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**18+ PROGRAMME ON ENDING CHILD
MARRIAGE IN SOUTHERN AFRICA**

IN-DEPTH REVIEW OF LEGAL AND REGULATORY FRAMEWORKS ON CHILD MARRIAGE IN ZIMBABWE



About Plan International

Founded in 1937, Plan International is one of the oldest and largest children's development organisations in the world. Plan International is currently working in 71 countries worldwide. Their vision is of a world in which all children realise their full potential in societies that respect people's rights and dignity. Through its *Because I Am A Girl* (BIAAG) global campaign, Plan International has had a major focus on promoting gender equality to lift millions of girls out of poverty.

About the 18+ Programme

The 18+ Programme on Ending Child Marriage in Southern Africa was conceptualised as an initiative to domesticate and operationalise the BIAAG campaign. It is a programming model with a clear theory of change and pathways for attaining the desired change. The programme, hosted in Zambia, covers Malawi, Mozambique, Zambia, and Zimbabwe and has three main objectives:

1. To mobilise girls at risk of child marriage so that they have the capabilities to determine their own futures and make their own choices about if, when and whom they marry.
2. To transform, through social movement-building, the gender norms and practices that drive child marriage.
3. To facilitate an enabling legal and policy environment to protect girls from child marriage.

About the study

The study, which took place between November 2014 and April 2015, analysed and documented domestic and regional legislation that prohibits and/or perpetuates the practice of child, early and forced marriage in the four countries. It interrogated whether formal, customary or religious laws are in conformity with international human (child) rights standards. The validation workshop was held in April 2015 and the final draft reports were out in July 2015. This in-depth review of the legal and policy environment has informed the development of policy briefs for the four participating countries, which recommend legal and policy changes at country and regional levels.

Acknowledgements

On behalf of Plan International, the chairperson of the *18+ Programme on Ending Child Marriage in Southern Africa*, Samuel Musyoki, would like to acknowledge the support accorded by our partners namely: the Open Society Initiative of Southern Africa (OSISA), Plan Netherlands, the Royal Netherlands Government and Plan Norway. We are thankful to Emmily Kamwendo-Naphambo, manager of the 18+ Programme, for the pivotal role she played in coordinating this study; and the 18+ focal point persons in Malawi, Mozambique, Zambia and Zimbabwe, the CSO and government partners and the Southern Africa Development Community (SADC) Parliamentary Forum (PF) for providing information and participating in the validation workshop. Finally, we would like to thank Professor Julia Sloth-Nielsen from the University of Western Cape, South Africa, who carried out this review and drafted a policy brief. Our thanks go also to the editorial team.

Cover photo: Plan International Mozambique.

Published by Plan International, 2016.

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ACRONYMS

ACPF	African Child Policy Forum
ACRWC	Africa Charter on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
AU	African Union
BEAM	Basic Education Assistance Module
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPF	Child Protection Fund
CRC	Convention on the Rights of the Child
CRIN	Child Rights International Network
CRVS	Civil registration and vital statistics
CSO	Civil Society Organisation
DVA	Domestic Violence Act
GBV	Gender-based violence
GGIP	Global Girls' Innovation Programme
GoZ	Government of Zimbabwe
HSCF	Harmonised Social Cash Transfer Programme
INGO	International Non-Governmental organisation
MICS	Multiple Indicator Cluster Survey
NANGO	National Association of Non-Governmental Organisations
NAP	National Action Plan
NFPA	United Nations Population Fund
NGO	Non-Governmental Organisation
NGP	National Gender Policy
NYP	National Youth Policy
OVC	Orphans and vulnerable children
SADC	Southern Africa Development Community
UCLU	Unregistered customary law union
UNFPA	United Nations Population Fund
UNICEF	United Nations Emergency Fund for Children
UPR	Universal Periodic Review
VFU	Victim Friendly Unit
WLSA	Women and Law in Southern Africa
ZHRC	Zimbabwe Human Rights Commission
Zim Asset	Zimbabwe Agenda for Socio-Economic Transformation
ZIMSTAT	Zimbabwe National Statistics Agency
ZWLA	Zimbabwe Women Lawyers Association

EXECUTIVE SUMMARY

Zimbabwe's Constitution of 2013 contains progressive provisions aimed at curbing the scourge of child marriage and promoting gender equality. These now require that domestic law be brought in line with the adopted Constitution. The Marriage Act is one such law, as it provided for different ages of marriage for boys and girls, and permits marriage for girls from the age of 16 years (or lower, with ministerial consent.) The Customary Marriages Act does not have any minimum age for the conclusion of a valid customary law marriage, leading to the inference that marriage from the age of puberty is possible. Unregistered customary unions are not regulated by law at all.

Child marriage in Zimbabwe has been identified as a rampant and serious problem, with as many as 31 per cent of girls married before the age of 18 years. Nor, it seems, have these figures been improving. Child marriage disproportionately affects certain areas such as Mashonaland.

That child marriage is an egregious violation of children's rights and a harmful cultural practice is contested in Zimbabwe. This was seen in 2015 with a stark reaction from CSOs, parliamentarians and some officials to statements from the Attorney General evidently supporting child marriage from the age of 12 years. Ambivalence towards the issue can be seen also in the opposing papers filed in the Constitutional Court challenge to the age of marriage brought in January 2015. However, positive reaction has greeted the January 2015 Constitutional Court finding that child marriage is unconstitutional.

The Government of Zimbabwe has repeatedly committed to the reform of marriage laws to treaty bodies, in line with its international treaty commitments. Yet this does not seem to be happening with sufficient priority; the impressive constitutional framework and fairly suitably detailed policy context notwithstanding.

In the main, therefore, this report argues trenchantly for an accelerated process towards putting in place an effective, gender-sensitive and treaty-compliant marriage law, which covers all forms of marriage in Zimbabwe.

REPORT BACKGROUND

Why Plan's interest?

Plan's 18+ programme aims to significantly reduce and eventually eliminate child marriage. Working holistically, recognising and targeting the spheres of influence that surround a girl and the complex circumstances that lead to child marriage, are the best ways of achieving substantial and sustainable results. Plan aims to change people's attitudes towards child marriage, create an enabling environment that recognises and protects girls' rights, and build girls' resilience and agency so they may challenge and resist this harmful practice.

The 18+ programme has the following objectives:

- To protect girls from child marriage.
- To develop and strengthen mechanisms to ensure that children, especially girls, stay in school and complete their education.
- To create a girl-led movement against child marriage.
- To establish partnerships with local and international NGOs and regional bodies to cooperate on research and planning, policy engagement, communication, education, and resource mobilisation.

It aims to:

- Raise awareness of the magnitude and effects of child marriage among all stakeholders.
- Encourage girls' direct participation in advocacy aimed at ending child marriage.
- Reform legal and public policy aimed at eliminating child marriage, including changing the legal age of marriage to 18 years for both girls and boys.
- Improve national child protection mechanisms to respond to child marriage.
- Transform attitudes in order to challenge the social norms that perpetuate child marriage.
- Carry out educational reforms that will encourage girls to enrol, stay, progress and complete a quality basic education, including working with community and family members.¹

The 18+ programme is a flagship initiative of the Global Girls' Innovation Programme (GGIP). Amongst the six guiding strategies, one is to advocate for legal and policy change at all levels. The 18+ programme does not address every driver of child marriage. Rather, it focuses on core drivers that perpetuate the phenomenon. The programme adopts a 'preventive' approach as opposed to a response, and therefore prioritises interventions that benefit girls aged 10 to 14 years old. In this context, one preventative measure is to ensure that domestic legal and policy standards create and/or sustain an environment for defeating the practice of child marriage. It is in this context that Plan commissioned this in-depth review of the legal and policy environment and the enforcement of legislation related to child marriage in Zimbabwe.

Specific objectives of the in-depth review

- a) To conduct an in-depth review of laws and policies as they relate to child marriage in Zimbabwe, and their implementation and enforcement status.
- b) To review international and regional frameworks/provisions related to child marriage and analyse how the domestic context responds to these frameworks.
- c) To develop a policy brief on child marriage in Zimbabwe.

Thus this review of legislative and policy frameworks takes stock of how Zimbabwe is faring regarding the minimum age of marriage for girls and boys; registration of marriages; consent laws for marriage; eliminating discrimination against women and girls in all matters relating to marriage and family relations; customary/religious laws on marriage (and the relationship between national law and customary law in plural legal systems); and the ratification status of key international treaties relevant to addressing child marriage. It will also assess the level of implementation and enforcement of existing laws and policies.

1. Davis et al. 2013.

Methodology

This report has been produced from a combination of secondary data review and primary data collection and analysis. The secondary data/desk review involved the analysis of research documents, programme reports and media articles on the topic of child, early and forced marriage in Zimbabwe. Relevant legal and policy frameworks and sectoral strategic documents were also analysed. The constitutional challenge to marriage laws which was heard in January 2015, and on which a judgment was handed down in January 2016, is a central consideration. Information obtained during the recent review of the report of the government of Zimbabwe by the African Committee of Experts on the Rights and Welfare of the Child is also adduced, including the Concluding Observations issued by that committee in response to the government presentation of the country report. Zimbabwe was also recently before the CRC Committee (in January 2016) and the CRC Committee's Concluding Observations relevant to issues surrounding child marriage are also flagged. Primary data collection concentrated on key informants such as selected government sectors, UN agencies and NGOs. Many have requested that their names not be divulged.

The information in the report facilitated the fulfilment of another deliverable to the assignment, namely to produce a policy brief that will be used for advocacy purposes on legal and policy changes. With the support from Plan International, both the draft report and the policy brief underwent a validation process by a sub-regional meeting involving representatives from Malawi, Mozambique, Zambia and Zimbabwe that took place in Lusaka from 16-17 April 2015. Contributions from this engagement were used to finalise the two documents. The work was supervised by the Sub-Regional Manager of Plan +18, Ms Emmily Kamwendo-Naphambo, who has provided strategic insights right from the inception report to the conclusion of the work.

Caveat

At the time of the validation workshop, judgment from Zimbabwe's Constitutional Court was still awaited in the constitutional challenge brought concerning child marriage. Now that the judgment is available, the report and policy brief have been adapted to cater for these new developments. Also subsequent to the validation workshop, a significant debate on child marriage in Zimbabwe emerged, emanating from unfortunate remarks issued by the nation's Attorney General supporting child marriage. It appears that the climate for change has altered significantly and some recommendations have been reshaped in order to capitalise on this momentum.

PART 1: UNDERSTANDING CONTRIBUTIONS OF THE REPORT TO EXISTING RESEARCH AND APPLICABLE INTERNATIONAL HUMAN RIGHTS FRAMEWORKS

1.1. Contributions of this report to existing research on child marriage in Zimbabwe

Detailed information on child marriage in Zimbabwe is not very widely available. The Research and Advocacy Unit produced a report in 2011 on child marriage in Zimbabwe,² analysing the then legal environment (which has changed since the adoption of the new Constitution in 2013), and providing some interesting details about child marriage in Zimbabwe based on newspaper reports and other data. The recent Multiple Indicator Cluster Survey (MICS) (2014) provides the most recent information which is reproduced in Part 2.2 below.

Zimbabwe was not selected as a country for study by the Centre for Human Rights at the University of Pretoria for its eight country study in 2014-5, nor has it been chosen by INGOs such as Kidsrights or Human Rights Watch for analysis. Other available information is derived from the UNFPA Child Marriage Factsheet produced in 2012. An up-to-date legal and policy analysis does not appear to exist at present. UNICEF recently (March 2015) commissioned a report on this theme, which has now been validated (July 2015), and presented to the Government of Zimbabwe. The overall

purpose of this phase of the UNICEF review of marriage laws in Zimbabwe was to gather evidence to inform subsequent policy and law review.³

The 2014 ACPF study on violence against children did include Zimbabwe as a country of focus,⁴ but principally concerning children living on the street. However, a report in 2014 of the Zimbabwe Youth Council on harmful social and cultural practices found that early marriages were reported as the most common harmful practice in all the seven areas under study. In most cases, participants in their study reported that early marriages are accompanied by emotional, physical and psychological abuse. Early marriages also lead to increased vulnerability especially in cases where young girls are burdened with the responsibility of looking after the family. While most early marriages can be classified as statutory rape, parties often opt for negotiated settlements, and in some cases parents accept bride wealth (*lobola*).⁵

Cumulatively, it can be inferred that child marriage until very recently (June/July 2015) had not yet enjoyed the level of prominence that it has begun to assume in neighbouring countries, such as Zambia and Malawi, where emerging social movements, supported by sustained media attention and prominent political figures lending their voices of support, are ensuring that

2. Sibanda 2011.

3. Ministry of Justice and Constitutional Affairs 2015, p. 20.

4. ACPF 2014.

5. Zimbabwe Youth Council 2014.

the issue of child marriage is rising in prominence. One of the recommendations of this report therefore concerns the need to draw role players together to form a social movement that will impact the issue of child marriage in Zimbabwe. This was underscored at an event in Zimbabwe at which the Girls Not Brides video *Together: ending child marriage in Zambia* was screened in 2015 by the Ambassador of the Netherlands. She stated that: “to end the scourge of child marriage in Zimbabwe and the world, there is a need for a continued collective partnership and unity of purpose among the various organisations around the country.”⁶

The Government of Zimbabwe reported in its written replies to the list of questions developed by the ACERWC in April 2015 that:

“Programming to stop harmful practices such as child marriage includes advocacy and awareness-raising on the negatives of child marriage in the most affected population groups that include apostolic sects through organisations like the Union for the Development of Apostolic Churches in Zimbabwe (UDACIZA). There is also counselling of families on an individual level and at community level parenting skills are improved through family clubs. In extreme cases the child who is deemed to be in need of care is removed to a place of safety while rehabilitation of the child is followed through.

In such cases child marriage is deemed statutory rape and prosecution is a last resort. Causes of child marriages such as poverty, amongst others, are mitigated though poverty alleviation programmes such as Public Assistance and Harmonised Social Cash Transfers. Where children are forced into marriage due to early school drop outs, there are back to school programmes to retain children in school for longer and delay marriage. The community cadre, the community childcare worker has an important role of identifying child protection cases and referring them appropriately, making sure there is less and less abuse of children.”⁷

In June 2015, the Attorney General of Zimbabwe, Johannes Tomana, was widely reported as having said that young girls who are not in school and who are

doing nothing should be able to be married off by the parents. Further, he is reported to have claimed that it was not practical to jail adults who have sex with ‘consenting’ 12 year old girls because the girls would suffer more with no one to look after them while their abusers are incarcerated.⁸ He was also reported as having said that if girls as young as 12 wanted to start families with older men, they had a right to be listened to by the courts. He added that girls of the age of 12 were capable of consenting to sex. The comments were very widely reported and attracted a barrage of criticism, as Zimbabweans took to twitter and other forms of social media to protest. Amidst calls for him to resign from office, a significant number of NGOs and activists groupings weighed in to counter the remarks of the Attorney General, and to express their shock. Amongst these were the Women’s Coalition of Zimbabwe, the National Association of Non-Governmental Organisations (NANGO) and Katswe Sisterhood. A press conference called to condemn the remarks was attended by, amongst others, representatives from various children and women’s rights groups, UN Agencies and some government officials from the Ministry of Women’s Affairs.⁹ The debate highlights the dire need for a strong social movement aimed at eradicating gender-insensitive, patriarchal and anti-child rights attitudes and values which appear to prevail in some quarters in Zimbabwe.

1.2. The standing of the international human rights frameworks applicable to Zimbabwe

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. The country is party to the major women’s and child rights conventions, as is enumerated below. However, even prior to the adoption of the Constitution, Zimbabwean courts had referred to international law, such as in the well-known case of *A Juvenile v The State* (1989 (2) ZLR 61 (S)) which concerned the sentence of juvenile whipping.

6. The event brought together a number of organisations who are working in different parts of the country to end child, early and forced marriage in Zimbabwe. It also provided them with an opportunity to share information on their organisation’s work, share best practices, and to build a better toolkit to deliver better results. The video is available at: <https://www.youtube.com/watch?v=vMKmOQ8B4BY>

7. Addendum for the responses to questions from the African Committee of Experts on the Rights and Welfare of the Child to the Government of Zimbabwe (copy on file with the author).

8. www.newzimbabwe.com/news/news.aspx?newsID=23247 [Accessed 19 June 2015]
9. CRINmail 15 June 2015.

Section 46 of the Constitution also permits that foreign law may be considered. This allows courts and other fora to consider the law of other jurisdictions in the interpretation of the provisions of the Declaration of Rights.

Section 236 of the Constitution permits that customary international law is part of the law of Zimbabwe unless inconsistent with an Act of Parliament or the Constitution. When interpreting any law, a court must give reasonable preference to an interpretation which is consistent with international law applicable in Zimbabwe, rather than an interpretation which is inconsistent with applicable international law.

However, ratification of an international treaty does not in and of itself ensure domestication in national law: Section 327(2) clarifies that Zimbabwe follows a dualist system of incorporation of international treaties, insofar as ratification must be approved by parliament and incorporated into law through an Act of Parliament.

Section 2 of the Constitution renders any law which is inconsistent with the Constitution invalid. This Section formed the basis for the constitutional challenge which is discussed later in this report.

Zimbabwe has ratified the following relevant treaties:¹⁰

- Convention on the Right of the Child (1989) [Ratified 1990]
- African Charter on the Rights and Welfare of the Child (1990) [Ratified in 1995]
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002) [Ratified in 2012]
- Convention on the Elimination of all Forms of Discrimination against Women (1979) [Ratified in 1991]
- International Covenant on Civil and Political Rights (1966) [Ratified in 1991]
- Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (1962) [Ratified in 1994]
- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000) [Ratified in 2013]

- ILO Convention on the Worst Forms of Child Labour, 1999 (No. 182) [Ratified in 2000]
- International Protocol on Economic Cultural and Social Rights (1996) [Ratified in 1991]
- African Charter on Human and Peoples' Rights (1986) [Ratified 1986]
- African Youth Charter (2006) [Ratified in 2009]
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (2003) [Ratified in 2008]
- SADC Protocol on Gender and Development (2008) [Ratified in 2008]
- Convention relating to the Status of Stateless Persons (1960) [Ratified 1998]

The following key principles can be drawn from the international frameworks to which Zimbabwe has acceded.

Article 1 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage states that no marriage shall be legally entered into without the full and free consent of both parties. Article 3 states that all marriages shall be registered in an appropriate official register by the competent authority. The African Charter on the Rights and Welfare of the Child requires in Article 21(2) the prohibition of child marriage and betrothal of girls and boys and further that States parties take effective action, including legislation, to specify the minimum age of marriage to be 18 years and to make registration of all marriages in an official registry compulsory. The definition of a child under the Charter is 18 years.

Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights also provides that marriage should be entered with the free consent of the intending spouses.

The Protocol to the African Charter on the Rights of Women in Africa states in Article 6 that State parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. Furthermore States should enact appropriate national legislative measures to guarantee that no marriage shall take place without the free and full consent of both parties; that the minimum age of marriage for women

10. Chiwaru 2015.

shall be 18 years; that monogamy is encouraged as the preferred form of marriage and the rights of women in marriage and family including in polygamous marital relationships are promoted and protected; that every marriage shall be recorded in writing and registered in accordance with national laws in order to be legally recognised; that the husband and wife shall by mutual agreement choose their matrimonial regime and place of residence; that a married woman shall have the right to retain her maiden name to use as she pleases, jointly or separately with her husband's surname; that a woman shall have the right to retain her nationality or acquire the nationality of her husband; that during her marriage, a woman shall have the right to acquire her own property and to administer it freely.

Article 7(b) of the SADC Protocol states that states must take measures to ensure equal legal status of women and men in civil and customary law including full contractual rights and the right to hold and acquire rights in property. Article 8 calls upon State parties to ensure that women and men have equal rights and are regarded as equal partners in marriage. Laws on marriage must ensure that no person under the age of 18 years shall marry unless otherwise specified by law; that every marriage shall take place with the full consent of the parties; that every marriage is registered in accordance with national laws; that both parents have reciprocal rights and duties towards their children with the best interests of the children being paramount.

The Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women (CEDAW) and No. 18 of the Committee on the Rights of the Child on Harmful Practices (2014) is of high relevance, given that it comprehensively spells out the position of these committees concerning child, early and forced marriage. This document closes, to a considerable extent, the door on the debate about whether there is a distinction between child and forced marriage. It notes that "child marriage is considered as a form of forced marriage given that one or both parties have not expressed their full, free and informed consent." Nevertheless, the Joint General Recommendation/Comment has left the door open for legal obfuscation about the minimum age of marriage. It continues that, as a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, in exceptional circumstances a

marriage of a mature, capable child below the age of 18 may be allowed, provided that the child is at least 16 years old and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to culture and traditions. However, it sets the absolute ceiling for minimum age (in exceptional circumstances) at 16, meaning that State parties will not be justified for any reason whatsoever to accept marriages where a party is lower than this age. By permitting deviations to the age of marriage below 18, the clear standard of the African Charter on the Rights and Welfare of the Child is diminished.

