Sexual abuse and exploitation of the girl child through cultural practices in Zimbabwe: a human rights perspective

A dissertation submitted in partial fulfilment of the requirements of the LLM (Human Rights and Democratisation in Africa) Faculty of Law, Centre for Human Rights, University of Pretoria

By

Roselyn Hanzi
(26500389)

Prepared under the supervision of Dr B Twinomugisha - Faculty of Law, Makerere University - Kampala, Uganda

October 2006
DECLARATION

I, Roselyn Hanzi, declare that the work presented in this dissertation is my own. It has never been presented to any other University. It is hereby presented in partial fulfilment of the requirements for the award of the LLM Degree in Human Rights and Democratisation in Africa.

Signed………………………………………….

Date……………………………………………….

Supervisor: Dr B Twinomugisha

Signature………………………………………….
DEDICATION

To my mother, Mutsa and to the memory of my father.
ACKNOWLEDGEMENTS

I am grateful to the Centre for Human Rights, University of Pretoria, for choosing me to be part of the LLM class of 2006. The learning experience was *sui generis*. I would also like to thank the staff and management at the Centre for their support during the duration of my studies in Pretoria. I am especially grateful to the following Prof Viljoen and Prof Hansungule for their guidance. My sincere appreciation also goes to Martin, Jeremie, John, Tarisai, Waruguru, and Magnus for all their assistance during the program.

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To Stephen, thank you for being there for me throughout my academic year. I also appreciate the assistance of various other people throughout my academic year especially my friends in the LLM class.
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<thead>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
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<td>ACRWC</td>
<td>African Charter on Rights and Welfare of the Child</td>
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<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
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<td>ANPPCAN</td>
<td>African Network for the Prevention an Protection against Child Abuse and Neglect</td>
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<td>CCAs</td>
<td>Child Care Advocates</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRESS</td>
<td>Child Rights Education Support Services</td>
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<td>FIDA(U)</td>
<td>Federation of Women Lawyers Uganda</td>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>LSZ</td>
<td>Law Society of Zimbabwe</td>
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<tr>
<td>NGO</td>
<td>None Governmental Organisation</td>
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<td>RSA</td>
<td>Republic of South Africa</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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<td>ZINATHA</td>
<td>Zimbabwe National Traditional Healers Association</td>
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Chapter 1

Introduction

1.1 Background

Sexual abuse and exploitation of children has occurred throughout history.¹ The problem of child sexual victimisation is universal.² It is universal because of the subordinate status of children.³ Children are victims of sexual abuse and exploitation due to their social, psychological, economic and intellectual positions.⁴

Sexual abuse did not form part of international human rights law until the coming into force of the Convention on the Rights of the Child (CRC).⁵ The international law on child sexual exploitation on the other hand can be traced back to the League of Nations.⁶ The denial of sexual abuse of children for a long time throughout history has been attributed

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² KC Faller Child sexual abuse: an interdisciplinary manual for diagnosis case management and treatment in society (1989) x; According to the World Health Organisation (WHO) the overall prevalence of child sexual abuse is 25% for girl and 8% for boys see Family Health International ‘Non-consensual sex’ 23 Network (2005) 3.


⁵ The Convention on the Rights of the Child (CRC) 34came into force on 2 September 1990 it has been ratified by 192 countries see T van Banning et al Human rights instruments (2004); Art 19(1); art 34 & art 36 of CRC.

⁶ G van Bueren( n 3 above) 52; protection against sexual exploitation has also developed from international law prohibiting the exploitation of women and children these include art 4 of the Geneva Declaration of the Rights of the Child of 1924 and principle 9 of the Declaration on the Rights of the Child 1959 available at <http://www1.umn.edu/humanrts/instree/auok.html> (accessed on 24 August 2006).
to disbelieving children. Sexual abuse of children within the home is also regarded as a form of violence by the United Nations.

The protection of the girl child against sexual abuse and exploitation is also found in the African Charter on the Rights and Welfare of the Child (ACRWC), the Women Protocol to the African Charter on Human and People’s Rights (the Protocol). Sexual abuse remains a problem in most parts of the world. All states that have ratified these instruments have an obligation to protect children from sexual abuse or exploitation. The obligation to protect children against sexual abuse cannot be fulfilled unless the state ensures that cultural practices that condone and facilitate sexual abuse and exploitation are discouraged and prohibited. The ACRWC specifically prohibits traditional practices that are harmful to girls. It also prohibits customs and practices that are prejudicial to the health of the child.

The need to enjoin states to prohibit cultural practices that are harmful was initially acknowledged by the United Nations (UN) in the 1950’s after colonial administrators were concerned about harmful customs practised in their colonies. Other international instruments such as the Convention on the Elimination of Discrimination against Women

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9 The African Charter on the Rights and Welfare of the Child (ACRWC) Centre for Human Rights Compendium of key human rights documents of the African Union (2005); ACRWC was adopted by the 26th Ordinary Session by the Assembly of Heads of State and government of the Organisation of African Unity in 1990 and came into force in 1999; art 16(1) & art 27 of ACRWC.
12 Art 21 of ACRWC.
13 Art 21(1)(b) & art 21(2) of ACRWC.
14 Art 21(1)(a) of ACRWC.
(CEDAW) have condemned these practices.\textsuperscript{16} Some of the practices that have been regarded as harmful include female genital mutilation, early marriage that results in early pregnancy and dowry price or bride wealth.\textsuperscript{17} Recently the practice of virginity testing has been identified as being harmful to the girl child.\textsuperscript{18} All of these practices are not only harmful but result in sexual abuse and exploitation.

The involvement of children in sexual activities is detrimental to the survival and development of the child as articulated in ACRWC.\textsuperscript{19} Sexual abuse of children has a direct and potentially permanent impact on the self-esteem of the victim.\textsuperscript{20} Few victims enter adulthood without the symptoms of the crime perpetrated against them as children.\textsuperscript{21} Extensive research has been conducted which focuses on the individual psychopathology associated with child sexual abuse.\textsuperscript{22} Sexual abuse is associated with disorders such as depression, anxiety, personality disorder, substance abuse and low self-esteem.\textsuperscript{23} Sexual abuse is also associated with suicidal thoughts, plans and behaviour.\textsuperscript{24} Some of the victims of sexual abuse have been infected with sexually transmitted infections such as H.I.V.\textsuperscript{25}


\textsuperscript{17} B Winter (n 15 above).


\textsuperscript{19} Art 5(1) of ACRWC.


\textsuperscript{21} As above.

\textsuperscript{22} R Roberts (n 20 above) 525.

\textsuperscript{23} As above.

\textsuperscript{24} RK Oates ‘Sexual abuse and suicidal behaviour ‘ \textit{Child Abuse and Neglect} 28 (2004) 487; R Roberts (n 22 above).

