals to be able to exercise their agency (Hicks, 2002).

According to Mackinnon (1987), it is a male notion that power means someone must dominate. My third assumption was to the effect that societal expectations of marriage that a man should be older than his wife in order to dominate her, hinders her participation in the public sphere. My findings revealed that the marrying of young girls is a matter of male domination which means that there is no equality in marriage. The child brides are treated like children, not wives, or like slaves, not equal partners, who are restricted to the home environment. The men who marry young girls do so in order to dominate them and mould them to their liking. For example, Amos (28) married a 14 year old girl and said he specifically chose a young girl even though there were older girls he could have married because he wanted someone who would listen to him and do exactly what he told them to do. He stated:⁶¹

'Mukadzi akaerekana akura adzidza anenge onetsa kutuma kana kuudza zvekuita anonga oda kuita zvomusoro wake.'

(Meaning: 'If a girl becomes older, and educated it will be difficult to tell her what to do because she would want to think for herself.')

Most child brides interviewed did not go back to school after marriage and their 'husbands' did not want them to attend school even if a donor was willing to paying for their education. According to Ara (2006), education is the strongest factor which influences women's control of their own lives. The fact that child marriage reduces the educational attainment of girls who marry early also has implications for agency later in life (Tsimpo, 2015).

Agency is defined as the capacity to define one's goals and act on them. It is difficult for young girl to define and act on her goals if she is in a marriage in which she is dominated, oppressed and forced into submission. Thus child brides become diminished individuals who are treated as objects or slaves. Smith (1993) says that a diminished person is expected to be submissive; there is no longer any right to self-determination because there is no basis in equality for any such right to exist. In a condition of inferiority and objectification,

⁶¹ Interview at Amos' house in Magada, Epworth on 15/10/2015.

submission is essential for survival. Moore (1990) notes that women's moral agency is limited by abuse and by their internalization of effects of that abuse. Abused women begin to distrust their own judgment and sense of themselves. Significantly they come to distrust their judgment in the moral domain as in other areas of their lives, hence they cannot effectively participate in either the private or public spheres of life (Moore, 1990).

Most child brides interviewed in Epworth were not employed and most of them were vendors of vegetables, floor polish and second hand clothes. Takunda⁶² (36) said that he did not want his wife to become a nurse but rather a vegetable vendor. He explained that even though his wife wanted to go back to school and become a nurse, he did not want a situation in which his wife would be more educated than himself since he only went as far as Form 2 (for 14 year olds) in secondary school. He also said that if she did become a nurse it meant that she would earn more money than him and she would become more vocal⁶³ in the marriage. Sen (1999) states that the relative regard for women's well-being is strongly influenced by such variables as women's ability to earn an independent income, to find employment outside the home, to have ownership rights and to have literacy and be educated and participating in decisions within and outside the family. Domination in the marriage affects women's ability to be independent and achieve whatever values and goals one has.

How one is moulded at a young age has an effect on one's agency and capacity. In Epworth, most girls and women who have been in child marriages and are now divorced end up in prostitutes or being vendors. Vimbai⁶⁴ (16) got married when she was 13 and her 'husband' deserted her after 2 years of marriage when she was 15 and a mother of one. She explained:

*'Chandinoziva ibonde. Kudzidza handina, hapana zvemaoko
zvandinongonawo asi pabonde ndinoziva zvekuitapo.'*

(Meaning: 'What I am good at is sex. I am not educated, I can't work but I know how to have sex'.)

Moore (1990) states that the ability to nurture self-respect and self-assertion is at the heart of moral agency, because it preserves a role for personal choice while acknowledging the social

⁶² Takunda is married to a 15 year old and has 3 children from his first marriage. Interview on 6/10/2015 at Epworth Overspill.

⁶³ Meaning, that she would be more outspoken in the marriage.

⁶⁴ Not her real name. Interviewed on 13/11/2015 at the Booster in Epworth.

dimension of that choice. Moore further stated that moral agency means that women take actions to shape their own lives rather than expect other people or situations to shape their lives for them without their participation or assent. Most child brides interviewed in Epworth did not shape their own lives; the lives they are living as vendors and sex workers were shaped by the abuse and oppression they faced/face as child brides. Abuse erodes the concrete options women have to shape their lives, women's ability to identify and attend to their own needs and women's sense that they are able to understand their situation and participate effectively (Moore, 1990).

The President of the Chiefs Council stated⁶⁵ that child brides are treated more like sex objects and slaves rather than wives and they become dependent and subservient to such an extent that they lack initiative and cannot think using their own initiative. He explained that the relationship between 'husband' and child bride is more like that between father and daughter where the child bride is afraid of her 'husband', does not ask questions and does everything to please him. According to Moore (1990), abused women pay attention to their partner's needs instead of their own in the hope of pleasing their abusers and reducing the violence. Abused women primarily depend on their abusers for physical, emotional and financial support. Abused women are known for their abilities to anticipate the orders and desires of those who have power over them (Smith, 1993). Hence child brides are moulded by abusive 'husbands' in order to obey more readily understand and follow their instructions. Their moral agency is diminished for they lack the capability to act on their own behalf.

In conclusion, women's agency has a strong instrumental impact on the well-being of children especially girls (Hicks, 2002). Child marriage however negatively affects women's agency by forcing them into submission through abuse, oppression and subordination. According to Sen (1984), women adapt their preferences to become content with their situation and this acceptance of the *status quo* is the most difficult barrier to agency. Domination as a result of child marriage has the effect of a woman living life thinking she is worthless and being subservient which in turn affects her self-respect and self-assertion. It is necessary to look at what the law, policies and practices are in place to establish whether they protect girls from child marriages and whether they enhance women's capacity and agency for effective participation.

⁶⁵ Interviewed at Rainbow Towers on 20/1/2016.

CHAPTER FOUR

4.0 DRAWING WATER WITH A SIEVE! INADEQUATE IMPLEMENTATION OF CONSTITUTIONAL PROVISIONS

4.1 Introduction

According to Moore (1990), more often than not, the very institutions to which women must look for help function to obstruct their development, reinforce their moral confusion and support the designs of their abusers. My fourth assumption was that the inadequate implementation of protective Constitutional provisions exposes girl children to child marriages. Constitutional provisions provide for the protection for the rights of children and women and equality of persons under the law. Section 56(1) of the Constitution provides for equality and equal protection of the law while section 78 provides for the minimum age of marriage (18 years of age) and that no person shall be compelled to enter into marriage against their will. This protects girls from discriminatory laws, cultural and religious practices that encourage them to get married before they are 18.

Despite this, however, girls in Epworth are still getting married before they have turned 18 in breach of their Constitutional rights to enjoy family life or parental care, to appropriate care when removed from their family environment, and to be protected from sexual exploitation, and any form of abuse.⁶⁶ The trivialization of child marriage practice, lack of political will, lack of resources and attitudes of the people towards protecting and promoting women's and children's rights have resulted in the diminishing of women's agency and capacity which then leads to their ineffective participation by women in the public sphere.

4.2 Trivialization of child marriage practice

The Cambridge Dictionaries Online (undated) defines 'trivialization' as making something seem less important than it really is.

4.2.1 Trivialization by the courts

According to section 81(2) and (3) of the Constitution, children are entitled to adequate protection by the courts and the child's best interests are paramount in every matter concerning the child. In the Constitutional Case of *Mudzuru and Tsopodzi v Minister of*

⁶⁶ Section 81(1)(d) and (e) of the Constitution.

Justice, Legal and Parliamentary Affairs N.O. and Others (above) which outlawed child marriage, the Court ruled that ‘with effect from the 20 January 2016, no person below the age of 18 may enter into marriage.’ The Constitution which outlawed child marriage practice came into force on the 22 of May 2013 which means that from that date girls below the age of 18 were protected from child marriage and any perpetrators of child marriages after that date were liable to prosecution. However the Constitutional Court did not offer adequate protection to the girls married between the period 22 May 2013 and 19 January 2016. Therefore the Court itself seems to have failed to take into account the best interests of the child principle as a paramount consideration since its ruling has the effect protecting child marriage perpetrators and accomplices at the expense of girls.

