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**AN INVESTIGATION INTO THE EFFECTIVENESS OF THE LAW IN DEALING  
WITH CHILD MARRIAGES.  
A CASE STUDY OF ZIMUNYA (MARANGE), ZIMBABWE**

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**BY**

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## Abstract

This research, conducted by a sociologist, investigates the effectiveness of the law in dealing with the harmful cultural and religious practice of child marriage which is usually forced on girls (as opposed to boys) and is particularly rampant in Chief Zimunya's area in the province of Manicaland, Zimbabwe. He uses a case study approach of some girls in the area, deploying various theories (such as the dominance, human rights and women's law approaches) to help unpack how effective various Zimbabwe laws are at combating the growing problem. Zimbabwe is losing this battle despite the fact that it is signatory to several international human rights instruments which outlaw the abusive practice and its judiciary's significant 2015 Constitutional Court judgment that ruled that such unions are unconstitutional. Employing interviews and focus group discussions as his main methods of data collection, the researcher aims at understanding the lived realities of this crime's young female victims (who suffer serious sexual, physical, verbal, mental, emotional and economic domestic violence) and, in particular, their relationship to the laws, structures and actors which are failing to protect them from this cruel yet widely tolerated social evil. He discovers that the crime is prosecuted under several different pieces of legislation, the most serious challenge of which for the authorities is that they contradict each other, most importantly, over marriageable age which is 18 years of age, according to the Constitution of Zimbabwe. He also learns that even if these laws were amended, prosecution would remain problematic for other more deep-rooted social and cultural reasons. In some parts of Zimbabwe's patriarchal society, especially in remote rural areas, girls and women have been socialised to believe that, being subservient to and controlled by men, they are born to grow up just long enough to reach puberty and marry as child brides and have children themselves. Education is therefore not a priority for girls and the poverty of rural living combined with the promise of the payment of *lobola* (bridewealth) by future so-called husbands are strong pull factors which tempt parents to force their daughters into these illegal unions. Also, the crime goes largely unreported or successfully prosecuted due to the combined silence of all its parties. Compliant, uneducated child brides remain locked in ignorance that their so-called normal life of abuse is a crime breaching their most fundamental human rights as children, while its adult male perpetrators (their so-called husbands) conspire with their accomplices (their parents and members of their community) to keep the crime a secret. Apart from reforming Zimbabwe's law to resolve its legislative contradictions, especially setting the universal marriageable age at 18, and a law to explicitly outlaw child marriage itself, this research strongly recommends, among others, the conducting of effective long-term nationwide public awareness raising and educational campaigns aimed at children and adults alike to combat and eliminate the criminal practice of child marriages.

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**Declaration**

I, Tonderai C Nyamuda, hereby declare that this dissertation is my original work. It is a reflection of my personal research and has not been presented to any other university before.

Signed ..... on the..... April 2020.

## **Dedication**

*I would like to dedicate this piece of work to the Almighty my Creator, my pillar of strength, my source of wisdom, inspiration, understanding and knowledge. The Lord has given me strength throughout the research program.*

*I also dedicate this work to my Mum (my hero), Jane Nyamuda, who has been encouraging me all the way and her encouragement has made sure that I give it all it takes to finish that which I have started.*

*To my family sisters and brother (the mukanyas) who have been affected in every way possible by this quest thank you.*

*Last but not least Felix Nyamuda, my father, wish you were here to see how the little man whom you left ages ago who have become a fully-fledged grown man. I promise I will take care of the legacy you left mukanya forever missed. Hope you are proud of me wherever you are.*

*My love for you all can never be quantified. God bless you.*

## **Acknowledgements**

I would like to take this opportunity to express my sincere gratitude to my supervisor, Dr R. K Katsande, for her continuous support during the period of this research. I thank her for her patience, motivation, enthusiasm and immense knowledge. Her guidance was insightful and it helped me throughout the research process and the writing of this dissertation.



### **List of abbreviations and acronyms**

ACRWC	African Charter on the Rights and Welfare of the Child
CAMFED	Campaigning for Female Education
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CRC	Convention on the Rights of the Child
Criminal Law Code	Criminal Law (Codification & Reform) Act [Chapter 9:23]
Maputo Protocol	Protocol to the African Charter on the Rights of Women in Africa
DEVAW	United Nations Declaration on the Elimination of Violence against Women
ICESCR	International Covenant on Economic, Social and Cultural Rights
LAMA	Legal Age of Majority Act, 1982
SDG	Sustainable Development Goal
VFU	Victim Friendly Officer
WAG	Women's Action Group
WILSA	Women and Law in Southern Africa
ZWLA	Zimbabwe Women Lawyers Association

### **List of international human rights instruments**

African Charter on the Rights and Welfare of the Child (ACRWC)  
Convention on the Elimination of All forms of Discrimination against Women (CEDAW)  
Convention on the Rights of the Child (CRC)  
International Covenant on Economic, Social and Cultural Rights (ICESCR)  
Protocol on Gender and Development  
Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)  
United Nations Declaration on the Elimination of Violence against Women (DEVAW)

### **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] (Criminal Law Code)  
Customary Marriages Act [Chapter 5:07]  
Domestic Violence Act [Chapter 5:16]  
Legal Age of Majority Act, 1982 (LAMA)  
Education Act [Chapter 25:04]  
Maintenance Act [Chapter 5:09]  
Marriages Act [Chapter 5:11]

### **List of cases**

*Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* Constitutional Court Judgment No. CCZ 12/2015 (unreported)

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## CHAPTER ONE

### 1.0 INTRODUCTION AND BACKGROUND OF THE STUDY

#### 1.1 Introduction

Socialisation can be defined as the process in which individuals learn the behavioural patterns that are most likely accepted and tolerated in society and this process includes the learning values which children are taught. They develop the social values of their parents or guardians just by observing them (Haralambos and Holborn, 2008). Socialisation plays an important part in our lives hence some of the life we live is actually borrowed from what we have learnt growing up. Men and women tend to have been socialised in a different ways. For example, when females are abused, they often do not report the incident. Sometimes, in serious cases they make no report because they are ignorant of different laws which have been made to protect them. Young boys and girls are socialised in different ways. Boys are socialised to feel and become superior to their female counterparts. However even if children are socialised in negative ways, both boys and girls are protected by laws such as section 81(1)(e)<sup>1</sup> of the Constitution which states that every child should 'be protected from economic and sexual exploitation'. This includes protection from being sexually exploited by being criminally forced into illegal child marriages.

Handel (2006) postulates that socialization involves conflict whereas the functionalist, T. Parsons does not agree. Parsons is probably the most important functionalist theorist of socialization. Parsons believes that through the socialization process, the individual is able to internalize society's values and these values then become a part of their personality. According to Willet et al. (2016), Simone de Beauvoir's provocative declaration, "He is the Subject, he is the Absolute and she is the Other," signals the central importance of the self for feminism in law, in customary practice, and in cultural stereotypes. She claims that women's selfhood has been systematically subordinated, diminished, and belittled, in other words, just short of being totally denied.

By virtue of their oppressed condition, married children are not able to report what has happened to them because they are ignorant of the laws protecting them from the criminal

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<sup>1</sup> Section 81(1)(e) provides: 'Every child, that is to say every boy and girl under the age of eighteen years, has the right to be protected from economic and sexual exploitation, from child labour, and from maltreatment, neglect or any form of abuse.'

actions perpetrated against them. Hence the criminals behind illegal child marriages are not apprehended and continue in their criminal activity. This research gives an insight into how and why it is that the law is not being effectively enforced to prevent child marriages, protect children from them or punish those responsible for them. While some community members have taken steps to report issues of child marriage, police officers are unable to take action because they are stationed too far away from the crime scenes. Some officers drop their investigations out of fear of witchcraft, having received threats of harm or even death.

Some children marry out of poverty and their parents do not protect them from this. Some young girls in Zimunya rural area say that they are already sexually active so the fact that their parents do not try to stop them is of little or no concern to them. The attitude of their parents towards the crime of child marriage is important because socialization through parents is the mechanism for transferring the accepted norms and values of society to the individuals within the system (Talcott and Parsons, 1949). This study seeks to establish the effectiveness of the law in dealing with illegal child marriages.

Liberal feminists hold that women should enjoy personal autonomy, that is, they hold that women should live lives of their own choosing. Some offer “procedural” accounts of personal autonomy (MacKenzie and Stoljar, 1999). This study will reveal how law enforcement agencies effectively deal with child marriages and will particularly look at issues of corruption, lack of resources and insufficient awareness about the problem of child marriage.

## **1.2. Statement of the problem**

In spite of all the laws protecting children from child marriages, law enforcement agencies are still facing challenges to put a stop to them. The problem is that there are several systems of law which apply to child marriages. There are civil, customary and religious marriages and they need to be reformed and/or harmonised.

## **1.3 Research objective**

The objective of this research was to investigate the effectiveness of laws combating child marriages.

#### **1.4 Research assumptions**

1. Customary and religious practices are responsible for the perpetuation of child marriages.
2. The modern age recognize a woman using the number of years, whereas the customary system looks at biological and social clock.
3. Legislation alone is not adequate to eradicate the scourge of child marriages.
4. There is limited awareness and enforcement of legislation to protect girls from child marriages.

#### **1.5 Research questions**

1. Are customary and religious practices responsible for the perpetuation of child marriages?
2. What types of religious and customary practices are responsible for the perpetuation of child marriages?
3. Does the modern age recognize a woman using the number of years, whereas the customary system looks at biological and social clock?
4. Is legislation alone adequate to eradicate the scourge of child marriages? If it is not adequate, why is it inadequate?
5. Is there adequate or limited awareness and enforcement of legislation which protect girls from child marriages?
6. Are organisations providing enough awareness or there is limited awareness and enforcement of legislation to protect girls from child marriages?

#### **1.6 Definitions of key concepts**

**Socialisation** - Socialization is the process of internalizing the norms and ideologies of society (Haralambos and Holborn, 2008).

**Patriarchy** - Patriarchy is a social system in which men hold primary power and predominate in roles of political leadership, moral authority, social privilege and control of property (Sultana, 2010).

**Male dominance** - Male dominance is one of the earliest known and most widespread forms of inequality in human history (Edwards, 1987)

**Child** - Child is every boy or girl under the age of eighteen years (Zimbabwe Constitution, 2013)

## **1.7 Demarcation of the study**

This study is mainly focused on one of the wards in Chief Zimunya's area in the Province Manicaland, Zimbabwe. Some studies have recently carried out on child marriages in the Marange apostolic church in this area and this study is focused on the effectiveness of the law in combating this problem as implemented by the law enforcement agencies. My experience as a sociologist helped me in determining the area of study. Geographically the study was limited to a ward in Chief Zimunya's area.

Some key informants in the study included members/representatives of the Zimbabwe Gender Commission, the Zimbabwe Republic Police, the Ministry of Women Affairs Gender and Community Development and the Justice Commission of Zimbabwe. Most of my key informants were from Mutare and Harare and they included magistrates, victim friendly officers, gender officers and public prosecutors. Harare Magistrates' Courts deal with child marriage cases, although most of the perpetrators are charged with different crimes including statutory rape or sexual assault. The Harare Magistrate's Courts also deals with some cases which come from Mutare, since these are controversial cases. The Harare Courts have a wider catchment area and was quite adequate to inform my study. Findings in this study are applicable to other areas since the law enforcement agents within Zimbabwe operate under one authority.

## **1.8 Definition of terms**

### **1.8.1 Marriage**

Marriage is a contract entered between two people who have decided to live together and are over the minimum marriageable legal of eighteen years and they give their consent freely without having come under any force. The case of *Hyde v Hyde* held that marriage is a voluntary union for life of one man and woman to the exclusion of others.

### **1.8.2 Who is a child?**

Section 81(1) of the Zimbabwe Constitution states that a child, boy or girl is a person under the age of eighteen years. This is in agreement with the United National Convention of the Rights of Child (article 1) which defines a child as every human being below the age of

eighteen years. And any one below the age of eighteen enjoys the full protection of the courts and their upper guardian is the High Court of Zimbabwe.