However, the current chairperson of the CRC Committee has stated that where African countries who are signatories to the African Children's Charter report periodically to the CRC Committee, they will be held to the higher standard contained in the Charter.¹¹

In addition to establishing a minimum age for marriage, the Joint General Recommendation/Comment also advocates that a legal requirement of marriage registration must be established and effective implementation provided through awareness-raising, education and existence of adequate infrastructure to make registration accessible to all persons within their jurisdiction. Supporting this, a system of national compulsory, accessible and free birth registration of all children must be established, in order to effectively prevent harmful practices including child marriage.

As regard forced marriage, the Joint General Recommendation/Comment enumerates examples of situations where one or both parties to a marriage have not personally expressed their full and free consent to the union by pronouncing that forced marriage may also be manifested through marrying girls too young when they are not physically and psychologically ready for adult life or adequately prepared for making conscious and informed decisions and are thus not ready to consent to marriage. Additionally, where guardians possess the legal authority to consent to the marriage of girls in accordance with customary or statutory law, this may result in forced marriages because girls are thus married contrary to their right to freely enter into marriage. Exchange or trade-off marriages, servile marriages, and permitting rapists to escape criminal sanctions by marrying their victims also constitute forms of forced marriage.

11. Personal communication, Prof Benyam Mezmur.

Payment of dowry and bride price increases the vulnerability of women and girls to violence; if children are involved, the payment of bride price is defined as a sale of children by the CRC Optional Protocol on the Sale of children, Child Prostitution and Child Pornography (OP-SC). In addition, the CEDAW Committee (General Recommendation 29) has declared that such practices should not be required for a marriage to be valid, and such agreements should not be recognised by the State party as enforceable.

Situations where families will agree to the temporary 'marriage' of their daughter in exchange for financial gains (contractual marriage) is a form of trafficking in human beings.¹²

The Joint General Recommendation/Comment places an unequivocal obligation on States parties to establish legal structures to ensure that harmful practices are promptly, impartially and independently investigated, that there is effective law enforcement and that effective remedies are provided to those who have been harmed by such practices. It is not acceptable for State parties to undermine their gravity either by failing to adopt the right legal frameworks, or by failing to diligently enforce the same where they exist.

The Joint General Recommendation/Comment provides impetus for State parties to seriously implement strategies to promote girl's education, since the committees stress that the completion of primary and secondary education provides girls with short- and long-term benefits by contributing to the prevention of child marriage and adolescent pregnancies, preparing women and girls to better claim their right to freedom from violence and increasing their opportunities for effective participation in all spheres of life.

Other relevant General Comments which deal with matters relevant to early child and forced marriage include CCPR General Comment No. 19: *Protection of the Family, the Right to Marriage and Equality of the Spouses* (1990), CCPR General Comment No. 28: *Equality of Rights between Men and Women* (2000), CESCR General Comment No. 14: *The Right to the Highest Attainable Standard of Health* (2000), CESCR General Comment No. 16: *Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (2005), and at a regional level, the African Commission on Human And Peoples' Rights

General Comments on Article 14 (1) (a), (b), (c) & (f) and Article 14 (2)(a) & (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2014). The African Commission on Human and Peoples' Rights, together with the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), is in the process of developing a General Comment on child marriage, which is expected to be finalised during 2016.

Numerous other General Comments of the CRC Committee have relevance to the topic, including CRC General Comment No. 3: *HIV Aids and the Rights of the Child* (2003). CRC General Comment No. 4: *Adolescent Health and Development in the Context of the Convention on the Rights of the Child* (2003), CRC General Comment No. 13: *The Right of the Child to Freedom from All Forms of Violence* (2011), CRC General Comment No. 14: *The Right of the Child to Have His or Her Best Interests Assessed and Taken as a Primary Consideration* (2013), and CRC General Comment No.17: *The Right of the Child to Rest, Play, Leisure and Recreation* (2014). The committee is also in the process of developing a General Comment on Adolescence.

The ACERWC has just produced a General Comment (No. 2) on Article 6 of the Charter. Linking birth registration to harmful practices, the committee refers in Part 18 to the role played by birth registration in combatting early marriage. Increasing birth registration rates is a high priority of the African Union.

1.3. Responses by treaty bodies to issues concerning child marriage in Zimbabwe

In 2012, in its Concluding Observations to the Government of Zimbabwe in regard to harmful cultural practices, the CEDAW Committee expressed its serious concern about the persistence of harmful norms, practices and traditions, patriarchal attitudes and deep-rooted stereotypes, regarding the roles, responsibilities and identities of women and men in all spheres of life, as well as the State party's limited efforts to address such discriminatory practices.¹³ These include, in particular, polygamy, bride price (*lobola*), and in certain regions, virginity testing and witch hunting.¹⁴

12. Paragraphs 20, 22 and 23.

13. CEDAW/C/ZWE/CO/2-5 (March 2012).

14. Para 21.

Child marriage is not referred to in the Concluding Observations of the CEDAW Committee directly, however.¹⁵

In addressing negative patriarchal and discriminatory practices, the CEDAW Committee urged the State party to:¹⁶

- “(a) Put in place, without delay, a comprehensive strategy to modify or eliminate patriarchal attitudes and stereotypes that discriminate against women, in conformity with the provisions of the Convention. Such measures should include efforts, in collaboration with civil society and community and religious leaders, to educate and raise awareness of this subject, targeting women and men at all levels of the society;
- (b) More vigorously address harmful practice by expanding public education programmes and by effectively enforcing the prohibition of such practices, in particular, in rural areas (amongst other recommendations).”

As early as 1998, in its Concluding Comments addressed to Zimbabwe, the Human Rights Committee raised the issue of the right to decide if, when, and whom to marry. It was recommended that early marriage and the statutory difference in the minimum age of girls and boys for marriage should be prohibited by law; the Government of Zimbabwe was asked to adopt measures to prevent and eliminate prevailing social and cultural attitudes supporting early and child marriage.¹⁷

In the Universal Periodic Review held at the 12th meeting, on 10 October 2011, the delegation of Zimbabwe was headed by Hon. Minister Patrick Chinamasa, Minister for Justice and Legal Affairs. Conclusions and recommendations that were accepted by Zimbabwe relevant to child, early and forced marriage were as follows:

- 1) That Zimbabwe continue its efforts to combat trafficking in persons and consider the possibility to accede to the Optional Protocol to the CRC relating to sale of children, child prostitution and child pornography¹⁸ and to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children;¹⁹

- 2) That concrete measures be taken to align Zimbabwe’s domestic laws, including customary laws with international human rights instruments that it is party to, to ensure harmonisation with the protections guaranteed in the Constitution;
- 3) That where gaps exist, elaborate legislative and administrative measures to outlaw discrimination against women and eliminate gender-based violence take place;
- 4) That Zimbabwe undertake continued action including legislation to address the marginalisation of women, children and other vulnerable groups from socio-economic and political spheres;
- 5) That Zimbabwe enforce its established policies and uphold its legislation to prevent instances of marginalisation and discrimination against women;
- 6) That protection measures against gender-based violence be strengthened;
- 7) That Zimbabwe takes all appropriate legal and administrative measures to bring justice for the people, in particular for vulnerable groups living in remote and rural areas;
- 8) That Zimbabwe undertake a review with a view to ensuring a coordinated system bridging gaps, especially with respect to the provision of birth certificates;
- 9) That Zimbabwe continues free access to education, notably for girls and vulnerable children.

The Government of Zimbabwe submitted its initial report to the African Committee of Experts on the Rights and Welfare of the Child in 2014. This report was considered at the April 2015 meeting of the ACERWC. A CSO report was submitted and considered by the Committee in late 2014. The government report, as highlighted below, does not contain much on child marriage at all, other than references to the need to harmonise legislation regarding the definition of a child. This could be indicative that the magnitude of the problem of child marriage in Zimbabwe continues to remain a thorny issue, and that the full extent of the problem has not been taken on at the highest level of government.

15. Although it is dealt with in the CSO report to the CEDAW Committee: see ZWLA 2012.

16. Para 22.

17. ICCPR Concluding Comments, Zimbabwe, A/53/40 (1998) para. 214.

18. Subsequently effected in 2012.

19. Ratified by Zimbabwe in 2013.

CSOs take issue with the reference in the report to its family law project. The reality with regard to that 'project' is that the government has done very little to act on proposals for law reform put forward by the women's movement. No actual Bill exists on the proposed harmonisation of marriage laws as stated in the State report.

What are in existence are concept papers at uncoordinated levels within departments in the Ministry of Justice and the NGO sector. These have had a gestation period longer than several elephants put together. The initiative to harmonise marriage reform has stalled over the last decade because it is regarded as something of a luxury amidst political turmoil; yet democracy in the family is perhaps the fundamental starting point for building a culture of true democracy at the national level.

The reality is that challenges associated with the different marriage forms remain. Besides the need to harmonise the marriage age under the Marriages Act, the Customary Marriages Act remains steeped in the role of a guardian and the expectation of marriage consideration. Also the fact that no notice of intention to marry is required under the Customary Marriages Act has resulted in many marriages being registered without the first wife's knowledge.

CSO Report to CEDAW, 2012 para 32.1 and 32.2.

The extent of the problem is much more fully elaborated in the CSO report as follows: "The median age of first marriages in Zimbabwe has been declining from 19 years for women currently aged 45-49 years, to 16 years for those aged 15-19 years; and 32 per cent of women aged 20-49 years currently in marriage were married before the age of 18 years.²⁰ Prosecution in cases of child marriages governed by customary law is hampered in that the Criminal Law (Codification and Reform) Act Chapter 9:23 only criminalises 'extra-marital sexual intercourse' with a young person."^{21 22} It is instructive that CSOs took issue with the

Government of Zimbabwe in 2012 during the CEDAW reporting process in relation to the promised reform of marriage law, as shown in the box opposite.

During the consideration of the Initial report submitted concerning the African Children's Charter, and during the dialogue with delegates from the State Party to the ACERWC in 2015, it became apparent that the government is preparing an 'omnibus bill' (A General Laws Amendment Bill) to amend 400 pieces of legislation in order to render them consistent with the Constitution. Marriage laws were just one of the affected areas. It was stated in the government responses to the list of issues raised by the Committee that the definition of a child and an amendment to the legal age of majority are envisaged in the Bill. However, the General Laws Amendment Bill tabled in May 2015 did not include any matters relevant to child marriage, and no further amending legislation has been publically aired. This is an issue which is discussed later in this report.

Zimbabwe has recently reported to the CRC Committee. The list of issues to which the government must respond was developed and issued in June 2015. Child marriage features prominently as follows in Question 13:

"Please inform the Committee about the measures taken to combat child and forced marriage of girls. Please indicate whether an investigation has been conducted by the State party into the allegations of involvement of members of religious sects, such as apostolic churches, in harmful cultural practices, particularly early marriage, including of girls as young as 10 with older men for 'spiritual guidance'. If so, please provide the Committee with the main findings of any such investigation. In particular, please provide detailed information on:

- a) The criminal charges brought against all those found responsible within these churches, and against all those who facilitated early and forced marriages; and
- b) The compensation and rehabilitation measures, including medical, psychological and social services, provided to the victims of child and forced marriage."

20. ZIMSTAT MICS August 2010, p. 117; and Zimbabwe 2010-11 Demographic and Health Survey: Key Findings, at www.measuredhs.com/pubs/pdf/SR188/SR188.pdf provides that 31 per cent of women aged 25-49 in Zimbabwe are married by age eighteen, compared with just 4 per cent of men aged 25-49.

21. Section 70 of the Criminal Law (Codification and Reform) Act Chapter 9:23; Maureen Sibanda *op cit.* p. 7, Sibanda 2011.

22. CSO report to the ACERWC.

Child marriage is also raised in Questions 14 and 19, and progress towards harmonisation of legislation with the CRC is raised under a number of headings. Access to sexual and reproductive health services is another additional concern, about which trenchant questions are posed. Data and statistics are requested from Zimbabwe on the number of children who have been married forcefully through apostolic churches and the number of child and teenage pregnancies.²³

In its response to the presentation by the Government of Zimbabwe in 2016, the CRC Committee issued Concluding Observations which express in strong terms the need for attention to be paid to previous Concluding Observations regarding reviewing the national legal framework, and combating social attitudes and cultural and religious practice hampering the realisation of children's rights.²⁴ In addition, the Committee reiterates in strong terms the need for urgent revision of legislation to bring it in line with the constitution.²⁵ The State party is also urged to finalise the Child Rights Policy, accompanied by a strategy for its implementation.

Child marriage is addressed directly by the Committee: although welcoming the decision of the Constitutional Court, it recommends that the ruling be widely disseminated,²⁶ and it remains 'deeply concerned' about the prevalence of harmful norms and practice that perpetuate discrimination against girls including in particular forced and early marriage, polygamy, bride price and, in certain regions, virginity testing and witch hunting.²⁷

Zimbabwe was recommended to:

- take all measures to enforce the application of the law prohibiting child and forced marriages and to prevent such marriages from occurring;

- establish an effective monitoring system to assess progress towards the eradication of child marriage;
- provide victims of child and forced marriage with compensation and rehabilitation measures;
- conduct an investigation into the involvement of members of religious sects, such as apostolic churches, in harmful cultural practices, enduring that criminal charges are brought against all those found responsible within these churches, and against all those who facilitated early and forced marriages; and
- raise awareness among families, traditional and religious leaders to prevent and combat harmful practices.

These are strong and clear recommendations to which Zimbabwe will be held accountable at the next review of progress made in fulfilling children's rights under the CRC.

From the above analysis of responses to treaty body recommendations, it is clear that authorities have not paid sufficient attention to the treaty obligations incurred. In particular, harmonising legislation and policy with international law to which Zimbabwe is bound, and promptly giving effect to treaty body recommendations and observations, has not taken place.

The fact that questions relating to child marriage have now become uppermost in the eyes of international treaty bodies is a welcome development as it is going to require the Government of Zimbabwe to give serious attention to the array of measures and programmes required to deter and combat this practice. A primary consideration will be the lack of attention to legal reform, which is necessary to address the disparity between international law and the prevailing domestic position in Zimbabwe.

23. CRC/C/ZWE/Q/2 (June 2015).

24. CRC/C/ZWE/CO/2 para 7.

25. CRC/C/ZWE/CO/2 para 9.

26. CRC/C/ZWE/CO/2 para 25.

27. CRC/C/ZWE/CO/2 para 46(a).

PART 2: CHILD MARRIAGE INDICATORS AND PREVALENCE IN ZIMBABWE

2.1. Current state of indicators related to child marriage in Zimbabwe

According to the 2012 Census the population of Zimbabwe is slightly under 13 million (12,973,808), 52 per cent of which is female. The annual population growth rate was at 1.1 percent between 2002 and 2012. Seventy per cent of the population live in the rural areas, and the remaining 30 per cent live in urban areas. There are 16 official languages in Zimbabwe; namely Chewa, Chibarwe, English, Kalanga, Koisan, Nambya, Ndau, Ndebele, Shangani, Shona, sign language, Sotho, Tonga, Tswana, Venda and Xhosa.

Land in Zimbabwe covers 386,848 square kilometres, while water covers 3,910 square kilometres; of the total land area, 85 per cent is agricultural land, the rest consists of national parks, state forests and urban land. Land reform transformation issues have been a political 'hot potato' since 2000 when the fast track land reform programme was introduced. Sanctions were imposed on Zimbabwe, causing investor flight, a shortage of basic commodities, a range of inflationary pressures and on-going diplomatic isolation by world powers. This has negatively impacted on Zimbabwe's security, political and economic well-being. There are indicators of economic recovery (since the crash of 2008), which is encouraging as regards resources available for the implementation of children's rights going forward. After the July 2013 harmonised elections in the country, the

new Zanu-PF-led government introduced the 2013-3018 Zimbabwe Agenda for Sustainable Socio-economic Transformation (Zim Asset) as the economic development blueprint and turnaround plan for Zimbabwe's development priorities.

The country is divided into ten administrative provinces.²⁸ Ministries that may be implicated in legal and policy reform concerning child marriage include Justice, Legal and Parliamentary Affairs; Health and Child Care; Women Affairs, Gender and Community Development; Primary and Secondary Education; Ministry of Local Government, Public Service, Labour and Social Welfare, and the Ministry of Home Affairs.

According to the 2012 Census national report, approximately 52 per cent of the rural population are women. Women in rural areas have less access to social services, fewer economic opportunities and less ability to participate in decision making.²⁹ High levels of violence, including sexual violence, have been revealed: a recent National Baseline Survey on the Life Experiences of Adolescents (NBSLEA) which was a nationally representative study in which males and females aged 13 to 24 years were interviewed on their experiences of sexual, physical, and emotional abuse reported as follows on the prevalence and 12-month victimisation rates for various types of violence against children:³⁰

- Almost one third of females (32.5 per cent) and 1 in 10 males (8.9 per cent) aged 18 to 24 years reported experiencing sexual violence in childhood.

28. Bulawayo, Manicaland, Mashonaland central, Mashonaland east, Mashonaland West, Matabeleland North, Matabeleland South, Midlands, Masvingo and Harare.
29. UN Zimbabwe (13 October 2014).

30. Multisectoral Protocol on the Management of Sexual Offences 2012 (Judicial Services Commission) p. 17.

- Of respondents aged 13 to 24 years, approximately 9 per cent of girls and 2 per cent of boys reported experiencing sexual violence in the 12 months preceding the survey.
- Nearly 1 in 10 females (9 per cent) and less than 1 per cent of males aged 18-24 years reported experiencing physically forced sex (rape) prior to age 18.
- Approximately 9 per cent of girls aged 13-17 years reported experiencing physically forced sex in the past 12 months.

Relevant social and economic indicators relating to Zimbabwe include the following:³¹

- Life expectancy: 45 years
- Fertility rate: 4.1 children per woman³²
- The adolescent birth rate, also known as the age-specific fertility rate for women aged 15-19 years is 120 births per 1,000 women
- Population of persons below 15 years: 41 per cent
- Birth registration of children under 5: 32 per cent³³
- Maternal mortality rate: 960/100,000
- Infant mortality rate: 57/1,000
- Under 5 mortality rate: 84/1,000
- Net enrolment rate primary school: 91 per cent
- Enrolment rate lower secondary school (2009): 49 per cent
- Enrolment at upper secondary school (2009): 35 per cent
- HIV infection rate 15-19 years: 3.8 per cent
- Teenage pregnancy: Teenage pregnancy is generally quite high with 24 per cent of girls/young women having started child bearing within the age range 15-19 years.³⁴

2.2. Child marriage hotspots in Zimbabwe

Zimbabwe has a high prevalence of early marriage,³⁵ estimated at one in three girls being married before the age of 18.³⁶ With a child population estimated at 47 per cent, 4 per cent of girls are married before the age of 15, and 31 per cent are married before the age of 18. Zimbabwe is ranked 41 on the number of countries where children marry before the age of 18 years. The rates of child marriage are higher in some areas than others. On average, one out of three girls will be married before their 18th birthday.

The 2014 MICS survey provides the most recent data on child and early marriage in Zimbabwe. Information on age at first marriage was obtained by asking all married respondents who were or had been married the month and year they married or started living with a partner as if married. The proportion of women who were married before the age of 15 is more than that of men. Five per cent of women and 0.3 per cent of men age 15-49 years were first married or in union before age 15. One in three women and less than 1 in 20 (3.7 per cent) of men age 20-49 were first married or in union before age 18. Young people age 15-19 years currently married or in union were 24.5 per cent and 1.7 per cent for women and men, respectively. The percentage of women and men aged 15-49 years who were in a polygynous union was 10.1 per cent and 3.8 per cent, respectively.

Age mixing is prevalent for young women, with 19.9 per cent of women age 15-19, and 17.5 per cent of women age 20-24 years married or in union with a spouse 10 or more years older.³⁷ Table 1 is reproduced from the MICS.³⁸

While child marriage is common in Zimbabwe, prevalence is highest in Mashonaland Central (50 per cent), followed by Mashonaland West (42 per cent), Masvingo (39 per cent), Mashonaland East (36 per cent), Midlands (31 per cent), Manicaland (30 per cent),

31. These are reproduced in Zimbabwe's initial report to the African Committee of Experts on the Rights and Welfare of the Child (2013), which was submitted formally in October 2014 and considered in 2015.

32. ZIMSTAT 2015. The MICS data suggests that this figure is 4.3.

33. ZIMSTAT 2015, p. 34.

34. Government of Zimbabwe 2014, p. 14. ZIMSTAT 2015 gives this figure at 22.4, slightly lower.

35. Child marriage prevalence is the percentage of women 20-24 years old who were married or in union before they were 18 years old (UNICEF 2013).

37. ZIMSTAT 2015, p. 35-36.

38. Less than five per cent each of women and men reported having had sex before the age of 15. Eighteen per cent of women age 15-24 reported having had sex in the last 12 months with a partner who was 10 or more years older. (ZIMSTAT 2015, p. 40).