4.2.2 Trivialization by law enforcement agents

Law enforcement agents have a duty to enforce the law in its entirety without fear or favour. It is their duty to protect lives and to uphold the law. According to section 219 of the Constitution, the police are to investigate and prevent crimes, maintain law and order, uphold the Constitution and enforce the law without fear or favour. In Epworth, the officers who are in charge of investigating and arresting child marriage perpetrators were the Victim Friendly Unit Police community volunteers. They receive no salary and they are not government employees even though they wear police uniforms and carry out duties like any other uniformed law officers. According to one constable who has been volunteering since 2001 and has been staying in Epworth since 1992, he was given the task of investigating and arresting perpetrators of child sexual violence because he knows the community very well and lives there. However since the volunteers are not salaried and lack incentive to do their work I realised during the research that of them know some of the alleged child marriage perpetrators and actually had a relationship with them as (even) in my presence they would ask them for money to buy drinks, beer or lunch and these looked like bribes.

Trivialising child marriage by leaving the crime to be investigated by unpaid volunteers who apparently solicit bribes from the guilty shows the lack of seriousness on the part of law enforcement agents to protect vulnerable girls. According to Section 50(9) of the Constitution, other than police services, a judicial officer acting in a judicial capacity and other ‘public officers’ are the only persons who can affect arrests. Since police volunteers are not included in this group it would appear that a child marriage perpetrator would have a cause of action against a volunteer who purports to arrest or detain him.

4.3 Lack of political will

Wister (undated) says that lack of political will simply means that politicians are not willing to do something, either because it will impair their chances of being elected, or getting legislation they want passed in the future, or because they simply don't want to do it because of their own personal beliefs.

4.3.1 Laws have not yet been aligned

Upon considering the confusion between various pieces of legislation (i.e., the Constitution, the Children's Act, the Criminal Law Code and the Marriages Act) over the definition of a 'child' and, hence, the minimum marriageable age, I shifted my focus to policy makers. It could be argued that according to the Constitution, 18 years of age is the minimum marriageable age whereas it is 16 under the Marriages Act, the Children's Act and the Criminal Law Code, while the Customary Marriages Act is silent on this important issue. The Gender Focal Persons in the Department of Constitutional Affairs in the Ministry of Justice, Legal and Parliamentary Affairs stated that since the coming into force of the Constitution in 2013, not much has been done to align the marriage laws and other laws that protect girls from being exposed child marriage with the Constitution. They noted that other laws which the government prioritise such as the Indigenisation and economic empowerment laws have been aligned to the Constitution because the government benefits from them.⁶⁷ Issues of child marriage and women's rights are usually paid attention to towards government election time or when it is courting international donors.

4.3.2 Lack of awareness of the law

Awareness is understanding of a subject, situation or practice based on the information that has been made available or experience. According to section 62(2) of the Constitution, everyone has the right to access information for the exercise or protection of a right. Children and women have the right to know that child marriage has been outlawed and that according to section 80(3) of the Constitution, all laws, customs, traditional and cultural practices that infringe the rights of women are null and void. Some child marriages of the women and girls I interviewed resulted from cultural and religious practices but they did not know that the Constitution had outlawed such practices. Section 80(3) of the Constitution outlaws cultural and religious beliefs that encourage child marriage and discourage women's participation in

⁶⁷ Interview at the Offices of the Ministry of Justice on 15/10/2015.

the public sphere as being in contradiction of the Constitution. Making the public aware of such laws and provisions that protect children and women will have an impact on the treatment of women in society and will deter child marriage perpetrators and accomplices from engaging in the practice.

While I was conducting desk research on the reporting of the Constitutional judgment that outlawed child marriages in Zimbabwe,⁶⁸ the media only reported on the case for the first four days after the delivery of the judgment. It was during those first four days that there were talk shows, radio programmes, and front page newspaper articles which talked about child marriage practices and their impact on children's/women's lives and society at large. Afterwards when such issues were reported articles about them did not occupy prominent positions in the newspaper but were often hidden away. Hence, the lack of consistency, on-going robust and vigorous campaigns, awareness and information dissemination concerning child marriage all work together to trivialise the issue.

4.4 Lack of resources

The lack of resources can simply be taken to mean that there is no financial support for a plan of action which may bring a project to a halt. Since available resources may never be sufficient, focus should then be placed on how to prioritise their use.

4.4.1 Department of Social Welfare

In Epworth, I gathered that most child brides were orphans or came from a poor background so I focused my attention on the Department of Social Welfare which has a mandate to provide social security and care to orphans and vulnerable children. The District Child Welfare Office for Harare Central stated⁶⁹ that in Epworth there were many orphans and poor families and that the Department used to assist with school fees and basic commodities but that since 2006 the Department has been struggling financially and as a result many children have dropped out of school. He explained that the demand for children needing school fees went up very high in 2006 because many families had been displaced by Operation *Murambatsvina* (see footnote 1). It was also stated that since 2013 the Department has been receiving less than 2% of its required budget from the State. Since the Department of Social

⁶⁸ *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* (above).

⁶⁹ Interview conducted at the Department of Social Welfare on 19/2/2016.

Welfare is seen as a non-profit making department, Treasury does not see fit to award it even 5% of its budget. The fact that children are the future generation is not a priority.

This lack of availability of resources affects mainly girls because families prefer to educate a boy rather than a girl. Tsimpo (2015) states that education for girls is not regarded as necessary because girls must inevitably get married, and whatever wealth they accumulate benefits the families of the ‘husbands’ they get married to rather than the families of their parents.

The Department of Social Welfare has a programme under the Social Protection Scheme called Basic Education Assistance Model⁷⁰ which supports poor families with school and examination fees, but this programme is not benefiting them. The Harare District Child Welfare office said this is because those in the selection committees are very corrupt and the programme is benefiting children and relatives of the committee members. As a result of this neglect, poor families usually make the choice to educate their sons and push their daughters into early marriages so that they do not stay home doing nothing. According to UNICEF (2015), ‘the major purpose of BEAM is to prevent poor households from resorting to negative coping mechanisms, such as withdrawing children from school.’

4.4.2 Ministry of Gender and Women’s Affairs

Since the focus of my dissertation was on women’s participation and was to establish whether child marriage has an impact on women’s capacity and agency, which then lead to ineffective participation in the public sphere, I focused on the Ministry of Gender and Women’s Affairs. The Gender Officer said in an interview⁷¹ that as the Ministry only receives less than a percentage of what they request from Treasury, it is unable to carry out many awareness campaigns in communities like Epworth about the negative effects of child marriage and just generally informing women about their Constitutional rights. The Ministry relies more on donors such as UNDP, UN Women and other stakeholders. However relying on donors has its challenges, according to the Gender Officer, as they only fund their own agendas. According to article 33 of the SADC Protocol the state has to ensure that there are gender sensitive budgets and planning including designating necessary resources towards initiatives

⁷⁰ Established in 2000 and receives financial support from donors.

⁷¹ Interviewed on 15/12/2015 at the Offices of the Ministry of Gender and Women’s Affairs.

aimed at empowering women and girls. In other words the state is to prioritise women's and girls' programmes when deciding their budgets.