### ***1.8.3 What is child marriage?***

Child marriage is a marriage in which at least one of the parties is a child, which is anyone under eighteen years (UNHCHR, 2014). Therefore according to this international human rights instrument eighteen is the minimum marriageable age and it is in place to protect both boys and girls. Illegal child marriages cause the breaches of other human rights and these include the right to dignity, the right to be protected from all forms of violence, including sexual abuse and the right to education. Girls married before they turn eighteen have a limited decision making capacity due to the fact that they are still minors (Figure 1).

Legislation governing marriages in Zimbabwe is inconsistent and contains loopholes. For example, the Customary Marriages Act [Chapter 5:07] does not stipulate the minimum legal age for marriage which seems to encourage child marriage. The Marriages Act [Chapter 5:11] acknowledges the minimum age for boys as eighteen yet for girls it is set at sixteen. Therefore all these laws should be brought into agreement with the Constitution. The Maintenance Act [Chapter 5:09] also seems to legitimise child marriages by stating that maintenance for a child stops immediately upon the child marrying.

**Figure 1: Photograph of a girl below the age of 18 nursing her child**





#### ***1.8.4 Patriarchy***

The phenomenon of patriarchy is the process through which men flex their muscles or power in a family or societal set-up. Men batter women, the argument goes, simply because they can (Katsande, 2015). It is a social system in which men hold primary power and dominate the roles of political leadership, moral authority, social privilege and control of property (Sultana, 2010).

## CHAPTER TWO

### 2.0 THEORETICAL AND METHODOLOGICAL FRAMEWORK

#### 2.1 Introduction

Methodology has been defined as a theory and analysis of how research is done and should proceed (Hellum, 1990). Different methodological approaches have been employed in this research to untangle the research problem in the process of answering the research questions. The various data collection methods I chose complimented the methodological approaches so that credible and optimal data and meaning could be located and extracted in order to bring the best out of my study and these will be outlined in the research design.

#### 2.2 Methodology

##### 2.2.1 *Women's law approach*

The women's law approach is viewed as a starting point to analyse socio-legal issues affecting women. This approach unpacks women's lived realities which encompass their birth, care, domestic work and sexuality which are important factors which together form the basis for analysing their position within society and, particularly, their relationship with the law (Benzton, 1998).

Issues and theories surrounding human rights have been constructed using a male model and when women's real life experiences are taken into account, the theories, compilations and prioritisations change significantly (Okin, 1998). The women's law approach views the equality of men and women under the law and examines whether such equalisation achieves equality or whether it further perpetuates differentiation between men and women due to how they are socialised. Dahl (1987) postulates that as long as we live in a society where men and women have different paths in life, different living conditions, with different needs and opportunities legal rules will necessarily affect men and women differently.

The approach to women's law assists in appreciating women's encounters with discriminatory norms within a seemingly or *de jure* egalitarian legal system. The women's law approach uses their lived realities to help detect the shortfalls or weaknesses women experience within the legal system. Women's inequality can be detected, understood and addressed if the details of women's particular experiences are revealed, exposed, analysed and give a proper assessment (Farha, 2008).

I therefore used the women's law approach, and having women at the core of the study, I unpacked why young girls have failed to report cases of child marriages. I found, for example, that this depends on how they have been socialised. In some cases some of their parents have failed to obtain birth certificates for them and this has prevented law enforcement officials from being able to take action against culprits when cases of child marriages have in fact been reported. A birth certificate certifies the age of the child which is a necessary element to prove when charging a culprit. The reason why many parents do not obtain birth certificates for their children is because as members of apostolic churches they are encouraged to use the services of traditional midwives who, operating outside the state's formal medical services, do not issue birth certificates.

As mentioned above, boys and girls in Zimbabwe experience the country's laws differently in that whereas boys may only marry when they reach eighteen, girls may marry at the age of sixteen with the consent of their parents or guardians. This is due to the fact that Zimbabwe is a gendered society. I also noticed that the inconsistency and contradictions between the different laws on the minimum marriageable age affected girls differently depending on which different social groups they belonged. In the field I came to understand that girls are not given the amount of attention and protection which they really need. This marginalises them and makes them vulnerable to becoming easy victims of child marriages.

### ***2.2.2 Sex and gender analysis***

The research was focused on how women's rights have been taken away through the failure to enforce laws in dealing with child marriages which can be attributed to the ignorance of the law by victims and also by the failure to enforce the law since most of these marriages are not registered. Sex and gender analysis expresses how societal attitudes differentiate between men and women by not only looking at their different biological make-up but also at the differing minimum marriageable ages for each of them. Whereas boys can only marry when they reach 18, girls can marry as young as 16 as long as they receive the consent of their parents. Cultural and societal expectations were at the back of my mind while I was conducting this research. Although illegal child marriages affect both boys and girls, I realised that it is more prevalent among and more dangerous for girls.

This approach was mainly utilised based on perceived notions on what men and women should do and how they ought to behave and interact spliced together with cultural, social and legal interpretations of perceived gender differences (Stolen, 1991).

### ***2.2.3 Feminist dominance theory***

Feminist dominance theory offers several approaches to understanding the effectiveness of the law in dealing with cases of child marriages for both girls and boys. What came to mind was that society consider males as being superior to females supported, for example, by the fact that even the law favours them in that it allows boys only to marry at 18 when they are sufficiently mature, whereas girls, who need more protection, can marry as young as 16 when they are not fully developed to be wives or mothers.

Catharine A. MacKinnon's brand of dominance feminism not only provides a theoretical framework for investigating the glass ceiling(s) at the effectiveness of the law in dealing with child marriages, it also posits a paradigm for reform based on the unique experiences and lived realities of women. Therefore the core of this research was to investigate the effectiveness of law in dealing with child marriages. Dominance feminism serves as a call to action which seeks to empower women as women, i.e., in their own right and not as women in relation to men. Although MacKinnon has never addressed this issue directly, her anti-subordination (or dominance) theory has special relevance for married women.

### ***2.2.4 Human rights approach***

Illegal child marriage is a fundamental human right violation which threatens the lives of both boys and girls. I have decided to use this approach since it will reveal not only how children's rights are violated, but also how girls suffer more from it than boys. This approach will entail examining how the fundamental human rights of children, especially girls, contained in important relevant local, national and international human rights instruments have been violated. This approach is essential in providing a clear understanding of how girls and boys should be able to enjoy their legal rights without any form of discrimination. It clearly showed me that the laws which are currently in place are not helpful since they are failing to protect young girls since most of them are forced to marry before they reach eighteen years of age.

While international human rights law clearly stipulates that both boys and girls should only marry after attaining eighteen years of age, allowing or forcing a girl to marry as young as 16 (as is the case in Zimbabwe) violates her right to education as well as many of her other human rights. Girls below the age of eighteen are still children who should be protected and are not in any way ready to be married since they cannot give their free and informed consent to such an important life-changing contract. According to the Constitution of Zimbabwe, they are still children for all other intents and purposes.

Zimbabwe has freely entered into, signed and ratified different international treaties on human rights and the mandates of these treaties is clearly to end illegal child marriages. Therefore, Zimbabwe has no choice but to adhere to these treaties no matter what and take all steps to make sure that every child enjoys their rights. Therefore, all Zimbabwe's various pieces of legislation, including the Children's Act, the Criminal Code and all of its marriage laws need to be amended to come into alignment with the Constitution of Zimbabwe, the country's supreme law, which sets out that all children, including girls, become adults at the age of 18 and can only freely marry at that age. Such a change will be a first major step in helping to eliminate illegal child marriages.

### **2.3 Emerging issues**

During the research a lot of different issues emerged that were not envisaged at the research design stage.

I discovered that as a result of marrying at a tender age, young girls do not have the autonomy they need to negotiate for safe sex. As a result they are vulnerable to abuse. Young brides are also more exposed to contracting HIV/AIDS because their so-called husbands are often already married and hence they become one of their multiple sex partners.

Also their mortality rate and that of their children are high in view of their lack of physical maturity to bear children and their propensity to develop complications before or during birth.<sup>2</sup> According to Human Rights Watch (2013) spousal age, typical of child marriage, is a significant risk factor associated with violence and sexual abuse against girls.

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<sup>2</sup> 18 November 2019 at 22 Miles Corner Shops.

Moreover domestic and sexual violence cases are prevalent due to the fact that the husbands who marry these girls are way older than them and lose their temper with them when they fail to behave like wives through no fault of their own. These girls are unable to defend themselves against abuse as they are physically weaker, poorly educated and ignorant of the laws which protect them.

I also noted that there are more and increasing numbers of cases of baby dumping among child wives than among adult mothers as these young girls break under the mental and emotional torture of the responsibility of tending a child when they are children themselves. There are also the aspects of the economic status and wellbeing of girls who marry young in that they are less likely to exit the cycle of poverty (Human Rights Watch, 2013).

Due to the fact that these girls leave school without a proper education or survival skills means that they are forced into low income generating activities like selling market vegetables whose proceeds are insufficient to meet their daily needs and, as a consequence of which, they find themselves sinking and drowning in an ever downward spiral of poverty from which they cannot escape. Their right to education is taken away due to fact that they drop out of school and are then forced to become housewives. While they are expected to take on the responsibilities of being the mother of a family, they are incapable because they are not yet mature enough to do so.

According to UNESCO (2009), education should assist the community to distinguish between personal values and rights which would empower children and their mothers. Girls are the only ones affected by dropping out of school while boys might even continue with school if they marry before reaching eighteen. Child marriages are actually making it difficult for Zimbabwe to achieve one of the Sustainable Development Goals (SDGs) by 2030 and this has to be addressed as far as human rights are concerned.

I discovered that most of these child marriages are going unreported and are dealt with privately without the knowledge of law enforcement agencies. One of the reasons could be that community members fear for their life because the area of Manicaland is quite well known for witchcraft. This is possibly the situation when cases which have been secretly reported are later withdrawn because the complainants (child brides) fail to appear in court

and face their alleged perpetrators. This possibility was triangulated with magistrates who said most cases will fail against alleged culprits when witnesses fail to provide evidence.

In some cases the issues are solved privately between the parties in which the parents of the child receive compensation to keep quiet about the whole incident. This is often done to protect the perpetrator and possibly to support the young victim who may already be pregnant. Payment of compensation does not legitimise illegal child marriage. When the law has been broken the law should take its course. It is clear that the law is only one of a number of factors which affects people's decisions, the action they take and the relationships they have (Smart, 1995).

#### **2.4 Limitation of the study**

Due to financial constraints I could not go as far as Marange where I had intended to go. Instead I only went as far as Zimunya which was closer. In Chief Zimunya's area I interviewed respondents in Ward 33. Although the findings may not reflect what was happening in the whole area of Zimunya they are relevant to the extent that his area is home to many Marange church members. The operation of much governmental bureaucracy meant that while I was able to interview court officials, there was information about some matters which was too sensitive and they could not share with me. For the same reason, the police would not allow me to interview as many victim friendly officers as I intended. Also I was unable to obtain much information from some young people who were not comfortable talking in group discussions. It could have been that they did not wish to share information in front of their parents who might have been in the group at the time and some might have felt that they could not release private information about their church in that setting.

#### **2.5 Ethical considerations**

Before I started my research I was quite aware that some participants did not wish to provide me with information that the research needed because they were afraid of being exposed. I explained the nature and purpose of the research and sought their consent to participate before we entered into any discussions. I assured them that their input was for academic purposes only, that their names were to be kept confidential and that I would use pseudonyms to protect their identity.

## CHAPTER THREE

### 3.0 DATA COLLECTION METHODS

#### 3.1 Interviews

I interviewed key informants at their respective work places which happen to be law enforcement agencies and securing authority was a challenge to obtain although I did finally manage to do so. I interviewed the victim friendly unit officers, a magistrate, and gender officers from the Zimbabwe Gender Commission and the Ministry of Women's Affairs (Table 1).