Table 1: Percentage of people in early marriage in Zimbabwe, including spousal age differences

INDICATOR		PERCENTAGE
Marriage before age 15	Percentage of people who were first married or in union before age 15 (a) Women age 15-49 years (b) Men age 15-49 years (c) Men age 15-54 years	5.0% 0.3% 0.3%
Marriage before age of 18	Percentage of people who were first married or in union before age 18 (a) Women age 20-49 years (b) Men age 20-49 years (c) Men age 20-54 years	32.8% 3.7% 3.9%
Young people age 15-19 years currently married or in union	Percentage of young people aged 15-19 years who are married or in union (a) Women (b) Men	24.5% 1.7%
Polygyny	Percentage of women who are in a polygynous union (a) Women aged 15-49 years (b) Men aged 15-49 years (c) Men aged 15-54 years	10.1% 3.8% 4.1%
Spousal age difference	Percentage of young women who are married or in union and whose spouse is 10 or more years older, (a) among women aged 15-19 years, (b) among women aged 20-24 years	19.9% 17.5%

Matabeleland North (27 per cent), Harare (19 per cent), Matabeleland South (18 per cent), and Bulawayo (10 per cent).³⁹

Once girls in Zimbabwe are married, only some of them (67 per cent) use contraception in spite of the need to space their childbearing. Unmet needs for family planning amongst women married or in union aged 15-49 is 10.1 per cent.⁴⁰ 68.5 per cent of girls in Zimbabwe have their demand for contraception satisfied.⁴¹

Child marriage occurs more frequently among girls who are the least educated, poorest and living in rural areas. In 2011, women aged 20-24 and living in rural areas were about twice as likely to be married/in union before

the age of 18 than their urban counterparts. This urban-rural divide has remained at roughly the same level since 2006.⁴² Data from the 2014 MICS study indicate that the urban/rural split remains roughly the same, ie 40 per cent in rural areas versus 19.3 in urban areas. It is encouraging that UNFPA reports a recent decline in child marriage in rural areas of Zimbabwe.⁴³ Table 2 was drawn by Sibanda⁴⁴ from the previous MICS survey, illustrating specific ages of first marriage.

Education is associated with the prevalence of child marriage in Zimbabwe. Thirty-three per cent of women aged 20-24 with no education and 55 per cent of women with primary education were married or in union

39. Founding affidavit of Loveness Mudzuru at p. 10, quoting ZIMSTAT 2015. However, the figures on p. 58 of the Summary Report differ slightly from these, resulting also in a slightly different order of severity as measured by region. Mashonaland Central and Mashonaland West remain the major areas of concern.

40. This has dropped from 17 per cent in the previous MICS of 2009.

41. Founding affidavit of Loveness Mudzuru (copy on file with the author) at p. 10, quoting ZIMSTAT 2015.

42. Founding affidavit of Loveness Mudzuru, as above.

43. UNFPA 2012, p. 24.

44. Sibanda 2011.

Map 1: Map of Zimbabwe, showing provinces



at age 18, compared to 23 per cent of women with secondary education or higher. A 2012 report on progress towards the achievement of the MDGs records that, as far as MDG 3 is concerned, Zimbabwe has achieved gender parity at primary and secondary school levels with respect to enrolment, attendance and completion rates. There is also gender parity in literacy rates.⁴⁵ Zimbabwe has the highest literacy rate of 92 per cent in Africa, according to the Girl's and Young Women's Empowerment Framework (discussed under policies below).

Household wealth influences the prevalence of child marriage among all wealth quintiles. Girls from the poorest 20 per cent of the households were more than four times as likely to be married/in union before age 18 than girls from the richest 20 per cent of households.

Unregistered customary unions are the most predominant form of marriage in Zimbabwe, with estimates that more than 80 per cent of marriages in rural households involve such unregistered unions.⁴⁶

45. UN Zimbabwe 2012.

46. Ndhlovu-Bhebhe (no date).

Table 2: Age at first marriage

Percentage of women who were first married by specific exact ages and mean age at first marriage, according to current age, MIMS, Zimbabwe, 2009								
Age	% first married by exact date					% never married	no. of women	Mean age of first marriage
	15	18	20	22	25			
15-19	5.6	n/a	n/a	n/a	n/a	76.4	2,616	16.3
20-24	9.7	44.2	64.1	n/a	n/a	26.1	2,412	18.0
25-29	10.3	44.4	63.0	76.2	87.6	9.5	2,129	18.9
30-34	10.8	42.4	63.7	77.6	88.7	4.8	1,459	19.4
35-39	13.0	43.1	65.1	78.2	88.8	2.6	1,208	19.5
40-44	14.0	45.2	65.1	75.2	87.3	3.1	828	19.6
45-49	15.7	52.3	74.2	83.6	92.6	1.1	687	18.8
20-49	11.4	44.5	64.8	n/a	n/a	11.1	8,723	18.9
25-49	12.0	44.6	65.1	77.6	88.6	5.3	6,311	19.2
15-49	10.0	39.3	55.2	63.9	70.3	26.1	11,339	18.7

Source: Zimbabwe Multiple Indicator Monitoring Survey (MIMS) 2009 report, August 2010, page 117.

Child marriage in Zimbabwe is fuelled by the persistence of deeply entrenched social attitudes which support early and underage marriage, sometimes (as mentioned) even expressed by chiefs and political and religious leaders.⁴⁷ Early marriage is also supported by apostolic child communities, as noted by UNICEF Zimbabwe Country Office in its 2014 Gender Review Report (UNICEF 2014): *“Among the followers of the Apostolic religious beliefs and practices in Zimbabwe, their religious doctrines emphasise marriage within the church and young girls are married off to older men exposing them to early pregnancy, pregnancy complications, risks to HIV and AIDS in a multiple sexual network (polygamous relationship), and limit educational opportunities and advancement of the young girls since they are likely to drop out of school. A targeted intervention is absolutely needed here.”*

However, there are some signs that traditional leaders are beginning to be drawn into the debates. In July 2014, it was reported that at a meeting for chiefs in Marondera, organised by the Women Affairs, Gender and Community Development, under the 18+: *Ending Child Marriage* campaign, the majority of chiefs from the province agreed that there was need for traditional leaders to promote good cultural values that protect children.⁴⁸ In September 2015, chiefs in Matabele North gathered at a workshop to discuss combatting child marriage. And the launch of the AU Campaign to End Child Marriage in July 2015 was endorsed by the country’s first lady. Encouraging signs are, therefore, to be found.

47. As above. See also the CSO report to CEDAW, ZWLA 2012.

48. www.women.gov.zw/81-news/126-zimbabwe-commemorates-the-int-l-day-of-the-girl-child [Accessed March 2015]

Key informants consulted for this study noted that patriarchal attitudes also support what can be characterised as a considerable degree of inertia in tackling discriminatory practices under customary law head on, and it is evident that strong leadership to spearhead the campaign to end child marriage is needed.

2.3. Key conclusions: opportunities and challenges relating to child marriage prevalence in Zimbabwe

Opportunities

- Zimbabwe has the highest literacy rate in Africa and investments in education have been widely shown through research to impact positively on reducing child marriage. By encouraging continued expansion of assistance to vulnerable girls to enable them to continue to access education, especially secondary and vocational education, concrete measures to combat child marriage can be taken.
- Economic recovery is underway which should mean that the Government of Zimbabwe can boost resources available to prevention and responses to child marriage through its Zim Asset 2013-2018 economic blueprint.
- The government has formally accepted numerous recommendations relating to child marriage emanating from the UPR process, indicating its commitment to tackling the issue. In the next UPR review process, progress will be required to be shown.
- The consideration of Zimbabwe's progress by the ACERWC in its April session revealed that the government is aware of the need for comprehensive law reform in the arena of marriage.
- The ruling of the Constitutional Court in 2016 (discussed below) sends a very strong message that child marriage violates the Constitution.

Challenges

- Key informants note the persistence of deeply entrenched social attitudes which support early and underage marriage, sometimes even expressed by political and religious leaders; the recent debate sparked by comments from the Attorney General attests to this further.
- At the validation workshop, concerns were expressed by delegates from Zimbabwe that hard data on the incidence of child marriage is not available and that further "on the ground research" is required to enable more effective lobbying and advocacy once the true magnitude of the problem is properly revealed. This indicates that it is not yet widely accepted that Zimbabwe is indeed a country with a high incidence of child marriage.
- The 'light treatment' of child marriage in the government report to the ACERWC may be indicative of a reluctance on the part of the GoZ to acknowledge the need for speedy and comprehensive reform of applicable legislation and enhanced programme delivery to combat early and child marriage.
- Polygamy remains extremely widespread, and impacts girls and women's status in society in numerous adverse ways.
- The AU Campaign to End Child Marriage was launched on 31 July 2015, and efforts will need to be intensified and rolled out more rapidly, drawing in traditional leaders and chiefs to a greater degree, and raising far more public profile about the scope of the problem.

PART 3: LAWS RELATING TO MINIMUM AGE

3.1. The 2013 Constitution

Several provisions in the commendably progressive 2013 Constitution are relevant to the issue of child, early and forced marriage. For ease of reference and to avoid splitting them up, the constitutional provisions are dealt with *in toto* here.

Principal amongst them is Section 78 (Marriage Rights) which sets a minimum age for marriage at 18, and prohibits forced marriage (“no person shall be compelled to marry against their will”: Section 78(2)). This Section is contained in the Declaration of Rights (Chapter 4). Of considerable note, too, is Section 26, entitled ‘Marriage’. Section 26(1) requires the State to take appropriate measures to ensure that no marriage is entered into without the free and full consent of the intended spouses; whilst Section 26(2) requires the State to take measures to ensure that children are not pledged in marriage. The State must also ensure the equality of rights and obligations of spouses during marriage and at its dissolution (Section 26(4)), and that in the event of dissolution of a marriage, provision is made for the necessary protection of any children and spouses. Marriage is not defined in Section 332 (the definitions clause of the Constitution), and must therefore at face include all forms of marriage, under civil, religious and customary law. This Section (Section 26) and Section 25 discussed below fall in the chapter of the Constitution entitled ‘National Objectives’.

Section 25 (headed ‘Protection of the Family’) also constitutionalises an obligation upon the State and all institutions and agencies of government at every level to protect and foster the institution of the family and in particular to adopt measures for the care and assistance of mothers and fathers and other family members who have the care of children.

Section 51 provides for the core principle of human dignity: “Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected”.

Section 19 (‘Children’) is also relevant (and also falls in Chapter 2, ‘National Objectives’):

“(1) The States must adopt policies and measures to ensure that in matters relating to children, the best interests of the children concerned are paramount.

(2) The States must adopt reasonable policies and measures, within the limits of the resources available to it, to ensure that children:-

- (a) Enjoy family or parental care, or appropriate care when removed from the family environment;*
 - (b) Have shelter and basic nutrition, health care and social services;*
 - (c) Are protected from maltreatment, neglect or any form of abuse; and*
 - (d) Have access to appropriate education and training.*
- (3) The State must take appropriate legislative and other measures:-*
- (a) To protect children from exploitative labour practices; and*
 - (b) To ensure that children are not required or permitted to perform work or provide services that:*
 - (i) are inappropriate for the children’s age; or*
 - (ii) place at risk the children’s well-being, education, physical or mental health or spiritual, moral or social development.”*

Other potentially relevant Sections of the Constitution are elaborated as follows:

Section 80 (‘Rights of Women’) (contained in Chapter 4, the Declaration of Rights, meaning that they are justiciable before courts of law):

“(1) Every woman has full and equal dignity of the person with men and this includes equal opportunities in political economic and social activities;

(2) Women have the same rights of men regarding custody and guardianship of children, but an Act of Parliament may regulate how those rights are to be exercised; and

(3) All laws, customs, traditions and cultural practices which infringe the rights of women conferred by this Constitution are void to the extent of the infringement.”

Section 81, which follows, enumerates children’s rights. This Section is quite elaborate, but at issue is primarily Section 81(1)(a) which provides for children’s rights to equal treatment before the law; Section 81(1)(c) which provides for the right of a Zimbabwean child to prompt provision of a birth certificate; Section 81(1)(d) for the right of a child to family or parental care (the Section applies to all children aged below 18 years, which means that 18 is the constitutional age at which majority is attained); Section 81(1)(e) which provides for the child’s right to protection from economic and sexual exploitation, child labour and from maltreatment, neglect or any form of abuse; the primacy of the child’s best interests (Section 81(2)), and their right to enjoy the protection of the Courts, particularly the High Court as their upper guardian (Section 81(3)).⁴⁹

Also of note is Section 56 (equality and non-discrimination), including that all persons are equal before the law and have the right to equal protection and benefit of the law, and that women and men have the right to equal treatment. The state is enjoined to take reasonable legislative and other measures to promote the achievement of equality and protect or advance people or classes of people who have been disadvantaged by unfair discrimination. An added

ground for non-discrimination included in the Constitution is a prohibition on discrimination against those born out of wedlock.

Section 54 provides that no one shall be subjected to slavery or servitude and Section 55 contains a prohibition on forced or compulsory labour.

Section 86 (2) states that the fundamental rights and freedoms set out in the Chapter dealing with fundamental rights may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.

The Constitution remains to be domesticated in national legislation which is compliant with its precepts. This much has been acknowledged by the Government of Zimbabwe, as noted above. However, progress has been rather slow, considering that the issue of harmonisation of law on marriage – specifically – has been raised by treaty bodies for some time now. And, although the Constitutional Court hearing (discussed below) to have the Marriage Act declared unconstitutional took place in January 2015, judgment was handed down in a year later in January 2016. In the intervening period, no draft laws relevant to marriage or child marriage have seen the light of day.

3.2. Marriage Act (Cap 5:11)

This Act regulates civil or statutory marriages. Section 20 of the Act provides for the circumstances under which minors can marry.

Section 22 of the Marriage Act sets the minimum age of marriage at 16 years for girls and 18 years for boys. Girls who are over 16 may marry so long as they have the consent of their parents or guardians, and girls younger than this can marry with the consent of the Minister of Justice. These ages, incidentally, were fixed at a time when the age of majority was 21 years, not 18 as it is now (under the Constitution). If parents or guardians are not available, or refuse their consent, a judge of the High Court can grant consent, according to Section 20(2)(1). A marriage contracted without the necessary of consent of guardians or the Minister is voidable, meaning it can be set aside upon application (by the parent or legal guardian whose consent was not obtained), according to Section 21(1). However, if no such application is brought within the specified time of six weeks, the marriage contracted without parental/guardian’s consent is valid. An application may

49. The full text of the constitutional provision pertaining to children reads as follows: Section 81 of the Constitution comprehensively provide for children’s rights. It provides that:

(1) Every child, that is to say every boy and girl under the age of eighteen years, has the Right:

- (a) to equal treatment before the law, including the right to be heard;
- (b) to be given a name and family name;
- (c) in the case of a child who is:
 - (i) born in Zimbabwe; or
 - (ii) born outside Zimbabwe and is a Zimbabwean citizen by descent; to the prompt provision of a birth certificate;
- (d) to family or parental care, or to appropriate alternative care when removed from the family environment;
- (e) to be protected from economic and sexual exploitation, from child labour, and from maltreatment, neglect or any form of abuse;
- (f) to education, health care services, nutrition and shelter;
- (g) not to be recruited into a militia force or take part in armed conflict or hostilities;
- (h) not to be compelled to take part in any political activity; and
- (i) not to be detained except as a measure of last resort and, if detained— i) to be detained for the shortest appropriate period;
- (ii) to be kept separately from detained persons over the age of eighteen years; and
- (iii) to be treated in a manner, and kept in conditions, that take account of the child’s age.

(2) A child’s best interests are paramount in every matter concerning the child.

(3) Children are entitled to adequate protection by the courts, in particular by the High Court as their upper guardian.

also not be brought after the married minor has attained the age of 18 years. Section 22(2) states that if a girl below 16 or a boy below 18 contracts a marriage without the necessary ministerial consent, where such marriage is considered desirable and in the interests of the parties, the Minister may validate it in writing retrospectively. This in effect means that both boys below 18 and girls below 16 can conclude a marriage which can be rendered valid.

Any new legislation would have to raise the age for marriage to 18 and above for both women and men. This in turn would also affect the consent provisions relating to guardians or parents or the Minister or the High Court. These consent provisions would become unnecessary, since the constitutional age of majority is now 18 years. Hence, an omnibus General Amendment Act which amends Section 20 and 21 of the Marriage Act could serve the minimum purpose of raising and equalising the age of marriage for girls and boys, and eliminating any exceptions to this 'straight 18' position. However, as argued below, piecemeal amendments are not the most desirable route to follow.

One positive aspect of the Marriage Act is that it directly contemplates the proof of age dilemma: Section 23, entitled 'Proof of age of parties to proposed marriage', provides that if parties appear before a marriage officer for the purpose of contracting a marriage with each other and such marriage officer suspects that either of them is of an age which debars him or her from contracting a valid marriage, "he shall refuse to solemnise a marriage between them unless he is furnished, to his satisfaction, with proof of age of the party concerned and with such other requirement as may be necessary".

3.3. Customary Marriages Act (Cap 5:07)

Some customary marriages are regulated by statute in Zimbabwe. Although Section 11 of the Act prohibits the pledging of girls in marriage, that is not enough to bar child marriage, for which there is no minimum age set in the Act. This means that, as matters now stand, the Act is in contravention of the Constitution. Traditionally under unwritten customary law, the minimum age of marriage was the attainment of puberty, hence it is assumed that by default, this is the minimum age contemplated in the Customary Marriages Act.

The Act should be clearly amended to provide for the age of 18 as the minimum age of consent to a customary marriage, and this would obviate the need for a guardian's (or the Minister's) consent.

In its Concluding Observations of September 2012, the CEDAW Committee expressed "its concern at the disadvantaged position of women in rural and remote areas who form the majority of women in the State party, and who experience poverty, difficulties in access to health and social services, and a lack of participation in decision making processes at the community level".⁵⁰ This is followed by strong recommendations concerning marriage and the family, including those related to the Customary Marriages Act itself. These are reproduced in full below:

"Marriage and family relations

37. The Committee is concerned about the persistence of discriminatory customary laws and practices, especially in rural areas and remote communities, with regard to, inter alia, marriage and its dissolution, inheritance and property rights. The Committee is deeply concerned that the customary and religious laws and practices that discriminate against women in the field of marriage and family relations, such as polygamy and bride price (lobola), are being upheld by the State party's preservation of a combination of civil and customary marital regimes, and by the adoption of legislation such as the Customary Marriages Act.

38. The Committee calls upon the State party to:

- (a) Amend without delay all discriminatory provisions and administrative regulations relating to family, marriage and divorce and take all necessary legislative measures to ensure women's equal share in all marital property regardless of monetary and non-monetary contributions to the marital property;*
- (b) Prohibit polygamy in accordance with the Committee's General Recommendation No. 21; and*
- (c) Consider elaboration and adoption of a unified family code in conformity with the Convention, in which equal inheritance rights, property and land rights are addressed and polygamy is prohibited".*

The CRC Committee's recent Concluding Observations related to the need for legislative steps to harmonise customary law with the Constitution have already been provided.

50. Para 35.

Apart from specifying a minimum age for a valid customary law marriage, it is evident that a number of other features of the Customary Marriages Act violate the 2013 Constitution (and international treaty law provisions which are binding to Zimbabwe).

3.4. Minimum age under customary or religious law

As pointed out, the vast majority of customary unions are not registered under the Customary Marriages Act, and are hence governed by what has been termed 'deep customary law', ie the living custom in practice for those peoples. As the form and substance of 'deep customary law' has to be ascertained on a case-by-case basis, it is not possible to describe one customary law system for a country such as Zimbabwe, which comprises multiple tribal and ethnic affiliations. A study undertaken in neighbouring Zambia by the Zambia Law Reform Commission in 2002 amply identifies the multiplicity of customs that constitute the marriage systems, some of which are compulsory (necessary for a valid customary marriage), and others which are desirable or simply practiced, but which do not affect the coming into existence of a union. Common amongst peoples in Southern Africa are requirements such as the payment of bride wealth (lobola) and ceremonies for handing the bride over to the family of the bridegroom. What is also evident is that marriage under customary law and practice is a negotiation between the families of the bride and bridegroom, with the bride's father consent being required (and not that of the bride). Hence the scene is set for non-consensual unions organised by the respective families.

The diversity of customary practices and debates on which specific practices lead to a requirement for validity has been contested in courts in neighbouring South Africa, as detailed below. However, no cases can yet be found which involve the age of marriage. As noted above, the minimum age for marriage under all known forms of custom in southern Africa is the attainment of puberty. This means that girls can be married from as young as 12 years of age, and boys (usually) from a slightly older age.

Religious marriages evidently occur in Zimbabwe,⁵¹ and it is not clear whether they are formalised via the process recognised in the Marriage Act, but probably this is not the case. There are also likely to be occurrences of Muslim marriages which are probably conducted via religious ceremonies and which fall outside the statutory regime. There is no legislation regulating religious marriages in Zimbabwe. The CEDAW Committee recommends a unified family code, which would in essence have to incorporate religious marriages as well.⁵²

The fact that legislating for religious marriages is oftentimes fraught is evident from the analysis of the draft Marriage Bill of Zambia contained in the In-depth Policy and Legal review on child marriage in Zambia, as well as from the on-going but fruitless attempts in South Africa to legislate for Muslim marriages. In June 2015, a constitutional court action was (re)launched in South Africa to compel Parliament to adopt the Muslim Marriage Bill which was developed in 2003 and tabled in Parliament in 2011. The Bill has not yet been discussed, allegedly due to trenchant opposition by traditional Muslim leaders.