4.4.3 Education Policy

The Education Policy⁷² provides that a girl, even when she gets pregnant, has the right to continue with her education even after giving birth. In Epworth I found that after girls got pregnant or married they were not going back to school. Questions such as who would pay for the girl's school fees, look after her baby while she was in school, provide for her baby and for the girl's schooling were raised and these were not addressed in the policy. Section 81(1)(f) of the Constitution states further that every child has the right to education. Section 75 of the Constitution provides for the right to a basic state-funded education and that the state has to take 'reasonable' legislative and other measures to achieve the progressive realisation of the right. This however is to be done within the limits of available resources.⁷³ The lack of resources for basic state-funded education has affected many girls even those who would have returned home to their parents after divorce or desertion. One woman explained how after the return of their daughter, her 'husband' had refused to pay school fees for her daughter and referred to her as a 'closed chapter' meaning he had already done everything for her and was not going to do anything more.

Section 81 of the Constitution provides for the rights of children. The Constitution clearly provides for the rights of a child to family, parental care and appropriate care when removed from the family environment.⁷⁴ Child marriage takes away the right to parental care of a girl child. When these girls have been removed from the family environment, they do not receive appropriate care but are treated like slaves by their 'husbands'. Rufaro⁷⁵ (15) shared in an interview⁷⁶ how her 'husband' would give her a 25 litre bucket full of floor polish to go and sell and ordered her only to return home when she had finished selling it. She explained that she would leave home around 6 a.m. every day without eating anything and would walk for hours and had to try and sell the floor polish before sunset because she had to be home before 6 p.m. The Constitution states that a child has the right to be protected from child labour,

⁷² The Education Policy outlines the education system in Zimbabwe.

⁷³ Section 75(4) of the Constitution.

⁷⁴ Section 81(1)(d) of the Constitution.

⁷⁵ Not her real name.

⁷⁶ Interviewed at Overspill Shops on 18/12/2015.

maltreatment, neglect or any form of abuse.⁷⁷ The findings in Epworth established that child marriage is prevalent and child brides are being abused and not going back to school after their ‘marriage.’

In conclusion, the failure to effectively implement the Constitutional rights of children as indicated above has resulted in mainly the girl child being affected because of her biological make-up which then negatively affects her transition into womanhood. The child brides are thus exposed to sexual abuse and exploitation, child labour and slavery which then affect their development. Because of the abuse as a result of early marriage, most child brides’ self-respect and self-assertion is diminished. Self-assertion and self-respect are the essential aspects of agency.

Figure 5 shows a diagram illustrating the current framework that is in place to protect girls from child marriage. It shows the resources designed to capacitate them as well as the gaps/loopholes which are pulling or pushing them into early marriage.

⁷⁷ Section 81(1)(e) of the Constitution.

“Drawing water with a Sieve” Gaps/Loopholes

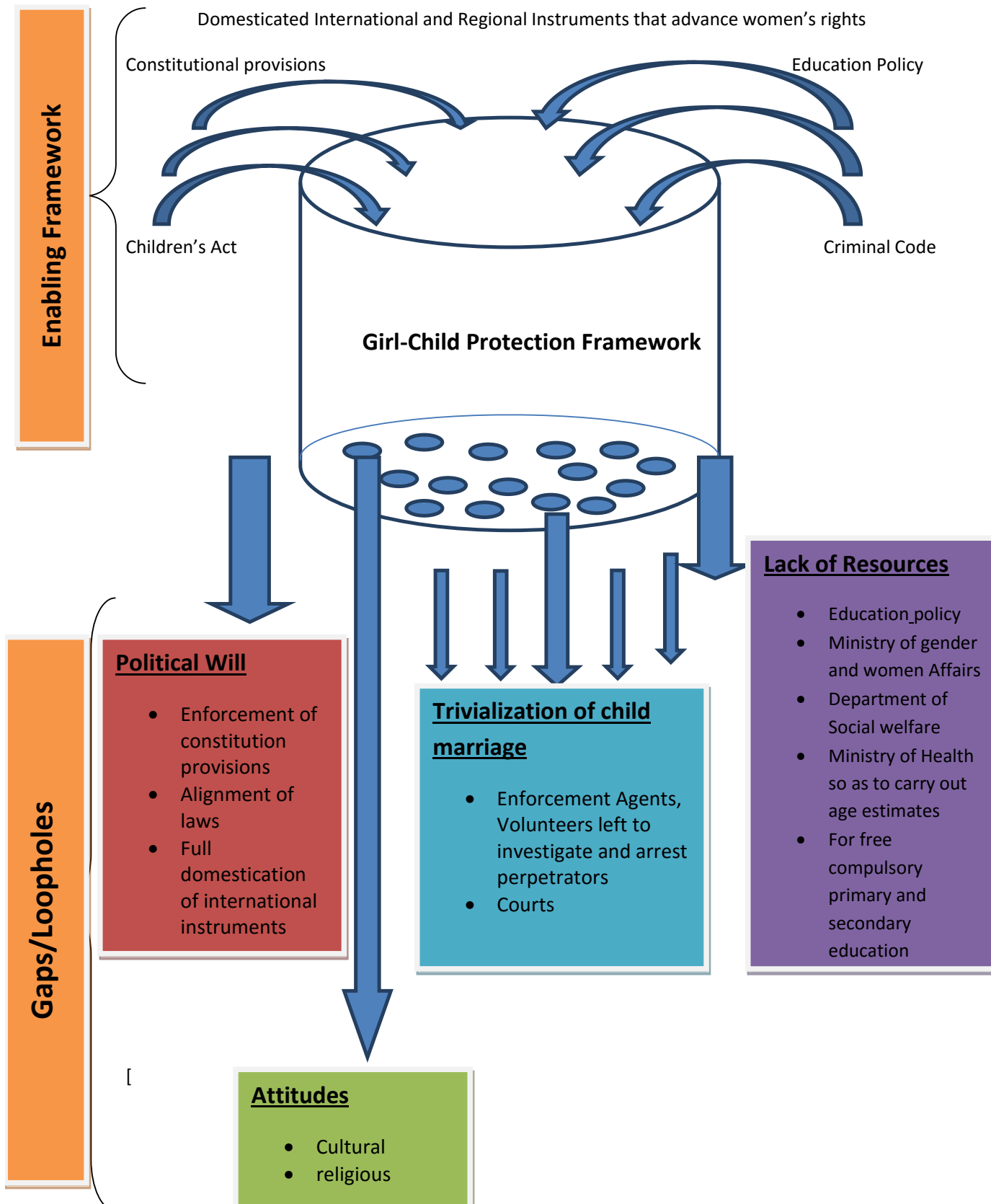


Figure 5: Drawing water with a sieve

4.5 *Where is her protection?* **The need for legislative and other measures**

Child marriage is now widely recognised as a violation of children's rights. It is also a direct form of discrimination against the girl child, who, as a result of the practice, is often deprived of her basic rights to health, education, development, and equality. Tradition, religion, and poverty continue to fuel the practice of child marriage, despite its strong association with adverse reproductive health outcomes and the lack of education for girls (Sibanda, 2011). Child marriages are a serious violation of human rights, and have led to many girls in Epworth being exposed to sexual exploitation and abuse.

Though there are different international and regional instruments that Zimbabwe has ratified that prohibit child marriages, the reality on the ground is that most girls in Epworth are entering into early marriages. My fifth assumption was that there is a need for legislative and other measures to address child marriages in order to ensure the full and meaningful participation of women/girls in the public sphere. According to Sibanda (2011), the practice of child marriages is one reflection of society's negative attitude towards women revealing the fact that important decisions such as marriage, choice of partner, and women's sexuality are all controlled by others throughout life from early to old age.

Child marriage is opposed both directly and indirectly by many international human rights instruments through the provision which prohibits all forms of discrimination against girls and harmful cultural or traditional practices against children. Zimbabwe as a state has a three-fold obligation to protect, respect and fulfil rights (Figure 6). The obligation to 'protect' means that the state has to take appropriate steps and measures, which include putting in place a legislative framework and policies that prohibit violations of human rights as stipulated in the conventions. By signing and ratifying the instruments, Zimbabwe as a state has obligations that arise from such ratification. The following instruments shall be analysed and discussed: CEDAW, the Women's Protocol, SADC Protocol, ACHPR, Convention on the Rights of the Child (CRC) and African Charter on the Rights and Welfare of the Child (ACRWC).