\textsuperscript{25} BA Davar ‘Rethinking gender persecution, sexual violence and women’s rights: a new conceptual framework for political asylum in international human rights law’ 6 \textit{Texas law journal of women and the law} (1997) 489; There is a myth that sex with a virgin cures HIV infections see R Jewkes ‘The virgin cleansing myth: cases of child rape are not exotic’ \textit{The Lancet} (2002) 11; L Ackermen et al ‘Social factors that make South African women vulnerable to HIV infection (2002) 102; A high school teacher in Zimbabwe was recently convicted of raping a six year old girl whom he infected with HIV he was sentenced to 17 years imprisonment, available at <http: www.unicef.org/media
The European Commission of Human Rights specifically commented on the mental suffering of children because of sexual abuse. It concluded that sexual abuse results in acute psychiatric disturbances that fall in the category of treatment prohibited under article 3 that prohibits torture inhuman and degrading treatment.26

In Zimbabwe the sexual abuse and exploitation of the girl child remains high.27 Recently the state has acknowledged the problem of sexual abuse and exploitation of the girl child and has indicated the willingness to step up campaigns against it.28 This campaign however targets school children in primary and secondary schools.29 There has also been an increase of sexual abuse of children in schools by the teachers and other staff members.30

The family as an institution has facilitated child abuse and exploitation in Zimbabwe through cultural practices and customs as a survival tactic.31 Some commentators have directly linked the revival of these cultural practices to the economic crisis that has


29 As above.

30 Reports by UNICEF indicate that sexual abuse of children in Zimbabwe has greatly increased in schools in 2005, at one primary school in Marondera 52 children were abused whilst 14 children were sexually abused at another school in Harare. At least 11 girls were abused every day in 2005 with at least 4 146 cases of sexual abuse being recorded by one local Non Governmental Organisation that is dealing with sexual abuse of girls available at <http://www.unicef.org/media/media_3514.html> (accessed on 17 August 2006).

31 Practices done in the name of culture in Zimbabwe include virginity testing, child marriages, lobola, kuripa ngozi and kuzvarira.
resulted in food shortages around the country. These traditional practices include the marriages of the child to older men in exchange for food or money known as *kuzvarira*, *kuripa ngozi* or pledging a girl into marriage and virginity testing. Some of the practices are however not directly linked to the prevailing economic crisis but are just practiced as a tradition like *chiramu*. These practices have become more common amongst the Shona, the largest tribe constituting at least 76% of the population and predominantly patriarchal. Theorists of patriarchy have directed their attention to the subordinate status of women and found their explanation in the male need to dominate the female.

Although Zimbabwe as a state has shown a commitment to protecting children against sexual abuse by enactment of laws criminalising involvement of the girl child in prostitution, incest and rape of girls, little has been done to ensure that forced and early marriages of the girl child are curtailed. Virginity testing is not criminalised and is also currently being practised in rural parts of the country on a wide scale.

### 1.2 Statement of the problem

Although Zimbabwe has ratified several international and human rights instruments that protect the girl child against sexual abuse and exploitation the prevalence remains high in the country. This is attributable to several factors that are social, cultural and

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33 This is a traditional practice whereby a husband is allowed to fondle the young sisters of his wife in other instances the maternal uncle is allowed to do this as a form of socialisation, see J Raath (n 27 above) ‘Study finds three out of ten girls are sexually abused’ available at http://www.pangea.org/street_children/africa/zimba3.htm (accessed on 3 September 2006); other efforts have been directed towards the treatment of victims of sexual abuse in court by the setting up of victim friendly courts that have resulted in the increased use of the closed circuit television. This has had the effect of reducing the trauma that was suffered by children in giving evidence due to confrontation with the accused person see the Criminal Procedure and Evidence Act.


36 The Criminal Law (Codification and Reform) Act Chapter 9.23.

37 Zimbabwe ratified CRC on 11 September 1990 with no reservations, ACRWC on 1 January 1995 with no reservations.
economic. The recent steps that the state proposes to take to eradicate sexual abuse by empowering the victims in schools will not eradicate sexual abuse and exploitation in Zimbabwe as education is not free at all. Not all girl children are attending schools at present as educational costs are very high,\textsuperscript{38} due to the current inflation levels most families cannot afford to send their children to school.\textsuperscript{39} The possible victims of sexual abuse and exploitation can be left out in this campaign. Poverty is one of the root causes to sexual abuse and exploitation of children. Poverty has to be addressed in order to obtain a lasting solution to the problem of child sexual abuse and exploitation in Zimbabwe.

The state has to realise that most of the sexual abuse and exploitation of children is done within the family through cultural practices such as early forced marriages and virginity testing and not reporting cases of sexual abuse that occur in the family.

Not all marriages are registered in Zimbabwe, virginity testing is not criminalised, and adequate measures have not been put in place to ensure that cases of incest are brought to light. Although the state has criminalised sex with young girls of a particular age, these laws have not deterred the offenders at all. Most of the sexual abuse is not perpetrated by strangers to the child but by acquaintances. Girl children still continue to be sexually abused at schools in Zimbabwe and this has become a major problem with one of the victims being infected with H.I.V recently.\textsuperscript{40}

\subsection*{1.3 Aims and objective of study}

This paper seeks to show how the family has facilitated sexual abuse and exploitation of the girl child in Zimbabwe under the guise of culture through practices like \textit{chiramu}, virginity testing, bride wealth and early marriages. These practices can be directly linked

\textsuperscript{38} In 1996 the Committee on the Rights of the Child stated that primary education was not free or compulsory in Zimbabwe see U.N. Doc.CRC/C/15/Add.55(1996), para.19 available at<http://www.umn.edu/humanrts/crc/crc-Zimbabwe96.htm> (accessed on 14 August 2006).


\textsuperscript{40} UNICEF 'UNICEF outraged and shocked with latest case of child rape in Zimbabwe' available at http://www.unicef.org/media/media_3514.html (accessed on 17 August 2006).
to the patriarchal nature of the Shona society in Zimbabwe. Child sexual abuse is said to originate in an essentially patriarchal society in which both women and children are victims of unequal distribution of power. The present role of the state in Zimbabwe is to ensure that the girl child is not sexually abused and exploited. This obligation cannot be fulfilled by promulgating laws to enforce the rights of the girl child or by educating the school going girl child only in Zimbabwe. There is a need for the state to address the root cause of why the family is resorting to these cultural practises in the first place. After addressing this, the state can come up with laws and regulatory frameworks to stop child sexual abuse in Zimbabwe.

Present shortcomings in legislation and implementation will also be explored. The possibility of reform in law and policy and regulation to ensure the protection of girl child against sexual abuse and exploitation will be discussed.

The author has chosen Zimbabwe as this is her country of origin, she is familiar with the cultural practises in that country and the problems facing the girl child. Reference will constantly be made to South Africa, Uganda and other countries where necessary so as to give a comparative approach in legislative provisions protecting children against sexual abuse and exploitation.

1.4 Research questions

1. Why and how has the family as an institution facilitated the sexual abuse of the girl child?

2. What measures if any, have been taken by the state to eradicate sexual abuse and exploitation of children perpetuated by cultural practices in Zimbabwe.

3. What measures should the state take in terms of law and policy to stop child sexual abuse and exploitation of children caused by cultural practices in the Zimbabwean family.