3.5. The constitutional challenge to minimum age in Zimbabwe

A constitutional challenge related to the minimum age for child marriage in Zimbabwe was heard in January 2015. Two victims of child marriage were assisted to take the government to court to challenge the constitutionality of Zimbabwe's marriage laws which they said were discriminatory as regards the legal age of marriage for a girl child.

Loveness Mudzuru and Ruvimbo Tsopodzi wanted the Constitutional Court of Zimbabwe to declare unconstitutional some of the provisions of the Marriage Act and the Customary Marriages Act, arguing that it does not provide for a minimum age limit for marriages. Mudzuru and Tsopodzi were both married at the age of 15 while they were still going to school. They were both parties to unregistered customary unions.

51. Sibanda 2011, referring to the Janne Marange Apostolic church which has a huge and growing following and which is said to support child marriage. According to Sibanda, the church enjoys significant political support.

52. This recommendation runs counter to other wisdom, such as Chiwaru 2015, which proposes piecemeal amendment of certain identified Sections of the existing legislation specific to marriage.

The applicants also sought a declarator to the effect that no one may enter into a customary law union before the age of eighteen (18) years and that any registered customary law union contracted by person below the age of eighteen (18) years be declared null and void.⁵³ The Ministries of Justice, Legal and Parliamentary Affairs, Women Affairs, Gender and Community Development and the Attorney-General were cited as respondents.

Relying on the CRC and the ACRWC, the applicants' arguments included that allowing children to be married is subjecting them to maltreatment, neglect and abuse which is proscribed in Section 81 (1) (e) of the Constitution. They also averred that an important provision relevant to this matter is the right of children to family or parental care codified in Section 81 (1) (d) of the Constitution, and their pleadings referred also to Section 19 of the Constitution as well as Section 25. A breach of Section 56 (3) was grounds for an additional challenge, since this section makes it clear that no person shall be discriminated on the basis of age and sex; and Section 22 of the Marriages Act makes just such discrimination on the basis of both age and sex. Finally, the application relied on Section 80(iii) insofar as the Constitution makes it clear that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of this infringement.

The Minister's opposition to a declaration of constitutional invalidity was evidently based on the different ages at which boys and girls mature physically:

*"It is true that the Marriage Act, [Chapter 5:11] differentiates between the minimum age of marriage for boys and girls, and that the Customary Marriages Act, [Chapter 5:11] does not specify any minimum age for either boys or girls. I, however, deny that there is anything unconstitutional about that state of affairs. The differentiation is simply that, and is necessitated solely by the sexual difference itself and the implications therefore for married life. As far as I am aware the differentiation arises from biological and psychological maturity levels for boys and girls."*⁵⁴

In court, it was evidently argued that the right to found a family from the age of 18 years as set out in Section 78(1) of the Constitution did not (on a literal interpretation) entail a prohibition on child marriage before the age of 18.⁵⁵

A third strand of reasoning for the respondents was that there was nothing unconstitutional about legislation which authorised child marriage "as the applicants should have taken responsibility for getting pregnant".⁵⁶

It is of some concern that the Minister of Justice saw fit to defend the matter, in the face of its obvious clash with the Constitution. Moreover, the grounds on which he based his defence (earlier sexual maturity of girls) suggests that there is at best weak political commitment to raising the minimum age of marriage. Dispelling the myth that the age of marriage is linked to girl's sexual (physical) maturity should be a central advocacy point for the Plan 18+ campaign. Early sexual maturity was raised, too, in the recent high profile debate occasioned by the unfortunate remarks of the Attorney General of Zimbabwe.

However, in a much acclaimed and well-argued judgment grounded in international law, the Constitutional Court agreed that the minimum age for marriage in Zimbabwe must be 18 years, as set out in Section 78 of the Constitution (marriage rights) and reinforced by the children's rights provision in Section 81. This rendered the Marriage Act and the Customary Marriages Act invalid.⁵⁷

The Court rejected the literal interpretation that the constitutional right to 'found a family' from the age of 18 years did not constitute a ban on child marriage below that age, preferring a purposive interpretation. The Court enters into a substantial engagement with gender equality arguments, stating that there is a need to acknowledge that a child's gender can detrimentally affect the realisation of his or her right, and bemoaning the gender natural language of the CRC which in fact masks gender-specific rights violations.⁵⁸

53. Loveness Muduru, Founding affidavit p. 9.

54. Extract from the opposing affidavit quoted in the applicant's head of argument at p. 31. Judgment no. CCZ 12/2015 at p. 6. See also Judgment no. CCZ 12/2015 at p. 51, an argument which the Constitutional Court termed "surprising" and "without scientific evidence to support it". The Minister also argued that the applicants did not have standing to bring the application, but a discussion of that ground (which was dismissed, on the basis that the applicants brought the application to ensure the protection of constitutional rights in the public interest) falls largely outside the scope of this report. However, the fact that children are a "weak and vulnerable" group in society and are persons "who have no capacity to approach a court on their own seeking appropriate relief" was a key factor in the finding that the application was brought in the public interest (Judgment no. CCZ 12/2015 at p. 24).

55. Judgment no. CCZ 12/2015 at p. 6.

56. Judgment no. CCZ 12/2015 at p. 7.

57. "The constitutional invalidity of existing legislation takes place immediately the constitutional provision with which it is inconsistent comes into force". Judgment no. CCZ 12/2015 at p. 22. See also CRINmail 21 January 2016 and 27 January 2016.

58. Judgment no. CCZ 12/2015 at pp. 33-34. This heightened judicial sensitivity to the de facto discrimination that women face in Zimbabwe augurs well for future constitutional litigation in any area where women's equal rights may be at stake. See, too, at p. 52, the statement that the difference in age in the impugned legislation was based on the stereotypical notion that females were destined solely for the home and the rearing of children and that only males were destined for the market place and the world of ideas.

The Court relied heavily on international treaty law which Zimbabwe is constitutionally forced to consider when interpreting a constitutional provision (in terms of Section 46(1)(c)). The Court opined that “[r]egard must also be had to the emerging consensus of values in the international community of which Zimbabwe is a party on how children should be treated and their well-being protected”,⁵⁹ thus anchoring its ruling firmly in a children’s rights approach.⁶⁰

Noting that the child marriage term covers all marriages of persons under the age of 18 years,⁶¹ the Court referred to both the CEDAW Committee and Article 1 of the CRC. However, the Court correctly pointed out the “common feature of many conventions as being the failure to specify for States Parties the minimum age of marriage as a means of protecting children”, leaving this to domestic law to spell out.⁶² In fact, the court astutely observes that it is striking how poorly international human rights conventions address the practice of child marriage.⁶³

Turning to regional human rights instruments, the Court privileges the provisions of Article 21(2) of the ACRWC, noting that Zimbabwe voluntarily undertook, through *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”, and that the ACRWC places States parties under a positive obligation to take effective measures, including legislation, to specify the age of 18 years as the minimum age for marriage. In short, according to the Court, they are obliged to abolish child marriage.⁶⁴ And that, according to the Court, is what was intended with the constitutional provision in Section 78(1). Any other meaning would lead to the absurdity that persons who have attained 18 years have the constitutional right to found a family, but under the Marriage Act, no right to marry. A further absurdity in their contention would entail that while persons under eighteen years would, according to them, have the right to marry, they would not (constitutionally) have the right to found a family.⁶⁵

The Court proceeds to say that the adoption of legislative measures for the abolition of provisions which offend the provisions of relevant treaty law became “a compelling social need”.⁶⁶ The Court outlines in considerable detail the “overwhelming empirical evidence of the horrific consequences of child marriage”, which cannot fail to have an impact on the conscience of any society that cares about the fundamental values of human dignity, freedom and equality.⁶⁷ The Court opined that upon adoption of the Constitution, the State was under a duty to repeal Section 22(1) of the Marriage Act.⁶⁸

The Court was not swayed by the fact that the unions of the applicants fell neither under the Marriage Act nor the Customary Marriages Act, as they were unregistered customary unions.

“The Constitution does not specify the type or nature of marriage. A person can choose to enter into any kind of marriage and found a family. The wide definition of marriage is that it is a union between a man and a woman of full age who have freely and with full consent entered into an agreement to live together permanently as man and wife, to have children and bring this up as a family.”⁶⁹

The Court dealt swiftly with the argument that a declaration of unconstitutionality would enable men to impregnate girls and evade the responsibility of marrying them. The short answer, the Court said, is that the circumstances of getting pregnant do not disentitle the girl from the enjoyment of all the children’s rights that are constitutional enshrined.⁷⁰ She is entitled to parental care and schooling just like any other child. She remains a child regardless of her pregnancy. Alluding to the need to men to take responsibility for the pregnancy of the girl and the maintenance of the child once it is born, the Court opined that this was a social problem needing co-operation amongst stakeholders, not measures which force a girl to get married.⁷¹

59. Judgment no. CCZ 12/2015 at p. 26.

60. This is reinforced by the finding that “once a child got married with the written permission of the Minister and a girl who had attained the age of 16 years got married, they were treated as persons of full age to whom the protection of the rights of the child was lost” (underlining inserted); Judgment no. CCZ 12/2015 at p. 31.

61. Judgment no. CCZ 12/2015 at p. 27.

62. Judgment no. CCZ 12/2015 at p. 28.

63. As above at p. 28 and p. 29, referring amongst others to the 1962 Marriage Convention, and pp. 31-34 and again at p. 37 there is a discussion of CEDAW and the CRC, including Concluding Observations of the CEDAW Committee to Zimbabwe.

64. Judgment no. CCZ 12/2015 at pp. 35-36.

65. Judgment no. CCZ 12/2015 at p. 43.

66. Judgment no. CCZ 12/2015 at p 38 – 41, citing *inter alia*, increased domestic violence prevalence, contribution to trafficking in women and children, health costs, denial of access to education and the resulting ‘feminisation of poverty’.

67. As above.

68. Judgment no. CCZ 12/2015 at p. 50.

69. Judgment no. CCZ 12/2015 at p. 45. The court does not neglect to mention that although entering into marriage is an exercise of the right to found a family, a single parent who lives with and brings up his or her children can found a family in that respect, without necessarily getting married to the father or mother of the child with whom he or she lives as one household.

70. Judgment no. CCZ 12/2015 at p. 52.

71. Judgment no. CCZ 12/2015 at p. 53.

The effect of the judgment can be succinctly summarised as follows:

- A person who has not attained the age of 18 years has no legal capacity to marry – the right to enter marriage and found a family is legally delayed until the age of 18.
- A person who has attained the age of 18 years has no right to marry a person aged below that threshold (in the exercise of his or her right to found a family).
- There are no constitutionally valid exceptions to this absolute prohibition.⁷²
- The prohibition affects any kind of marriage whether based on civil, customary or religious law in order to ensure that children acquire a right to be protected from any form of marriage.⁷³
- The invalidity of child marriage, the Marriage Act and the Customary Marriages Act occurred at the time when the constitutional provision came into force, ie May 2013. This accords with the fundamental principle of the supremacy of the Constitution.⁷⁴
- The constitutional standard of the best interests of the child are best served, in the circumstances, by legislation which repeals Section 22 of the Marriage Act.⁷⁵
- By failing to adopt the above legislative measure to protect the rights of the girl child after May 2013 when the constitution came into effect, in the face of a duty to act, the State denied the girl children subjected to child marriages the right to equal protection of the law.⁷⁶
- The court's finding is not retrospective in effect due to the disruption it would cause for persons who conducted themselves on the basis that the legislation was valid. Therefore the order takes effect from the date of issue, ie 20 January 2016. It is unstated, but obvious, that all marriages, including unregistered customary unions, will have no legal force henceforth and will be invalid.

Interestingly the Court is alive to the former lack of concern about the problem of child marriage in Zimbabwe, pointing to the “lack of common social consciousness on the problems of girls who became victims of early marriages”.⁷⁷ The Court also hints at the need for public dissemination of the fact that child marriage in Zimbabwe has been abolished.⁷⁸

The constitutional challenge, the outcome of which has been clear cut, is, however, only one step along the path to harmonisation of laws and policies on child marriage. The strong judgment delivered has sent an important (socio-political) message. However, the need for a drafted amended law to be completed and shepherded through the requisite parliamentary process remains uppermost.

3.6. Key conclusions on laws on minimum age

Opportunities

- The constitutional challenge represented a key opportunity for progressive jurisprudence to emanate from the Constitutional Court, which has drawn a ‘line in the sand’ as regards the constitutional age of marriage.
- The case has received widespread publicity in Zimbabwe and abroad, which continues to flag the issue of child marriage in raising consciousness about the problem as it affects Zimbabwe.
- The current Marriage Act does contemplate the prospect of lack of proof of age, and provides that marriage officers may then refuse to solemnise a marriage; an amendment to Section 22(1) to raise the age of marriage of girls to eighteen, and eliminate all exceptions would therefore provide a minimum floor of compliance with the Constitutional Court's finding.
- The government has publically committed (at the consideration of its State Party Report to the African Committee of Experts on the Rights and Welfare of the Child in April 2015) to harmonise laws with the Constitution, including the Marriage Act and the Customary Marriages Act.

72. Judgment no. CCZ 12/2015 at p. 46. At p. 49 the Court expressly disallows exceptions based on consent by a public official, or of the parents or guardians of a child.

73. Judgment no. CCZ 12/2015 at p. 47.

74. Judgment no. CCZ 12/2015 at p. 48.

75. Judgment no. CCZ 12/2015 at p. 50.

76. Judgment no. CCZ 12/2015 at p. 50 and p. 52, noting that Section 78(1) of the Constitution entitles a girl and a boy to equal protection and treatment before the law.

77. Judgment no. CCZ 12/2015 at p. 53.

78. Judgment no. CCZ 12/2015 at p. 54.

Challenges

- Government's opposition to the constitutional challenge, based on the differential ages at which boys and girls mature, suggests on-going reticence about the concept of non-discrimination and undermines the 'straight 18' position, which flouts international law.
- The need to address the minimum age in both statutory and customary laws relating to marriage means that 'quick fixes' are not so easily able to be effected; furthermore the huge challenge of addressing the minimum age of marriage contracted under religious law remains, as well as the minimum age for marriage in unregistered customary unions.
- Simply amending the existing laws to insert a marriageable age of 18 for both boys and girls does not strengthen corollary needs, such as strengthening proof of age provisions, and providing remedies for victims of child marriage.
- The government does not appear to have followed through on the commitments made during the 2012 CEDAW reporting process and the UPR to draft a comprehensive unified family code; it is by no means certain that a harmonised draft marriage code actually exists yet (the priority evidently being the larger constitutional harmonisation project).
- The omnibus General Laws Amendment Bill introduced in May 2015 did not (contrary to the information provided to the ACERWC earlier that year) contain any provisions relating to marriage or child marriage.⁷⁹
- The government's opposition to the Constitutional Court application calls into question whether the political will to give effect to treaty body recommendations and those accepted during the UPR process exists.
- The Constitutional Court did not specify a timeframe within which parliament must act to resolve the invalidity.

79. Newsday (25 May 2015) reports that the reaction from Zimbabwean Lawyers for Human Rights to the proposed reaction to the General Laws Amendment Bill was scathing, noting that it was piecemeal, that it did not involve public consultation in the development of the Bill, and that it failed to align the most crucial and substantive provisions required to comply with the new Constitution. The Bill was gazetted on 8 May 2015, and public hearings were held during the week of 27-31 July. No mention is made of amendments to the Marriage Act and the Customary Marriages Act amongst the 126 statutes due to be amended. However, there is a proposed amendment to the Penal Code to decriminalise sexual activity between adolescents aged between 12 and 16 years. This has reportedly proved controversial (see <http://allafrica.com/stories/201507290294.html>).

PART 4: LAWS ON CONSENT

4.1. The 2013 Constitution

Section 78(2) is clear on this issue: no person may be compelled to marry against their will. Section 80(3) is also relevant: all laws, customs, traditions and cultural practices which infringe the rights of women conferred by this Constitution are void to the extent of the infringement. Finally to drive the point home, reference can be made to Section 26(1) which requires the State to take appropriate measures to ensure that no marriage is entered into without the free and full consent of the intended spouses, whilst Section 26(2) requires the State to take measures to ensure that children are not pledged (promised) in marriage. (Pledging of under-age children in marriage is undermining of their free and full consent, since the spouse is chosen on their behalf).

These constitutional injunctions lay a clear basis for measures that must be put in place to ensure that consents are indeed given freely by spouses. It remains to be seen whether the measures currently in place suffice.

4.2. Marriage Act

The Marriage Act does not spell out directly that the full and free informed consent of the parties to marriage is required. Where the word ‘consent’ is used in the Act, it relates to the consent of parents or guardians in the case of persons under 18, or to consent furnished by a court where the parents or guardians are unable or unwilling to furnish consent.

That the actual consent of the parties to the marriage is in fact required for a civil marriage may be inferred only obliquely from Section 26 which deals with the marriage formula to be recited:

“In solemnising any marriage, the marriage officer, if he is a minister of religion, may follow the rites usually observed by his religious denomination or organisation, but if he is any other marriage officer he shall cause each of the parties in some part of the proceedings to make the following declaration:

“I do solemnly declare that I know not of any lawful impediment why, I, AB, may not be joined in matrimony to CD, here present.”

and each of the parties shall say to the other:

“I call upon these persons here present to witness that I, AB, do take CD to be my lawful wedded wife (or husband)..”

Consent of the spouses may also be inherent or understood in the provisions of Section 16 concerning the necessity of an application for a marriage license by the parties, as Section 16(2) permits the magistrate to whom an application in terms of Subsection (1) is being made to require each of the parties to furnish him with their full names, age, condition and residential address and may put to each of them such questions as he may deem necessary to determine whether any lawful impediment exists to the proposed marriage. The questions may, it is conceded, explore whether consent is being freely and voluntarily given. Similarly, the signed application for bans provided for imply consent. However, this is not expressly stated.

In order to fully meet the demands of the 2013 Constitution, future legislation on marriage will have to spell out in detail how it is to be ascertained that the parties’ free and informed consent has been obtained.

4.3. Consent under custom and religion

Under all of the customary laws of the sub-region, the consent or co-operation of the parties to the marriage has been described as being merely desirable, but not essential. This is because customary marriage is an alliance of two families. The reasoning follows the definition of a customary marriage as ‘a relationship that concerns not only the husband and wife, but also the family groups to which they belonged before the marriage’. Thus whether the marriage is taking place between minors or not, consent to a customary marriage by the parents of a woman is strictly adhered to under customary family law. This approach enables force or coercion or undue influence to be exerted, and

free and informed consent of the parties to be undermined in child marriages that are driven by the self-interest of family members and traditional practices. It is no different in modern day Zimbabwe, as Sibanda points out.⁸⁰ She cites in particular the role played by *lobola* (in some communities it is called *roora*) in cementing relationships between families, and alludes to perceived financial gains which are especially alluring when families are faced with severe poverty. She cites a case where a 10 year old Zimbabwean girl was married off in 2001 to a 40 year old man in order to obtain food, allegedly for the price of 2,000 Zimbabwe dollars. She also refers to reports of girls aged 10-15 years being forced into marriages near Harare owing to the poverty of their parents.⁸¹

The Customary Marriages Act in Section 4(1) makes reference to the customary law marriage being solemnised in the district in which a woman or her guardian resides, and Section 4(2) requires that the guardian of the woman must be present at the solemnisation of the marriage as well as a chief, headman or village head of the guardian of the women. The parties to the marriage must also be present, according to Section 4(2), which therefore provides some possibility of the solemnisation officer/traditional leader ascertaining that free full and informed consent is being furnished by the parties. Further, a customary marriage officer may put relevant questions to either of the parties to a proposed marriage, to the guardian of the woman or his (sic) deputy, according to Section 6(1). Furthermore, the marriage may not be solemnised unless the customary marriage officer is satisfied that the intended husband and wife freely and voluntarily consent to the marriage (Section 7(1)(b)). On the face of it, therefore, free and full consent is required for a marriage under the Customary Marriages Act. (It is quite interesting that the Customary Marriages Act is superior in this regard to the (civil) Marriage Act). Section 11 of the Act prohibits pledging of women and girls in marriage, which too makes a contribution towards enforcement of the idea of free and informed consent being required for marriages concluding under the Customary Marriages Act.

However, that is not the end of the matter. A problematic feature of the Customary Marriages Act includes that it is still required that adult women must have the consent of their customary-law guardians before they can marry. A woman will not have a guardian once she

achieves the age of majority – which is 18 years. This provision therefore flies in the face of the Age of Majority Act (and the Constitution) which sets the age of majority at 18 and supersedes the provisions of the Customary Marriages Act (which dates back to 1951).

Lobola (and the actual payment thereof) is not a requirement for the validity of a customary marriage in Zimbabwe. In 1984, this was established by judicial precedent. However, according to Section 7(1)(a) of the Customary Marriages Act, a marriage officer must be satisfied that an agreement on marriage consideration has been reached. In fact, it is provided that a magistrate may fix marriage consideration in consultation with the guardian of a woman, a provision which theoretically renders the state (or a person acting on behalf of the state) complicit in actions which tend to negate free and informed consent and promote objectification of women and girls.