**Table 1: Showing details of the key informants who were interviewed**

ORGANISATION	FEMALES	MALES	DESCRIPTION
ZRP VICTIM FRIENDLY UNIT	0	2	VICTIM FRIENDLY OFFICERS
ZIMBABWE GENDER COMMISSION	0	1	GENDER OFFICER
MINISTRY WOMEN AFFAIRS	1	1	GENDER OFFICER
JUDICIAL SERVICE COMMISSION	0	1	RESIDENT MAGISTRATE
CAMFED	1	0	SISTA TO SISTA OFFICER
ST JOSEPH'S CHILDRENS	0	1	PROJECT OFFICER
WORLD VISION	0	1	PROJECT OFFICER
PADARE	0	1	GENDER OFFICER
WILSA	1	0	PROJECT / GENDER OFFICER
<b>TOTAL</b>	<b>3</b>	<b>8</b>	

Some organisations gave me the privilege of permitting me to interview two as opposed to just one of their representatives. In either case, I managed to obtain all the information I needed. The key informants were helpful once I engaged them. They spoke freely about different aspects of child marriages. The interviews with key informants helped me to triangulate what I had already gathered from respondents on the ground in Zimunya. This method was useful as it allowed a dialogue to ensue between the respondents and myself thereby creating a more natural form of exchange within a socially conducive environment



(Stewart, 1997). My main aim was to investigate how law enforcement agents were enforcing the laws against perpetrators of child abuse, what strategies could be invoked to curb child marriages and to check whether legislation alone is adequate in combating child marriages.

### 3.2 Focus group discussions

I held focus group discussion with respondents in Ward 33 of Zimunya rural community, (Table 2). I took advantage of large numbers of local people attending maize distribution centres on dates provided by the councillor in order to conduct my focus group discussions among them before the start of the distribution programme. These group discussions also continued after the distribution process began.

**Table 2: Showing details of the respondents in the focus group discussions**

<b>AGE GROUP</b>	<b>FEMALES</b>	<b>MALES</b>
16 – 25	<b>13</b>	<b>9</b>
26 – 35	<b>15</b>	<b>7</b>
36 – 45	<b>11</b>	<b>8</b>
45 – 60	<b>7</b>	<b>5</b>
<b>TOTAL</b>	<b>46</b>	<b>29</b>

In Zimunya rural community Ward 33, I engaged the village councillor after obtaining authorisation from the city council. The respondents comprised people from different cultural backgrounds and different age groups. They had all come to the maize distribution programme. Based on their lived realities, the participants/respondents from the different groups shared their opinions about child marriages, the laws governing them and their enforcement by government agents. Different perceptions were raised by different age groups. Some young people were ignorant of the laws designed to protect their rights. The older women seemed to speak less about these issues. Although the majority of them were aware of their rights, some of them said that they could not oppose their husbands or men who used force to enforce child marriages. I attributed their attitude to the different socialisation processes to which men and women are exposed.

During the discussions some men noted that while they were aware of the laws on child marriage which exist on paper, they said that they do not apply in practice. During some of the focus group proceedings, lively debates sometimes ensued between the respondents and this made the research very interesting. Some respondents, however, were quiet during these discussions. They waited to the end and came up to me afterwards and shared their views with me privately.

### **3.3 Experiential data**

In the research journey I relied on my various experiences as a sociologist. I became aware that people in communities complain that sometimes after complaints are made to the police against so-called husbands of child brides, investigations or prosecution proceedings against them stop, they are forgotten about and they simply die an inexplicable death. I had also realised that people who are not educated, both young and old, were ignorant of the laws protecting children against child marriages. This can be attributed to the fact that there is a lack of awareness among and training of people about certain areas of the law, including the laws against child marriages.

Since I have experience corrupt police officers at traffic road blocks who take bribes to turn a blind eye to violations of the law, I accepted it as a possibility that police officers investigating criminal child marriages may also take bribes in order to stop their investigations of such cases. As a result of these corrupt police tendencies, I can understand why the families of young victims and perpetrators prefer to get together and take matters into their own hands by refusing to continue co-operating with the state authorities and settle the matter between themselves. This often involves the culprit paying the victim's family some form of compensation (a type of *lobola* or bride wealth) and agreeing to marry her. As a result the crime is covered up, justice is thwarted, the innocent child suffers in silence and ultimately the crime continues to be committed within society with impunity.

## CHAPTER FOUR

### 4.0 NATIONAL LEGAL FRAMEWORK / LEGAL FRAMEWORKS

#### 4.1 Introduction

This section sets out the relevant local and international legal frameworks which have a bearing on child marriages in Zimbabwe.

#### 4.2 National legal framework

Zimbabwe's revised Constitution of 2013 contains various human rights principles which protect children against illegal child marriages. The Zimbabwe Constitution is the supreme law of the land to which the provisions of the country's various laws must be made to agree in order to afford children constitutional protection against illegal child marriages. These various pieces of legislation include: the Marriages Act [Chapter 5:07], the Marriages Act [Chapter 5:11], the Maintenance Act [Chapter 5:09] and the Children's Act [Chapter 5:06] which fail to give children full protection since it does not state the minimum marriageable age. These statutes need to be fully investigated, reformed or amended since, as they stand, they seem to legitimise unwanted illegal child marriages in Zimbabwe. I understand that the Zimbabwe government is still in the process of conducting this exercise so that all these laws are made to conform to the minimum legal majority age which, according to the Constitution, is eighteen years of age.

Since there is no specific Act which specifically prohibits illegal child marriages, the Domestic Violence Act [Chapter 5:16] is one of the laws which is used to protect children against them in that the Act<sup>3</sup> expressly prohibits the harmful social and cultural practices of forced marriages, the pledging of girls, virginity testing and child marriages as these all constitute violations of human rights

The proposed Marriage Bill of Zimbabwe which is expected to align existing laws with the Constitution should have been enacted in 2013. It seeks to protect anyone below the age of eighteen from any form of civil, religious or customary marriage. The Constitutional Court judgment in the case of *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* (Constitutional Court Judgment No. CCZ-12-2015)

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<sup>3</sup> Act No. 24 of 2006.

which was handed down in January 2016 held that the practice of child marriages in Zimbabwe is unconstitutional.

Section 56 of the Constitution guarantees every person the right to equality and not to be treated in a non-discriminatory manner on a number of grounds including sex and gender. The Zimbabwe Constitution protects children's rights in line with various international human rights instruments. The fact is, however, that there are disparities between what the law says (that child marriages are illegal) and what is occurring on the ground, that illegal child marriages are still prevalent in Manicaland and beyond. This means that law enforcement agencies and the government still have a critical role to play in the combating of illegal child marriages.

According to the Zimbabwe Gender Commission, the Constitution of Zimbabwe is mandated to provide children with adequate protection and the High Court is the upper guardian of all children. Section 78(1) and (2) of the Constitution on marriage rights specifically notes that the minimum legal marriageable age is eighteen years old and that no one should be forced to marry since marriage is a voluntary union entered between two parties with full consent of both parties.

Since the Constitution is the supreme law all other laws take their validity from it meaning that if they are inconsistent with it they are invalid to the extent of their inconsistency with the provisions of the Constitution. Therefore the provisions of the Constitution should not be taken for granted but be respected accordingly. Therefore since section 81(1) of the Constitution clearly defines a child as being a boy or girl under the age of 18, that is the final authority on the issue and all other laws must agree with and reflect this legal fact.

### **4.3 International human rights framework**

There is a plethora of international human rights policies and laws of Southern African Development Community (SADC), the African Union (AU) and the United Nations (UN) which outlaw child marriages and they require member states to do the same. This is especially the case for African countries where the prevalence of child marriage remains high. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) was ratified by Zimbabwe 2008 after it came into force in 2005. This international treaty encourages the eradication of child marriages in article 2(2)

and sets the minimum age for marriage at eighteen years providing both parties give their full and free consent. According to the Zimbabwe Gender Commission (2016) this Protocol requires the implementation of a holistic approach to eliminate harmful practices and this approach essentially goes beyond simply enforcing legislative measures.

Article 16(1) and (2) of CEDAW prohibits child marriages but it does not state the minimum marriageable age. Zimbabwe adopted CEDAW in 1997. According to the Zimbabwe Gender Commission (2016), CEDAW and the Maputo Protocol provide a blueprint for gender equality and the implementation of these treaties eliminates the drivers of child marriages and leads to gender equality.<sup>4</sup>

The best interests of the child are the primary concern of the Convention on the Rights of the Child (CRC) and its main focus is to promote the rights of the child. The CRC is mandated to protect children from all forms of sexual abuse, exploitation and any other violation of human rights. It promotes the registration of all marriages which is one measure that may be used to determine whether a person is of an appropriate age to be entering a marriage.

Article 21 of the African Charter on the Rights and Welfare of the Child (ACRWC) requires appropriate measures to be taken to eliminate harmful social and cultural practices and it refers to the need to eliminate child marriage.<sup>5</sup> Article 8 of the Protocol on Gender and Development prohibits the marriage of persons below the minimum age which is eighteen. It follows, therefore, that the free and full consent has to be present in the case of those above eighteen.<sup>6</sup>

While all these Protocols have been adopted, ratified and signed by various member countries, including Zimbabwe, they really need to be implemented by each individual country to be of any use to their citizens in combating child marriages. Since all the national and international human rights instruments complement each other in their agreed goal to protect children and their best interests, they ought to be vigorously upheld especially by each member states' law enforcement agencies which are clearly mandated to protect children from child marriages.

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<sup>4</sup> Article 15 of CEDAW.

<sup>5</sup> Article 21 of the African Charter on the Rights and Welfare of the Child.

<sup>6</sup> Article 8 of the Protocol on Gender and Development.

#### **4.4 Different laws which protect children**

From the research I have discovered that although there is no specific piece of legislation prohibiting child marriage in Zimbabwe, there are however various laws such as the Domestic Violence Act [Chapter 5:16] and sections including, statutory rape under the Criminal Law (Codification & Reform) Act [Chapter 19:23] (Criminal Law Code) which are used to prosecute perpetrators of child marriages.

Various pieces of legislation dealing with civil, customary and religious marriages all need to be amended with the single purpose of curbing child marriages in Zimbabwe and this means that the government must take seriously and uphold all international treaties that it has signed to this effect. Child marriage is a violation of human rights perpetuated by a lack of adequate and enforced democracy, rights and governance systems, such as birth and marriage registration systems, and laws related to inheritance and divorce, among others.

The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, states that “marriage shall be entered into only with the free and full consent of the intending spouses.” According to section 81(1) of the Zimbabwe Constitution, every child, a boy or a girl under the age of 18 years is a child and this is in agreement with the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) which defines a child as any boy or girl who is under the age of 18.

Therefore a child marriage or early marriage is by definition any marriage carried out between two persons one or both of whom is below the age of 18, and in the case of a girl, before she is physically, physiologically and psychologically ready to shoulder the responsibility of marriage and childbearing (IPPF, 2007). The Children’s Act [Chapter 5:06] provides that all children are to be protected from all forms of child abuse including child marriages.

Article 4(2) of the Maputo Protocol requires state parties to take appropriate measures to ensure the prevention, punishment, and eradication of all forms of violence against women and to punish perpetrators of violence against women (CEDAW, 2005).

Article 21 of the African Charter on the Rights and Welfare of the Child (ACRWC) provides that child marriage and the betrothal of girls and boys is prohibited and effective action,

including legislation, must be taken to specify the minimum age of marriage to be eighteen years.

The 1989 Convention on the Rights of the Child (CRC) the first legally binding international instrument to incorporate the full range of human rights for children, also stipulates that people under the age of eighteen need special protection and care that adults do not need. The CRC does not have a specific law which addresses child marriages though it has some norms and protective measures which protect children and it provides an enabling framework to curb child marriages.

Section 81(2) of the Constitution of Zimbabwe stipulates that a child's best interests are paramount in every matter concerning the child. Children are entitled to enjoy adequate protection by the courts, in particular by the High Court, their upper guardian according to section 81(3) of the Constitution.

At regional and international level, Zimbabwe ascribes to a number of instruments intended to improve the promotion and protection of the rights of women and ensure the attainment of gender equality and to this end, it ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) in 2008 (Zimbabwe's CEDAW, 1996).

Various declarations have been signed and ratified by Zimbabwe in its bid to curb child marriages and this signifies that it is obliged to investigate the phenomenon of child marriages and take necessary steps and measures to protect girls from this national scourge. While the Zimbabwe Constitution contains the necessary provisions to protect girls from illegal child marriages, it is the enforcement of these provisions that is lacking. Several actors have acknowledged that there is a need to align existing laws with the provisions of the country's Constitution which adequately protects the rights of girls against child marriages. Every person who has reached the age of eighteen has the right to found a family in terms of section 78(1) of the Zimbabwe Constitution.