41 R Gunn and R Linden ‘The processing of child sexual abuse cases’ in (eds) JV Roberts et al Informing sexual assault a decade of legal and social change (1994) 85.
1.5 Literature review

The most controversial issue in child sexual abuse has been the role of the family.\textsuperscript{42} Extensive research conducted has shown that contrary to popular beliefs, sexual abuse of children by strangers accounts for a small percentage.\textsuperscript{43} Epidemiological studies show that abuse of children by strangers is low compared to the abuse perpetrated by relatives or acquaintances.\textsuperscript{44} Kitzinger thus criticises those who state that the home is the sanctuary for children against sexual abuse and warn children to say ‘no to strangers’ since most sexual abuse and exploitation is within the family.\textsuperscript{45} Events that occur within the family were not subject to international law until recently.\textsuperscript{46} Developments in international law challenge the numerous traditional practices that sexually involve children or that affect the child’s sexual development in ways inconsistent with the emerging international law norms yet fully consistent with theories of sexuality and cultural life.\textsuperscript{47}

Culture has been identified to be one of the major obstacles in enforcing children’s human rights in African countries.\textsuperscript{48} The state has an obligation under the ACRWC to protect the child against cultural practices that will result in sexual abuse and exploitation while in the care of parents, guardians or others under the guise of culture.\textsuperscript{49} Rwezaura

\textsuperscript{42} RJR Levesque ‘Sexual use, abuse and exploitation of children; challenges in implementation of human rights’ 60 Brooklyn Law Review (1994) 994.
\textsuperscript{43} As above.
\textsuperscript{44} RJR Levesque (n 42 above).
\textsuperscript{45} J Kitzinger ‘Defending innocence ideologies of childhood’ 28 Feminist review (1988) 82.
\textsuperscript{46} As above.
\textsuperscript{47} RJR Levesque Sexual abuse of children a human rights perspective (1999) 100.
\textsuperscript{49} Art 21 of ACRWC.
states that one of the causes of abuse of children in Africa is the perception of the child as a family resource, this conflicts with the rights of the child.50

The state has an obligation to protect the child against sexual abuse and exploitation. Protection of children can only be achieved by assisting families to carry out their protective mandate towards the girl child. G van Bueren states that other than adopting legislation against child sexual abuse and exploitation the state should support the family when it is in need.51

The state must take all measures to curb child sexual abuse and exploitation of the girl child as this violation can be linked to violations of other rights such as rights to bodily, sexual integrity and right to life. It can have fatal health consequences that include infections of sexually transmitted diseases such as H.IV that will cause the child not to fully enjoy other rights guaranteed in the international instruments.52

1.6 Research methodology

The methodology employed in this study is mainly library and desk research. The primary sources consulted are journal articles, law reports and textbooks. Secondary sources used include the Constitution of Zimbabwe and relevant legislation addressing the problem of sexual abuse and exploitation.

Some reliance is also put on Internet sources as they are readily accessible and usually provide the most recent information on developments in the protection of the girl child against sexual abuse and exploitation of the girl child in other jurisdictions. Through a comparative analysis, the author will identify necessary reforms that have been employed in other jurisdictions that will be useful in improving the predicament of the girl child.

51 G van Bueren (n 3 above) 51.
52 UNICEF (n 27 above).
1.7 Limitations of the study

The main methodological limitation of this study was the time available for the research that was three and a half months. Most of the research was conducted through the use of online journal articles thus the most trying moments were constant power cuts in Kampala every other day that caused the internet server to be down constantly.

1.8 Outline of chapters

**Chapter one** introduces the problem of child sexual abuse and exploitation of the girl child as a universal problem and gives a structure of the study.

**Chapter two** discusses the concept of a child, sexual abuse and exploitation as a human rights problem. It analyses the protection of children under international human rights law. **Chapter three** gives a broad overview of the relationship between culture and children’s rights. The role of the family will also be discussed as articulated in the human rights instruments.

**Chapter four** highlights and discusses the cultural practices that result in sexual abuse and exploitation of the girl child in Zimbabwe. The legal framework protecting children from sexual abuse and exploitation and the shortcomings will be highlighted. The impact of such sexual abuse and exploitation on the overall development of the child will also be discussed. **Chapter five** makes recommendations by looking at the developments from other countries on the rights of the girl child and cultural practises that result in sexual abuse.
Chapter 2

Child sexual abuse and exploitation; conceptual and international protection

2.1 Introduction

This chapter introduces the concept of childhood. In so doing the meaning of childhood will be discussed from psychological, sociological, international human rights law and domestic perspectives. The concepts of sexual abuse and exploitation are discussed. Various forms of sexual exploitation and abuse are also canvassed together with the consequences of such acts on the health of the girl child. It highlights the protection of children from sexual abuse and exploitation in international law. It concludes by showing how sexual abuse is detrimental to the healthy growth and development of the girl child and its potential impact on other rights.

2.2 The concept of childhood

Children are individuals, but childhood is a social institution.\textsuperscript{53} Childhood as a social status is defined within the generational order as inferior to adulthood.\textsuperscript{54} The dominant notion has been of childhood as a stage in the development of a human being.\textsuperscript{55} Childhood is defined as that which lacks skills and capacities of adulthood.\textsuperscript{56} Ennew states that children are immature human animals.\textsuperscript{57} Childhood has been conceptualised

\begin{itemize}
  \item[] \textsuperscript{53} J Ennew \textit{The next generation} (1989) 8.
  \item[] \textsuperscript{55} D Archard \textit{Children: rights and childhood} (2004) 39.
  \item[] \textsuperscript{56} As above.
  \item[] \textsuperscript{57} D Archard (n 55 above).
\end{itemize}
as the period of preparation for the autonomous individuality of adulthood. It is a period of rapid growth of the child physically, mentally and emotionally.

There is a conception of children that is implicit in moral and legal practice. According to this conception children as a legal class do not have the same status as adults. Anthropological evidence shows that children are universally regarded as relatively weak, helpless and in need of protection. Childhood is a process when children are, as Archard states in the ‘continued process of becoming, an never ended maturity’. They are therefore weak, inadequate, inexperienced and immature, they are to be measured against an unexplained unproblematic rational adult world that is complete and desirable in contrast to childhood is static. Childhood has also been described as a period of protection with the absence of responsibility when the child has a right to protection and training but not to autonomy.

The terms child and adult are flexible social categories that are defined according to the stereotypes of aging. Cultural variations and diversity do however limit the exact setting of childhood boundaries. Different criteria define child the development and period of childhood. The CRC that has been ratified by many states and considered to be

60 As above.
64 As above.
65 M Freeman (n 63 above).
67 B Mayall (n 54 above).
universal introduces the notion of childhood from a western point of view.\textsuperscript{69} The ACRWC on the other hand seeks to define childhood from an African perspective although it sets out 18 years as the cut off point to adulthood just like the CRC.\textsuperscript{70} In Africa childhood is comparatively shorter than in western regions.\textsuperscript{71} The child is also socialised to respect the parents, elders, those in a position of authority, to be cautious and generous to strangers.\textsuperscript{72} It is viewed as a time to learn, build a character and to acquire social and technical skills necessary to perform the future roles of adulthood.\textsuperscript{73} Chronological age in these societies does not indicate childhood at all.\textsuperscript{74} It has more to do with physical capabilities of the child.\textsuperscript{75}