The call has gone out for the Act to be redrafted to remove the offensive requirement of guardian's consent, which places adult women in a state of perpetual minority. It also does not comply with constitutional precepts about non-discrimination (since male spouses do not require the assistance and consent of a guardian), and since the Act implicitly confers the role of guardian only upon a male, a further violation of constitutional norms is detected.

The CEDAW Committee expressed its serious concerns in the following rather strong language in 2012 about the failure to address dated and discriminatory legislation since the 1991 ratification of the CEDAW Convention by Zimbabwe:⁸²

“The Committee is concerned that, although the State party ratified the Convention in 1991 without reservations, the Convention still has not been domesticated as part of the national law. It notes with concern that, short of such full domestication, the relevance of the Convention and its direct domestic application have not yet been established in the State party” (para 11); followed by “[t]he Committee urges the State party to place high priority on the process of full incorporation of the Convention into its domestic legal system in order to give central importance to the Convention as the basis for the elimination of all forms of discrimination against women. The Committee also recommends to the State party to ratify the Optional Protocol to the Convention” (para 12).

80. Sibanda 2011, p. 8.

81. Sibanda 2011, p. 14.

82. Previous Concluding Observations had been issued by the CEDAW Committee in 1998.

Clearly a full revision of laws impacting consent to marriage in the context of gender relations is implicated with this recommendation.

4.4. How does free and full consent work in marriages by repute or cohabitation?

Although there is no legislation regulating domestic partnerships or unregistered unions, it is clear that there are many such unions in Zimbabwe, including some involving girls below the minimum age for marriage (such as in the constitutional challenge discussed). Most will be, on the face of it, voluntary, although oftentimes driven by poverty and the need to find a provider. This may also be exacerbated by HIV/Aids and the resulting orphanhood of girls who then need to find older men to support them.

One solution lies in strict enforcement of defilement laws, in which a minimum age of sexual intercourse is established, coupled with state support to enable impoverished girls to stay in school and social grants to assist them maintain themselves. These are discussed in the following sections.

4.5. Key conclusions on laws relating to consent:

Opportunities

- The Constitution of 2013 contains strong provisions on consent to marriage which comply fully with international treaty law.
- The Constitution places the obligation on the State itself to put in place the measures necessary to ensure that consent when given is indeed free and without undue influence or pressure.
- The Marriage Act has the gap that it does not expressly require the free and informed consent of a person seeking to get married, including a child, although this is implied.

Challenges

- The Customary Marriages Act is dated and not in harmony with other legislation and the Constitution insofar as it requires the consent of a male guardian for all customary marriages, including those contracted by adult women.
- Without clear legal provisions concerning free and informed consent to marriage, the gap is opened for customary attitudes concerning the consent of guardians to prevail, and for forced or coerced unions to be arranged.
- The requirement of parental consent (or judicial or ministerial consent) for underage spouses in the Marriage Act would be rendered obsolete if the minimum age of marriage were to be raised to 18, as this is now the constitutional legal age of majority.
- The state will have to devise how exactly it is going to ensure the free and informed consent to marriage is indeed being given, as the Constitution places this obligation upon it to do so; implementation mechanisms need to take into account prevailing entrenched customary attitudes, as well as the deep poverty and cultural and religious practices which drive families to betroth their girl children.

PART 5: LAWS ON MARRIAGE REGISTRATION

5.1. The Constitution and registration of marriage

There are no express provisions in the Constitution requiring registration of marriage.

5.2. Marriage Act and registration of marriage

Part IV of the Marriage Act deals with registration of marriages. It requires the appointment of a Registrar of Marriages whose office shall be a public office and shall form part of the Public Service. Immediately after the solemnisation of a marriage, the marriage officer shall make an entry thereof in the marriage register book to be kept for that purpose. Every entry shall be signed by the marriage officer and by the parties married and shall be attested by at least two witnesses of or above the age of eighteen years.⁸³ The Act provides further for regulations specifying the form and content of marriage certificates, notices, affidavits, declarations, marriage register books and the Marriage Registration Book itself.

The reality is however that most marriages are not concluded in terms of this law and it is therefore not applicable address the problem of child marriage.

5.3. Customary Marriages Act

The Customary Marriages Act provides for the registration of customary marriage as follows:

“8. Marriage register

(1) Immediately after the solemnisation of a marriage, an entry thereof shall be made in ink in a marriage register to be kept for that purpose by the customary marriage

officer in the form or to the effect of the specimen set forth in the Schedule, and every such entry shall be signed by the customary marriage officer.

(2) Before the parties depart, there shall then and there be made on a separate piece of paper a duplicate original register of the entry referred to in Subsection (1) in which the same matter shall be entered and signed by the customary marriage officer in manner or to the effect of the specimen set forth in the Schedule, and the customary marriage officer shall deliver such duplicate original register to the woman.”

Section 18 provides for the appointment of marriage officers by the minister, who can be persons employed by the state or chiefs. Marriage officers are frequently found at courts, but these may be a long distance from where people live, hence the failure to register marriages in practice, and the proliferation of unregistered customary unions. It has been proposed that the minister should not have the discretion to appoint marriage officers, but should be compelled to appoint any person employed by the state such as a district administrator or any chief as a marriage officer.⁸⁴ It has been alleged that the appointment of marriage officers to register customary unions has also not benefitted spouses living in remote parts of Zimbabwe.⁸⁵ Another proposal is to the effect that while registration might be desirable as an ideal, it is not practical: “Some marriages are not solemnised due to lack of access to marriage officers. The Act has a provision that allows the Minister to appoint other persons to be customary law officers but this is not obligatory due to the use of the word ‘may’...” The development of a new law, which governs marriages which have not been solemnised but which have conformed to customs and usages of the particular group to which the spouses belong, is therefore

83. Section 30.

84. Chiwaru 2015.

85. Ndhlovu-Bhebhe (no date).

advocated.⁸⁶ According to Chiwaru, “from WLSA experience, persons married under a UCLU fail to register marriages due to such issues as distance to courts where customary marriage officers are found”.⁸⁷

The issue of requiring compulsory registration of customary marriages is a complex one. On the one hand, it is clearly mandated by international and regional treaty law. Both Article 21(2) of the African Charter on the Rights and Welfare of the Child (1990) and article 16(2) of CEDAW expect State parties to take all necessary action, including legislation, to make registration of all marriages in an official registry compulsory. CEDAW General Recommendation No. 21 (1994) expounds on this duty by committing States parties to require the registration of all marriages whether contracted civilly or according to customary or religious law.⁸⁸

On the other hand, penalising non-registered marriages with invalidity punishes (almost invariably) the wives whose marriages are not recognised upon dissolution and therefore cannot share in marital assets. It also provides scope for a second marriage (either civil or customary and duly registered) to hold sway, leaving the first wife in an unenviable position a party to an unrecognised marriage.⁸⁹ Further, recent data collected on registration of marriages under the South African Recognition of Customary Marriages Act found that few respondents (in rural and urban survey sites) knew of the provisions (in operation from 1998) and consequently did not register their marriages; and further, that when they did seek to register their customary unions, registry officials registered the unions as civil marriages.⁹⁰

The remedy is not to shy away from registration of marriages as a requirement of validity but to improve processes and procedures to ensure that the existence of previous wives is known to registry officials.

It has been noted that marriage registration procedures for marriage were stepped recently up by the registrar general.⁹¹ The new procedure requires those intending to marry to submit their full names, identity particulars,

passport size photographs and thumbprints on the day of the wedding. The witnesses to the union also need to give their full names and identification details. In the case of foreign nationals wishing to marry Zimbabweans, they need to produce a police clearance document absolving them of any past criminal activity or conviction in their home country.

5.4. Interplay between civil and customary marriages regarding registration

Sometimes issues crop up which relate to the interplay between the dual marriage systems in force in Zimbabwe. For instance, it is required that ‘Africans’ who want to marry under the Marriage Act rather than the Customary Marriages Act must get a certificate from a magistrate stating that the bride’s customary-law guardian has consented to the marriage. This draws customary law inequality into the civil marriage system.

Further, problems are faced in practice regarding the interplay between customary and civil marriages, such as where a person married under customary law goes on to take a second wife under the Marriage Act without first dissolving the customary law marriage. The solutions to this problem are various, but include stepping up the registration of customary law marriages in such a way that civil marriage officers can ascertain fully if a prior customary marriage exists. The opposite problem also exists, ie where men married under the Marriage Act contract a serial marriage but under customary law, without having dissolved the prior civil marriage. Obvious difficulties arise in relation to the division of spousal assets, especially upon death.

These practical difficulties point to the need for a harmonised registration system so as to be able to detect all marriages – for the enhanced training of registering officials, and ultimately for the demise of polygamy. The CEDAW Committee proposes outlawing polygamy,⁹² which is deeply entrenched in customary law and practice and would therefore cut to the heart of customary practice in Zimbabwe.

86. Chiwaru 2015, p. 40.

87. Chiwaru 2015.

88. CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations (1994) Paragraphs 36-39.

89. See the recent case in the South African constitutional court in this regard, discussed in Sloth-Nielsen and Kruuse 2014.

90. Mwambene and Kruuse 2015

91. Ndlovu-Bhebhe (no date), noting that the requirements for certification had moved faster than the harmonisation of law on marriage generally.

92. According to Mwambene and Kruuse 2015, polygamy in South Africa is gradually declining in customary settings, but it is not known the extent to which this phenomenon is also echoed in Zimbabwe.

5.5. Key conclusions on registration: opportunities and challenges

Opportunities

- Zimbabwe already has a system for the registration of customary marriages, and has devolved authority to register marriages to district authorities and chiefs.
- Registration procedures already exist under the civil Marriage Act.
- Steps appear to be underway to improve registration procedures.
- Links should be made between birth registration and civil registration and vital statistics (CRVS) systems; and enhancements made to draw in additional capacity and utilise resources effectively.

Challenges

- The need to curb child marriage through enhanced control and registry procedures is patent.
- Registration possibilities in rural areas need to be stepped up.
- Women (in particular) need to be aware of the disadvantages of serial relationships insofar as their property interests can be seriously compromised.

PART 6: LAWS RELATED TO DISCRIMINATION IN MARRIAGE AND FAMILY RELATIONS AND OTHER LAWS RELEVANT TO CHILD MARRIAGE

6.1. Introduction

As is pointed out in the 2013-2017 National Gender Policy (discussed below), Zimbabwe has, over the years, made significant strides in amending and enacting legislation and has passed 17 pieces of legislation to advance the gender equality and equity objectives. These include the Matrimonial Causes Act (1987); Maintenance Act (1999); Administration of Estates Act (1997); Maintenance Act (1999); Sexual Offences Act (2001), Education Act (2004), Labour Act, [Chapter 28:01]; Criminal Law Act (2006); and the Domestic Violence Act (2007).⁹³ Despite these achievements, however, more remains to be done. The need for harmonisation of marriage laws is emblematic of this.

6.2. Married Persons Property Act (Cap 5:12)

The current default marital property regime is out of community of property (except for marriages entered into before 1 January 1929). The marital power accorded a husband in a marriage which is in community of property (which would have to be effected by ante-nuptial contract), remains intact, unless it is specifically detailed that the wife and

husband have equal powers in respect to assets held in community of property. The Act as a whole can be regarded as *de facto* and *de lege* discriminatory against women.⁹⁴

The abolishing of marital power will mean that husbands or wives will not be able to sell or encumber both movable and immovable property during the subsistence of a marriage without the consent of the other. It is be advisable to legislate for the abolition of the Roman-Dutch law of the marital power of husbands, and to presumptively provide for equal powers over marital assets to be shared between husband and wives in Zimbabwe, unless expressly excluded, eg in relation to assets acquired before the conclusion of the marriage or inherited during the subsistence of the marriage by either party.

The present 'out of community of property' default position usually works to the disadvantage of women who do not accumulate property to the same degree during the subsistence of a marriage, due to child rearing and home keeping duties.

There is no need to reinvent the wheel, however, as templates for similar legislation exist elsewhere, as in neighbouring South Africa, for instance.

93. National Gender Policy p. 11. To this can be added the Trafficking in Persons Act 4 of 2014.

94. See Chiwaru 2015.

6.3. The Matrimonial Causes Act (Cap 5:13)

This law addresses divorce and the distribution of marital assets. Zimbabwe basically has a ‘no fault’ divorce regime, but fault can determine property distribution, eg the gross misconduct of one party. Case law indicates that adultery (for instance) could affect the way in which the property is allocated.

It has been pointed out that Section 8(2)(a) of this Act tacitly acknowledges child marriage, by providing that an award or maintenance for a minor child shall cease if that child marries.⁹⁵

6.4. Trafficking (Trafficking in Persons Act (Cap 9:25))

This Act was passed in 2014 with the express intention of domesticating the UN Protocol Against Transnational Organised Crime and the Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children. Section 3 creates the offence of trafficking in persons and defines its contents. Section 3(2) imposes severe penalties for convicted traffickers (not less than 10 years’ imprisonment, and life imprisonment for certain offences). Trafficking where the offender is an ascendant, parent, sibling guardian or a person who has parental authority over the victim is considered an aggravating circumstance. A defence of consent of the victim to trafficking is expressly excluded, and it is provided that where the victim is a child, a defence that the child’s parent or guardian or other person with parental authority over the child consented is also excluded. It may also not be raised as a defence that the ‘act constituting an essential element of the crime is a customary or religious practice’, which rules out the possibility of adducing cultural practice as a justification.⁹⁶

The Act provides further for compensation for victims of trafficking upon conviction of a trafficker (compensation for damage or loss of property, for physical, psychological or other injury, and for loss of income or support). Forfeiture of the proceeds of trafficking are further provided for, as is the jurisdiction of Zimbabwean court to hear cases of persons trafficked outside Zimbabwe (extraterritorial jurisdiction, as required by the Protocol.) Centres for

victims of trafficking are required to be established in each province according to Section 8 of the Act, which further sets out the functions of those centres in provide rehabilitative and other support for victims and their dependants. The Act also provides for the setting up of an Inter-Ministerial Anti-Trafficking Committee, which amongst other functions, must adopt a national anti-trafficking plan of action for a period of one year or more and monitor its implementation. The Committee must also propose and promote strategies to prevent trafficking, and introduce and implement public awareness campaigns to counter trafficking.

The Act introduces consequential amendments to a range of other laws, and incorporates the Protocol as a schedule (Schedule 3).

To the extent that forced or child marriage can potentially be a product of trafficking, it is possible that the Committee established under the Act, and the victim centres that are supposed to be launched, can play a (small) role in combatting the practices covered in this brief. It would be beneficial to highlight this to the Committee once it is established, and to ensure that materials (posters) advocating an end to child and forced marriage are available at victim support centres. However, in the view of this author, the Trafficking in Persons Law is not going to play a major role in the fight against child marriage, since the definition of trafficking in the Protocol (and the Act) precludes its more generalised application in the sphere of child marriage in which there is seldom transportation or the purposes of sexual exploitation of the victim (“trafficking means the recruitment, transportation, harbouring, transfer, receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, or fraud , of deception, of the abuse of power for the purposes of exploitation. Exploitation includes at minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”)

The CRC Committee has addressed substantial recommendations to Zimbabwe concerning improved measures to address trafficking,⁹⁷ including expanding access to education for girls and boys to address a root cause of trafficking. Child marriage is not referred to in the context of the trafficking recommendations, however.

95. As above, p. 10.

96. Section 3(7)(e).

97. CRC/C/ZWE/CO/2 para75 (a) – (g).

6.5. Sexual offences

The Criminal Law (Codification and Reform) Act (Cap 9:23) repeals the Roman- Dutch criminal law in this area. Section 70 of the Criminal Law (Codification and Reform) Act (Cap 9:23) provides that any person, who has sexual intercourse with a person below the age of sixteen (16) years with or without their consent, shall be charged with rape or aggravated indecent assault or indecent assault. This means that potentially, spouses in child marriages could be committing an offence under the penal law.

The remarks of the Attorney General alluded to earlier have sparked a debate and sowed some confusion about the ages relating to consent to sexual intercourse in Zimbabwe. Reports that girls aged 12 and over can consent to sexual intercourse lead to social media being engaged to the effect that the law should protect girls up to the age of 16, and they aver that the law should offer 'absolute protection' as it does to girls aged below 12.⁹⁸

Moreover, an amendment being debated at present which is included in the General Laws Amendment Bill which was tabled in Parliament on 8 May 2015 will decriminalise consensual sexual activity between persons aged between 12 and 16 years. However, this proposal is allegedly causing considerable public resistance.

In any event, the enforcement of statutory rape laws leaves much to be desired. News reports detail how two Bulawayo men aged 35 and 29 were acquitted of rape of a 15 year old, and that courts are increasingly treating the age of consent as 12. "Recent press reports show that when a magistrate has imposed a jail sentence on a man for having sex with a child who is under 16, that sentence has often been revised downwards on appeal.

Some perpetrators get away with community service or merely having to pay a fine.⁹⁹ Clearly this judicial ambivalence to the offence of statutory rape indicates the needs for much greater public awareness about the impact of early sexual debut, and highlights the patriarchal attitudes which predominate.

The Criminal Law (Codification and Reform) Act 23 of 2004 (as amended) prohibits procuring a person for unlawful sexual conduct, inside or outside of Zimbabwe, but prescribes somewhat less than stringent penalties of up to two years imprisonment. The Act also prohibits coercing or inducing anyone to engage in unlawful sexual conduct with another person by threat or intimidation, prescribing sufficiently stringent penalties of one to five years' imprisonment. Section 23 of the Criminal Code prohibits the sale of any person. Any person who procures a young person for "the purposes of engaging in unlawful sexual conduct with another person or with persons generally, whether inside or outside Zimbabwe; or to become a prostitute, whether inside or outside Zimbabwe; or to leave Zimbabwe with the intent that the other person may become a prostitute; or to leave his or her usual place of residence, not being a brothel, with the intent that he or she may become an inmate of or frequent a brothel elsewhere; shall be guilty of procuring and liable to a fine or imprisonment for a period not exceeding ten years, or both such fine and imprisonment".

Section 94 of the Criminal Law (Codification and Reform) Act (cap 9:23) proscribes forced marriage under the title 'Pledging of female persons'. Pledging a female for forced marriage or to compensate for the death of a relative or any debt or obligation is punishable under the Act, with penalties of up to two years' imprisonment.¹⁰⁰ Accomplices who are party to forced marriages may also incur criminal liability.

98. CRINmail 15 June 2015; see too Kuda Hove *The age of sexual consent* (copy on file with the author, June 2015. Hove avers that the law is in fact more nuanced than most commentators suggest: he says that "Section 64(2) [of the Penal Code] refers to sexual crimes committed to children between the ages of twelve and fourteen years, the Section says that a person accused of engaging in sexual intercourse or other sexual conduct with a young person above the age of twelve years but of or below the age of fourteen years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, but not with sexual intercourse or performing an indecent act with a young person or sodomy unless there is evidence that the young person was capable of giving consent to the sexual intercourse or other sexual conduct and gave his or her consent thereto", which means that a charge of sexual intercourse or other sexual conduct with a person between 12 and 14 years of age 'may' be done away with on the grounds that the young person gave their informed consent – Section 64(2), and that sexual intercourse or other sexual conduct with a person between 14 and 16 years of age amounts to the crime known as sexual intercourse or performing indecent acts with young persons and consent is not a defence – Section 70(2). This leads to a confusing state of affairs where the law states that on one hand children between the ages of 12 and 14 years of age can consent to sexual encounters but on the other hand states that children between the ages of 14 and 16 years of age cannot give consent and that is why consent cannot be relied upon as a valid ground of defence. A possible solution to this problem is to provide children between 12 and 14 years with the same protection as children in the 14 to 16 years age group by stating that consent is not a defence for any sexual encounter with a young person as defined in the Act.

99. CRINmail 15 June 2015.

100. The applicable Section reads in full as follows:

"94 Pledging of female persons:
(1) A lawful custodian or relative of a female person who:
(a) at a time when the female person is under the age of eighteen years, or without her consent, hands her over to another person as compensation for the death of a relative of that other person, or as compensation for any debt or obligation; or
(b) at a time when the female person is under the age of eighteen years, or without her consent, enters into an arrangement whereby the female person is promised in marriage to any man, whether for any consideration or not; or
(c) by force or intimidation compels or attempts to compel a female person to enter into a marriage against her will, whether in pursuance of an arrangement referred to in paragraph (a) or (b) or otherwise;
shall be guilty of pledging a female person and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding two years or both.
(2) Any party to an arrangement or marriage referred to in Subsection (1) may be charged as an accomplice to pledging a female person."

Section 68 of the Criminal Law (Codification and Reform) Act (cap 9:23) provides for the abolition of the spousal rape exemption in the laws of Zimbabwe: it reads that:

“It shall not be a defence to a charge of rape, aggravated indecent assault or indecent assault:

(a) that the female person was the spouse of the accused person at the time of any sexual intercourse or other act that forms the subject of the charge:

Provided that no prosecution shall be instituted against any husband for raping or indecently assaulting his wife in contravention of Section sixty-six or sixty-seven unless the Attorney-General has authorised such a prosecution”.

This is a positive development as regards the overall thrust of this report, that is the implementation of treaty body recommendations.

However, the fact remains that child marriage itself is not subjected to penal sanctions, unless the marriage is a forced marriage (which may be difficult to prove). The suitability of criminal sanctions remains to be discussed at the policy level, however.