Child marriages are a matter of national concern since they seriously jeopardise the life of minors because they so grievously violate their right to dignity. The nation's authorities at every level should intervene to prevent child marriages because it is clearly unlawful and

harmful for a child to marry. Marrying minors also exposes them to various diseases (Sibanda, 2011). The Criminal Law Code prohibits the intimidation and compulsion of female persons to enter into marriages against their will. The Marriages Act (Chapter 5:11) has now been declared unconstitutional following the Constitutional Court judgment of *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* (above)<sup>7</sup> and has been repealed since it did not clearly state the minimum marriageable age.

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<sup>7</sup> Constitutional Court Judgment No. CCZ 12/2015.



## CHAPTER FIVE

### 5.0 FINDINGS AND DISCUSSION OF FINDINGS

#### 5.1 Introduction

This chapter presents and discusses the findings on each of the assumptions of the study and they concern the effectiveness of laws in dealing with child marriages. As already mentioned, illegal child marriage is a harmful cultural social practice which is a great cause for concern in Zimbabwe since many children, especially girls, are subjected to it. This abuse in turn increases the inequality gap between men and women in society.

#### 5.2 Customary and religious practices are responsible for the perpetuation of child marriages

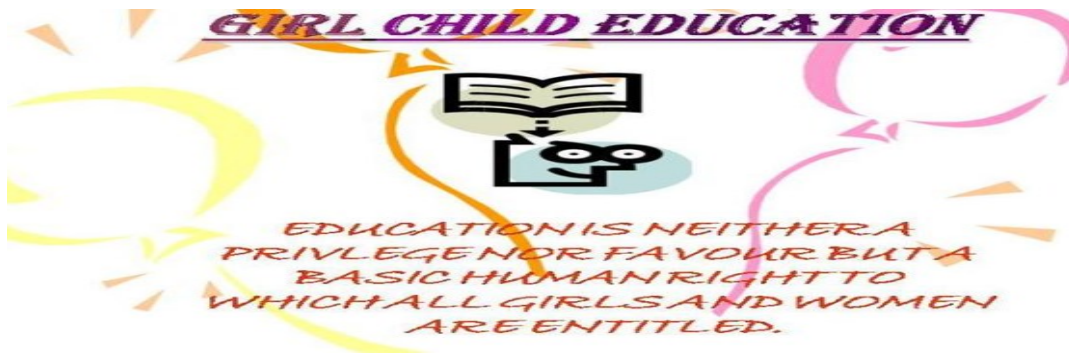
The respondents involved in this research agreed that child marriages exist in Zimbabwe. Two male respondents said that most children marry at a tender age simply as a way of procuring material things for themselves and not because of customary and religious practices in the area of Zimunya. This respondent said that he had married his second wife before she was eighteen years old. This was due to the fact she was an orphan and she had no one to take care of her so he explained that marrying her was his way of helping her out from poverty. This is consistent with existentialist feminism that observes that men always seek to dominate and control women, who are regarded as ‘the other’. While women do not remarry unless they are divorced, men can marry more than one wife.

Girls are required to obey the instructions given to them by the male members of their family (Lindstrom, 2001). As a result of their inferior status in society and their low self-esteem due to how they have been socialised, girls end up being abused. They feel they do not have any rights due to the way they are socialised and treated by society, in the process of which their right to dignity is taken away. As a consequence of becoming a child bride, a girl is also often deprived of her constitutionally guaranteed right to education (Figure 2). In other words, she is forced into marriage, drops out of school and is now expected to be a house wife.<sup>8</sup>

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<sup>8</sup> Section 81(1)(f).

**Figure 2: Image depicting that education is a basic human right which all girls and women have the right to enjoy**



In accordance with its duty to uphold its obligations under its Constitution and international human rights instruments to which it is bound, Zimbabwe is obliged to safeguard the human rights of its young girls and women since, compared to boys and men, they constitute a vulnerable group of its society. Another respondent said:

*'Vana vadiki vakunyanya kuda zvinhu.'*

This literally means that young girls are now pursuing material things and this is getting them into trouble because they end up in early marriages because they are falling into the wrong hands of older men who are taking advantage of them. The respondent continued:

“Men are born superior beings hence they are financially stable so they are luring young girls into sleeping with them hence some will fall pregnant.”

However luring young girls into bed is a crime and you can be charged with statutory rape since there is no specific law dealing with child marriages in Zimbabwe. An old man who was a respondent noted that in many cases only one marriage partner is a child and they are usually the female. He said that there are only a few cases of young men marrying older women or it could be two mischievous kids who could have impregnated each other.

Article 10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also provides that marriage should be entered with the free consent of the intending spouses.<sup>9</sup> Most young girls are failing to exercise their rights fearing that their husbands are above the law after having been taken advantage of them and these cases are

<sup>9</sup> Article 10(1) of the ICESCR.

going unreported. The Marriages Act of Zimbabwe seems to favour men over women because it states that girls can be married at the age of 16 whereas boys can only marry at 18 hence this creates an inequality gap.

Another point he mentioned is that these little girls live in fear of remaining unmarried and getting too old before they marry and this mind-set pressurises them into getting married or eloping when they are too young for married life.

Another respondent in a group of ladies blamed customary and religious beliefs for child marriages and said that when they do occur in families, their response is to keep them secret. She said that agreements are entered into between the two parties, the man and possibly his family and the young child's family. These agreements cement the relationship between the couple and they could be motivated by things such as hunger in the family or *kuripangozi* (appeasing their ancestors) / *kuroterwa* especially among those living in the Marange sects and complying with their doctrine. It should be noted, however, according to section 80(3) of the Zimbabwe Constitution all laws, customs, traditions and cultural practices are void to the extent that they infringe the rights of women conferred by the Constitution.

An older woman, *Mai* (Mother – used as a term of respect) Max, admitted that she got married when she was fifteen years old in accordance with her church doctrine, and said that at the time she did not know how disadvantaged she was. According to Macharia (1995), a bride has very little say in rituals that affect her directly and personally. She was only 15 at the time she got married, due to the fact that she was physically mature enough to have children. Her parents had her married even though she did not consent to it. Most children reach puberty between 9 and 12 years of age. Sometimes young girls are initiated into adulthood through an initiation ceremony in accordance with tribal customs (Armstrong et al., 1992).

But over time *Mai* Max she realised that she had lost many opportunities in life, she was unable to continue her education and had she done so she could have learned skills and been able to support herself better. She actually compared herself with other young girls who managed to continue with their schooling and became successful in life. She emphasised that boys are not disadvantaged because they can impregnate girls yet be allowed to continue with their own education because they are viewed superior to girls. Section 81(1) of the Zimbabwe

Constitution states that every child has the right to education and this is supported by the education policy which further provides that after falling pregnant and giving birth, a girl has the right to continue with her education. It is different for boys, however, as even if they make a girl pregnant or ‘marry’, they can continue with their schooling because it is not considered unusual for a boy to have a ‘wife’. In other words, when it comes to marriage, society socialises girls and boys differently.

*Mai Max*<sup>10</sup> said that girl marriages are a disaster for young girls because most of them die whilst giving birth because they are still too young. Some face unbearable challenges trying to look after their families and homes because they are not mature enough to be a wife to their husband and mothers to their children. In other words, instead of playing with children of their own age, child brides must busy themselves with household chores or taking care of their husbands.

These respondents also observed that the introduction of contraception in high school is a major reason for the increase in promiscuous behaviour. One woman named *Mai Murehwa* from the Methodist Church in Zimbabwe explained that according to Church teachings, girls between 10 and 18 should not be given access to contraceptives because they are too young, and that sexual intercourse is only for married people. In some communities, puberty means automatic entry into adulthood (Ncube, 1998). Another lady, *Chipo*, concurred by indicating that sexual intercourse before marriage is adultery, it is against church doctrine and hence is subject to punishment by the church.

One female lady from the United Methodist Church vehemently declared that the church does not and will not support adolescents being permitted access to contraceptives because this is tantamount to giving them the right to engage in adulterous affairs that perpetuate moral decadence which leads to unwanted pregnancies. Another group of respondents expressed similar sentiments and among them was a young man who added that as a people, they would not want their adolescents to take contraceptives because they increase the chances of sterility in young women.

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<sup>10</sup> Not her real name.

There was a group of mixed respondents of all ages and this was the most interesting group because of some of the unusual things they came up with. One of the young boys denied that customary and religious practices are contributing to child marriages, and explained young girls:

*‘Vari kuda kunakirwa, vari vana vadiki, vakunyanya kuda zvinhu.’*

(Meaning: ‘They want to experiment (new things) and enjoy whilst they are still young.’)

He said that we are living in a time of competition in which showing-off is the norm. He said that the latest fashion is to have a ‘blesser’ or a working boy which means someone who is way older than the girl who spoils her.

Dahl (1987) postulates that as long as we live in a society where men and women have different paths in life, different living conditions, with different needs and opportunities legal rules will necessarily affect men and women differently. Therefore, so long as there are men who have the social capital and money which they can use to take advantage of young girls by buying things, like food, for them, the inequalities between them will continue to be perpetuated causing girls to continue dropping out of school. He also observed that even though a child may come from a family of good repute does not mean they cannot be rebellious. Another respondent an old lady from a different group noted that young girls lack the negotiating power to oppose any man who says he wants to marry or sleep with her.

Some of these forms of behaviour can be attributed to the way society socialises boys and girls, men and women differently to the extent that if they witness a certain form of behaviour being acted out and tolerated within a society they eventually come to accept that it is a norm within the society. For example, they will be misled into thinking that sleeping together is a matter of love, when it is not, but these young girls are too immature and do not have the wisdom to know the difference between good and bad.

A respondent in a small group made an interesting point when she said that it would be better to let young girls marry when they want to even though it agrees with customary or religious practice. She continued that even if children are prevented from marrying that will not stop them because they will still indulge in sexual activities behind the backs of their parents.

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.

Young children are in the habit of having secret sexual relationships so the young lady was of the view that it does not matter whether one marries when they are still children because children are already engaging in sexual activity anyway. The lived realities of young girls who engage once in sexual activity is that they then keep on doing so for fear of being left alone and as a result some of them fall pregnant in the process. They meet their partners at boreholes or in nearby bushes.

This young lady was so amazing she later confessed that she got married at a tender age. She said that once, before she got married, she eloped with her future husband but she returned to her parents who took her back because she was not pregnant. After that she continued meeting up with him without her parent's knowledge and she finally fell pregnant. The respondent noted that having heard what different organisations had to say about illegal child marriages when visiting her area, she now realised what she had really lost out by marrying as young as she had. She said that she had lost her right to education and that her best interests as a child were not considered when she got married. She acknowledged that she faced a lot of challenges as she eloped because of her age. It was a burden but later over time she got used to it. The respondent did not want her children to go through what she had experienced. So women who were themselves child brides have much valuable information to share about their experiences. The respondent talked about the power relations between herself and her husband and the times he forces her to go and sell tomatoes and how abusive he can be towards her in order her to do anything he wanted.

Another respondent was the National Coordinator for the Ministry of Women's Affairs whose interview was insightful since he informed me of the cultural practices which are followed by the Zimunya and other communities. He acknowledged that they are aware of child marriages in different communities including Zimunya in Mutare. He also noted that the root cause of these marriages is rooted deep in gender inequality and also in the low status of the girl child in their communities. Boys are seen as invaluable assets to a family whereas girls are not considered that important because one day they are expected to and must get married and leave their family. Madan (2014) observes that women have always been in a

position which is inferior to that of men. A mind-set such as this is responsible for perpetuating inequalities between men and women in society. Boys are socialised to be superior beings, whereas girls choose to marry because that is how their society has socialised them to think and behave throughout their lives.

Some families even stop sending their daughters to school because they consider education irrelevant to their roles as wives and mothers which is what they are socialised to become. Boys on the other hand are sent to and encouraged to stay in school. This difference between the treatment of boys and girls persists even though girls as well as boys are guaranteed the human right to education under Zimbabwe's Constitution. According to Ainscow (1995), education is the strongest factor that influences control over one's future. Since time immemorial girls were not given the preference of being educated since it was seen as a waste of time to educate them in view of the fact that they would get married at some point in time and leave their father's house. This unfortunate practice was reinforced by factors such as religious and cultural norms, values and traditions, lack of education and state policy and weak legal frameworks.