Bennett states that a particular economy may prove crucial in shortening or lengthening the duration of childhood. He further elaborates that in those societies where survival is a struggle, the child cannot enjoy dependency for long as a child is a luxury that a family cannot afford.\textsuperscript{76} In most African societies like the Shona, a child has been seen as a family asset or resource.\textsuperscript{77} Thus, a child can be married off at an early age to ensure that her family does not starve. As such, the child is no longer a child but becomes an adult.\textsuperscript{78} This traditional image of the child as a resource to the family has been challenged in recent years and this has resulted in tensions between the young and the older generations.\textsuperscript{79} There has been a radical shift of perceptions of children as property of their parents. Modern children’s rights movement aims at viewing children as persons in

\textsuperscript{69} Art 1 of the CRC states that a child shall be anyone below the age of 18 years.
\textsuperscript{70} Art 1 of CRC; art 2 of the ACRWC also defines a child as any person below the age of 18.
\textsuperscript{71} B Rwezaura (n 50 above) 255.
\textsuperscript{72} As above 257.
\textsuperscript{73} B Rwezaura (n 50 above 255.
\textsuperscript{74} AT Donso (n 62 above) 12.
\textsuperscript{75} As above.
\textsuperscript{77} B Rwezaura (n 50 above) 253.
\textsuperscript{78} AT Donso (n 62 above).
\textsuperscript{79} B Rwezaura (n 50 above) 257.
their own right.\textsuperscript{80} The concept of a child as property in African societies conflicts with contemporary ideas about childhood in international human rights law.\textsuperscript{81}

Since childhood is defined according to the stereo-types of aging of different societies, in an attempt to harmonise the definition of a child, the CRC and ACRWC define a child as every human being below the age of 18 years.\textsuperscript{82} This age limit of childhood has been incorporated by many states into their domestic legislations such as Zimbabwe,\textsuperscript{83} South Africa\textsuperscript{84} and Uganda.\textsuperscript{85} The child is afforded protection and certain rights against abuse and exploitation. Rwezaura states that the co-existence of two images of childhood, whereby a child is afforded rights and protection under international law and the concept of a child as a resource in African societies has undermined the protective role of the law.\textsuperscript{86}

Childhood is regarded as a distinct idyllic and a-sexual stage in the pre-adult personal development.\textsuperscript{87} Cross cultural and historical evidence show that there is a customary separation of childhood and sexuality.\textsuperscript{88} This position is however not true to some cultures in Africa like the Shona people of Zimbabwe. Under local customs, girl children can be married off at puberty stage. Although this is compatible with custom it does amount to sexual abuse and exploitation under international law. Recently in international law childhood and sexuality have become separated their boundaries are rigorously policed.\textsuperscript{89}

\textsuperscript{80} As above.
\textsuperscript{81} B Rwezaura (n 50 above) 255.
\textsuperscript{82} RJR Levesque (n 69 above).
\textsuperscript{83} Sec 15 of the General Laws Amendment Act Chapter 8: 07 that amended the provisions of the Legal Age of Majority Act No. 15 of 1982.
\textsuperscript{84} Sec 28(3) of the Constitution of South Africa.
\textsuperscript{85} Sec 2 of the Children Act Chapter 59 of Uganda.
\textsuperscript{86} B Rwezaura (n 50 above) 260.
\textsuperscript{87} DT Evans ‘Falling angles the material construction of children as sexual citizens’ 2 International Journal of children’s rights (1994) 1.
\textsuperscript{88} As above 2.
\textsuperscript{89} DT Evans (n 87 above) 3.
2.3 Concept of child sexual abuse

There is no universally accepted definition of child sexual abuse.\textsuperscript{90} There are differences in how far sexual extends.\textsuperscript{91} Sexual encounters are intercourse, genital contact, fondling or an encounter with an exhibitionist.\textsuperscript{92} Others include anything that brings sexual gratification to the adult as sexual abuse.\textsuperscript{93} Sexual abuse remains even if the child is not capable of knowing that it is.\textsuperscript{94} It includes paedophilia,\textsuperscript{95} incest and any intra-familial relationship which risks damaging the healthy sexual growth of the child.

A popular definition of sexual abuse is one by Schether and Roberge who have defined it as;

\begin{quote}
………the involvement of dependant developmentally immature children and adolescents in sexual activities that they do not fully comprehend, to which they are unable to give informed consent or that violate the social taboos of family roles.\textsuperscript{96}
\end{quote}

Child sexual abuse represents a key site in which unequal gender power relations play out.\textsuperscript{97} It is noted that accurate statistics for the prevalence of intra familial and extra familial abuse of children are difficult to obtain.\textsuperscript{98} This study will focus on sexual abuse and exploitation where the perpetrators are male and the victims are girl children. Sexual abuse of children can be in various forms. It can be non-contact sexual abuse that is done to the child, voyeurism falls within this branch whereby the offender

\textsuperscript{90} M Freeman \textit{The moral status of children: essays on the rights of the child} (1997) 261.
\textsuperscript{91} As above.
\textsuperscript{92} M Freeman (n 90 above) 261.
\textsuperscript{93} As above.
\textsuperscript{94} M Freeman (n 90 above) 262.
\textsuperscript{95} A word used to describe those that are sexually attracted to children.
\textsuperscript{96} M Freeman (n 90 above) 261; G van Bueren (n 3 above)46.
\textsuperscript{97} S Warner ‘Disrupting identity through visible therapy: a feminist post structuralist approach to working with women who have experienced child sexual abuse’ 68 Feminist review (2001) 115.
observes the child when the child is naked. Exposure is another form of sexual abuse this occurs when an offender exposes his private parts to a child. Sexy talk can also occur when the offender tells the child about its sexual attributes.

It can include sexual contact. It can be oral when the child is kissed or the offender orally copulates with the child. In other cases it can be the touching of the intimate body organs of the child or inserting a finger in the vagina of a child. This can be done whether the victim is wearing clothes or not. Oral genital sex can occur when the child is kissed, sucked or licked. In this case penetration can occur. The offender can have sexual intercourse with the child where there is actual penetration of the vagina or anus.

2.4 Concept of child sexual exploitation

Some authors such as Kempe have equated sexual exploitation of children to sexual abuse. All forms of sexual exploitation are abusive. However sexual exploitation is usually done for financial gain. The Declaration and Agenda for Action of the World Congress against Sexual Exploitation of Children of 1996 has defined sexual exploitation of children as;

…comprising sexual abuse by an adult and renumeration in cash or kind to the child or third person or persons. The child is treated as a sexual and commercial object.

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100 As above.
101 KC Faller (n 99 above).
102 KC Faller (n 99 above) 13.
103 G van Bueren (n 3 above) 14.
104 As above.
105 G van Bueren (n 3 above) 14.
106 Family Health International (n 2 above) 52.
Sexual exploitation of children is in various forms, it includes child pornography, child prostitution when the child is enticed into such activities by the adults or is employed as a prostitute. Child marriages are also regarded as a form of sexual exploitation due to the financial gain the parents get from bride wealth. In this research sexual exploitation of children will be viewed from the exploitative nature of child marriages.

2.5 International and regional protection against sexual abuse and exploitation

The response of the international community to sexual abuse of children does not have a long history. Child sexual abuse has recently been recognised as a significant social problem. The hesitancy of international law to address child sexual abuse has been attributed to the dichotomy of the private and public spheres. International law is primarily concerned with the public sphere whilst domestic law deals with the private sphere. Events that happen within families are usually not subject to international law. International law respects familial autonomy as articulated in the International Covenant of Economic Social and Cultural Rights (ICESCR). However, Child sexual abuse facilitated in the family under the guise of culture is now prohibited under international law by the CRC and the ACRWC.