4.5.1 *The State's obligation under international law*

According to articles 2 and 24 of CEDAW, the state has an obligation to take all appropriate measures, which include legislation, to modify or abolish existing laws, customs and

practices that discriminate against women.⁷⁸ The state has also the obligation to adopt all necessary measures aimed at achieving the full realization of women's rights.

My point of departure is article 1 of CRC which defines a child as '*every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.*' This provision protects girls from child marriage for as long as they are below 18 years of age. However, by the CRC including the provision that a child, depending on the law applicable, can actually attain majority status earlier, has opened the door for legislation that allows a girl child below 16 to attain majority in regard to marriage according to section 22 of the Marriages Act.

It should be noted at this point that child marriage is not specifically mentioned in the CRC but is prohibited if regard is had to article 3, which talks about the best interest of the child, article 34 which refers to protection of the child from all forms of sexual exploitation and abuse, article 36 which refers to protection from all other forms of exploitation prejudicial to any aspects of the child's welfare and article 6 which refers to the right to the maximum extent possible for survival and development. Since child marriages expose girls to sexual abuse, it is not in their best interests and hinders their development, hence it can be safely argued that the CRC protects girls from child marriage. Section 26 of the Constitution calls for the state to take all appropriate measures to ensure that 'no marriage is entered into without the free and full consent of the intending parties.' In child marriage, a girl lacks the capacity to freely and fully consent because she has not sufficiently matured to understand the implications of marriage.

The Children's Act defines a child as any person below the age of 16⁷⁹ and a minor as any person below the age of 18. On the other hand, the Criminal Law Code⁸⁰ defines a young person as any person below the age of 16. These inconsistencies between the various definitions of 'a child' in Zimbabwe's national laws and the international and regional provisions which define 'a child' as anyone below 18 have exposed Zimbabwe's girls to sexual abuse against which then pushes them into early marriage because of reasons such as

⁷⁸ Child marriage discriminates against women and negatively impacts on their health and education.

⁷⁹ Section 2 of the Children's Act.

⁸⁰ Section 61(1) of the Criminal Law Code.

early pregnancy and loss of virginity. According to section 34⁸¹ of the Constitution, the state must ensure that all international conventions and treaties are incorporated into the law.

In the field I discovered that quite a number of child brides did not have birth certificates and because of that the courts were not prosecuting their matters until they had undergone an age estimate test by trained medical doctors and had obtained a report to that effect. However the cost of such tests is \$80 and most girls do not have that kind of money because in Epworth most of them live on less than \$1 a day. As a result the police have adopted the attitude that if a girl does not have a birth certificate, then there is no need to do further investigations or even open a docket against her 'husband'. Since some child brides fear their 'husbands' they have now resorted to simply lying that they do not have birth certificates so that their matters are not prosecuted. Section 81(1)(b) of the Constitution, however, provides for the right to a name and the prompt provision of a birth certificate. Thus the state has an obligation to ensure that every child has a birth certificate. According to some child brides interviewed, the challenge of not having a birth certificate was the reason why they could not register to write their Grade Seven exams, which is why they dropped out of school as they could not proceed to secondary school without first passing their Grade Seven exams.

Article 19 of the CRC places an obligation on the state to take appropriate measures (including administrative and educational measures) in order to protect a child from all forms of violence and this includes child marriage. Therefore, the state needs to take administrative measures so that every girl child has a birth certificate.

In Epworth, child brides said that they are forced to have sex by their spouses. One, Catharine⁸² (15) explained how her 'husband' always forces himself on her and that it does not matter whether she is menstruating at the time or not. According to psychologist Hingoranny (2002), rape is a very traumatic experience and the victim requires intensive therapy to get through it. Some people get married because of their insecurity and the stigma that no one will marry them. But these girls barely forgive the rapist. Articles 34 and 27 of the CRC and the ACRWC, respectively, provide that the state has an obligation to protect a child from all forms of sexual exploitation and abuse.

⁸¹ Section 34 of the Constitution refers to the domestication of international instruments. Section 327, however, states that the treaty or convention does not automatically bind Zimbabwe, it has to be approved by Parliament.

⁸² Note her real name.

According to Sibanda (2011), whilst it appears that the legal framework to protect girl child from child marriages in Zimbabwe exists through Constitutional provisions and policies, the government is often either unable to enforce existing laws, or rectify discrepancies between national laws on marriage age and entrenched customary and religious laws. This is because of the official tolerance of cultural, societal and customary norms that shape and govern the institution of marriage and family life (IPPF, 2007).

In conclusion, it should be noted that the state has obligations under international and regional instruments to protect girls from child marriage. Protection has been provided for in the human rights instruments and the Constitution but failure to fully implement these rights has resulted in the prevalence of child marriage. The state needs to take correctional⁸³ and positive action in order to implement the Constitutional rights of women and children.

⁸³ These are measures to correct a wrong that was in the law, policy or practices which discriminated women. For example, the wrong that was in the marriage laws which exposed only girls to child marriage.