6.6. Inheritance laws

The relevant laws governing this are the Administration of Estates Act (Cap 6:01), which governs division of assets in customary law marriages, the Deceased Estates Succession Act (cap 6:02) governing civil marriage, the Deceased Persons Family Maintenance Act (Cap 6:03),¹⁰¹ and the Wills Act (cap 6:06).

The Administration of Estates Act recognises unregistered marriages for purposes of inheritance in Section 68 (3) as follows: “A marriage contracted according to customary law shall be regarded as a valid marriage for the purposes of this part notwithstanding that it has not been solemnised in terms of the Customary Marriages Act (Cap 5:07) and any reference in this part to a spouse shall be construed accordingly.” At death of a spouse, this would mean that the widow or widows are entitled to get the house, household goods and contents. However patriarchy dictates that the relatives of the deceased man have to ‘confirm’ the existence of the customary law marriage. The wife who

has a marriage certificate simply produces it to get the death certificate. The greatest challenge women in unregistered marriages face is recognition as the surviving spouse. The ‘title’ is sometimes heavily contested either by many women amongst themselves (relatives often taking sides) or it pits the relatives of the deceased against the ‘wife’.¹⁰²

The Deceased Persons Family Maintenance Act (Cap 6:03) contains provisions against ‘property grabbing’: Section 10 (1) of the Act confers upon the surviving spouse and children the right to occupy any immovable property which the deceased had the right to occupy and which the surviving spouse or child was ordinarily occupying immediately before the death of the deceased, the right to use the household goods and effects, implements, tools and vehicles which immediately before the death of the deceased the surviving spouse or child was using; and the right to use and employ animals which immediately before the death of the deceased were being pastured or kept at the immovable property. It is a statutory offence to deprive children of these rights. This protects the deceased’s spouse and children from property grabbing. Section 2 provides that a ‘child’ in relation to a deceased “includes an adopted and an illegitimate child of the deceased”.

The 2013 Constitution of Zimbabwe provides in Section 26(d) that in the event of dissolution of a marriage whether through death or divorce, provision is made for the necessary protection of any children and spouses. Section 56 which prohibits discrimination is also relevant.

Although highly relevant to the issues of gender equality and now governed by additional Constitutional provisions, it is the view of this author that inheritance law reform is a step removed from legislative steps needed to reform legal provisions permitting child marriages, and therefore not a priority issue for law reform at this point. However, the rule that children born out of wedlock cannot inherit from their father is clearly discriminatory¹⁰³ and should be abolished at the earliest opportunity to fall in line with the constitutional injunction. Whether legislation on child marriage or marriage in general is the appropriate vehicle for this is, however, not clear: a more appropriate law to amend

101. This Act provides some protection for the needs of the family of the deceased who may be disadvantaged by the laws on intestate and testate succession. It applies to the estates of all people regardless of their type of marriage. The Act provides that any dependent of the deceased may make an application for an award of maintenance from the net estate of the deceased.

102. Chikwaru 2015, p. 17.

103. They are however entitled to maintenance from the deceased estate.

would be legislation affecting children's rights (which is also needed to harmonise the provisions of Zimbabwean domestic law with the CRC and ACRWC).

6.7. The Children's Act

A consolidated children's statute was adopted in 1971 and has been amended several times. The Act (Cap 5.06, the Children's Act) aims to "provide for the establishment of children's courts; to make provision for the protection, welfare and supervision of children and juveniles; to provide for the establishment, recognition and registration of certain institutions and institutes for the reception and custody of children and juveniles and for the treatment of children and juveniles after their reception in such institutions and institutes; to require the contribution by certain persons towards the maintenance of children and juveniles; to provide for the adoption of minors; and to provide for matters incidental to or connected with the foregoing".¹⁰⁴ The most recent amendments to the Act were effected in 2001.

The Act, however, defines a child as a person aged under 16 years;¹⁰⁵ a further definition of a young person is provided ("'young person' means a person who has attained the age of sixteen years but has not attained the age of eighteen years"). This split is in principal undesirable and contrary to the 2013 Constitution, as the constitutional position is a 'straight 18' one. The Children's Act also states that a 'legal guardian' includes the husband of a girl who is under 18 years of age. This implicitly supports child marriage as a legal institution in Zimbabwe. The provisions warrant amendment to ensure harmonisation with the Constitution and the recent raising of the minimum age of marriage to 18.

The Act defines a child in need of care with reference to a list of identifiable circumstances, but none are especially relevant to a child victim of child marriage. The closest is the reference to a child or young person who frequents the company of any immoral or vicious person or is otherwise living in circumstances calculated to cause or conduce to his seduction, corruption or prostitution; who is being maintained in circumstances which are detrimental to his welfare or interests; or a child or young person whose parent or guardian has given him up to another person in

settlement of a dispute in accordance with custom. Using these definitions to combat child marriage is somewhat of a stretch, however, and at minimum the definition of a child in need of care lacks the specificity needed to be useful in the context of child marriage.

The Children's Act establishes a Child Welfare Council which is intersectoral, and includes representatives of both government and civil society. The functions of the Council are:

- (a) to advise the Minister and any other person that the Council thinks appropriate on any matter relating to the welfare of children;
- (b) to monitor the overall situation of children in need of care and to try to ensure that their welfare and rights are advanced;
- (c) to promote and encourage the co-ordination of the activities of organisations which have as their object the promotion and protection of the rights of children;
- (d) to administer the Child Welfare Fund; and
- (e) to perform any other function that may be assigned to it by the minister.¹⁰⁶

The Children's Act also established specialised children's courts.¹⁰⁷ It deals with criminal offences against ill-treatment and neglect of children by their parents or guardians,¹⁰⁸ but a perusal of the various acts deemed to constitute ill treatment and neglect could not be construed to cover parental betrothal of their children or giving them out in marriage. Although the Act contains a Section on medical examination and treatment of children and young persons, it does not provide in any way for reproductive health matters, nor does it specify an age at which children can consent to medical treatment or access health services without parental consent.¹⁰⁹ The child labour provision¹¹⁰ seems principally focused on hazardous labour and equally not relevant to combating child marriage. Part IV of the Act deals with the removal of children into care where there is reason to believe that the child may be a child in need of care. Since the definition of a child in need of care does not include circumstances approximating child marriage, this Section is not applicable in the effort to combat child marriage.

104. See the Preamble.

105. Section 2 (the interpretation Section).

106. Part 1A, Sections 2A-C. This Part was inserted by amendment in 2001.

107. Part 2.

108. Section 7.

109. See in this regard Sections 129-134 of the South African Children's Act 38 of 2005.

110. Section 10A, inserted in 2001.

Section 7 criminalises the ill-treatment and neglect of children and young persons. Subsection 6 however provides that “nothing in this Section shall be construed as derogating from the right of any parent or guardian of any child or young person to administer reasonable punishment to such child or young person.”

Section 12 provides for the power of the court to order a parent or guardian of a girl, child or young person to exercise due care and supervision of the girl, child or young person. Subsection 1 provides that the Children’s Court may order the parent or guardian of a girl under the age of 18 years who is exposed to the risk of seduction or prostitution, or is living a life of prostitution, to exercise such due care and supervision.

In sum, the Children’s Act is presently ill-equipped to deal with the incidence of child marriage or its aftermath (ie responding to reported cases of child marriage and providing remedies for victims through the children’s court). There is reportedly a process of revision of the Act underway to bring it in line with modern child rights legislation as has been effected in numerous African countries (the latest being Benin in 2015). This process also needs to harmonise the envisaged law with the Constitution of 2013. The child law reform process should ideally be participatory (as in Namibia and Zanzibar) and involve all stakeholders. However, given that it has been mooted for some time, it does not seem to be occurring at the requisite pace, as is the case with the reform of marriage laws.

It is recommended that a national process towards developing a constitutionally compliant child law should be initiated with all stakeholders, including ordinary citizens and customary leaders, and that this endeavour be linked to specific timeframes.¹¹¹ Various supportive elements concerning child marriage should feature in the legislation including:

- the inclusion in the definition of a child in need of care of a victim of child marriage;
- steps that a children’s court can take to protect a child victim or potential victim of child marriage;¹¹² and
- orders that a children’s court can make regarding the dissolution of the marriage and the position of any children born of the marriage.

6.8. Guardianship of Minors Act (Cap 5:08)

This Act covers custody and access in addition to guardianship, so it is not well named. It covers parental rights and responsibilities in respect of these issues. Section 3 of the Act effectively provides that the father of children born in wedlock is their guardian. This runs counter to the equality provision in the Constitution as well as international human rights which require that men and women have equal rights and responsibilities over their children.

According to a recent report, Section 5(1) of the Act also violates the constitutional provisions on equality and the need to consider the best interests of the child. This is because it provides that “where either of the parents of a minor leaves the other and such parents commence to live apart, the mother of that minor shall have the sole custody of that minor until an order regulating the custody of that minor is made” by the court. In the allocation of custody and other aspects of parental responsibilities, the requirement of the CRC and the ACRWC is that of the best interests of the child, so these Sections need to be amended to give equal consideration to the rights and responsibilities of the father and mother of a child, with the overriding consideration being given to the best interests of the child. Section 5 (3) of the Act which gives the mother priority should also be reviewed.¹¹³

Orders confirming guardianship are the preserve of the High Court, which is inaccessible, expensive and out of reach of ordinary citizens. It has been proposed that powers to confirm guardianship should be devolved to lower courts.

Guardianship is relevant to child, early and forced marriage insofar as consent may be required from a guardian where an intended spouse is below the minimum age of marriage (Marriage Act) and in relation to customary unions. However, were the minimum age of marriage to be raised to 18 for all marriage systems, this Act would have little relevance to the child marriage conundrum and therefore its relevance would recede.

Nevertheless, the new Constitution now provides that a child’s best interests shall be paramount in every matter concerning that child. The application of this principle is however still restricted and the Guardianship of Minors Act must be amended to reflect the primacy of this principle.

111. The CRC Committee recently endorsed the need for a review of all child law.
112. See the discussion relating to the Domestic Violence Act below.

113. Chiwuro note 84 above, at p. 33.

6.9. Maintenance Act (Cap 5:09)

The Act provides in Section 11(d) that maintenance shall cease upon a child's marriage. Since the constitution now prohibits child marriage, this provision is constitutionally suspect. However, were the age of marriage to be raised for all purposes to 18 years, the necessity of amendment on an urgent basis would abate.

6.10. Domestic Violence Act (Cap 5:16)

Section 2 of this Act enacted in 2007 provides for who a complainant may be in terms an application for a protection order:

“complainant’, in relation to a respondent, means:

- (a) a current, former or estranged spouse of the respondent; or*
- (b) a child of the respondent, whether born in or out of wedlock, and includes an adopted child and a step-child; or*
- (c) any person who is or has been living with the respondent, whether related to the respondent or not; or*
- (d) any person who:*
 - (i) co-habits with the respondent; or*
 - (ii) is or has been in an intimate relationship with the respondent;*

who applies for a protection order or in respect of whom a protection order may be issued.”

Other persons, termed ‘complainant’s representatives’, may also lodge an application on behalf of a complainant, notably a police officer, a social welfare officer, an employer of the complainant, a person acting on behalf of a church or other religious institution or a private voluntary organisation concerned with the welfare of victims of domestic violence; a relative, neighbour or fellow employee of the complainant; a counsellor; or such other class of persons as the minister may appoint by notice in a statutory instrument.

Amongst the acts described as constituting domestic violence in Section 3(l),¹¹⁴ the Domestic Violence Act provides protection to children from specific harmful cultural and social practices. Section 3 of the Act prohibits practices which are detailed as forced virginity testing, forced marriages, child marriages, the pledging of girls to relatives of a deceased person for purposes of appeasing such deceased person’s avenging spirit, forced wife inheritance, female genital mutilation and sexual intercourse between fathers-in-law and newly married daughters-in-law. The explicit mention of child marriage as a form of domestic violence is novel and indicative of an awareness of the heightened risk of violence for children who are victims of child marriage. The Act continues to criminalise certain acts of domestic violence:

Section 4 provides as follows:

- (1) Subject to Subsection (2), any person who commits an act of domestic violence within the meaning of Section 3 shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.
- (2) The following acts of domestic violence shall not constitute an offence:
 - (a) emotional, verbal and psychological abuse referred to in Section 3(1)(c) and defined in Section 3(2)(c)(i), (ii), (iii) and (iv); and
 - (b) economic abuse referred to in Section 3(1)(d) and defined in Section 3(2)(d)(i) and (ii).

From the above, it is apparent that via the circular mechanism of the Domestic Violence Act, child marriage has in fact been illegal in Zimbabwe since 2007. However, it has at the same time been open to a defendant to raise the defence that there is no such thing as child marriage under customary law due to the absence of a specified minimum age of marriage in the Customary Marriages Act, or that the child bride married by civil rites had done so in compliance with the Marriage Act.

Nevertheless, the above provisions are indicative of a consensus (at least amongst legislators) that child marriage is such an egregious violation of rights that it constitutes not just an act of domestic violence, but one which is regarded as a criminal offence.

114. This is a finite list.

The primary remedy provided for in the Act is the acquisition of a protection order (in the absence of criminal sanctions). This order may prohibit the respondent from committing or enlisting the help of another person to commit any act of domestic violence; direct the respondent to stay away from any premises or place where the complainant resides, or any part of such premises or place; prohibit the respondent from entering or approaching any place or premises where or at which the complainant works, attends or frequents, or any part of such premises or place; direct the respondent to pay emergency monetary relief in respect of the complainant's needs and those of any child or dependant of the respondent, including household necessities, medical expenses, school fees and mortgage bond or rent payments; award the temporary custody of any child or dependant of the respondent to any person or institution and regulate rights of access by the respondent to such child or dependant; direct the respondent to afford the complainant or any child or dependant of the complainant access to their place of residence and use of the facilities associated; direct the respondent to pay adequate compensation in the prescribed manner for any personal or physical injury, pain, trauma or loss suffered by the complainant; direct that the complainant or the respondent or both undergo counselling by a counsellor with the respondent paying all the necessary expenses; generally, direct the respondent to do or omit to do any act or thing which the court considers necessary or desirable for the well-being of the complainant or any child or dependant of the complainant.¹¹⁵ Contravention of the provisions of a protection order, which is generally valid for 5 years unless revoked or varied, is an offence.

The Act contemplates that the police have a major role to play in enforcement of the Act, and requires a specific duty officer/desk at each police station (Section 5). The police are duty bound to inform a victim of her right to lodge a criminal complaint.

The Anti-Domestic Violence Council is established in terms of Section 16 of the Act. The functions of the Anti-Domestic Violence Council include dissemination of information, research, provision of services necessary to deal with all aspects of domestic violence, and promotion of the establishment of safe houses for the purposes of sheltering victims of domestic violence including children pending the outcome of court proceedings under this Act.¹¹⁶

It is proposed that from a legislative perspective, the Domestic Violence Act provides a useful tool in addressing child marriage violations where they occur. Police training on responding to allegations of both domestic violence and child marriage as a manifestation of domestic violence would be highly desirable, since police are present even in rural areas.¹¹⁷

Also, for advocacy purposes, child marriage has already in recent times been addressed by the legislator, and this can be used in lobbying parliamentarians who may display reluctance to accede to an overall age of consent of 18 to all marriages.

However, it must at the same time be pointed out that there are significant barriers to the enforcement of the provisions of the Domestic Violence Act.¹¹⁸ These include religious, cultural and economic reasons which prevented most victims of domestic violence from seeking legal recourse. Other studies point to a lack of awareness of the law,¹¹⁹ severe dearth of skills and expertise in the areas of law enforcement in rural areas, the socially and economically constructed dependency of women on their men, the (unaffordable) costs of transport to police stations to report domestic violence, etc. Key to addressing the implementation gap is reducing women's economic dependency and changing patriarchal mindsets.

115. Section 11.

116. Government of Zimbabwe initial report to the ACERWC p. 19.

117. However the domestic violence victims are not convinced. According to a Musasa study reported upon (Musasa is an NGO established by the Women's Coalition of Zimbabwe), the respondents called for increased DVA awareness (22 per cent), while 19.5 per cent want police officers to be impartial. 12.2 per cent urged the government to stop corruption in the system, another 12.2 per cent wanted to see more commitment from the police while 9.8 per cent stated that there must be less paperwork to shorten the process. 7.3 per cent highlighted that acquiring a protection order should be done for free, while 4.9 per cent stated that there is a need for legal representation for women. Additionally, another 4.9 per cent indicated that there should be compensation for victims and the remaining 4.9 per cent indicated that women should also be allowed to speak in court and withdrawals should not be allowed (2.4 per cent). (As reported on www.allafrica.com 14 December 2012).

118. Chireshe 2015.

119. Chuma and Chazovachii 2012, p. 1-18.

6.11. Child labour

Zimbabwe's legal framework, encompassing the Children's Act and the Labour Act, protects children from child labour but there is inadequate enforcement of the law which leaves many children vulnerable to child labour. UNICEF reported over half a million cases of child labour and that 13 per cent of children aged 5-14 were engaged in child labour in 2009.¹²⁰ Most of the children engaged in both economic and non-economic child labour came from households with low income and broken families due to HIV and AIDS. This may not be a priority issue at the moment, however, but will fall to be considered in the revision of the Children's Act.

6.12. Birth and Deaths Registration Act (Cap 5:02)

The Act makes the notification and registration of all births which occur in Zimbabwe after the 20th of June 1986 compulsory. This has however not resulted in the registration of all such births. In view of the Constitution which now provides that "every child has the right to be given a name and family name and in the case of a child who is born in Zimbabwe; or born outside Zimbabwe and is a Zimbabwean citizen by descent; to the prompt provision of a birth certificate"; the Act must be amended to reflect the state's constitutional responsibility as well as the rights of the child. Many aspects of the Act reflect discrimination between children born in and out of wedlock and require rectification. However, as this does not impact child marriage directly, it is contended, and therefore may not be a priority area for reform. Birth registration is provided free of charge to children below the age of 6 years.

However, the Act does need to be reviewed for compliance with the African Committee of Experts General Comment No. 2 on the implications of Article 6 of the Charter (discussed in the separate report on international law and policy). It remains a recommendation of this report therefore.

Various measures to improve the rate of birth registration have been put in place, in line with the African Union drive to increase the rate of birth registration on the continent. These measures are described in the GoZ initial report to the African

Committee of Experts on the Rights and Welfare of the child. Government computerised the processing of all vital civil registration events. The Registrar General has computerised 63 offices throughout the country as at 17 July 2013. Government has moved from analogue to digital communication to speed up the processing of vital events, and reports constructing modern district registry facilities to provide a conducive environment to serve the public.¹²¹

The CSO report to the ACERWC raises a series of concerns about both implementation of birth registration and the need to amend the Act to bring it in line with the Constitution. These recommendations include also:

- The GoZ should invest in a continual, national awareness-raising campaign on the importance and process of birth registration.
- The GoZ should increase staffing at registry offices as well as invest in training such personnel in client service.

As already suggested, the birth registration drive should be harnessed in the quest to ultimately improve marriage registration, and it is proposed that registry officials be drawn into this as early as possible: training and advice on detecting child marriage (eg when babies are brought in to be registered by teenage mothers) would be a starting point.

6.13. Citizenship of Zimbabwe Act (Cap 4:01)

This Act recognises child marriage; contrary to the constitutional provision that only those who have attained the age of eighteen years can found a family. It states that "a person shall be regarded as being of full age if he has attained the age of eighteen years or if, being under that age, he is or has been married".¹²² The Act also requires revision to eliminate discrimination between legitimate and illegitimate children and to bring it in line with the non-discrimination provision in the Constitution of 2013. However, again this latter issue does not impact directly upon the child marriage question and therefore need not enjoy the same level of priority attention in the law reform programme.

120. UNICEF 2009.

121. Government of Zimbabwe initial report to the ACERWC p. 26.
122. Section 2.

PART 7: OTHER POLICIES AND PROGRAMMES

7.1. Education

According to the Government of Zimbabwe's report to the ACERWC, Section 75 of the new Constitution further provides for the right to education. The government's objective to make primary education free was carried through for a period of approximately ten years after independence. The government reported that this could not be sustained due to inadequate resources, as well as compliance with the Economic Structural Adjustment Programme (ESAP) that was undertaken in 1992. The Social Dimension Fund was then set up to provide a safety net for vulnerable children. The Education Act of 2004 was also amended in 2006 to provide that no child shall be refused admission to any school and that primary education for every child shall be accessible. The amendment further provides that tuition fees shall be maintained at the lowest possible level while at the same time maintaining the high standards of education.