Under the CRC, the child is protected from abuse whilst in the care of parents, guardians or others who care for the child. The state is required to take all appropriate legal,

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110 As above 994.

111 RJR Levesque (n 109 above).

112 As above.

113 KC Faller (n 99 above).


115 Art 19 of CRC.
administrative, social and educational measures to protect the child. Sexual exploitation of children is also prohibited.  

At the regional level, ACRWC expressly prohibits child sexual abuse and exploitation. It compels states to amongst the same grounds articulated in the CRC to protect children against sexual abuse by school authorities. ACRWC is applicable to all children under the age of 18 years regardless of national ages of majority. It seeks to eliminate the possibility of sexual abuse of children within marriages by establishing 18 years as the minimum age of marriage. To reinforce this, states are obliged to make registration of all marriages compulsory in an official register. Child marriages are to be prohibited by enacting the necessary legal measures that sets a minimum age of marriage at 18 years.  

The international community appears to have accepted that in order to protect children against sexual abuse and exploitation there is a need to support the family when it is in need. It is regarded as the principal preventive measure. There is an additional duty on the state to establish social programmes for the prevention, identification and reporting of child sexual abuse. The CRC regards it to be in the best interests of the child for the cooperation of health officials and law enforcement agents and the judiciary.

116 Art 19(1) of CRC.
117 Art 34 & 36 of CRC.
118 Art 16(1) of ACRWC.
119 Art 16(1) of ACRWC.
120 G van Bueren (n 3 above) 51.
121 Art 21(3) of ACRWC.
122 Art 21(2) of ACRWC.
123 Art 21(2) of ACRWC.
124 G van Bueren (n 3 above) 51.
125 As above.
126 Art 19(2) of CRC.
State reporting is one of the strategies that have been introduced by the international community to ensure compliance with international norms.\textsuperscript{127} There are reporting procedures in the CRC and ACRW to oversee compliance, state reporting is not a form of enforcement mechanism as such.\textsuperscript{128} Reporting procedures have not been effective in ensuring that child sexual abuse and exploitation of the child is curtailed. There has been a general lack of political will to implement the comments of the relevant Committee.\textsuperscript{129}

2.6 Conclusion

Child sexual abuse is currently a human rights issue, children’s rights to be protected against sexual abuse and exploitation is now part of international human rights law. Child sexual abuse is violence against the girl child, international law seeks to protect individuals from private violence.\textsuperscript{130} Under this regime children are regarded as those who are below 18 years of age. State parties to instruments that protect children against sexual abuse and exploitation have an obligation to ensure that children are not sexually abused within the family.


\textsuperscript{128} As above; states are supposed to report to the Convention on the Rights of the Child as stipulated in art 44 of CRC, art 42 of ACRWC provides for state reporting to the Committee on the African Charter on the Rights of the Welfare of the Child.

\textsuperscript{129} This is particularly true in the case of most African countries such as Zimbabwe. Zimbabwe has submitted a number of reports to the Committee on the Rights of the Child and despite recommendations to take action of eradicating harmful practices such as lobola and child marriages that result in girl children being sexually abused and exploited this practice remains high see para 13 of the Committee on the Rights of the Child 12\textsuperscript{th} session concluding observations on Zimbabwe available at <http://www.law.wits.ac.za/humanrts/crc/crc-Zimbabwe96.htm> (accessed on 15 October 2006); the Committee of Experts on the African Charter on the Rights and Welfare of the Child has not considered any country reports from yet.

\textsuperscript{130} RJR Levesque ‘Piercing the family’s private veil: family violence, international human rights and cross cultural record’ Law and policy (1999) 162.
Chapter 3

Family, culture and children’s rights; an overview

3.1 Introduction

Culture is one of the obstacles to the enjoyment of children’s rights in Africa as communities where children live do not always observe the relevant human rights instruments that protect children from harmful cultural practices or are not aware of them.\(^ {131} \) The family is the custodian of culture.\(^ {132} \) It is through the family that children are taught or experience cultural values. Not all cultural practices are compatible with human rights norms protecting rights of children, the girl child in particular. Some cultural practices that are harmful are female genital mutilation and early marriages. This chapter will discuss the status of culture in international law and the role of the family as the custodian of culture with the duty to pass it on to the child. The incompatibility of culture and the rights of children will also be covered.

3.2 The family defined

The term family has not been defined in international law.\(^ {133} \) A family has been described as the smallest unit of society that has to be protected and supported.\(^ {134} \) Families vary


\(^ {132} \) Art 18(1) of ACHPR; art 18(2) states that the state has a duty to assist the family in safeguarding the moral and traditional values; ACHPR has however been criticised as according too much weight to the protection of culture that results in the human rights violations of rights of women and children within the family see Center for reproductive law and policy Briefing paper on the Protocol on the Rights of Women in Africa (2006) available at <http://www.reproductiverights.org> (accessed on 14 May 2006).

\(^ {133} \) B Rwezaura et al ‘Parting the long grass: the African family’ 35 Journal of legal pluralism and unofficial law (1995) 27; The European Commission has however defined the concept family life in a number of cases that include X &Y v Switzerland 1977 Y.B Euro. Conv on HR 168(Eur. Ct. HR) in G van Bueren ‘International protection of family members’ rights as the 21st century approaches’ 17 Human rights quarterly (1995) 735.

\(^ {134} \) B Rwezaura (n 133 above) 26; art 10 of ICESCR; art 23(1); G van Bueren (n 133 above) 733.
from culture to culture and from one historical period to another.\textsuperscript{135} A dichotomy surrounds the notion of family, it is conceptualised as both a cohesive association of autonomous people and as a group of individuals subject to a higher law that protects competing claims.\textsuperscript{136} Commenting on the term family the Human Rights favoured a broad interpretation that includes all those considered to be family by the society of the state party.\textsuperscript{137} There are a variety of family forms that differ from the western concept to the African concept.\textsuperscript{138} In most African cultures the term family is used to define blood relations.\textsuperscript{139} In patrilineal societies to which the Shona family identifies itself, a description of family is found through the tracing of male descendants that include a father, his brothers and sisters whether half or full and other blood relatives.\textsuperscript{140} In cases where the patrilineal family is not able to provide, the child will turn to his matrilineal family who are usually related to the mother through blood relations.