3 Fold State obligations

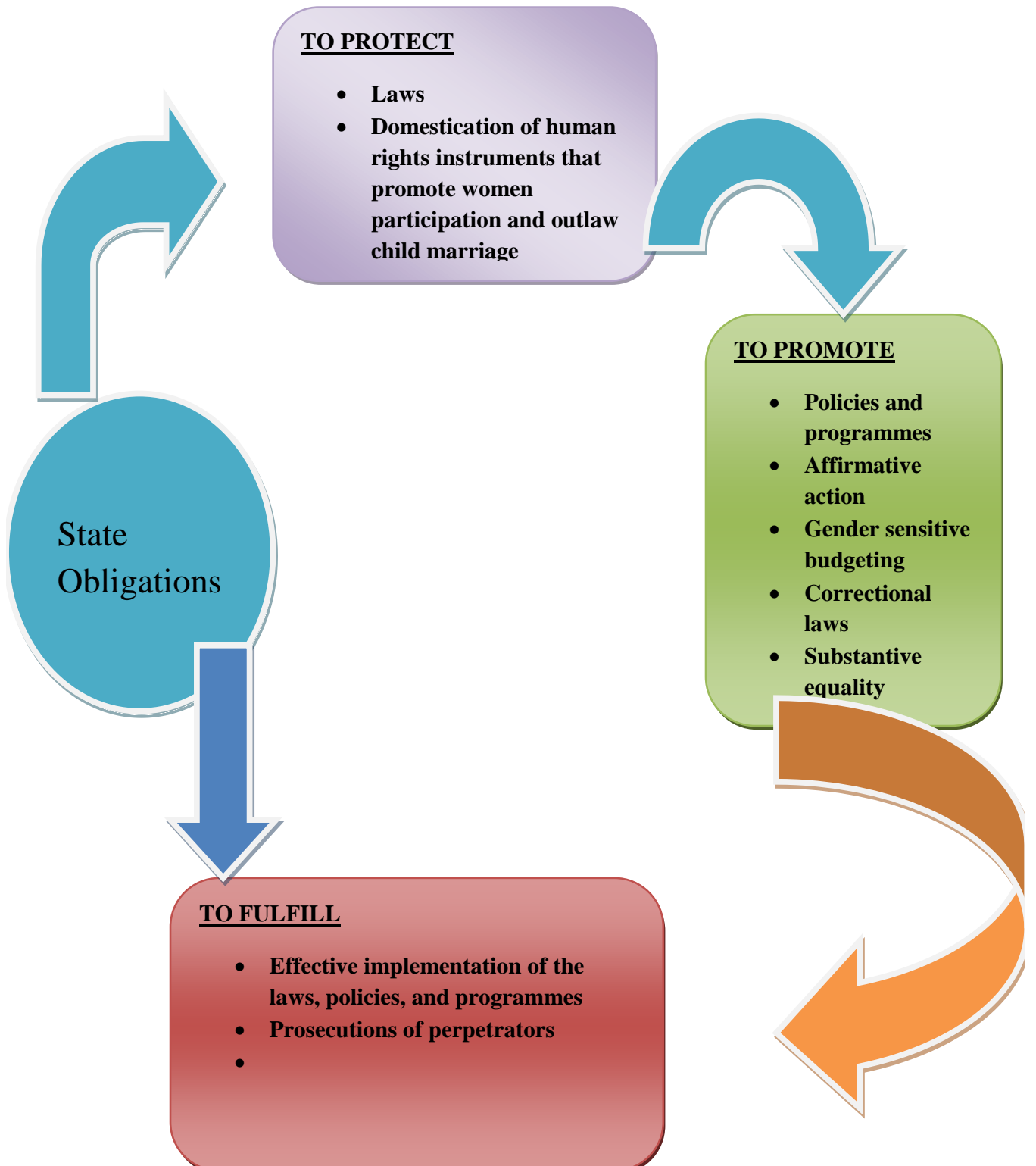


Figure 6: Diagram showing the state's threefold obligations to human rights

4.6 'To my surprise!' Emerging issues

Firstly, I assumed it was mothers who were pushing their daughters into early marriage. My thoughts were based on the fact that because of poverty, a mother would think that if they got their daughter out of the house, it would mean one mouth less to feed and also that she would receive financial help for herself and her family from her daughter's 'husband'. To my surprise, most women in Epworth who got married young did not want their daughters to get married before they had finished secondary school. One woman said:⁸⁴

'Ini mwana wangu akamitisa otizira, ndinoenda kunomutora. Hazvinei neni kuti ane nhumbu, nhumbu inobarwa munhu odzokera kuchikoro ini ndosara nechizukuru. Handidi nemwana wangu kuti azonoshushwa zvake bodo.'

(Meaning: 'If my daughter gets pregnant and elopes, I will go and take her back. It doesn't matter [that] she will be pregnant. She will give birth and go back to school and I can stay at home looking after my grandchild. I don't want with my daughter and I don't want her to be abused by her 'husband'.')

Women have now accepted that the pregnancy of a girl does not automatically mean she has to get married.

On the other hand, women also explained that when daughters return home⁸⁵ with or without a child, they are happy that she is back but it is the girls' fathers who turn out to be the problem. Rutendo (39) explained how her daughter returned home from her abusive marriage⁸⁶ and that her father said he did not want anything further to do with his daughter and that she should go back to her 'husband' and work on her 'marriage' with him.

Another woman explained how the return of her daughter brought joy to her but problems for her marriage. She shared that because she accepted her daughter's return against her 'husband's will, she was told by her 'husband' to move out of their matrimonial bedroom and for the last 8 months she has been sleeping in the same room with her daughter and grandchild and only visits her bedroom when her 'husband' demands his conjugal rights. This

⁸⁴ Interviewed on 22/10/2015 in Magada.

⁸⁵ Returning because the marriage has failed.

⁸⁶ Her daughter was married because she had fallen pregnant while she was in Form Two. She was only 15 years old and her 'husband' was 29 years and used to physically abuse her and would not buy food or clothes for her.

sacrifice by a mother proved to me just how much women/mothers are willing to give up anything and everything so that their daughters do not remain in or return to a child marriage.

Virginity to most women interviewed is no longer an important element in most women's lives. It was my finding that some girls enter early marriage with a particular man because they have lost their virginity to him. Most women in Epworth are now moving with the changing times and have realised that virginity though a very small and unseen aspect of a relationship had such power over society and that if lost, impacted upon when and to whom one should be marry. Most women especially older women noted that it is not necessary to throw away a young girl's future by forcing her into early marriage simply because she has lost the small thing of her virginity.

Bride price is no longer a major push factor behind girls in Epworth entering into early marriage. I interviewed girls who were in the early stages of cohabitation or 'early cohabitation'⁸⁷ because no *lobola* had been paid and their families had not even bothered to ask for the money or for their return. It was clear that because of poverty families are actually feel relieved if a girl leaves home to stay with another family because it means one less mouth to feed for the parents. In other words the girls relieve burdens on their families if they cohabit early.

Education and other interventions should not simply be about providing money but they should also consider the power dynamics in child marriage. For example, who has the power to allow a girl in child marriage to go back to school? It was a surprise to me that even when donors or well wishers offer money for girls in child marriages to go back to school, the girls had no authority to decided to go back. Her thoughts and voice did not matter, only that of her 'husband' and family. Amos (28) who had married a 14 year old explained that he did not want his wife to go back to school and was comfortable with the level of education that she had since she had had reached Grade 7. According to Hellum and Katsande (2015), power structures inform different norms that shape the unequal gender relations in the family. 'Power over' concerns the ability of power holders to secure the compliance of those less powerful and is evident in child marriages. The young brides do not have a say or cannot

⁸⁷ Since no bride price was paid, it cannot be referred to as marriage but rather cohabitation. It is 'early cohabitation' because the girls are below the age of 18, which is the legal age of majority.

negotiate even for their right to education⁸⁸ with those regarded as power holders such as their ‘husbands’.

Women’s capacity and agency is affected by early marriage and this has a negative impact on women’s participation in the public sphere. Because of the unequal gender relations in child marriage, most child brides and women who got married as minors are abused. Though women in and from child marriage do not want their daughters to get married while they are minors, the issue of power dynamics in most marriages shows how even after returning home, child brides are faced with further abuse and rejection by their own fathers. The next chapter will interrogate the link between child marriage and women’s capacity and agency in order to establish whether the failure to implement children’s rights has a negative impact on women’s participation in the public sphere.

⁸⁸ Provided for according to section 75(1)(a) of the Constitution.

CHAPTER FIVE

5.0 INTERROGATING THE LINK: DISCUSSION

5.1 Child marriage v Women's meaningful participation

Child marriage is defined as a marriage of a girl or boy who is below the age of 18 years. According to Tsimpo (2015), the practice is highly prevalent among girls hence it negatively impacts the lives of women as they are burdened by the duties of wifing and motherhood⁸⁹ at an early age. Tsimpo (2015) further states that the issue of child marriage has a significant impact on the ability of girls to make choices later on in life. For example, Nyasha⁹⁰ is a 14 year old who got married at 13 and explained in an interview that she had just finished Grade Seven when she got married. She said she wanted to be a maid but did not even know what that entailed. The impact of child marriage in Nyasha's life is that she did not even have the chance to fully develop so that she could make an informed choice about her career path.

According to article 268 of the Beijing Platform of Action, motherhood at a very young age entails complications during pregnancy and delivery and a risk of maternal death that is much greater than average. Overall, early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long term adverse impact on child brides and their children's quality of life (Shaba, 2000).

Kabeer (2008) states that a girl or women's capacity to make choices is dependent on 3 dimensions, namely, agency,⁹¹ resources⁹² and achievements.⁹³ Focusing on the dimension of agency, child marriage clearly affects agency because girls who marry as children often have less decision making ability in their households (Tsimpo, 2015). If one cannot or does not have any decision making ability at home, it will be difficult for them to be able to participate meaningfully in the public sphere. Meaningful participation requires one to have the capacity, opportunity and empowerment in order to be able to make informed decisions not only about

⁸⁹ The burden of wifing and motherhood limits most women to the family arena so that they are able to effectively carry out their duties.

⁹⁰ Not her real name, interviewed at Domborambari Clinic on 15/12/2015.

⁹¹ Agency is one's ability to be able to define objectives and act on them.

⁹² These can be social, human or material.

⁹³ Achievement affects choices because they are foundations on which future agency is built (Tsimpo, 2015).

their lives but also about political, environmental and economic developments. Thus child marriage negatively impacts on women's meaningful participation.