In order to make education accessible to the majority of learners, the amended Education Act enabled the government to regulate the charging of fees and levies. Accordingly, it is mandatory for every responsible authority to first apply for approval before charging or increasing any fee or levy.¹²³

According to commentators, in reality, prohibitive costs of education, including developmental levies are a significant barrier to access to education.¹²⁴ The Basic Education Assistance Module (BEAM) is now the programme providing available support to increase access to education. BEAM aims to offset costs for orphans and vulnerable children (OVCs). The main challenge facing BEAM relates to financial constraints. The demand for educational assistance outweighs the

funds available. Also, the government notes that the late disbursement of BEAM funds has affected the administrative functioning of schools

The GoZ report alludes to high dropout rates from school, citing a variety of reasons, including poverty and illness. Child marriage accounted for one per cent of the dropout rate in 2006. The CSO report to the ACERWC noted that an evaluation of the Programme of Education Support "found that almost 40 per cent of children of school going age dropped out of school between 2007 and 2009. The four major reasons for adolescent girls dropping from school are lack of school fees, early pregnancy, child marriage and long distances to school".¹²⁵

Pregnant girls also used to be expelled from schools. However in 1999, the government changed the policy and allowed the girls to go back into the formal education system after delivery. This is accompanied by counselling for the girl and the responsible boy, if he too is a schoolboy, as well as their parents.¹²⁶ The government has also revealed that a programme of second chance education has commenced for school dropouts, where the focus of the initiative is not just academic, but also takes into account technical and vocational training to equip the children for life after they have left school. However, the demand for educational financial assistance outweighs available funding.

In its Concluding Observations to Zimbabwe, many recommendations concerning the right to education were made,¹²⁷ including addressing barriers to girls' education in the context of early marriage, and taking steps to retain girls in schools. The GoZ should analyse these recommendations carefully and devise strategies over the medium term to effect the required improvements.

123. Government of Zimbabwe initial report to the ACERWC p. 50.
124. Mapuva 2015

125. Complementary report to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Child Rights Coalition of Zimbabwe, 2014 (copy on file with the author), p.28 (hereafter CSO report to the ACERWC).

126. Government of Zimbabwe initial report to the ACERWC p. 50.
127. CRC/C/ZWE/CO/2 para 69 (a)-(h).

As a key element of the overall strategy to combat child marriage, enhanced effort to implement free education should be advocated, especially now that a more favourable economic climate might be developing.

7.2. Gender Policy

In 2004, the government adopted a National Gender Policy (NGP) to mainstream gender into all sectors and promote the equal advancement of women and men. The Gender Implementation Strategy 2007-2010 was then developed.¹²⁸ The policy was reviewed to further align it with international and regional human rights instruments, notably the 2008 SADC protocol, and a new policy for the period 2013-2017 was adopted in April 2013.¹²⁹ The NGP is underpinned by principles of gender justice, equality, integration and inclusiveness. Eight priority areas were identified as policy goals, namely:

- i. Gender, constitutional and legal rights;
- ii. Gender and economic empowerment;
- iii. Gender, politics and decision making;
- iv. Gender and health;
- v. Gender, education and training;
- vi. Gender-based violence;
- vii. Gender and environment; and
- viii. Gender, media and ICTS.

The NGP embraces a number of policy strategies contained in these eight thematic areas. Of principal concern for this report is the goal of harmonisation of the gender equality provisions of the Constitution in a legislative reform programme. Amongst the strategies identified to achieve this policy strategy are the following:

i. Simplify, translate in all languages, disseminate and popularise the gender justice components of the new Constitution and other relevant policies and legal provisions.

ii. Conduct a gender audit of all existing relevant laws, identify gaps in line with the new constitutional provisions, and recommend areas for review or enactment of new instruments.

iii. Advocate for the enactment of new laws, and/or support any efforts towards enactment of laws needed to deliver the gender equality provisions as provided in the new constitution.

iv. Advocate for the establishment of institutions and/or support any efforts towards the establishment of institutions and other mechanisms needed to deliver the gender equality provisions as provided in the new constitution.

viii. Identify harmful laws, cultures and traditional practices that infringe on women's and girls' rights and that impede the gender equality objectives and lobby for their elimination."¹³⁰

Another relevant policy objective is improving gender sensitivity in health service delivery (Objective 4). Amongst the highlighted goals are increased advocacy for budget allocation for financing gender-responsive policies and programmes in the health sector and in national HIV and AIDS policies and strategies; increased advocacy for gender-responsive mechanisms to ensure universal and affordable access to health services for all and to support affirmative action initiatives to address areas that have sharp gender disparities; and additional support to efforts to develop relevant and robust national policies and strategies for addressing high levels of maternal, infant and child mortality.¹³¹

Under the rubric 'Gender education and training', the NGP identifies, as a policy objective which is relevant to this report, advocacy and support for efforts to design and implement programmes aimed at creating an enabling environment for the retention of girls at secondary school levels, particularly in rural and resettlement areas.¹³²

Also relevant is Policy Goal 6, which concerns the reduction and elimination of gender-based violence (GBV). Specific strategies are set out in this regard. The Ministry of Women's Affairs, Gender and Community Development is accorded a coordination and oversight role in the implementation of the NGP. A mid-term review of the policy was scheduled for 2015; this presented a suitable opportunity to review progress made, or lack thereof, in the law reform process to eliminate gender disparity which was identified as a key policy objective two years previously.¹³³

128. CEDAW Concluding Observations to Zimbabwe, see footnote 13.
129. Government of Zimbabwe 2013.

130. National Gender Policy 2013, p. 22.
131. National Gender Policy 2013, p. 25.
132. National Gender Policy 2015, p. 26.
133. See also in general UNICEF 2014.

The 2016 Concluding Observations of the CRC Committee, which have already been alluded to, contain numerous recommendations pertinent to gender equality in Zimbabwe, indicating heightened concern for discrimination against girls, both *de lege* and *de facto*.

7.3. Girls' and Young Women's Empowerment Framework

In its 2013 report to the ACERWC, it was reported that the Government of Zimbabwe was in the “process of developing a Girl/Young Women Empowerment Framework in a bid to enhance equal participation of women and men in national development processes”. The framework, adopted in October 2014, is based on the realisation that equal participation of women cannot be achieved if discrimination, which starts at the earlier development stages of the girl child's life, is not adequately addressed. The major objective of the framework is to lay the foundation for girls' and young women's empowerment through:

- Equal access to education, skills development and training, food and nutrition, integrated comprehensive health and protection services;
- Improved access to economic resources and services for sustainable livelihoods;
- Equal access to secure formal and informal employment and viable business opportunities; and
- Effective participation in decision making and leadership at household, community and societal levels.¹³⁴

The framework provides guidance for all stakeholders involved in girls' and young women's empowerment. It seeks to:

- Eliminate all forms of discrimination against the girl child;
- Eliminate negative cultural attitudes and practices against girls and young women;
- Promote and protect the rights of the girls and increase awareness of her needs and potential;
- Eliminate discrimination against girls in education, skills development and training;

- Eradicate violence against the girl child and young women;
- Promote the girl child and young women's effective participation in decision making and leadership at household, community and societal levels; and
- Strengthen the role of the family in improving the status of the girl child and young women.

The framework based on the realisation that has been found that empowering girls and young women with education and opportunities for participation can have a profound effect on their own well-being, and that of their family. For example, the framework records that the Zimbabwe Demographic Health Survey (ZDHS) 2011-2012 found that: “the child mortality rate is lower in families where the mother understands that family violence is never justifiable ... Women who participate in household decision making are more likely to receive services that support a safe pregnancy... Girls who finish secondary school are less likely to marry whilst they are still a child... Women with more than a secondary education are more likely to be employed”.¹³⁵

Amongst others, the framework advocates a “participatory, all inclusive, empowerment approach” which recognises that the involvement of boys and men will help to ensure the success of the transformational process of the household, society and institutions. Such an approach also aims to ensure collaboration across ministries, sectors, communities and faiths.

A further defining principle is that of age-appropriate interventions which take into account that the different needs and capacities among young girls, adolescent girls and young women of varying ages are critical to the successful implementation of any programme.

The framework, launched by the government and the Ministry of Women's Affairs, Gender and Community Development,¹³⁶ sets clear targets for an increase in the percentage of girls and young women's access to sexual and reproductive health services; an increase in the percentage of girls' participation in decision making processes; the achievement of parity in all levels of education; and an increase in the rate of reporting incidents of violence against girls from 3 per cent to 50 per cent by 2020.¹³⁷

134. Government of Zimbabwe initial report to the ACERWC, para 4.1.3.1.

135. Government of Zimbabwe, 2014. Girls and Young Women's Empowerment Framework 2014, p. 8.

136. www.togetherforgirls.org/safe/?p=464 [Accessed 5 March 2016]

137. UN Zimbabwe (13 October 2014).

Several government ministries are identified for the specific actions identified in the framework for implementation of the empowerment strategy. Amongst the actions identified in the framework which are relevant to this report are: engaging the judiciary and the police on the strict enforcement of laws protecting girls and young women from violence, abuse and exploitation; providing comprehensive one-stop support services to survivors of violence; setting up effective systems for reporting cases of girls'/young women's abuse; facilitating the education of girls and young women on their rights and responsibilities; strengthening and supporting the establishment of girls' and young women's one-stop, friendly, integrated sexual and reproductive health centres, rolling out the Adolescent Reproductive Health Strategy in all clinics and health centres; amending the inheritance laws to address conflicts between the Constitution and the country's international obligations;¹³⁸ and reviewing all laws that discriminate against girls and young women.

Directly relevant to this brief are the goal to conduct campaigns against negative and harmful religious and cultural beliefs and practices such as forced and early marriages;¹³⁹ advocacy for effective enforcement of laws against child marriage; and the identification and training of peer educators and counsellors for girls and young women at the community and institutional levels.¹⁴⁰ The lead ministry for these activities is the Ministry of Women's Affairs, Gender and Community Development.

These aspirations are laudable and are well in tune with what is needed to address both attitudinal change (eg patriarchy), as well as the concrete delivery of services (eg sexual and reproductive health services as a necessary corollary to efforts to end child marriage). However, the challenge lies at the level of implementation – to what extent, and with what reach and effect, is the policy going to have an impact on the ground?

7.4. Child Policy

According to the Zimbabwe country report submitted to the African Committee of Experts on the Rights of the Child, the government is in the process of developing a child rights policy aimed at improving coordination of implementation, monitoring, evaluation and reporting on international and regional children's rights instruments. This process started in 2011. The CSO report advocates that "[t]he GoZ should finalise the Child Rights Policy to clarify on the roles and responsibilities of the ministries and departments involved in child protection and welfare."¹⁴¹

In its list of issues developed by the ACERWC to which Zimbabwe was required to respond, the following was asked regarding the child policy:

"The Committee notes that the Zimbabwe child rights policy is still in draft form since 2011. This has delayed the synergy among the different ministries and the establishment of a central coordinating organ. The committee, therefore, would like to get concrete information on what steps the Government of the Republic of Zimbabwe has taken to accelerate the adoption of the policy and the creation of continued collaboration among the various ministries. The state party should also provide information on the extent to which the policy has been harmonised with the constitution in light of the Charter."¹⁴²

The question was not answered. This leaves scope to determine that progress has not been made.

Also, according to the GoZ initial report to the ACERWC, a National Plan of Action for Children was developed in 1992. There is no indication of the extent to which the plan has been regularly updated to reflect current realities and shifting concerns, such as the fiscal crisis of 2008. However, the CRC Committee no longer recommends countries to embark on national plans of action, and for this reason no recommendations concerning this are proffered here. The government does record that there is a National Programme of Action for Children (NPAC) which coordinates activities of the government and organisations which have, as their objective, the promotion and protection of the rights of children.¹⁴³

138. This is seen as part of economic empowerment (Objective 2): Girls' and Women's Empowerment Framework, p. 26 (Government of Zimbabwe 2014).

139. The Ministry of Health and Child Care (MOHCC) is also tasked with carrying out campaign activities on negative cultural beliefs and practices under strategic objective 4 (To provide and make accessible to girls and young women's cultural and religious sensitive sexual and reproductive health services including counselling and life skills).

140. Government of Zimbabwe 2014. Girls' and Women's Empowerment Framework, p. 28.

141. p. 2. The CRC Committee also urged Zimbabwe to finalise the child policy in its Concluding Observations of January 2016.

142. Government of Zimbabwe written replies to the ACERWC, April 2015, copy on file with the author.

143. Government of Zimbabwe initial report to the ACERWC p. 19.

However, the speedy finalisation of a child rights policy focusing on co-ordination, as highlighted by the GoZ in its initial report to the ACERWC, would be a welcome step in the on-going process of the implementation of children's rights across government departments and organs of civil society. This is endorsed by the CSO report to the ACERWC which advocates that “[t]he GoZ should finalise the Child Rights Policy to clarify on the roles and responsibilities of the ministries and departments involved in child protection and welfare.”¹⁴⁴

7.5. National Youth Policy

In 2013, the government launched the National Youth Policy (NYP) which provides for the empowerment of youth by creating an enabling environment and marshalling resources necessary for undertaking programmes to fully develop the youth in all spheres of life. This can be an important adjunct in the creation of alternatives to child marriage, especially by providing vocational training and employment alternatives to young people who would otherwise see marriage as the only viable option.

7.6. Orphan Care Policy

This policy provides guidelines on the protection and upkeep of orphaned children. It aims at protecting children through a six tier system which provides that the child should be put into the custody of, in order of priority: the nuclear family; the extended family; the community; foster care; adoption; and lastly institutionalisation. Through the National Action Plan for Orphaned and Vulnerable Children (NAP OVC), the government caters for orphans and vulnerable children by providing school fees, health care, food and accommodation, psychosocial support, education, nutrition, livelihoods and birth registration. The vision of the programme is that, by 2020, all children in Zimbabwe will live in a safe, secure and supportive environment that is conducive to child growth and development.

7.7. Cash Transfer Programme

The Harmonised Social Cash Transfer Programme (HSCT) is a key programme pillar of the revised NAP OVC 2011-2015 and its accompanying Child Protection Fund (CPF). The programme of support is a pooled funding mechanism managed by UNICEF in partnership with the Ministry of Labour and Social Services (MOLSS) which seeks to address inequities through a comprehensive child protection and social protection approach to vulnerable children and families. It was formulated, as one of its main pillars, to support the Department of Social Welfare to design a national government owned and coordinated cash transfer programme which targets labour-constrained food poor households through a clear targeting, monitoring and evaluation and implementation strategy. By implementing this programme, the CPF aims to reduce the household poverty of approximately 55,000 extremely poor households, including those with orphans and other vulnerable children. The cash transfer programme will be implemented in all ten provinces of Zimbabwe, covering one district per province with a total population of approximately 231,657 households (according to the 2002 census).¹⁴⁵

The CSO report to the ACERWC argues that the support of USD20 per month given to families under the Social Welfare Assistance Act is not adequate and not accessible to all those who are in need of such assistance, particularly those from rural areas who would have to spend more money travelling to district offices where the Department of Social Welfare is situated.¹⁴⁶

As social cash transfer schemes are important tools in fighting extreme poverty (one of the drivers of child marriage), and keeping children in school, continued expansion of the HSCT programme must be advocated as one strategy to address child marriage over time, with priority given to rural areas.

144. CSO report to the ACERWC p. 5.

145. Government of Zimbabwe initial report to the ACERWC p. 47.
146. CSO report to the ACERWC p. 18.

7.8. Education policy circulars

The Girls' and Women's Empowerment Framework highlights the critical role of education for girls. It records that *"(i)n 2011, the World Bank noted that over their life time, African girls who completed primary school contributed additional outputs between 13 and 25 per cent of the national GDP. If they completed secondary school, this output increased by GDP growth rates of between 0.5 to 1.0 per cent annually for the next 45 years. The same report found that women who were not teenage mothers had lifetime incomes equivalent to between 25 and 30 per cent of the annual GDP"*.¹⁴⁷

The GoZ promulgates policy circulars aimed at regulating and promoting access to education. The Basic Education Assistance Module (BEAM) was launched in 2001 as a social safety net paying levies, school and examination fees for children from disadvantaged families. BEAM is a national programme through which the government provides financial assistance to children who are struggling to attend school, in particular, orphans and vulnerable children. It is one of the government's social protection measures provided under the Enhanced Social Protection Programme. The primary objective of BEAM is "to reduce the number of children dropping out of school, and reach out to children who have never been to school due to economic hardships". Its main development objective is to prevent irreversible welfare losses for poor households who resort to withdrawing children from school in response to increasing poverty.¹⁴⁸

However, the CSO report (at p. 2) records that "The Director of Labour and Social Welfare informed the Parliamentary Portfolio Committee on Public Service and Labour that whereas the GoZ intended to fund 750,000 primary and 250,000 secondary school pupils in 2014 through the BEAM, the programme was allocated USD15 million. This is enough to support 83,000 secondary school pupils at a cost of USD180 per term, leaving out the rest of the intended children".¹⁴⁹ The GOZ argues, however, that this is due to budgetary constraints which prevented further support to more pupils.

Another potentially relevant circular is No. 35 of 2001 which grants leave to girls who fall pregnant in primary and secondary schools and allows their re-enrolment after delivery. Other potentially relevant education initiatives include the Education Transition Fund (ETF), where the government provides textbooks and learning materials in core subjects for all primary and secondary school children. This resulted in a very substantial reduction of the backlog in textbooks. However, the recurrent budget needs to provide for a continuation of this provision to sustain the one-to-one ratio, replace textbooks and expand to more subjects.

In order to improve the quality of education in the rural areas, the government introduced the Rural Electrification Programme which benefited 5,158 schools as of June 2011.

Zimbabwe has embarked on an educational curriculum review to respond to the changing economic, political, social-cultural context. The review is informed by three pillars, one of which is gender sensitivity.

7.9. National Adolescent Sexual and Reproductive Health Strategy 2010-2015

Key interventions of the above strategy include training of service providers (nurses and peer educators), establishment of youth-friendly corners in selected health institutions, and the provision of contraceptives. As this strategy is coming to an end, a new strategy for expanding adolescent sexual and reproductive health services should be under development, as part and parcel of the fight to combat child marriage, and as part of the service delivery paradigm to already married girls.

7.10. Cultural values and traditions

In 2004, the government developed a National Cultural Policy with the main objective of promoting cultural diversity through electronic, print media, and some performances and celebrations. The policy also seeks to provide for the development and promotion of cultural activities in schools and afford pupils access to cultural education. The policy acknowledges that youth and children are a mirror of society in that the nation

147. Government of Zimbabwe 2014, p. 10.

148. Government of Zimbabwe initial report to the ACERWC p. 48.

149. CSO report to the ACERWC p. 7.

sees its achievements and its potential for the future in its own children. The Cultural Policy seeks to promote positive cultural practices. It obliges the government to facilitate the development of culturally-based strategies aimed at eliminating ignorance among youth relating to sexuality, domestic violence, sexual abuse and rape. The government must also ensure that the girl child is not disadvantaged by cultural practices, such as early marriage and being the sole care providers within the family.

Religious beliefs and practices, particularly of some apostolic sects, undermine the exercise of girls' and young women's rights in choosing the appropriate time and person to engage in marriage. Engagement with apostolic sects around religious beliefs which support child marriage is part and parcel of the targeted interventions recorded by the UNICEF Zimbabwe country office in its 2014 Gender Review Report.¹⁵⁰

Cultural considerations also inhibit child participation. There still exist cultural and traditional values which tend to limit the participation of children and continuously condemn children to subservient and passive roles in families and communities. Child participation, therefore, remains a contested area requiring sustained intervention starting at the family level right through to the governance processes and structures.¹⁵¹

7.11. Key conclusions relating to policies

Opportunities

- Much of the policy framework is adequate, although resourcing remains a big challenge;
- Gender issues have been well articulated in policy and strategic plans, including for girls' empowerment;
- Child marriage interventions feature prominently in articulated policy in various domains.

Challenges

- The process of developing national child policy is not complete;
- Zimbabwe has been struggling to implement free education;
- A new Adolescent Sexual and Reproductive Health policy must be drawn up as the current one ended in 2015.

150. UNICEF 2014, p. 48.

151. CSO report to the ACERWC, p. 7.

PART 8: ACTORS AND ROLE PLAYERS

8.1. The Gender Commission

The new Constitution provides for the establishment of the Gender Commission to monitor issues concerning gender equality; to investigate possible violations of rights relating to gender; and to conduct research into issues relating to gender. A Bill to establish the Gender Commission was tabled in 2014 and debated in Parliament in February 2015. Concerns have been expressed about provisions which seem to limit the functional independence of the Commission.¹⁵² As at September 2015, the Bill had not been finalised as law.¹⁵³ However, on 30 June, a nine-member Commission was appointed by the President, in accordance with the applicable Sections of the Constitution, and sworn in during September 2015. This body has the potential to become an important voice in the fight against patriarchy and other cultural values which sustain child marriage.

8.2. The Zimbabwe Law Development Commission

The Zimbabwe Law Development Commission resides under the Ministry of Justice, Legal and Parliamentary Affairs. It is dependent on Parliament for the allocation of funds. From the website of the Law Development Commission, it would appear to be understaffed as the position of principal law officer, senior law officer and state counsel are indicated as being vacant.¹⁵⁴

One of four departments in the attorney general's office is the Department of Legal Drafting, which is responsible (*inter alia*) for drafting bills in line with instructions from ministries, providing advice on drafting Bills to ministries and government

departments, and attending cabinet committee meetings when bills drafted by the division are being considered.¹⁵⁵

Marriage law reform was mooted by the Ministry of Justice in the second half of 2011.¹⁵⁶ It has yet to materialise in the form of a draft bill available for public comment. As previously mentioned, the General Law Amendment Bill which was tabled on 8 May 2015 does not contain any amendments to marriage laws or children's law, contrary to the assertions of the GoZ during the hearing of the initial report of Zimbabwe to the ACERWC earlier in 2015. Whether there is a further/different General Laws Amendment Bill in preparation which will cover these issues could not be definitively ascertained.