\section*{3.3 The family under international law}

The family is recognised and protected under international law.\textsuperscript{141} It is the foundation of society and the natural environment for the growth and well being of its members.\textsuperscript{142} The family has rights and duties to nurture, socialise and develop children in a manner consistent with local customs and traditions.\textsuperscript{143} All family members have a role to play in

\begin{itemize}
  \item \textsuperscript{135} B Rwezaura (n 133 above) 27; Recently there has been a move by some human rights activists for same sex marriages to be recognised as family international law still regards family as consisting of heterosexual couples. In X & Y v United Kingdom the European Commission for Human Rights stated that despite the evolution of attitudes towards homosexuality, homosexuality could not be regarded as family life but as private life see G van Bueren (n 133 above) 737.
  \item \textsuperscript{136} G van Bueren (n 133 above) 733.
  \item \textsuperscript{137} G van Bueren (n 133 above) 734.
  \item \textsuperscript{138} B Rwezaura (n 133 above) 27.
  \item \textsuperscript{139} B Rwezaura (n 133 above) 28.
  \item \textsuperscript{140} As above.
  \item \textsuperscript{141} Art 23(1) of the International Covenant of Civil and Political Rights (ICCPR), art 10 of the International Covenant of Economic Social and Cultural Rights; the extend of the recognition and importance of the family can be seen in the International Year of the Family as proclaimed by the United Nations in 1994; G van Bueren (n 133 above) 733.
  \item \textsuperscript{142} See para 5 of preamble to CRC; art 18 of ACRWC states that the family is the natural unit and basis of society.
\end{itemize}
ensuring that the girl child is protected against sexual abuse and exploitation, in so doing, the family will be ensuring that the girl child enjoys childhood as a time of play that is a-sexual and peaceful within its protective bosom. The survival, development and protection of children are dependant on their parents. Parents have equal responsibility for the upbringing and development of children.

Most African families identify themselves with certain ethnic groups that adhere to certain cultural practices. Family members do have a right to practice their culture. However, this right is not absolute, cultural practices should not interfere or violate the rights of the girl child as enshrined in the human rights instruments. Some of the cultural practices are harmful to the healthy growth and development of the girl child and there is a need for the states to move away from peeping or piercing the family ‘privacy veil’ to lifting it, in order to regulate the activities that can be prejudicial to the growth of the girl child. When considering the family in the context of African societies as they exist today and operate on a daily basis, account has to be taken of the various forces that influence the obligations and rights, relationships and affiliations that family membership entails. Forces that may influence obligations of the family include prevailing economic conditions that can be a driving force for the family members to engage in certain cultural practices.

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144 J Kitzinger (n 45 above) 78; family has a primary role of caring and protecting children see UNICEF (n 25 above) 39.

145 T Khaime (n 143 above); art 19(1) & 20(1) of ACRWC.

146 Art 22 &27(1) of the Universal Declaration of Human Rights (UDHR); art 15(1) of ICESCR; art 27 of ICCPR.

147 See RJR Levesque (n 130 above).

148 B Rwezaura ( n 133 above) 30.

149 In Zimbabwe the rise in cases of sexual abuse and exploitation of children has been largely attributed to the harsh economic conditions currently facing the country see The Zimbabwe Situation ‘girl children forced into marriage as hunger bites Zimbabwe available at <http://www.zimbabwesitutaion.com/may16_2006.html> (accessed on 24 August 2006).
3.4 Culture

Culture may be defined as the integrated pattern of human knowledge, belief and behaviour, which is dependent upon the capacity of human society to learn and transmit knowledge about their values ideas and beliefs to succeeding generations. Culture can also be defined as the customary beliefs, social forms and material traits of a racial ethnic or linguistic, or religious or social group. For the purpose of this discussion culture will be defined as a set of attitudes, values, beliefs and behaviour shared by a group of people communicated from one generation to the next by way of language or some other means of communication.

Culture is recognised in international and regional instruments such as the ACHPR, ICESCR and the Women's Protocol in Africa. However, culture reflects patriarchal values and has proved to be insensitive to the rights of women and children in general. Onyango states that culture or tradition as it exists today is 'made for, of and by men.' The notion of culture or tradition has been used to justify human rights violations. Various families adhere to and practice different cultures, of which, some result in sexual abuse and exploitation of girl children. This paper will focus on the cultural practices of the typical Shona family in Zimbabwe and the impact on the right not to be sexually abused or exploited of the girl.

151 As above.
153 Art 17(3) of ACHPR.
154 Art 15 of ICESCR.
155 Art 17 recognises the right to live in a positive cultural context.
156 Onyango (n 150 above) 21.
157 D Ahn (152 above).
3.5 The family, culture and observance of children’s rights

Children’s rights are now considered to be universal due to the wide acceptance of CRC by nations. The implementation of the CRC should not be hampered by the particular socio-cultural experiences of the diverse societies that have subscribed to its normative framework. There is tension between culture and children’s rights, as with culture and human rights generally. The CRC gives rights to children and at the same time acknowledge rights and duties of the family. The child has a right to survival and development, is dependant on the family and this can only be achieved under a stable, caring family environment that does not subject the child to cultural practices that will perpetuate sexual abuse or exploitation of the child.

CRC acknowledges the rights and duties of the family to nurture, socialise and develop their children in a manner consistent with the local values, customs and traditions. The family has a role to provide direction and guidance to the child in the exercise of his or her rights in a manner consistent with the child’s evolving capacities. The child is introduced to values and norms of society within the family environment as the family is the custodian of traditional and moral values recognised by the community as articulated in ACHPR. The state has a duty to assist the family to safeguard these moral and

158 T Khaime (n 143 above) 221.
159 As above.
160 T Khaime (n 143 above)
161 As above.
162 The right to survival and development of the child is articulated in art 27 of CRC and art 5 of ACRWC.
163 art 5 of CRC; although the family has the duty to ensure that a child interacts with society and observes relevant cultural practices such parental decision making powers are not unrestricted hence the family cannot be allowed to engage in cultural practices that facilitate sexual abuse of the child see G van Bueren (n 116 above) 741; ACRWC recognises the duty of the parents to care and protect the child in art 19 it does not explicitly advocate for the socialising and development of the child consistent with local values and culture like the CRC; art 11(1)(c) of ACRWC however states that every child shall have the right to education directed at the preservation of African culture and tradition.
164 Art 5 & 14(2) of CRC; T Khaime (n 143 above) 227.
165 Art 18(2) of ACHPR.
traditional values.\textsuperscript{166} The approach of the above instruments demonstrates that there is consensus that the family is central in the socialisation of children from childhood to adulthood.\textsuperscript{167}

Under international law there is a dynamic relationship between the rights of the child, culture and the family with the intention of achieving the growth and development of the child.\textsuperscript{168} This relationship is endangered when the practices that are culturally correct conflict with the standards set out in the international human rights norms.\textsuperscript{169} It is therefore, the duty of the state to ensure that the family does not engage in cultural practices that are detrimental to the development of the child or that cause the child to be sexually abused and exploited. The rights of the child have to be primary over cultural practices, with the CRC and ACRWC being supreme over any culture and tradition. International law is in favour of cultural practices that advance the protection and promotion of children’s rights and overrides practices that are deleterious to the protection of children’s rights.\textsuperscript{170}

Cultural practices must not sexually abuse and exploit the girl child hence affecting the survival and healthy growth of the child as stated in ACRWC and CRC.\textsuperscript{171} Any decision made by the family must be done to enhance the growth and development of the child.\textsuperscript{172} There has to be a balance between cultural values and the best interests of the child with the best interests prevailing.\textsuperscript{172} Cultural practices that harm the growth of the child and cause the sexual abuse or exploitation of the child cannot be said to be in the best interests of that child.