### **5.3 Is it the case that modern society uses age to determine when a girl can marry, whereas the customary system makes the determination based on her biological growth**

One of the respondents, a wife of a councillor, explained that many girls leave school before the age of eighteen as the result of different reasons. She noted that due to economic hardships some children drop out of school after which they are taken advantage of because of their body statuses which are big and some cultural practices of 'chiramu' still exists in the area of chief Zimunya where young girls are viewed as potential wives after / before their sisters death. Civic society organisations, NGOs, government still have a role to play in educating communities about the dangers of some cultural practices such as 'chiramu' which take advantage of young girls. Socialisation is responsible for removing the power of young girls to say no to the sexual advances of their brothers in law. According to positivist human rights lawyers, co-operation and mutual respect are the most beneficial behaviour for individuals and a society (Meron, 1984).

When I asked one group about when they thought a girl/woman was ready to marry, I got a shocking answer from an old lady, *Mbuya* (Grandmother – used as a term of respect)

Nyamandwe, who said that the only condition was physical and that so long as she was able to bear children she was ready to marry. She said:

*'Kana munhu angova nemazamu uye akukwanisa kuenda kumwedzi zvoreva kuti akukwanisa kuchiwanikwa.'*

(Meaning: 'When someone has developed boobs and has reached puberty she is ready for marriage.')

In the group, however, was a former teacher, *Mbuya* Mundembe, who opposed this opinion and said that the physical body is not important but rather age is a better indicator. She said marriage at the age of 18 is acceptable. She also observed that young girls can be taken advantage of it, while they are living with their married sisters, their sister dies and they are then taken as the new wife of their brother-in-law according to the customary practice of '*zvimutsamapfihwa*' ('to take over after their sisters' death) and this occurs regardless of their age. They are compelled to stay and cannot refuse to do so. Sometimes have no other option because this is the only home they have known. .

On another note a group of six married women observed that children who are orphaned at a very early age are also likely to marry young in an effort to find comfort because they view marriages as a heaven on earth. The main cause of children marrying is often desperation and hunger, so they look for someone to take care of them. Also, girls who look older than they actually are also attract older men who mistakenly think that they are old enough to marry when they are not. Some middle aged women told me that culture and societal expectations are really the main cause of child marriages.

#### **5.4 Legislation alone is not adequate to eradicate the scourge of child marriage**

Most women tend to suffer in silence especially young girls due to the fact that they are ignorant and do not report cases of gender based violence because they married before they reached 18. The councillor's wife noted that this failure to report gender based violence is perpetuating the practice and law enforcement agencies are reluctant to take the matter seriously as it is regarded as a domestic affair. Education on sexual reproductive health and the dangers of illegal child marriages should be taught from primary school level in order to empower young children so that they cannot be easily abused. According to UNESCO (2009), education should assist the community to distinguish between personal values and



rights which would empower children and their mothers. She also mentioned that issues surrounding child marriages are more prevalent because most of them are not reported and nothing has been done about those which have been reported. The reason for the inaction could be related to corruption, laziness or a lack of resources on the part of the law enforcement agencies.

Since, in recent years, young girls are becoming sexually active and marrying at an earlier age they have experienced more complications at child birth and fallen deeper into poverty (UNFPA, 2014). She also said that some people and the police do not raise the issue of child marriages out of fear because of the influence of witchcraft and this partly explains why cases are going unreported and why child marriages are more rampant in the Manicaland region. According to section 219<sup>11</sup> of the Constitution the police are supposed to investigate and stop crimes, maintain law and order, uphold the Constitution and enforce the law without fear or favour.

The majority of young girls who enter into illegal marriages on a daily basis in Zimbabwe do not report such cases because they and even their parents are afraid of the retaliation they would suffer from so-called husbands on whom young brides are totally dependent and who use physical violence to control them. The fact that no one is taking the lead in reporting illegal child marriages also makes child brides more vulnerable. Girls and women need to be empowered according to regional and international treaties on gender equality so that they are not abused. Girls and women ought to be accorded their human dignity and the rights afforded them in terms of sections 51 and 80(1) of Zimbabwe's Constitution so that they do not fall victim to manipulation and abuse.

The councillor acknowledged that 18 is the marriageable age according to the Constitution and the LAMA.<sup>12</sup> Despite the fact that 18 is the legal marriageable age, cultural traditions may overrule this law and permit marriages to take place earlier with parental consent or in special circumstances, such as teenage pregnancy.

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<sup>11</sup> Zimbabwe Constitution, section 219, the Police Service and its functions.

<sup>12</sup> Legal Age of Majority Act, 1982 (LAMA).

I received shocking information of witchcraft activity which still prevails in the Zimunya villages and terrorises police officers and communities preventing them from reporting and apprehending alleged law breakers.

The United Nations Declaration on the Elimination of Violence against Women (DEVAW) recognizes that violence against women is a manifestation of historically unequal power relations between men and women, which have led to the domination over and discrimination against women by men and to the prevention of the full advancement of women. These social and human rights problems need to be redressed legally and socially. However as a result of failing to criminalise these acts of misconduct, some states breach their obligations under the international human rights treaties by which they are bound and this gives rise to impunity on the part of law breakers.

Zimbabwe Women Lawyers Association (ZWLA) observed that it is really culture and societal expectations that are the cause of child marriages within communities. According to Morna (2011), culture and tradition are major barriers to women accessing decision making positions. All the adults I spoke to concurred that adolescents who marry before they turn 18 due to customary, religious practices; that legislation alone is insufficient to eradicate the scourge of child marriages; that there is not enough public awareness about the scourge and that law enforcement agencies are too corrupt and as a result are failing to fully and properly execute their duties.

Section 78(1) of the Zimbabwe Constitution stipulates that every person who has attained the age of eighteen years has the right to found a family. But there is however a problem with the various contradictory marriage laws that do not all consistently uphold the fact that 18 is the minimum marriageable age in terms of the Constitution and LAMA and these contradictory laws need to be aligned in an effort to help curb child marriages in Zimbabwe. Children's rights must be respected, upheld and enforced by Zimbabwe as important human rights especially in view of the fact that it is a signatory to many international treaties which seek to eliminate harmful social and cultural practices which so seriously harm Zimbabwe's young population.<sup>13</sup>

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<sup>13</sup> Article 5(a) of CEDAW.

Sibanda (2011) states that culture is one of the obstacles preventing the enjoyment of children's and women's rights in Africa since communities do not observe the relevant human rights instruments that protect children from harmful cultural practices or they are simply not aware of them.

It has become glaringly obvious that legislation alone is inadequate to eliminate the harmful and unlawful practice of child marriage. Stakeholders must work together on public awareness raising and educational strategies to combat it (Figure 3).

**Figure 3: Image to 'STOP CHILD MARRIAGE'**



### **5.5 There is limited awareness and enforcement of legislation which protects girls from child marriage**

One group of my respondents acknowledged that children under the age of eighteen should be protected by the law, their parents and teachers. They raised the point that human rights are a cause of concern when it comes to issues of child marriages. They noted that their children are ungovernable these days due to having too many rights. One elderly lady referred to the Bible verse which says 'spare the rod and spoil the child.' She said that today's children lack teaching about child marriages from their close relatives and civic organisations and they are hearing more about corporal punishment (i.e., whether they should be protected from corporal punishment) in which they are more interested. As a result, parents cannot control their children properly since they cannot punish or beat them. This in turn exposes children to early marriages. Parents are afraid of being jailed for using corporal punishment

on their children if they suspect them of engaging in inappropriate early sexual activity which could lead to early child marriages. However despite all their fears, parents they tend to agree that their daughters are more vulnerable to falling victim to child marriages than their sons (Figure 4).

**Figure 4: Photograph of girl holding a sign with the words ‘I AM A GIRL CHILD DO NOT MAKE ME A CHILD MOTHER’**



Burja (1983) postulates that African women’s education has always been geared towards their roles as wives and mothers and therefore, providing them tertiary education was not considered necessary. Girls who marry are at a disadvantage because they drop out of school, whereas boys have the right to continue attending school after they start a family. Some women blamed modern technology (e.g., the internet, computers and cell phones) which exposes their children to inappropriate ideas which make them vulnerable to becoming victims of child marriages. Watching pornography on the internet, for example, is enticing young children to experiment sexually and this can lead to early pregnancy. They also said that some churches are condoning such risky practices and socialising them to accept them as normal which they clearly are not. Children who belong to churches whose elders practice child marriages simply copy the other children they see getting married. Such churches are using their brain-washing doctrines to socialise all their members into believing that abnormal practices such as child marriages are normal. According to Ncube (1998), what can be viewed as the collective interests of the family or community may override the individual interests of the child.

A young lady, Nyasha, noted that awareness about illegal child marriages is lacking among communities and this leads to most people being ignorant about them and the socialisation

(which silently condones such marriages) takes away the negotiating power of most women and girls who have little choice but to go along with them. According to section 81(1) and (3) of the Constitution, children are entitled to protection from the courts and the child's best interests are paramount in every matter concerning them. The Constitutional Court outlawed child marriages in 2016 in the case of *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* (above)<sup>14</sup> which held that children under the age of 18 may not enter into marriage. Tsanga (2003) noted that while age is an important consideration in a general law marriage, there is no specific age limit under traditional or Islamic law. No matter how brainwashed these young girls are, now after this ruling, children are protected by the law and anyone who marries an underage girl is now liable to face prosecution by the state.

Concerning my assumption that legislation alone is inadequate to eradicate the scourge of child marriages, one young respondent confirmed its inadequacy claiming that law enforcement agents are so corrupt that culprits who take advantage of and marry children are not properly convicted and sentenced. He suggested that committees should be set up in villages to co-operate with different government agencies and stakeholders to help combat the scourge of child marriage. The village head who was in this group also explained that there is inadequate awareness about child marriage in Zimbabwe and two of the problems are that people do not know what a child is (i.e., that, according to the law, 18 is the age of majority) and they do not know about the laws which are in place to protect the girl child.

The public's lack of awareness and ignorance about illegal child marriages creates a temptation for low-paid law enforcement officers to behave corruptly by taking bribes from culprits so that they can escape justice. Another respondent intervened and said that some officers are themselves perpetrators of marrying children and cannot be trusted to protect the public by enforcing the law because they would have to turn themselves in first before prosecuting others. This would mean their downfall. In this context it should be noted that, in terms of section 219(1)(c) and (d) of the Zimbabwe Constitution, all police officers are mandated to protect and secure the lives and property of the people and to maintain law and order within the society.

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<sup>14</sup> Constitutional Court Judgment No. CCZ 12/2015.

Another old man Mr Kurewa<sup>15</sup> observed that the law is only there to protect the affluent yet most ordinary people are suffering. He pointed out:

‘After committing the same crime we end up rotting in jail but for those who have money, they will pay judges, prosecutors or any other law enforcement agencies. Therefore, government should establish some liberal or independent organisations to assist and review such matters and also set up committees which monitor and evaluate the quality of justice prevailing in communities. Yet they are destroying their future.’

Mr Kurewa later pointed out that police officers and some other law enforcement agencies are now working to earn a living (honestly or corruptly) and not necessarily to fulfil their duties wholeheartedly.

A police officer who was also a respondent in this discussion group expressed his embarrassment at the fact that child brides actually stand up in court to defend their so-called criminal husbands, ‘*Vachiti ndakamunyepera kuti ndine 18 years*’ (testifying that they were 18 when she ‘married’ or fell in love) as a result of which the power of the court to punish these perpetrators is drastically reduced and they receive much lighter sentences (e.g., community service) than they deserve. Incidents like this mean that not all law enforcement agents are corrupt as some do their work diligently.

Another young woman shared that some children start engaging in sexual activities at a tender age, as early as thirteen or fourteen years old when they are returning from school. If they continue doing so they fall pregnant because they do not have protection. Today young girls are becoming sexually active at an earlier age and waiting till they are older before they marry which is extending the period of time from sexual maturity until marriage (UNFPA, 2014). These young girls choose to do what they want despite the steps their parents take to prevent them from becoming promiscuous. They sometimes rebel against their parents, continue with their conduct and fall pregnant or elope.