It appears, nevertheless, that all available resources should be harnessed to assist in the drafting of new marriage laws, given the apparent understaffing of government legal departments. Hence consultants could be employed and CSOs approached to join forces and take on specific Sections of its drafting – borrowing or drawing upon other country's legislation where appropriate.

8.3. Co-ordination and sexual violence

The Protocol on the Multisectoral Management of Sexual Violence was revised in 2012 in a process led by the Judicial Services Commission. The Protocol promotes a coordinated and integrated approach to sexual abuse and has been expanded to include girls and women – who share the brunt of sexual violence. The Protocol ensures that necessary action and referrals are made where survivors have experienced

152. Newsday (15 February 2015).

153. Her Zimbabwe (July 2012).

154. www.justice.gov.zw/index.php/law-development-commission?showall=&start=1 [Accessed 31 August 2015]

155. www.justice.gov.zw/index.php/attorney-general-s-office/20-departments/attorney-general-s-office/5-division-of-legal-drafting?showall=1&limitstart=1 [Accessed 21 March 2015]

156. Ndhlovu-Bhebhe (no date).

physical and emotional abuse.¹⁵⁷ It outlines the roles and responsibilities of various duty bearers, including the Zimbabwe Republic Police Victim Friendly Unit (VFU). The Protocol includes a referral pathway for reported incidents. Of note for the purposes of interventions related to child or forced marriage, the Protocol specifies that victims may report to any police station at any time. No victim may be turned away by the VFU, even where a matter is alleged to have occurred in another jurisdiction. The receiving officer must deal with the case as if the offence occurred in their jurisdiction for the purposes of opening a docket and ensuring appropriate medical care.

It is further specified that all sexual violence and abuse, and all domestic violence cases, should be investigated by a VFU officer, and investigations must not be unnecessarily delayed for any reason. Where an alleged perpetrator lives in the same home or community as a victim, it is preferable for the victim to be supported to remain in their home, according to the Protocol. All allegations of sexual violence or abuse or domestic violence must be investigated and where there is sufficient evidence the matter should be taken to court. The VFU officer should also support the victim to access other relevant services if required. The roles and responsibilities of ward and district community development officers are also spelt out.

If VFUs are to play a role at the frontline of reporting and investigation into incidents of child marriage, these are important guidelines to build on and mainstream in relation to reported instances of child marriage. However, it is notable that the VFUs also suffer from a lack of resources – human, financial and physical.¹⁵⁸

A child is defined as any person under 18 years of age for the purposes of the Protocol. Civil society has raised concerns that, whilst the multisectoral approach is pertinent in the fight against sexual abuse of children, there is limited awareness and implementation of the Protocol on the Multisectoral Management of Child Sexual Abuse which is unavailable to some of the critical players who should be involved in its implementation.¹⁵⁹ A recommendation emanating from this concern is that enhanced efforts to train stakeholders and disseminate the Protocol should be undertaken.

8.4. Child Protection Committees and child participation structures

Child Protection Committees (CPCs) have been established throughout the country to encourage child participation at all levels. They are additionally tasked with: driving the implementation of NAP II; mobilising resources and creating synergies with other related programmes; advocating with local authorities, government institutions, the private sector and donors to prioritise commitment of resources to NAP II activities, and ensuring close collaboration among stakeholders, as well as overseeing the implementation of OVC grants.

The Zimbabwe Youth Council, established in 1997, coordinates, supervises and fosters the activities of national associations and clubs or organisations from grassroots to national level. It also facilitates youth participation in key national and international events and is the interface between the government and the youth. The Zimbabwe Youth Council manages the children's parliament programme which is a leadership development and advocacy arm on children's rights.

Through the Ministry of Women Affairs, Gender and Community Development, gender clubs have been established in most schools. These clubs are guided safe platforms created to allow the girl child/ young woman and boy child /young man to openly learn, share and discuss issues they face and the obstacles encountered in achieving their individual child rights. These empower the girl child and young woman in particular to speak out for their rights and challenge their peers, schools, communities and systems that hinder or block their access to critical services which hinder their advancement and empowerment socially, politically and economically. The clubs also raise awareness amongst community, parents and leadership on issues pertaining to negative cultural values, systems, beliefs and attitudes towards the empowerment and the development of the girl child/young woman.¹⁶⁰

157. Judicial Services Commission 2012.

158. CSO report to the ACERWC p. 21.

159. CSO report to the ACERWC p. 24.

160. Government of Zimbabwe initial report to the ACERWC, p. 22.

The Children's Parliament, which was established in 1991, serves as a leadership development and advocacy arm on children's rights and also seeks to facilitate participation of youth in governance issues. It operates as a mirror image of the real parliament which entails that each and every parliament constituency in the country has a child parliamentarian representative. National debates are normally held once annually and child parliamentarians also engage in other activities throughout the year. The CSO report to the ACERWC records some misgivings about the efficacy of the child participation structures:

*“Zimbabwe has established the Child Parliament, Cabinet and Council to promote child participation in issues that affect children. These structures are however not adequately resourced to function effectively on the ground hence they remain unknown to most children and hardly represent the views of the majority of children in Zimbabwe. The children rarely meet in these structures with the Child Parliament meeting just once in a year to mark the Day of the African Child which coincides with its opening session. Their interaction with senior Parliament, Cabinet and Council is limited hence reducing their effectiveness in representing children's issues”.*¹⁶¹

8.5. Civil Society Organisations

There are a number of CSOs working on child marriage-related issues in Zimbabwe. For instance, the Zimbabwe Women Lawyers Association (ZWLA)¹⁶² is lobbying government to amend the Marriage Act and the Customary Marriages Act to curb marriages of people below the age of 18 years. In a statement it said: “ZWLA is concerned that the government has not prioritised the alignment of the marriage laws with the new Constitution so as to provide for equal treatment of children under the marriage laws, be they civil or customary, and for the prohibition of the marriage of every boy and girl below the age of 18 years. ZWLA, therefore, urges the government to immediately amend the Marriage Act and the Customary Marriages Act so as to affirm the age of marriage under civil and customary law as 18 years.”¹⁶³

In 2011, ZWLA undertook research on marriages as part of a proposed law reform process.¹⁶⁴ This was carried out under the Ministry of Justice, Legal and Parliamentary Affairs, and was supported by UNICEF. An updated brief was prepared by Sylvia Chirawu on behalf of UNICEF for submission to the Ministry of Justice, Legal and Parliamentary Affairs in mid-2015.

Veritas is another legal organisation concerned with child marriage, and there is a robust NGO sector working on diverse related issues in Zimbabwe. The Women's Coalition of Zimbabwe has an active voice, as does the Women and Aids Support Network. The Zimbabwe National Council for the Welfare of Children appears to be the umbrella body for the child rights sector in Zimbabwe.¹⁶⁵ Plan International is, of course, a key stakeholder.

8.6. Coordination at government level

According to the key informants, the coordination of implementation, monitoring and evaluation efforts on children's rights remains the weakest link in Zimbabwe despite the existence of the National Programme of Action for Children (NPAC). There is confusion among government ministries and departments resulting in uncoordinated efforts which waste resources. They note that there was some uncertainty about the role of the Ministry of Health and Child Care (MoHCC) which houses the NPAC and some respondents in the DSS (Department of Social Welfare) preferred that child welfare be their sole responsibility. However, respondents also allude to severe staff shortages and other deficits besetting the DSS:

“The DSS is extremely under-resourced to meet the challenges it faces, in terms of number of vacancies among professional front line staff, the professional qualifications and experience of many of the staff who are in post and the physical facilities and resources at their disposal. There were vacancy rates of 24 per cent and 37 per cent for all staff and social services officers respectively within the DSS in 2010. All the 65 districts had no vehicle and computers,

161. CSO report to the ACERWC p.13.

162. www.zwla.co.za

163. Zimbabwe Situation (7 July 2014).

164. Copy on file with author.

165. The CSO report to the ACERWC compiled by the Coalition lists the following stakeholders in Annexure A: Zimbabwe National Council for the Welfare of Children, Save The Children, Plan International, SOS Children's Village Zimbabwe, Progressio, ICCO KERKINACTIE, Terre Des Hommes, Coalition Against Child Labour in Zimbabwe, Shanduko Yeupenyu Child Care Trust, Justice for Children, Life Empowerment Support Organisation, Tinokunda Trust and about 40 others.

telephones and photocopiers were said to be non-existent in most districts.”¹⁶⁶

The Child Welfare Council (CWC) was established by the Children’s Act in 2008. The CWC’s functions include monitoring the overall situation of children in need of care and to ensure that their welfare and rights are advanced.

In its Concluding Observations of January 2016, the CRC Committee expressed considerable concern about coordination in government relating to children’s rights:

“The Committee however reiterates its concern regarding the lack of an effective mechanism to ensure systematic implementation of the Convention and the monitoring or progress achieved. The Committee is particularly concerned about the insufficient clarity in the mandates and roles of the different ministries, departments and entities at the national, provincial and district levels responsible for coordination.”¹⁶⁷

¹⁶⁶. CSO report to the ACERWC p. 43.

¹⁶⁷. CRC/C/ZWE/CO/2 para 12.

PART 9: ENFORCEMENT AND ACCESS TO JUSTICE

Access to justice issues has been referred to at various places throughout this report, insofar as the law on the books is weakly implemented, or insofar as implementation suffers at the hands of patriarchal attitudes about women's economic dependency upon men, and cultural beliefs. This Part serves to reinforce what has previously been adduced.

Apart from a civil and criminal court system of tiered courts, including a juvenile court, local courts exist which comprise chiefs' courts and headmen's courts. These fall outside the Judicial Services Commission. Legal Aid is available for indigent litigants but the budget is not enough to even cover the costs of defence for accused persons facing (serious) criminal charges. Some *pro bono* representation is available through organisations such as the Zimbabwe Lawyers for Human Rights office, Justice for Children Trust, and the Legal Resources Foundation.

The government set up the Zimbabwe Human Rights Commission (ZHRC) under Section 242 of the new Constitution. The Commission has taken over the human rights mandate of the Office of the Public Protector, formerly known as the Office of the Ombudsman, and the Zimbabwe Human Rights Commission Act [Chapter 10:20] was enacted in 2012 to operationalise the Commission. The ZHRC houses three units, one aimed at complaints handling and investigation; the second aimed at education, the promotion of human rights and research; and the third aimed at monitoring and inspections of places of detention, such as prisons and refugee camps. There is a thematic Group on Child Rights within the Commission. The GoZ acknowledges that the functioning of the ZHRC is hampered by lack of resources. In its written responses to the list of questions developed by the ACERWC, the government said:

“The Zimbabwe Human Rights Commission structure is comprised of commissioners as a policy making board, a secretariat headed by an executive secretary, two deputy executive secretaries for programmes,

and administration, technical staff and support staff. The total number in posts is 54. The 2015 budget provides for USD556,000 for the Human Rights Commission for operations and maintenance. However the budget is insufficient to meet its arrears and its 2015 operational requirements due to the constrained fiscal environment.”¹⁶⁸

The CRC Committee recommended that the independence of the Zimbabwe Human Rights Commission be ensured, including with regards to its funding, mandate, immunities and appointment of members, in accordance with the Paris Principles.¹⁶⁹

However, as with neighbouring countries, access to the justice system is out of the reach of most ordinary people. This is true for geographical reasons for those in rural areas, as well as for economic reasons (the cost of travel or launching applications), and for cultural reasons (people preferring to have their disputes mediated in the community, rather than accessing the formal machinery of the state. Additionally, CRINmail's report on access to justice in Zimbabwe (CRINmail 15 June 2015) notes that the severe lack of judicial and police resources often results in under or non-enforcement of domestic court orders. They also note that judicial corruption in Zimbabwe is widespread, extending even beyond magistrates and judges. Key informants report that senior government officials continue to undermine judicial independence through a variety of methods, including bribery, threats and intimidation. The dual nature of civil and customary law is also cited as an impediment to accessing justice, since most personal law is governed by customary law rather than civil law.

The usual recommendations here include capacitating justice structures closer to where people live, and in training all law enforcement staff and VFU personnel much better to perform their various roles, be they in relation to domestic violence, investigation of sexual violence, or child protection. Child marriage would necessarily be included.

¹⁶⁸. p. 3.
¹⁶⁹. CRC/C/ZWE/CO/2 at para 21.

PART 10: OVERALL RECOMMENDATIONS AND CONCLUSIONS

10.1. Treaty body processes

Zimbabwe is scheduled (tentatively) for the 2nd UPR process in July 2016. It would be highly desirable if Zimbabwe was able to report progress achieved in relation to gender equality and the discriminatory age of marriage, since substantial recommendations were already received in 2011 relating to the need to improve the legal and regulatory environment for child marriage to which Zimbabwe agreed. However, over four years later and with the next UPR process in sight, action has not been speedy to implement these. Similarly, since the next CEDAW report was due in February 2016, and concrete recommendations relating to the reform of marriage laws have not yet materialised, a degree of urgency can be detected. In addition, the process of consultation around the next report should have commenced as soon as possible.

In its initial report to the African Committee on the Rights and Welfare of the Child in 2013, the government stated categorically that “(t)he marriage laws are also undergoing harmonisation to ensure that a standard age for all marriages is set to further discourage early and forced marriages.”¹⁷⁰ Yet, despite the government’s alluding to reforms to be contained in an omnibus General Laws Amendment Bill, perusal of the version tabled in Parliament on 8 May 2015 and taken to the regions for public consultation in late July 2015 does not reveal any amendments pertinent to child and early marriage. Indeed, unless another General Laws Amendment Bill is under preparation, the ACERWC has not been fully apprised about the extent to which law reform is imminent. Certainly by the time that the CRC Committee responded to Zimbabwe some nine months later, the drafted legislation had not materialised.

It is now clearly necessary to prioritise these commitments to amend and harmonise the laws, since this has been promised to various treaty bodies for some years now.

The Constitutional Court judgment of January 2016 should be a catalyst in pushing the agenda for marriage law reform forward. Extensive publicity should be given to its ruling, including in local languages and through the dissemination of easy to understand materials.

10.2. Stronger coordination of efforts and a leadership focal point

Overall, the need has been identified to draw role players together to form a much stronger social movement that will impact the issue of child marriage in Zimbabwe. Key informants note the persistence of deeply entrenched social attitudes which support early and underage marriage, sometimes even expressed by political leaders and senior government officials, as occurred recently. Political will may be viewed as being flaky/contested, if regard is had to the opposition to the constitutional challenge that was put forward by the Minister of Justice, expressing patriarchal views based on misguided ideas about girls’ developing sexual maturity.

However, since child marriage has already been (somewhat) criminalised in the domestic violence legislation, this can be a strong advocacy point to show that the horse has bolted and it is too late to shut the stable door now (as it were).

¹⁷⁰. Government of Zimbabwe initial report to the ACERWC p.18.

Since the AU goodwill ambassador is herself a Zimbabwean national, it might be a good idea for her to adopt Zimbabwe as her special focus point, and to visibly champion legislative reform in her own country. She was a prominent figure at the launch of the AU Campaign to End Child Marriage in Zimbabwe on 31 July 2015.

The campaign to end child marriage needs to be intensified and rolled out more rapidly, drawing in traditional leaders and chiefs to a greater degree. It is also likely that better coordination amongst CSOs, NGOs, INGOs and universities/institutes could be fostered and a more formal structure and plan of action formulated. A National Action plan such as in Zambia needs to be high on the agenda, together with the inauguration of a formal national task force comprised of relevant ministries and other stakeholders.

It goes without saying that treaty body recommendations, such as finalising the Child Policy, should be adhered to.

10.3. Additional suggestions for taking forward the process of the harmonisation of child laws

It is recommended that a national process towards developing a constitutionally compliant child law should be initiated with all stakeholders, including ordinary citizens and customary leaders, and that this endeavour be linked to specific timeframes. Various supportive elements concerning child marriage should feature in the legislation including:

- The inclusion in the definition of a child in need of care in relation to a victim of child marriage.
- Steps that a children's court can take to protect a child victim of child marriage.¹⁷¹
- Orders that a children's court can make regarding the dissolution of the marriage and the position of any children born of the marriage.

In addition, a harmonised definition of age in Zimbabwe cannot be achieved without an overhaul of the Marriage Act and the Customary Marriages Act.

10.4. Prioritisation

Although it is clear that the new Constitution will require a huge overhaul of the various laws of Zimbabwe (as has been the case elsewhere), priorities have to be set, and marriage laws have now risen to the top of the list, also due to the recent Constitutional Court judgment. Given the prominence of the issue, it is inexplicable that the harmonisation of the minimum age of marriage was not included in the tabled omnibus Bill of 8 May 2015. Trenchant questions need to be asked such as where the law reform process concerning child marriage is, and when it will see the light of day.

Furthermore, it can be proposed that all available resources should be harnessed to assist in the drafting of new comprehensive marriage laws (as opposed to ad hoc amendments). As mentioned in Part 8.2 of this report, given the apparent understaffing of government legal departments, consultants could be employed and CSOs and other stakeholders could be approached to join forces and take on specific Sections of the drafting – borrowing from or drawing upon legislation of other countries, where appropriate and desirable. The overarching aim must be a unified Marriages Act which incorporates processes and procedures for all forms of marriage (including religious marriages), and sets a minimum age of marriage at 18 for boys and girls. Further, the marital power accorded to men should be abolished, and urgent discussions commenced about a constitutionally compliant matrimonial property regime.

10.5. Polygamy

Polygamy remains deeply entrenched in Zimbabwe and feeds patriarchal attitudes and beliefs, as well as prejudicing women materially. Credible social awareness programmes about polygamy and its negative consequences will have spins offs for the national project of women's and girls' empowerment, and contribute to the fight to end child marriage.

171. See the discussion relating to the Domestic Violence Act.

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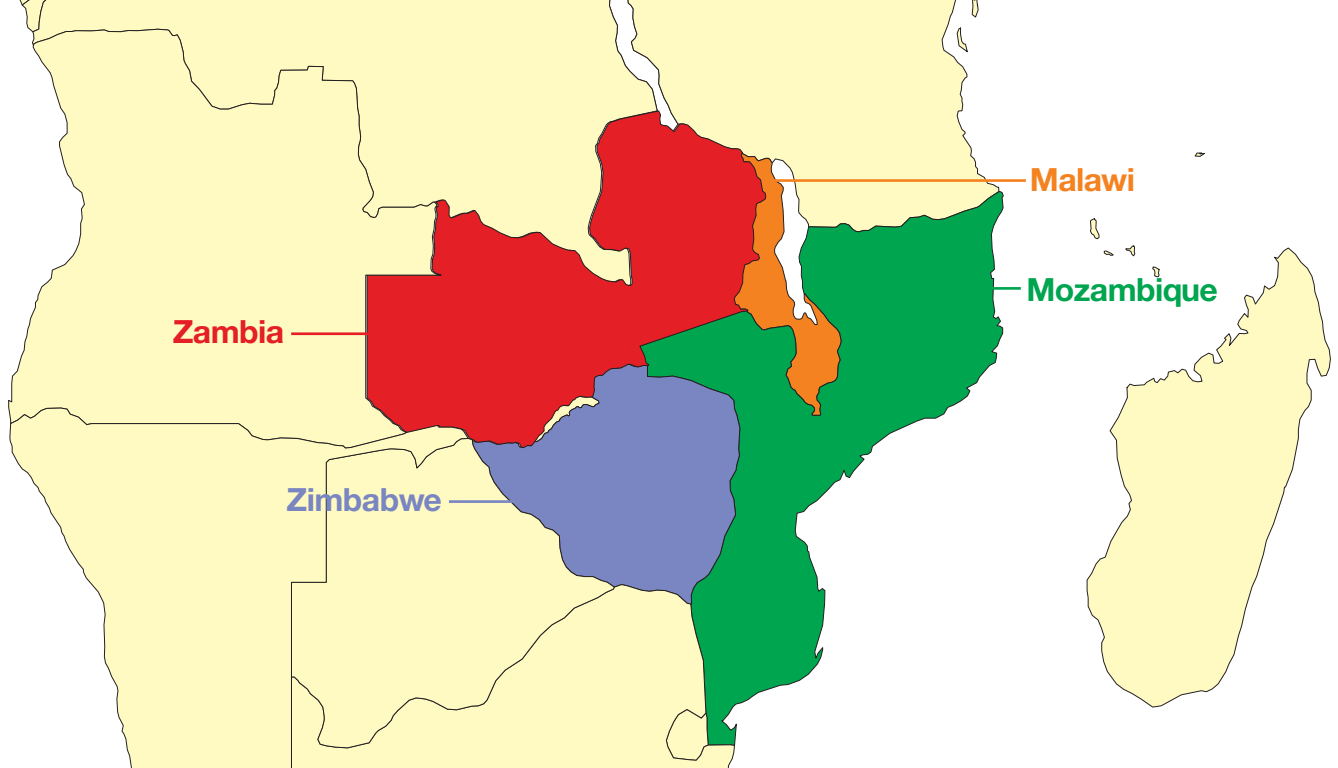
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