Women's meaningful participation is a necessary component for the development of women's rights, the welfare of a country and the world at large. According to Budlender (1999), women's meaningful participation increases sensitivity to issues relating to children's rights, the rights of the elderly and the marginalised. Child marriage however has the effect of limiting women's participation by limiting them to the family arena. This then has an impact on the implementation and recognition of women's and children's rights. According to Sibanda (2012), child brides are frequently susceptible to domestic violence because the age difference between them and their 'husbands' emphasizes the powerlessness of the girl child. There is some empirical evidence that child marriage is associated with girls experiencing an increased risk to domestic violence and sexual abuse. Abuse, according to Moore (1990), erodes one's sense of self and results in one distrusting their own judgment which in turn diminishes their moral agency.

Delaying marriage will increase the chances of girls entering and remaining in school which will mean a chance for them to fully develop physically, mentally and emotionally thereby increasing their prospects of literacy. It should be noted that education has a way of influencing one's character and shaping one's future. Child marriage has been proved to result in girls dropping out of or being pulled out of school. This impacts on their character and future participation as it will be difficult for a girl who has been moulded at home by her 'husband' to meaningfully participate in the public sphere. In child marriage the girls are moulded more by their 'husbands' and they are moulded to think and act within certain limited parameters. Tsimpo (2015) notes that once a child is educated, they are able to behave in a civilized and diplomatic manner. These are important qualities for women to have and develop in order to be able participate meaningfully in the public sphere.

According to Muhuro (2011), child marriage is one of the harmful cultural practices which maintains the subordination of women in society and perpetuates gender-based violence. Women who grow up in an environment where they are subdued and abused usually lack self-confidence and initiative. Participation of a woman who comes from an environment where she cannot do anything based on her own initiative thus becomes difficult.

Due to her underdeveloped pelvis, a girl who falls pregnant before she has turned 18 experiences complications at birth (Muhuro, 2011). Birth complications can cause fistula⁹⁴ which often leads to their being deserted by their ‘husbands’. This can cause mental torture and devastating psychological damage for these young girls and which in turn is likely to negatively affect their future participation as women in the public sphere.

Power dynamics⁹⁵ in child marriages have resulted in the girls not being able to negotiate safe sex, hence, they run a very high risk of contracting HIV/AIDS. Most girls in child marriages are married to older men who have been or are involved in other sexual relationships. Contracting HIV/AIDS at a young age can be devastating considering the stigma⁹⁶ attached to the disease. This then affects the girl who when she becomes a woman, finds it difficult to participate in the public sphere. She is most likely to remain hidden away in the private sphere to which she feels more accustomed.

In conclusion child marriage affects the health, education and mental and emotional development of girls since they will not be ready for the responsibilities that come with the roles of being a mother, a sexual partner and a wife. This as a result will affect their capacity and agency which then has a negative impact on women’s meaningful participation in the public sphere.

5.2 *They are glued together!* The inseparable bond between the best interest of the child and women’s agency

According to Hicks (2002), increasing women’s agency is an efficient means towards the goal of improving the well-being or capability of children. The agency of women contributes both to women’s own well-being and to the well-being of their children. When women have better education, they are better able to manage conflicts, both within and outside their homes and this has a direct bearing on their children’s well-being.

⁹⁴ A fistula is hole between the vagina and rectum or bladder that is caused by prolonged obstructed labour, leaving a woman incontinent of urine or faeces or both (Fistula Foundation).

⁹⁵ This refers to the dynamics that come into being because the man is older than the girl and he has resources that belong only to him and to which he alone has access and over which he alone has control.

⁹⁶ The stigma of HIV/AIDS in most societies is that its sufferers are shunned, looked down upon and regarded as promiscuous people.

Article 3 of the Convention on the Rights of the Child⁹⁷ clearly sets out the principle of the best interest of the child. The Convention however does not define the principle. Eekelaar (1992) defines ‘best interest of the child’ as ‘*basic interests, for example, physical, emotional and intellectual care development interests, to enter adulthood as far possible **without disadvantage**, autonomy interest, especially **the freedom to choose a lifestyle of their own.***’ (Emphasis added). Article 8(2)(a) of the SADC Protocol⁹⁸ clearly provides evidence of the link or inseparable bond between the best interest of the child and women’s participation in the public sphere. Article 8(2)(a) states that:

‘No person under the age of 18 shall marry, unless otherwise specified by the law, which takes into account the best interests and welfare of the child.’

Linking marriage to the best interest of the child principle is an important way of ensuring that a child is able to ‘enter adulthood as far as possible without disadvantages and with the freedom to choose a lifestyle of her/his own.’ It will bring about a young generation that has matured to the point that they are able to freely act and achieve or pursue goals and values of importance to them. According to section 22 of the Marriages Act, ‘*no boy under the age of 18 years and no girl under the age of 16 years shall be capable of contracting a valid marriage...*’ This section, though now outlawed by the Constitution, clearly indicates who is/was more affected by child marriage and who is/was protected from it. Applying the best interests of the child principle, girls should be particularly protected from child marriage and hence given the chance to fully develop physically and intellectually. This will eventually lead to a positive impact on their ability to participate in the public sphere.

The two principles (i.e., the best interest of the child and women’s meaningful participation in the public sphere) are inseparable. If the best interests of the child, especially girls, is not upheld society will create women⁹⁹ who are victims¹⁰⁰ and dependents. Research has shown that as a result of the failure to effectively implement the best interests of the child principle, it is the girl child who is affected more because of her sex and gender roles. This then ultimately has a negative impact on her agency and capacity. According to Hicks (2002),

⁹⁷ Zimbabwe signed and ratified the Convention.

⁹⁸ Which Zimbabwe as a state signed and ratified in 2008.

⁹⁹ Specific reference is made to women because it is women who are mostly affected by child marriage and the failure to observe and implement children’s rights.

¹⁰⁰ Victims of abuse in marriage. As noted in child marriage because of the power dynamics women are abused sexually, physically and financially.

women's agency has a strong instrumental impact on the well-being of children, especially girls.

According to Freeman (2007), 'the best interest of the child' principle is an element which needs to be taken fully into account when implementing other rights. He also notes that the principle should be applied and failure to observe it affects the enjoyment of any children's rights. He stress the fact that *'giving greater weight to children's best interests maximizes the welfare of society as a whole and putting children first is a way of building for the future.'* This clearly links the best interest of the child to women's agency and capacity which are important for one to be able to effectively participate in both the private and public sphere. As discussed above, girls are society's future women and it is girls who suffer more from the failure to enforce the principle of the best interest of the child because of their sex and gender roles which will have a direct and adverse effect on their participation as women in the public sphere.

Adhering to and effectively implementing the best interest of the child principle, according to Freeman (2007), means giving children an opportunity to become successful adults. A successful adult is defined as someone who is mature, educated and has occupational achievements. Thus a successful adult woman is able to meaningfully participate in the public sphere. Sibanda (2011) states that the best interests of the child requires that any decisions made by the family or behalf of the child must be done to enhance the growth and development of the child.

In conclusion, the best interest of the child principle, if taken as the paramount consideration in all issues and aspects of a child's development, has the impact of empowering girls and protecting them from sexual abusive relationship at a young age. Once a young girl is burdened with the duties of wifing and mothering at a young age due to the fact that her best interests were not protected will affect her future and well-being. The effective implementation of the best interest of the child principle benefits women more. There is however the need to address the gaps that there are in the law and policies and also the attitudes of society and law enforcement agencies in order to effectively implement the Constitutional provisions which protect girls from child marriage. The following chapter will focus on the different recommendations for different government ministries, society at large, law enforcement agencies and policy makers.