Another young man in the group said a lack of education campaigns in school and lack of resources for law enforcement are to blame for the prevalence of child marriages because people are ignorant of law. While the law is supposed to be protecting young girls from these

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<sup>15</sup> Not his real name.

criminals, the reverse is true. It is because the law is failing to protect these victims that they are protecting their criminal husbands. These young victims do so because they cannot support themselves and they depend on their criminal husbands who are their breadwinners.

An even more disturbing, deeper and darker social mutation of this problem is that some parents behave arguably even more criminally than the sexual predators of their young daughters. Essentially they turn the tables on the criminals and exploit them for their own benefit by threatening to report them (i.e., rapists and sex offenders who sleep with their under-age daughters) to the authorities unless they agree to marry their daughters or even other children/relatives of theirs in what can be described as marriage trade-offs.

Furthermore, agreed out of court settlements between criminal culprits and the parents of abused children are driving child marriages underground and making it more difficult for law enforcement agencies to do their work diligently and bring culprits to justice. In cases where young girls who do not want to but are forced to marry their culprits who are themselves forced by the girls' parents to marry in order to escape justice, these girls possibly face even worse forms of abuse in their homes because there was no real consent on the part of either party. In this context it should be noted that 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 practises that discriminate against women. It is the state's obligation to adopt or fully utilise all measures that aim at achieving the full realisation of women's rights.<sup>16</sup>

A police officer who was one of my respondents noted that most child marriages are more likely to occur among low or middle income families due to various factors which they face in their day to day lives such as poverty. The officer noted that they are mandated to eliminate these child marriages and they aim to achieve the SDGs<sup>17</sup> by 2030. In this context it should be noted that section 34 of the Zimbabwe Constitution requires the state to ensure that all international conventions and treaties to which Zimbabwe has agreed to be bound are incorporated into Zimbabwe's own domestic laws and come into force. This is the only way the sustainable development goals can be achieved.

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<sup>16</sup> Zimbabwe Constitution, section 80.

<sup>17</sup> Sustainable Development Goals.

The respondent also noted that officers do indeed lack adequate training on how to tackle child marriage cases and some do not agree that it should be their task to deal with or prevent them. He said that the police face limited resources to investigate perpetrators of child marriages since most of them live in remote areas, far from the police which they do not have the fuel to reach. The government also lacks capacity to help the police. In this context it should be noted that in terms of section 219(1)(a) of the Zimbabwe Constitution the police service is responsible for detecting, investigating and preventing crime. So since the police are compelled by the law to take action as far as reported cases of child marriages are concerned, issues of their incapacitation comes into play.

The respondent said that the government is doing nothing much as far as combating child marriages is concerned and it ought to work with different actors to put a stop to them. The officer explained that as law enforcement agencies, they could participate in workshops with some stakeholders and agree on different things but the implementation part is very weak because there are so little resources and all they could manage was to disseminate information about child marriages in the urban areas only. Apart from the difficulties the authorities have for trying to combat child marriages, he also referred to the push and pull factors making victims susceptible to child marriages, including, insecurity, poverty and lifestyle.

The respondent also noted that there are contradictions within the legal frameworks and between the different marriage laws (i.e. the civil, criminal, family and customary laws) which are not yet harmonised which makes prosecuting criminals difficult as decisions have to be made about which laws to adopt and put into practice. For example, there is no consistency between the various marriage laws and the Constitution as to the marriageable age. All the factors combine to increase violations of the human rights of children who are forced into child marriages in Zimbabwe.

The officer noted that most apostolic church members in Zimunya or Marange do not have identification documents or birth certificates and it is hard to prove that a victim is below the age of eighteen.<sup>18</sup> In cases in which young children do not have birth certificates even the courts cannot come to their aid because of the lack of evidence that the child is a minor. In

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<sup>18</sup> Members of the apostolic sect do not believe in giving birth in hospitals where births are recorded and upon which basis birth certificates are issued.



this regard the rights of children are being breached in that they are being denied the prompt provision of a birth certificate in terms of section 81(1)(c)(ii) of the Constitution.

Another respondent said that most men do ‘hit and runs’ on girls (impregnate them quickly and move on) and it not easy for a young girl to acquire a birth certificate alone without her husband. Due to that fact that some parents consent to marry their young daughter to the culprit, the issue of identification and birth certificates is also protected and lied about in court to protect themselves and their son in-law because they all fear being prosecuted. Furthermore, witnesses fear providing evidence which could help investigations in child marriage cases because they do not want to upset their neighbours. As a result they remain silent and turn a blind eye to child marriages in their communities. It is for these main reasons that children are getting married at a tender age in Chief Zimunya’s area.

In this context it should be noted that according to Article 21(2) of the African Charter on the Rights and Welfare of the Child (ACRWC) states parties are required to prohibit child marriage and the betrothal of girls and boys and take effective action, including legislation, to specify the minimum age of marriage to be 18 years and to make the registration of all marriages in an official registry compulsory.

Another police officer respondent confessed that it is difficult to enforce the laws after a chief has solemnised a marriage since this occurs outside the law.<sup>19</sup> He said that the police need to work hand in glove with these traditional leaders and make them aware of the harmful dangers of these unions (Figure 5).

**Figure 5: Photograph of police officers arresting an alleged sex offender**



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<sup>19</sup> Zimbabwe laws, i.e., customary laws and statutory laws, are not aligned and they contradict each other.

These marriages are mostly unregistered customary law unions which may take place regardless of the ages of the parties but so long as they have reached puberty (sometimes as young as 10) the children can marry. In this context it should be noted that according to the Marriages Act, boys may marry at the age of 18 and girls at the age of 16 and this difference perpetuates inequality between the sexes. He noted that between them, the different marriageable ages under the Marriages Act and unregistered customary union make it difficult for law enforcement agents to do their work since these laws are not in line with the Constitution which provides that the marriageable age is 18.

Section 46(1)(c) of the 2013 Constitution of Zimbabwe states that when interpreting Chapter 4 (Declaration of Rights), a court or tribunal forum of body must take into account international law and all treaties and conventions to which Zimbabwe is a party. Zimbabwe has ratified and signed most major child and women's rights treaties. All of these treaties and Zimbabwe's own Constitution, its supreme law, all agree that 18 is the marriageable age and that overrules all other local contradictory legislation. Therefore all law enforcement agencies should proceed on the basis that it is a crime to purport to marry a child who is any person, boy or girl, under 18.

Early marriage is also performed by apostolic child communities, as noted by UNICEF Zimbabwe Country Office in its 2014 Gender Review Report (UNICEF 2014). The apostolic church also performs child marriages involving children as young as 9 years old. Section 26(a) and (b) of the Constitution requires the state to take appropriate measures to ensure that no marriage is entered into without the free and full consent of the intending spouses and that children should not be pledged in marriage. Despite the existence of all this local and international law to prevent child marriages, young girls in the apostolic sect are compelled to marry according to church doctrine because they are socialised into accepting that it is the church norm and if they refuse, they are summoned and punished. However the Constitutional Court in its judgment of *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* (above)<sup>20</sup> has ruled such child marriages unconstitutional and unlawful.

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<sup>20</sup> Constitutional Court Judgment No. CCZ 12/2015.

He noted that the government needs to amend laws which are at odds with the Constitution to curb the continuation of child marriages and associated human rights violations. Although there is no specific law dealing with child marriages, the Domestic Violence Act is used to prosecute some perpetrators.

According to Article 21(2) of the ACRWC, all state parties, including Zimbabwe, voluntarily undertook, through its ratification of the instrument, “to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of a child.”<sup>21</sup> Since child marriages may be defined as a negative cultural and religious practice this provision applies to Zimbabwe. He said that since some cases go unreported due to the fact that minors are ignorant that child marriages are criminal and do not know their rights, groups of people within communities called neighbourhood watch groups have been formed and introduced to assist the police with such cases. Child protection systems within communities including village heads and neighbourhood watch groups are ideal mechanisms to help protect these children.

The contradictions concerning marriageable age between the various types of marriages in Zimbabwe have contributed to an increase in child marriages. What also worsens the situation is the attitude of members of the police and the judiciary who do not take such cases as seriously as they should. He also said that there is a lack of support from the government to strengthen different policy frameworks. He also said that national laws should take precedence over customary and religious laws but this can only be effective if these laws are aligned to the Constitution and the laws relating to illegal child marriage are thoroughly reviewed and amended to remove all loopholes and gaps. The Zimbabwe government should therefore have a clear and consistent law which sets out 18 years as the minimum age for marriage and remove all exceptions as per the Convention on the Rights of the Child. The respondent highlighted that the police force supports various programmes which address issues of child marriages.

The Mbare Provincial Magistrate said that there are no reported cases of child marriages as such but they are prosecuted as cases of statutory rape. According to Wright (1996), in common law jurisdictions, statutory rape is a case of no forcible sexual activity in which one

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<sup>21</sup> Article 21(2) of the ACRWC.

of the individuals is below the age of consent. So in the case of child marriage an adult man or woman takes a minor to have sexual intercourse with them as their wife or husband. The offence with which they are charged is statutory rape since the law does not have a specific law which criminalises child marriages. Culprits can also be charged with child sexual abuse or under the Domestic Violence Act. The magistrate noted that this act occurs with the so-called consent of the girl or boy but even if they purport to consent to the purported marriage, the law protects them because they cannot consent to sexual intercourse because they are still minors. The crime of statutory rape was made to punish the sexual exploitation by adults of minors.

He also admitted that there are some corrupt magistrates who are in the habit of taking bribes from perpetrators in exchange for indefinitely postponing cases in order to delay their conclusion. This causes the few courageous victims who have taken their abusers to court to give up so they escape justice. He also said that if the adult is less than three years older than the minor, charges can be lifted or the penalty reduced. The punishment is greater for culprits who are ten years or older than the minor. He said that even if a minor purports to consent to getting married and purports to consent to sex after marriage, the sexual intercourse is deemed not to be consensual, because these minors are not mature enough to make an informed decision.

It is for this reason that adults are later charged for contracting illegal child marriages. He also mentioned that minors and adults are unequal to each other, mentally, socially, legally and economically and that statutory rape is a crime which protects minors from adults who are in position of power and take advantage of purporting to marry children. He added that if an adult forces himself or herself sexually on a minor without his/her consent then they commit rape. The main purpose of statutory rape was to protect minors, i.e., unwed females from males due to circumstances in which they impregnate minors and run away to escape their responsibility. He also explained that culprits are treated more leniently if it is shown that the minor was already sexually active prior to the encounter.

He also said that it is still a crime if a boy makes a girl pregnant, even though they are both minors. In most of these cases the respondent said the Romeo and Juliet law is then applicable if there is an age difference of four years and the other party has to be below the age of fifteen for it to be called a crime. He also pointed out that in recent times there was a

rise in cases of adult women taking boys in illegal child marriages and they are prosecuted under the same laws although those laws were originally drafted with a view to protecting children from abuse of adult male, not female, perpetrators. In these cases the boys regard these older women as their trophies and they do not report such cases to the authorities. What usually happens is that the boys' parents will then take the matter into their hands and report it for the best interest of their children. However once such cases have been reported the law will then take its course accordingly against the adult female culprits.

## **5.6 Social Justice Strategies used to curb Child Marriages**

Since most child marriages occur outside legal structures, the VFU<sup>22</sup> officer noted that they work with religious and traditional authorities and various organisations such as WLSA<sup>23</sup> to advocate and raise awareness about the legal age of marriage. Since child marriages are most prevalent in rural areas, different children protection systems are in place and the people involved in them work with the police to bring culprits to book. Different types of training are provided to various rural communities to curb the increase in child marriages and to make sure that reported cases are taken seriously.

According to the CEDAW Committee's concluding observations, child marriages are considered to be harmful negative, discriminatory patriarchal practices which are condemned and public education programmes are recommended to curb them, especially in rural areas. The ACRWC also strives to protect girls from negative harmful social and cultural practices which include child marriages. According to article 3 of the CRC:

‘In all actions concerning children the best interests of the child shall be a primary consideration.’

Due to the fact that child marriages are extremely harmful to young girls, parents, governments and other responsible institutions have to take their part in protecting them from child marriages because it is in their best interests as children. The CRC is mandated to take action and appropriate measures to abolish traditional practices such as child marriages since they seriously injure the health of girls and breach several of their human rights.<sup>24</sup>

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<sup>22</sup> Victim Friendly Unit.