\textsuperscript{166} Art 5 of CRC.
\textsuperscript{168} T Khaime (n 143 above) 227.
\textsuperscript{169} As above.
\textsuperscript{170} T Khaime (n 143 above) 229.
\textsuperscript{171} Art 6(2) of CRC; art 5 (2) of ACRWC.
\textsuperscript{172} T Khaime (n 143 above).
\textsuperscript{173} Art 3 of CRC; art 4 of ARWC.
Since culture has also been identified to be one of the major obstacles to the enjoyment of rights of children in general,\textsuperscript{174} there is a need to ensure that although it is necessary to protect the family in exercising its duty to ensure that the girl child is familiar with cultural practices as guaranteed in several international law instruments,\textsuperscript{175} the child will not in the long run, be sexually abused or exploited.

\subsection*{3.6 Conclusion}

The family has a duty to bring up the child in a manner that is consistent with the local customs and values. Customs and practices that result in the sexual abuse and exploitation of the girl child conflicting with other rights of the child must not be condoned. There is a need for the state to closely monitor activities of the family to ensure that sexual abuse and exploitation of the child is minimised.

\textsuperscript{174} C Himonga (n 48 above) 90.

\textsuperscript{175} Art 12(1) of the ACRWC states that the child has a right to participate in culture.
Chapter 4

Culture and the right of the girl child not to be sexually abused and exploited: the Zimbabwean experience

4.1 Introduction

Like any other African society, Shona people of Zimbabwe engage in several cultural practices that are not compatible with rights of children. Some of these cultural practices are defended on the basis of socialisation of the child. One of the most common practices that was fizzling out but has recently been resurrected due to harsh economic conditions prevailing in the country is child marriages. Parents are now resorting to marrying off their girl children who reach puberty as a survival technique. Some of these child marriages are not driven by economic conditions, but are just practiced because of the cultural beliefs of the parents. It has been noted that most reports of sexual abuse occur in families with the lowest socio-economic levels.176

This chapter will commence by setting out the position of the Constitution of Zimbabwe on culture and children’s rights, a general description of every cultural practice that results in sexual abuse and exploitation of the girl child will ensue. This will be followed by the Zimbabwean experience of the practice. The legal framework and any other policy frameworks that have been introduced to curtail sexual abuse and exploitation of the girl and their shortcomings will be highlighted. In conclusion the consequences of such practices will be outlined on the general enjoyment of the rights of the child. In so doing this chapter will show how sexual abuse and exploitation is impeding the girl child from enjoying other rights in Zimbabwe.

4.2 Culture and children’s rights in the Constitution of Zimbabwe

Zimbabwe is predicated on the doctrine of constitutional supremacy.177 The 1980 Constitution of Zimbabwe has been amended 17 times since it came into force. Although the Constitution of Zimbabwe is the supreme law of the land it is silent on children’s rights. It does not have provisions protecting the child in any manner let alone sexual abuse and exploitation. The bill of rights is deficient in its protection of fundamental rights in this regard.

Zimbabwe has ratified a number of conventions that protect children against child sexual abuse and exploitation such as the CRC and ACRWC. International treaties or conventions ratified by Zimbabwe under the authority of the President are not self-executing unless passed into law by parliament.178 This is known as incorporation of international instruments into domestic law. The Zimbabwean Constitution has a provision for this.179 The declaration of rights in the Constitution focuses on a relationship between the state and the individual (primarily a masculine relationship).180 The Constitution of Zimbabwe does not have any explicit provision on cultural rights but it condones discrimination in cases were customary law applies.181 The Constitution of Zimbabwe does not explicitly guarantee the right to culture although application of customary law is recognised in several statutes.182

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177 Sec 3 of the Constitution of Zimbabwe states that the Constitution is the supreme law of the land.

178 Sec 111b of the Constitution of Zimbabwe.

179 As above.


181 Sec 23(1) of the Constitution of Zimbabwe.

182 Customary Law and Local Courts Act Chapter 8: 05.
4.3 Child marriages

Marriage is said to be amongst the most significant of life events in most societies as it signals the emergence to adulthood.\(^{183}\) Marriage is considered to be a way of building a family or an extended family.\(^{184}\) Giddens views marriage as a socially acknowledged and approved sexual union between two individual adults.\(^{185}\) It is supposed to be an adult activity although some people marry when they are still young.\(^{186}\) The preamble of CRC recognises that the body and mind of a child is less mature than adults,\(^{187}\) consequently roles appropriate for adults such as marriage are not suitable for children. Marriage has a huge impact on the lives of girls.\(^{188}\) Policy makers have approached marriage from a human rights perspective by trying to set an age limit and circumstances under which it can be entered.\(^{189}\) A number of human rights instruments such as the Women’s Protocol and ACRWC have set the age limit for marriage as 18 years.\(^{190}\) Due to globalisation, international human rights norms perceive that no child no matter what cultural background must be married before the age of 18 years.

Despite the age limit set by these human rights instruments early marriages still persist across the world. At least 100 million girls are estimated to be married early in the next decade across the world.\(^{191}\) The custom of child marriages has deep historic roots.\(^{192}\) Tradition and culture endorse child marriages.\(^{193}\) Globalisation has however challenged

\(^{183}\) R Jensen et al ‘Early Female marriage in the developing world’ 11 Gender and development (2003) 9.

\(^{184}\) As above.

\(^{185}\) D Kyalondo, Save the Children Uganda Child rights education and support services: causes and perceptions about child marriages in Maddu sub county, Mpigi district (2005) 4.

\(^{186}\) As above.

\(^{187}\) UNICEF State of the World’s Children (n 22 above) 43

\(^{188}\) As above.

\(^{189}\) As above; under art 16 the Universal Declaration of Human Rights (UDHR) marriage has to be entered into only with the full consent of both parties.

\(^{190}\) Art of 6(b) the protocol and art 21(2) of ACRWC.

\(^{191}\) Family Health International (n 2 above) 7.

\(^{192}\) As above.

\(^{193}\) Family Health International (n 2 above) 7.
some of the most concentrated, deeply rooted positive cultural values like child marriages by subjecting them to critical exposure.\(^{194}\)

Marriage is seen as a way to maximise fertility, secure family alliances and protect girls from pregnancy outside marriages.\(^{195}\) However child marriages result in the girl child experiencing traumatic or forced sex with her husband.\(^{196}\) Non-consensual sex is commonly referred to as rape.\(^{197}\) The sexual acts are not a one off event and persist. Thus child marriages result in the girl being repeatedly sexually abused over a long period of time until they reach 18 years, the minimum age of marriage under the ACRWC and the CRC. The girl child is exposed to early sexual activity and child bearing that have an impact on their health. Early child bearing can also cause maternal mortality.\(^{198}\)

Early marriage consumes the childhood years of a girl and compromises her schooling and future health.\(^{199}\) The Vienna Declaration and Programme for Action also address Child marriages.\(^{200}\) Sexual abuse occurs within the domestic setting of marriage where it is sanctioned by society. Early and forced marriages represent the most prevalent form of sexual abuse and exploitation of girls. The family deliberately exposes girls to sexual abuse and exploitation. Traditionally, in some societies marriage is not an arrangement between two people but two families. This is also the position among Shona people in

\(^{194}\) JO Onyango (n 150 above) 21.


\(^{196}\) Family health international (n 2 above) 7.

\(^{197}\) In Zimbabwe non-consensual sex is always referred to as rape and is criminalised by sec 70 of the Criminal Law (Codification and Reform) Act Chapter 9: 23.