CHAPTER SIX

6.0 WHAT SHOULD BE DONE! CONCLUSION AND RECOMMENDATIONS

As reflected in this paper, in order to have women participate in equal numbers with men in the public sphere, there is an urgent need to address child marriage as it negatively affects women's capacity and agency which then leads to their ineffective participation. The law however is not enough to address child marriage; there is also a need to address attitudes and beliefs that have been deeply-rooted in people.

6.1 Conclusion

From the findings, the following conclusions are drawn:

1. That child marriage perpetuates unequal gender relations within marriage which incapacitates women's potential to participate in the public sphere. Women's agency and capacity is negatively affected by the abuse, violence and oppression that child brides face in marriage which then negatively affects their confidence, self-respect and self-assertion.
2. That cultural and religious practices that fuel child marriage discourage women's/girls' participation in the public sphere. Women are discouraged from earning or seeking to earn more than their 'husbands'. They are encouraged to be submissive and to know their place as it is not their place to make decisions in either the private or public arena. Hence under culture and religious beliefs, as noted by Amina (1995), a real African woman is content with her subordinate position as wife, mother and beast of burden. She is passive in the face of abuse, tolerant of all forms of infidelity; her only real ambition is to retain respectability by labouring for the maintenance of a stable marriage and family and seeing to the satisfaction of her 'husband's desires.
3. Societal expectations of marriage that a man should be older than his wife in order to dominate her, hinders her participation in the public sphere. Domination in marriage

results in child brides paying attention only to the needs and desires of their ‘husbands’ and following their instructions. Hence they become dependents and lack initiative since they only act and think in limited parameters according to the instructions or orders given to them.

4. That the inadequate implementation of protective Constitutional provisions exposes girls to child marriages. The law is the starting point for correcting and eradicating child marriage. Failure to effectively implement Constitutional provisions that protect girls from early marriage pushes and pulls them into early marriage. It is also concluded that the law is not enough to address child marriages and that there is also the need to address the attitudes of society and to transform cultural and religious beliefs that expose girls to early marriage.
5. That there is a need for legislative and other measures to address child marriages in order to ensure the full and meaningful participation in the public sphere. Sibanda (2011) notes that legal reform, whilst useful, is not always effective because people do not easily give up their customs and traditions which are guilty of pushing and pulling girls into early marriage and which discourage women’s participation in the public sphere.

6.2 Recommendations

From the above conclusions, the following recommendations are made:

6.2.1 The need for girls’ and women’s capacitation

(a) Resourcing the Education Policy

According to Hicks (2002), public policies can contribute to women’s agency by ensuring that both blatant and subtle forms of gender-based-discrimination are outlawed and that these laws are enforced. The Education Policy is more beneficial to girls/women than boys. This is because it is mainly girls who are expelled or drop out of school because of early pregnancy or early marriage. Although the Education Policy provides that a girl child can go back to school after giving birth, it also needs to address the fact that when she does return, the girl is now also a mother with unique additional needs. There should be provision for monitored day

care centres at secondary schools so that young mothers can attend school while their children are looked after.

The Constitution¹⁰¹ and the Education Act¹⁰² provide for the right to education. However provision of the right does not mean that it is implemented. There is a need for free compulsory primary and secondary education especially for girls in order to keep as many girls as possible in school so that they get a chance to develop fully and be educated without being burdened by motherhood and wifehood which comes as a result of early marriage. According to Hicks (2002), the importance of mothers' education for the well-being of children can justify publicly-funded continuing education opportunities targeting women. It should be an offence for parents, guardians or 'husbands' to prevent or stop a child under the age of 18 from going to school since both the Constitution¹⁰³ and the Education Act¹⁰⁴ provide for children's right to education.

(b) Modifying of the Education Curriculum

Children spend most of their time at school and it is mostly what they are taught at school that shapes them and their future. The education curriculum needs to be modified to include subjects that will encourage women's participation and the promotion of women's and children's rights. The Education Curriculum needs to include subjects on sexual and reproductive health education in primary school. This will then address the dangers of teenage pregnancy and encourage the use of different contraceptives to prevent diseases and pregnancies. The curriculum should also include teachings on the impact of child marriages on women, children and the country's development.

(c) Resourcing social welfare

In Epworth, poverty is one of the major factors that is pushing and pulling girls into early marriage. To avoid a situation where families marry off their daughters in order to survive or make the choice to withdraw girls from school in favour of boys, the Social Welfare Department needs to receive adequate funding from the government treasury in order to be able to assist poor families and orphans with basic food, clothing and school fees. Hence the government should provide free compulsory primary and secondary education and the Social Welfare Department should provide families with food, shelter and clothing.

¹⁰¹ Section 75 of the Constitution.

¹⁰² Section 4 of the Education Act [Chapter 25:04].

¹⁰³ Section 78(1)(a) of the Constitution.

¹⁰⁴ Section 4 of the Education Act.

As a result of the corruption in the management of the BEAM Programme, funds are being channelled to undeserving children, thus leaving deserving orphans and underprivileged children out of school and exposed to the abuse of child marriage. There is a need to have an independent selection committee not from the same area or school but a committee which will conduct independent investigations to establish who does and who does not deserve to be on the BEAM Programme. The committee should constantly be re-staffed with new faces in order to prevent the committee becoming more corrupt and channelling funds to their families and relatives.

Social Services should revise its policy of forcing families to take in children or a child who is an orphan merely because they are related. This policy has resulted in families abusing such children. This can sometimes cause them to run away to live on the street or into early marriage as a way out of their misery. Families should not be forced to take in a child but rather a child who has turned up at the door of Social Services or on the streets should be placed in the government children's homes which are well funded and they provide children with all their basic needs.

Government on the other hand needs to build shelters for abused children and orphans. Currently, according to one official from the Department of the Social Welfare, Harare¹⁰⁵ has only one home, North Court Children's Home.¹⁰⁶ These homes should be funded and provide children with all the facilities required by a child to feel at home. The homes should also have library facilities and should receive funding for transporting children from the home to different government schools. Every child at the home should automatically qualify for free compulsory primary and secondary education.

6.2.2 Changing of attitudes and encouraging women's participation

(a) Dialogue

There is a need to dialogue with traditional and religious leaders so as to enlighten them concerning the negative impact of child marriage on women's lives and on society at large. Dialogue with men as the decision makers in most families is needed so to as educate them and make them understand the benefits of having educated daughters and raising and

¹⁰⁵ District Child Welfare Officer, Harare Central.

¹⁰⁶ The home is situated in a suburb called Mount Hamden and houses both girls and boys.

marrying matured and educated women who are able to contribute financially to the family through increased opportunities in life. Most men need to be made aware that the benefits of women's participation in decision making impacts positively on the well-being of both the men and children. Dialoguing creates a platform where those in positions of power and influence can be influenced to change attitudes and behaviours in a society or community. According to An-Naim (1994), the sharing of insights and experiences in internal discourse over time can help to mediate culture and contextualise differences and thereby produce common standards on the principle of the best interest of the child. Through dialogue, men can be influenced that since participation can have positive benefits for others as well as oneself, preferential attention to the inclusion of persons marginalized by gender roles can further the good of all (Hicks, 2002).

According to Sibanda (2011), culture, customs and traditions are never static in any society. They are transformed by many influences and value systems. Human rights norms can therefore impact and help to reinforce aspects of culture and tradition that are positive and undermine those that contribute to violence against women and infringe their human rights such as child marriages.

(b) Mentoring strategy

There is a need for a mentoring strategy for women and girls. This strategy entails women who have established themselves in different public professions and meaningfully participate in the public sphere take up aspiring young women under their wings. This will ensure that at any time in any generation there are women who are ready to take up places and decision making or influential positions and be able to effectively participate. This strategy empowers girls and women by giving them role models to look up to and see the gains of women's struggle for recognition and participation. It will inspire them to occupy different positions and professions in the public sphere. This strategy will change women's attitude from that of waiting to be given power to that of getting power by being ready to take up positions in the public sphere. It will also inspire young girls to further their education and to focus on achieving their set goals, plans and capabilities. Mentoring is a strategy that will capacitate women and girls as the different mentors will encourage the participation of women in different professions and fields.