<sup>23</sup> Women and Law in Southern Africa.

<sup>24</sup> Article 24(3) of the CRC.

According to CEDAW, many sexual reproductive problems which develop in women are a result of early child marriages due to women's/girls' lack of education and information about their rights. Different communication strategies and national action plans are being rolled by the Ministry of Women's Affairs in order to help tackle all kinds of cultural and social forms of discrimination against women arising from stereotypical expectations of how women should behave. The national coordinator observed that section 56 of the 2013 Constitution guarantees freedom of equality and protection against discrimination for both males and females in terms of marital status, gender and sex. The respondent also noted that section 80 of the Constitution singled out the rights of women as being of importance.

The respondent said that as a Ministry of the Zimbabwe government, the Ministry of Women's Affairs is working on bringing the national laws into line with the nation's recent Constitution of 2013, since the Customary Marriages Act does not determine marriageability based on age but upon the biological signs of puberty and this can occur at the age of 11. Some of the strategies used by the Ministry to curb child marriages include the provision of community based shelters, i.e., one-stop centres which are centres for survivors of gender based violence and child marriages.

Tsimpo (2015) acknowledges that child brides have less decision making ability in their individual lives and in their households and this then negatively affects their public participation. The Communication and National Action Plan Strategy for Ending Child Marriages has tackled some of the cultural, religious and social practices by walking the talk to remove stereotypical behaviours and discrimination among women. Traditional and religious leaders are being involved in different workshops conducted by the Ministry of Women's Affairs and some partners such as WILSA and WAG<sup>25</sup> in order to provide them with knowledge on issues to do with child marriages and this strategy will encourage people to comply with the law after they realise that certain customary practices such as child marriages are illegal.

More empowerment programmes have been initiated as a way to empower girls and CAMFED<sup>26</sup> is working with the Ministry to uplift girls in the education system. Hopefully this will keep them occupied and less likely to entertain thoughts of child marriages. In this

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<sup>25</sup> Women's Action Group.

<sup>26</sup> Campaigning for Female Education.

context, according to section 75(1)(a) of the Constitution, every citizen and permanent resident of Zimbabwe has a right to a basic state funded education including adult basic education. The respondent also explained that the Constitutional Court outlawed child marriages in 2016 and they are now working with the courts to make sure perpetrators are brought to book.

The Ministry of Women's Affairs is also working on a comprehensive sexuality education programme with schools and communities to enlighten adolescents of their sexual and reproductive health rights and also with a view to combating child marriages in Zimbabwe by 2030 in order to fulfil SDG number 5.3. The Ministry is also working with the UN Child Rights Committee to effectively monitor and evaluate steps to end child marriages and to facilitate the payment of compensation to survivors of the problem. The Ministry of Women's Affairs' respondent praised the milestone 2016 Constitutional Court judgment in the case of *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* which ruled that section 22 of the Marriages Act was unconstitutional, meaning that no one below 18 may legally marry. The respondent said that this is what they are using as a yardstick to stamp out child marriages. When girls enter into child marriages, many of their human rights are violated and these include: the right to protection, education, reproductive health care and economic engagement.

The Ministry of Women's Affairs also commemorates 16 days of activism against gender based violence and its latest theme called '365 days to activism' involves a daily campaign to fight gender based violence which is also part of fighting child marriages. This is also supported by the joint efforts of stakeholders in fulfilling section 81 of the Constitution.

A respondent from the Gender Commission<sup>27</sup> noted that section 56 of the Constitution is concerned with the national legal framework which entails the equality and non-discrimination of young girls. Also section 78 of the Constitution gives anyone the right to start a family when they reach 18 and section 81 protects a child below the age of eighteen from sexual exploitation. He went on to mention that despite these protections against child marriage there is a mismatch between the constitutional provisions and the prevalence of child marriage. The respondent was aware of the court ruling in the case of *Mudzuru and*

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<sup>27</sup> Interview conducted at the Gender Commission of Zimbabwe.

*Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* (above) in which the Constitutional Court ruled that the practice of child marriages in Zimbabwe is unconstitutional. The respondent acknowledged that the Marriages Act and Customary Marriages Act do not protect young girls since the Customary Marriages Act does the age of marriage which is now a problem because some people are taking advantage of this omission.

However all those who are taking advantage of the customary laws are violating the human rights of these young females or males because in 2016 the Constitutional Court found that it was unconstitutional to marry a person who is under the age of eighteen. The respondent also noted that the wording of the Maintenance Act unfortunately encourages illegal child marriages when it refers to the cessation of payment of maintenance for a child once the child marries. In this connection, he said that the law needs to be reformed so that its wording does not increase the incidence of child marriage. According to Sibanda (2011), legal reform whilst useful, is not always effective because people do not easily give up their customs and traditions. The Gender Commission respondent concurred that there is no specific law on child marriages but the Domestic Violence Act and the Criminal Law Code are used to protect children from child marriages since they prohibit harmful social and cultural practices.

The respondent acknowledged that article 16 of CEDAW prohibits child marriages and the practice of negative cultural practices although it does not stipulate a specific marriageable age. He referred to article 21 of the ACRWC which states that all harmful cultural and social practices be eliminated. Advocacy is one of the strategies which he mentioned is being used in curbing child marriages. There is limited awareness of the effects and implications of child marriage among caregivers especially in rural Zimbabwe where child marriage is a common practice (Sibanda, 2011). Child marriage is more of a social threat to young girls than boys, hence, it is a more serious violation of their human rights.

Several outreach programmes in communities are held from time to time to increase awareness among people in communities on the effects of child marriages. Such campaigns are designed to raise the consciousness of communities about the sexual reproductive health of their young girls who marry before they turn 18. He spoke of workshops with community leaders and the general public to raise their awareness on issues surrounding child marriages and these workshops are attended by different stakeholders who also provide education on



the laws and effects of child marriages. Awareness raising helps to bring about behavioural change within traditional leadership and the apostolic church so that they will be well versed with laws and information on child marriages.

The Gender Commission respondent spoke of the district and national campaigns to end child marriages in Zimbabwe. He referred to the dialogue between the Ministry of Women's Affairs Gender and Community Development and the Gender Commission which supports the Inter-Ministerial Committee on the Implementation of the National Action Plan. The Gender Commission respondent considered that qualitative research on child marriages is another strategy which was now being used to curb child marriages and in this connection it is hoped that the recommendations suggested by this research may meaningfully contribute to this objective. He talked about various organisations which work with girls by recruiting them into girls clubs where they educate them about the dangers associated with child marriages.

According to Sibanda (2011), the apostolic sect believes that girls should only receive a minimum amount of schooling and be married off as soon as they reach puberty. Since the lack of education about the dangers of child marriages is one of the reasons why girls become vulnerable to child marriages, many organisations working with girls aim at empowering them through the information they provide them when they join girls' clubs. These girls are later used to be speakers on roadshows and other awareness raising activities in their respective districts. They are also mentored to be future leaders and hence they are empowered. He mentioned working with the Zimbabwe Human Rights Commission on monitoring the implementation of human rights obligations related to child marriages.

Law reform is another strategy which he mentioned being vital in curbing child marriages, since, he said, our Zimbabwean laws, such as the Customary Marriages Act, contain loopholes and they need to be aligned with the current Constitution which stipulates that a child or minor becomes a major or an adult at the age of 18 which should be the legal marriageable age. He also noted that they investigate complaints of child marriage which they sometimes recommend for prosecution and monitor prosecutions of those who could have violated the rights of the girl child.

CAMFED is an organisation which campaigns for female education in Zimbabwe. The projects officer for CAMFED stated that in their effort to curb child marriages in Zimbabwe, they have empowered girl children by paying their school fees for those who are orphans or who are from a poor background. She went on to say that women were a marginalised group due to the effects of patriarchy and that the funding of girls' education was a means of redressing the education imbalance which has historically tilted in favour of boys. Vulnerable children who are selected by school committees and their representatives are given complete school uniforms, books and some food every month and if they are girls they are also provided with sanitary wear each and every month.

This initiative is very helpful because it empowers young girls many of whom are reported to be performing well academically and the good news is that this education is helping to lift them and their families out of the poverty trap. Evidence shows that access to education among girls is positively correlated to delayed marriage (ICRW, 2011). Girls with secondary schooling are up to six times less likely to marry as children when compared to girls who have little or no education (UNICEF, 2007). Also these children are in the hands of a teacher mentor who is on the CAMFED payroll. The main purpose of the teacher mentor is to provide guidance to these children and also to work hand in hand with their projects officer. Training to help combat child marriages is conducted every fortnight when the group of selected children meet with another group which is not under CAMFED programme. These programmes build mutual understanding between the teacher/mentor and the children and also provide the children with an opportunity to discuss challenges they are facing.

According to Moore (1990), a certain quality of relationship is essential to develop self-respect and self-assertion. Some specialists are brought to meet these children and they provide them with important information about child marriages and they also teach them how to become independent through self-help projects such as market gardening, poultry or pottery. All these are measures designed to empower the girl child so that they are not lured into child marriages, no matter how heavily they have been socialised. Some of the projects are very challenging, such as rearing pigs, which is traditionally regarded as men's work.

Sometimes chiefs, village heads and police officers are also invited to address the girls and they also convey to them the same message against child marriage. Police officers remind them that they are still children and encourage them to report any conduct against them which

they think might be abusive or might have violated their rights. The respondent said child marriages are private matters known only to those closest to the parties involved but over time they reveal themselves. According to Mackinnon (2008), the law alone cannot change our social condition.

The CAMFED respondent also said that sending a girl child to school decreases their vulnerability to child marriages which means that there is also a need to mobilise the community and raise awareness on how important education is to the girl child and that all girls should attend school. Addressing poverty and the lack of viable and sustainable income generating options for girls and young women is one of the major solutions to child marriage (Chinyoka and Ganga, 2011).

The Gender Officer respondent for St Joseph's Children's Home said that advocacy is one method of stopping child marriages. He noted that they advocate for the abolition of child marriages through the media and work with other organisations such as WLSA, PADARE<sup>28</sup> and WAG. He acknowledged that tackling early child marriages in Zimbabwe is possible but is a difficult task. He said that in addition to the advocacy programmes promoting children's rights which are being conducted from the grass roots up to the international level, proactive measures also need to be employed with the help of politicians. Tackling child marriages has to involve and move decision makers, influential people, government policy makers and donors internationally to take action which resolves to end the human rights violations of young and innocent girls and boys below eighteen years old.

He explained that the issue of advocacy can be done via the media, roadshows and dialogue which involves gathering and talking to different audiences on a specific topic. The idea is to bring about the improvement in equality and empowerment of both men and women. Burning issues are written down and brought to the attention of donors or government departments and this advocacy is done to put pressure on the government to bring about law reform. He said that since the advocacy is conducted from a European or Eurocentric point of view, it may be interpreted as having negative connotations when it involves certain subjects such as child marriage. Advocacy efforts against child marriage are quite strongly opposed by many Africanists or traditionalists who believe that one can marry or be married as soon as he or

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<sup>28</sup> PADARE, men's forum on gender.

she reaches adolescence or puberty. He noted that they also raise awareness through edutainment about the consequences and implications of child marriages at community level.

They also conduct consultations and communicate with different organisations on how best to end child marriages. They harness various forms of media to garner public opinion against child marriages. They also assess trends in child marriage in different districts around the country. He said that they were active in a nationwide joint strategy to stamp out child marriage during Zimbabwe's 16 days of activism. This helps to raise the profile of the human rights of girls and boys below the age of 18 because they are the most seriously affected by child marriages. Since they also develop their outreach campaign theme at this time various representatives of government departments are also in attendance. He noted that since it is a children's home it is also their mandate to work with child protection committees and to spread awareness about and increase the reporting of cases of child marriages.

The St Joseph's respondent said their organisation also engages and lobbies elected Members of Parliament to be advocate against child marriage. As an organisation he said they also rehabilitate victims of child marriages, and may refer them to one-stop centres under the auspices of the Ministry of Women's Affairs. They also engage community stakeholders to monitor and provide help at such centres.