6.2.3 *Changing of societal expectations*

(a) Information dissemination

Information is power. There is a need to inform the public about the laws against child marriage. People have to be told and taught about the negative impact of child marriage. The negative impact of child marriage should be taught from primary school level in order for children to learn that early marriage is not a paradise and is full of disadvantages for women, their children, society and the country at large. Children need to be taught about their rights and how they are protected under the law. Thus children need to be aware of their rights provided for in the Constitution and when or where to report when their rights have been violated.

There is a need for information dissemination on women's rights to participate in the public sphere and equality in marriage and that all cultural and religious practices that discourage women's participation in the public arena have been outlawed. Having information on the importance of women's participation in the public sphere will push and pull more girls/women to advance themselves intellectually so as to be able to meaningfully participate in decision making both in the private and public sphere.

6.2.4 *Adequately implementing Constitutional provisions*

(a) Multi-sectoral approach

The multi-sectoral approach is an approach where different government, private and non-governmental organizations come together in order to effectively work together for the betterment of the lives of people. In regard to child marriages there is a need for this approach in order to effectively do away with child marriage and encourage all women to meaningfully participate in the public sphere. The approach will include players such as the Ministry of Education, the Department of the Social Welfare, the Police, the Ministry of Health and the Ministry of Justice. The traditional and religious leaders also form part of the approach. The benefit of the approach is that girls will be kept in school for a longer period and perpetrators and accomplices of child marriage practice will be brought to justice.

Below is a diagram illustrating the multi-sectoral approach which needs to be put in place so as to protect girls from child marriages and keep them in school. The aim of the approach is to have as many girls as possible in school and to bring about the full and effective

implementation of children's rights as provided for in the law and to also have child marriage perpetrators and accomplices arrested for violating children's rights.

Muilt-Sectoral Approach to Child Marriage

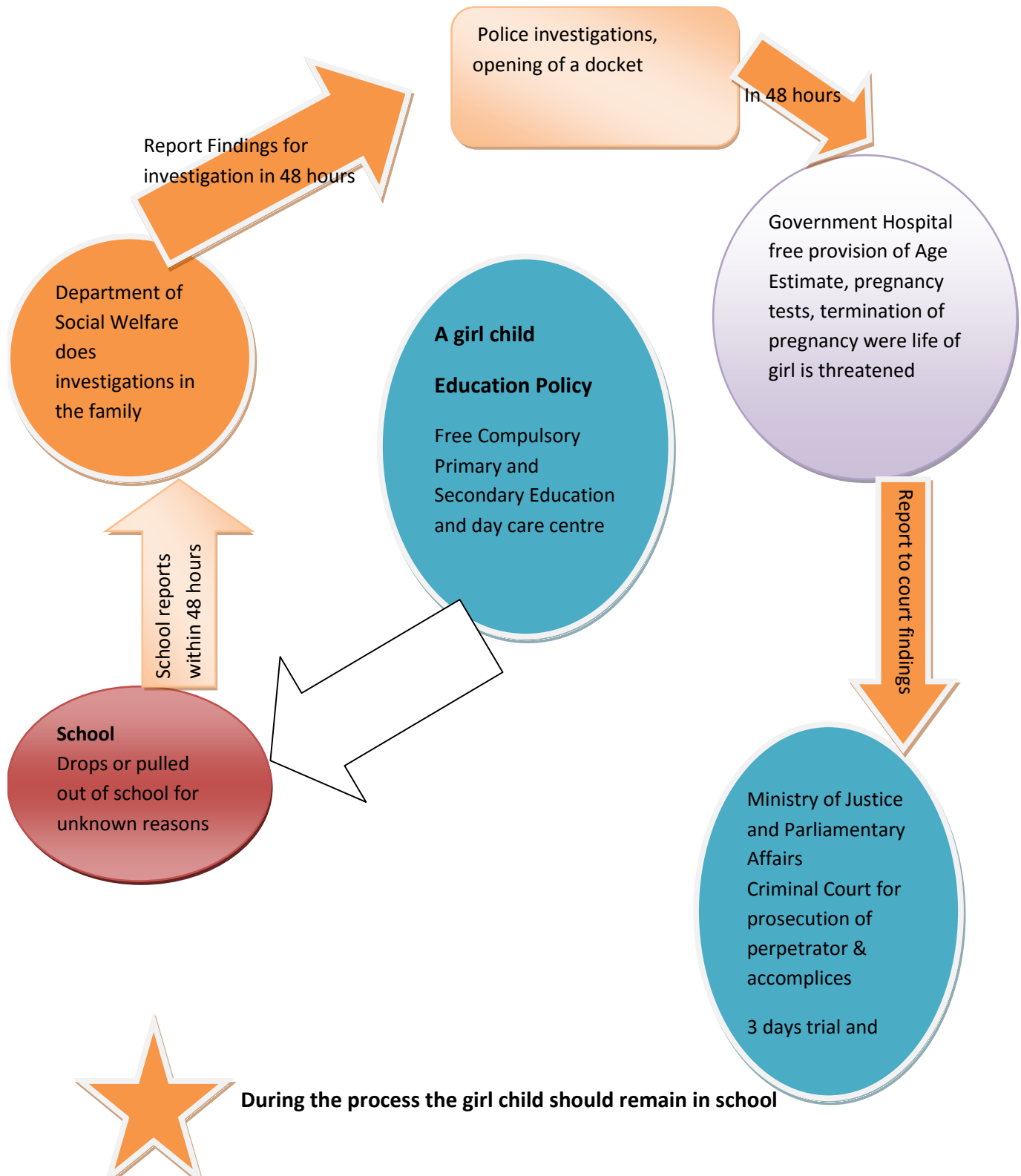


Figure 7: Diagram showing a multi-sectoral approach to combating child marriage

6.2.5 Legislative and other measures to protect girls from child marriage

(a) Alignment of laws

There is a need to quickly align the country's marriage laws with the Constitution. The definition of 'child' in the Children's Act and the Criminal Law Code must agree with the provisions of section 81 of the Constitution.

(b) Capacity building: Training of police personnel

There is a need to specifically train police officers who have the task of investigating perpetrators of child marriage.

The problem of corrupt VFU volunteer officers needs to be addressed by making sure that they are brought under the full employment, control and responsibility of the police force. It is important to note that corruption is a serious problem and that, according to ACBF Operations Research (2007), *'corruption undermines the rule of law, social and human values and raises moral concerns.'* It is also recommended that VFU Police officers should not operate in the area or neighbourhood in which they live or grew up. They should not in any way be able to unduly influence any investigation by virtue of their local knowledge.

Police personnel in the VHU office should be rotated/changed in order to prevent police officers adopting the attitude over time that child marriage practice is acceptable and a normal way of life in Epworth.

(c) Media strategy

The media is a powerful tool that can be used to make the public aware about the criminalisation of child marriage and the negative impact of the practice. The media strategy should include lively and well-designed campaigns using national radio, TV, newspapers and social media. These campaigns should be continuous and involve the production of songs, music jingles and dramas that discourage child marriage and encourage girls to finish their basic primary and secondary schooling. The strategy should also involve the use of different society role models, influential people, popular figures, celebrities, political leaders, cultural leaders and religious leaders to speak against child marriage and its negative impact on women's participation in the public sphere. NGOs and human rights organisations should also provide services which assist victims/survivors of child marriage practice with free legal aid services.

(d) Shadow reporting

According to Sibanda (2011), non-governmental organisations should write shadow reports on the country's compliance with CEDAW and CRC showing how the government is faring when it comes to reducing child marriages. Further they should assess the role of customary and religious laws that condone child marriage and promote dialogue with traditional and religious leaders to identify practical ways to reduce child marriage.

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