In addition the organisation also pushes for effective reforms and the effective implementation of laws and policies at national and local level. They sensitise or educate the public/stakeholders about policies and legislation which involve children's education, rights and gender equality. One of WLSA's main focuses of development is the creation of training materials for the gender sensitisation of all law enforcement agencies, traditional leaders, chiefs and the general public is a primary focus of attention for WLSA. WLSA also monitors mechanisms involved in the implementation of laws related to the prohibition or curbing of child marriages in Zimbabwe. The organisation tries to identify existing gaps and reviews them as far as the monitoring and implementation of the laws to prohibit or curb child marriages are concerned.

They raise awareness about issues dealing with child marriage, its consequences, implications and strategies to address it. WLSA also hold mass media awareness campaigns which include behaviour change on child marriages, promotion of sexual reproductive health, mobilisation

and education of communities on the social and cultural consequences of child marriages. This is a measure to try to instil positive thoughts into the minds of the people and drive out negative perceptions. The organisation also helps by referring or providing psycho-social services to victims of child marriages.

It also empowers women and girls with the skills and knowledge to advocate for their human rights on an international, national, community and personal level as well as to strengthen policy and legal frameworks that support girls and women in all spheres. WLSA also imparts knowledge to women and girls so that they can participate in political and civil decision making processes to prepare them for future leadership and advocate against child marriages. They encourage people to register the births of their new born babies as well as all marriages and this initiative aims at strengthening community advocacy and the elimination of child marriages. They also hold consultation workshops on how to amend or bolster laws against child marriages and improve lobbying efforts against the problem. They conduct school visits to educate boys and girls about their rights and improve their understanding of their human rights.

World Vision works to improve the livelihoods of children, families and their communities. Mr Munyaradzi acknowledged that they provide vocational training to children and families in an attempt to curb child marriages. They work in different regions in Zimbabwe to improve the livelihoods of young children. The World Vision respondent noted that since poverty is a major factor driving children into marriage, their focus as an organisation is about giving incentives and economic support to help vulnerable families and young girls. This economic support is actually helping families to send their children to school and vocational training also empowers girls to be self-reliant and not enter into marriage before they reach at least 18 and are sufficiently mature. Poverty takes away the rights of children including the right to education. Since most parents marry off their children in exchange of food commodities, World Vision seeks to give these exploited children opportunities to be educated. The respondent noted that education will enlighten children and since they will be occupied with school work they are less likely to fall prey to early marriage. World vision is running different initiatives around Zimbabwe to increase financial literacy, loan skills and savings in order to uplift the livelihoods of families and women. Such initiatives are designed to keep families and their girls in school in order to delay girls' marriages.

Padare men's forum on gender conducts dialogue sessions in different communities during which it raises the Constitutional case of *Mudzuru and Tsopodzi v Minister of Justice, Legal and Parliamentary Affairs N.O. and Others* (above) (which effectively outlawed child marriage) for explanation and discussion. These sessions are intended to challenge Zimbabwe men to take action and say no to child marriages since they are its perpetrators and because this crime disproportionately affects girls. Padare works with school children and they target young adults at the grassroots level so that they will grow up knowing it is wrong to marry someone before turning 18 because of its serious implications and it takes away their rights. The Padare respondent said that Padare shows the public the effects of gender based violence through music concerts, dialogue sessions, dramas and roadshows. He also noted that the outdated marriage laws are discriminatory because they allow boys to marry at 18 but girls at 16 which robs girl of their opportunities in life. Concerts are used to raise awareness and civic organisations also attend these events to share their different perspectives in combating child marriages. He said that at Padare they advocate the amendment of the law so that marriage is only possible when a person, male or female, turns 18.

The Padare respondent said that an enabling environment needs to be created for social change as well as the training of government officials, all law enforcement agencies, policy makers, chiefs and the judiciary. This will facilitate an empowering process which will equip all players with powers and rights to act appropriately in opposing child marriages. Various community organisations and traditional leaders have been educated on child marriages and are encouraged to preach anti-child marriages from their respective positions of responsibility. They also support children who have escaped from child marriages by taking them to safe homes or one stop centres run by the Ministry of Women's Affairs. At safe shelters they receive education, food, and shelter for free and psycho-social support from different organisations working within the safe houses.

He also mentioned that they conduct grass-root advocacy which aims at targeting young boys in communities and educating them against child marriages. Their idea is to promote the education of every child, boy and girl, so that being made aware of their human rights they can actively resist child marriages. The problem has always been that children fall prey to child marriages because they do not know their rights.

## **CHAPTER SIX**

### **6.0 CONCLUSIONS AND RECOMMENDATIONS**

This chapter discusses the conclusions and recommendations flowing from the research conducted on the effectiveness of laws in dealing with child marriages carried out in the case study of the problem in Zimunya.

#### **6.1 Conclusions**

1. Child marriages are still rampant in Zimunya and there are various factors which are contributing to them. People in Zimunya area still practising customary and religious customs which encourage young girls to marry. This is in spite of the fact that Zimbabwe is a signatory to the African Charter on the Rights and Welfare of the Child (ACRWC) in terms of which article 21 requires that states parties shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth, and development of the child.

Poverty is a major factor which pushes both young girls and boys alike into marriage and even pressurises their parents to encourage them to do so. The nationwide problem of poverty, however, can only be eliminated if it is resolved in a non-partisan and honest way. Various ethnicities are preserving their culture by encouraging their children to marry before they turn 18. As a result these young people lose many rights, including their right to education and the right to be heard. Failure to tackle this problem only deepens the poverty trap for families. Children could be protected from the illegal practice of child marriage if cases were reported and culprits brought to justice, but sadly due to socialisation such cases are not reported and so the practice continues unabated.

2. Social and religious acceptance of harmful societal and cultural practises has prevented young girls from reporting the human rights violations that they cause. In other words, if their elders accept these practices young children learn to accept or are socialised to accept them as well. Due to this socialisation, girls are content with how they live and when they reach puberty their elders make them feel that they are old enough to marry even though it is universally accepted that generally a person is

physically, mentally, emotionally, psychologically and, economically only ready to marry when they turn 18.

In some communities in Zimbabwe people are socialised to think that men should marry women younger than themselves and in child marriages which are not reported the men are also older than the young girls they marry and most of these are not reported. Since girls who marry when they are very young do not know their rights, they do not know that they are victims of crimes, do not complain to the police and it usually follows that they continue to be abused by their perpetrators or so-called husbands with impunity. In other words, they become victims of domestic violence.

So long as these abusive illegal child marriages continue to go unreported and their perpetrators remain unpunished, the illegal practice will continue and innocent children, especially girls, will continue to be harmed. Women are socialised to be slaves in their own homes even when they grow up and they remain submissive no matter what happens to them. Amina (1995) argues that a real African woman is content with her subordinate position as wife and mother and is, almost literally, a beast of burden.

3. The scourge of child marriages is rampant and occurs due to the fact that there is no legislation in Zimbabwe which deals specifically with child marriages. Yet, legislation alone is not enough to eradicate this scourge. What is needed is behavioural change which can only be brought about as a result of effective education campaigns, advocacy and lobbying. Sibanda (2011) states that legal reform, whilst useful, is not effective because people do not easily give up their customs and traditions. Legislation can be effectively implemented if there are other measures to complement it and if there is a specific law that deals with child marriages. However law enforcement agencies are not implementing the legislation or putting it into effect because their conditions of service are poor and they are corrupt.
4. Awareness of child marriages is limited due to the government which lacks resources although some civil society groups raise awareness of them but usually only in the specific provinces in which they work. Law enforcement to protect girls in Zimbabwe is not as dedicated as it should be due to the influence of witchcraft over law



enforcement agents who fear for their lives. Also they do not have the resources to cover the long distances involved when investigating cases which take place in remote areas. Investigations or prosecutions against alleged culprits also fail when witnesses fail or refuse to give evidence against them out of fear of retaliation from members of their community.

## **6.2 Recommendations**

1. There is a need to educate people to show them that some customary and religious practises such as child marriages which put the lives of their children in danger. For example, child wives have high mortality rates during child birth. It is recommended that the state provide sexual reproductive health education to communities and schools at the grass roots level which would expose the dangers of marrying young.

Children's rights should be included in the school curriculum as such education will equip both young boys and girls with more knowledge about their rights which will help them to reject and speak out against child marriages. Education on different laws which protect young girls and boys can also be live streamed on radio or TV shows where different actors or experts can discuss relevant laws. Girls' education will improve their livelihoods because they will become economically empowered and independent and shun cultural and religious ways of thinking which exploit and abuse them and they will uphold the lives of their families.

The government should also give special attention to girls who have dropped out of school due to child marriages and provide them with self-help projects and loans to start small projects which will enable them to have better livelihoods. Government initiatives of this kind should make sure that not one child victim of early marriage should suffer after their human rights have been violated. According to UNESCO (2009) the advantage of engaging governments includes the fact that they can freely and strategically address sensitive topics.

2. It is the government's duty to ensure that every child is issued with a birth certificate in urban and rural areas and this would be possible if the government operated a mobile registration unit which could be accessible in different places at different times depending on local demand. This will be the only way to assist the poor who are in

the rural areas. Also all marriages need to be registered. If everyone has a birth certificate which must be produced before a marriage can be registered this will help to reduce child marriages.

3. Due to weak legislation concerning child marriages in Zimbabwe I can safely recommend that the government conduct law reform to make the various pieces of legislation, especially the Customary Marriage Act [Chapter 5:07], the Marriage Act [Chapter 5:11], the Maintenance Act [Chapter 5:09] and the Children's Act [Chapter 5:06] compatible with each other and clearly outlaw child marriages. These laws should speak with one voice against illegal child marriage and they should have no loopholes.

Gaps between marriage laws have to be removed and I recommend the government of Zimbabwe also be guided by conventions and treaties it has signed to deal with issues of harmful social and cultural practices since Zimbabwe does not have a comprehensive Children's Act to protect children against illegal child marriages. The Zimbabwe government must strive for consistency between its national and international legal frameworks so that it conforms with international human rights laws.

According to Sibanda (2011), non-governmental organisations should write shadow reports on the country's compliance with CEDAW and the CRC showing how the government is faring when it comes to combating child marriages. After having conducted all necessary awareness campaigns and full dialogue with religious traditional leaders the government should determine and take steps to eliminate any religious, traditional and customary laws that condone illegal child marriages.

Civic organisations and NGOs should raise as much awareness as possible about the dangers of child marriages and work hand in hand with other stakeholders in strengthening their social justice strategies in curbing child marriages. I also recommend NGOs commit themselves to conducting effective long term projects to educate all people against child marriages as opposed to once-off projects which have no enduring impact and are unlikely to bring about changes in attitudes and behaviour.

4. Information dissemination is lacking in most parts of the country including Zimunya in Manicaland. Communities should be well informed about child marriages laws which protect their children against child marriages. Sexual reproductive education can be included in the school curriculum from a tender age or at grass roots level so that this will sink into the understanding of every child as he or she grows up. This will equip them to know that marriage at a tender age is to be avoided at all costs and that they should wait until they turn 18. They should also be taught the laws against child marriage and how they protects them if their rights are violated

Messages against child marriage could be broadcast daily in newspapers, on the TV and radio so that people's attitudes and behaviour can be positively changed over a period of time. Such information would not only target young people but entire communities.

5. The enforcement of legislation can only be achieved if the welfare of those who implement it is well taken care of and so incentives should be put in place to motivate the police who investigate the perpetrators of illegal child marriages. If policemen are living in poverty this is likely to compromise their dedication to their work to bring perpetrators of child marriages to justice.

Therefore, the Anti-Corruption Commission should also audit the accounts of investigating officers to ensure that they do not receive bribes to prevent them from fully carrying out their duties. The research reveals that some policemen are paid bribes directly into their bank or Ecocash mobile phone accounts. According to ACBF Operations Research (2007), corruption undermines the rule of law, social and human values and raises moral concerns.

I would also recommend that VFU officers do not remain in one station for a long period of time as familiarity with the community is likely to breed opportunities for corruption. This will prevent the same officers from developing preconceived ideas about child marriages over the course of time. In addition, law enforcement officers should avoid dealing with cases of people whom they are close to or they know personally to reduce bias.

It is recommended to give refresher courses to all law enforcement agencies from time to time and make them take an oath that they will continue performing their work with due diligence and transparency.

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