\(^{198}\) WHO and UNICEF estimate that at least 600 00 women die in the world from maternal mortality see AE Yamin et al ‘Maternal mortality as a human rights issue: measuring compliance with international obligations’ 21 Human rights quarterly (1999) 563.


Zimbabwe. Sexual abuse and exploitation of children remains, whether it is done in or out of marriage as a child who is less than 18 years cannot be said to be able to consent to sex.

A woman has a reproductive role to bear children for the husband's family under a patriarchal society. Child marriages are considered to be sexually exploitative due to the fact that most of them are entered into for the sole purpose of financial gain by the family of the girl and not because the girl chooses to marry because she is in love. Parents are forced by poverty to marry off their girl child in the hope of getting financial benefits in the form of bride wealth. Socio-economic factors of individual families and communities contribute to child marriages. Gender discrimination is also another cause of girl children being married off early, girls are unduly discriminated upon in terms of schooling when parents are unable to provide for all children they tend to arrange marriages for girls in order to ensure that bride wealth obtained is used to educate the boys. Girls are married off to wealthy old men. Another reason has been the prevention of pre-marital sex. Parents believe that if girls marry early they will be saved from sex out of marriage and related pregnancies.

4. 4 Child marriages in Zimbabwe
Zimbabwe is party to several international instruments that seek to protect the rights of the girl children against sexual abuse and exploitation and also forbid child marriages. Zimbabwe has not ratified the Women's Protocol yet. Be that as it may, the practice of early marriages still persists in Zimbabwe. Reports indicate that this practice has become common among the rural communities due to the current economic crisis facing

\[201\] A Armstrong (n 195 above) 344.
\[202\] DT Kyalondo (n 185 above) 14.
\[203\] As above 15.
\[204\] Early marriage avoids the moral baggage associated with pre marital sex and pregnancy (As above).
\[205\] Zimbabwe is party to CRC and ACRWC see (n 37 above).
The various types of early marriages existing in Zimbabwe are;

4.4.1 Kuripa Ngozi or homicide bride

One type of child marriages that has been persistently practised in Zimbabwe is the pledging into marriage of a girl to appease the spirit of a dead person. This practice is known as Kuripa ngozi. Rwezaura terms it homicide bride. This usually occurs in cases of murder, although murder was a crime punishable under common law before the coming into force of the Criminal Codification Act in 2005 by the courts of law this practice persists. In this case, a young girl is given to the family of the deceased as a wife to compensate for the loss of their relative by the family of the accused person. It is believed amongst the Shona people that failure to appease the spirit of the dead will bring misfortune to the accused and his clan. Girls as young as 14 years old have been married off into polygamous marriages to men who are 54 years old. The state has an obligation to intervene in the family to protect children who are constantly being sexually abused or exploited in this regard.

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207 As above.

208 B Rwezaura (n 70 above) 254.

209 B Rwezaura (n 126 above) 59.

210 As above.

211 It is believed that the spirit of the murdered person will not rest until such compensation is paid otherwise the spirit of the dead will come back and haunt the family of the accused person, this can result in the loss of cattle, or unexplained deaths within the family of the accused person or extended family see S Chirawu ‘Till death do us part: marriage, HIV/AIDS and the law in Zimbabwe (2006) available at <http://www.lawandsocietysummerinstitutes.org/workshop06/participants/slyvia.pdf> (accessed on 2 October 2006); B Goerke ‘Impact of traditional Shona beliefs on HIV/AIDS intervention available at <http://www.etdl.library.dup/ed/thesis > (accessed on 4 October 2006).

212 B Goerke above.
4.4.2 Kuzvarira or betrothal\textsuperscript{213}

\textit{Kuzvarira} is also known as the pledging into marriage of a girl child.\textsuperscript{214} This is a cultural practice where a child can be married off before they are born. This was widely practised before the colonial era when elders where able to accumulate young wives through pledging in exchange for grain during times of food shortages.\textsuperscript{215} This traditional practice has been revived due to the harsh economic conditions currently facing the country.\textsuperscript{216} The child is given away at any age when the family feels she is capable of performing her duties as a wife usually when she reaches puberty.

Child marriages have a negative impact on other rights as they result in sexual abuse. Sexual abuse of children violates the inherent dignity and worth of a child and involves cumulative breaches of various rights.\textsuperscript{217} The right to reproductive self-determination is greatly curtailed as the girl is not able to decide freely when to have children.\textsuperscript{218} This is so because of the unequal power relations that exist in child marriages as the men always tend to be at least 10 years older than the girls.\textsuperscript{219} The young girls are therefore not able to negotiate safe sex with their husbands,\textsuperscript{220} and are at a great risk of being infected with sexually transmitted diseases.\textsuperscript{221}

\textsuperscript{213} This practice has been identified as one of the cultural forces behind the high prevalence of HIV in Zimbabwe see M T Vambe ‘HIV/AIDS African sexuality the problem of representation in Zimbabwe literature’ 21 Journal of contemporary African studies (2003) 473.

\textsuperscript{214} J Raath (n 27 above).


\textsuperscript{216} n 32 above).

\textsuperscript{217} G van Bueren (n 3 above).

\textsuperscript{218} This right is derived from the right to reproductive health and choice as articulated in art 16(1)(e) of CEDAW; It is a cultural relationship that married people’s relationship must result in children as physical evidence of motherhood and fatherhood. Children are of great value in Shona culture since if one does not bear children they are a threat to the survival of the clan and do not become ancestors upon death see MT Vambe (n 213 above) 477.

\textsuperscript{219} Family Health International (n 2 above) 7.

\textsuperscript{220} As above.

\textsuperscript{221} As above; few man use condoms with their wives but with commercial sex workers see S Chirawu (n 211 above) 15; The prevalence of HIV has increased in Zimbabwe see J Adetunji ‘Condom use in marital and non marital relationships in Zimbabwe’ 26 International family planning perspectives (2000) available at <http://www.guttmacher.org/pubs/journal/2619600.html>
Child marriages have also resulted in a large number of girls dropping out of school as most tend to get pregnant due to the sexual abuse, arising from their marital obligation to have sex with their husbands.\textsuperscript{222} Approximately about 15 million girls between the ages of 15 and 19 give birth every year in the world.\textsuperscript{223} They account for at least 10\% of the babies that are born around the world. The risk of death from pregnancy related causes is four times higher in this age group than in women who are over 20 years.\textsuperscript{224}

Closely related to the right to health is the right to security of the person that occurs when a child is violated by being continually forced to indulge in sexual intercourse. Rape infringes upon the security of the person of the child,\textsuperscript{225} it has also been recognised as an act of torture by the International Criminal tribunal of Rwanda (ICTR) and the International Criminal Tribunal of Yugoslavia (ICTY).\textsuperscript{226} The effects of child sexual abuse on the right to health of the child will in the long run affect the child’s right to leisure.\textsuperscript{227}

\subsection*{4.5 Marriage laws in Zimbabwe}

Zimbabwe has a dual legal system like most African countries due to colonisation. Customary law applies side by side with general law. In Zimbabwe there are three types of marriage that are recognised. There is civil law marriage that is regulated by the

\begin{itemize}
\item In Zimbabwe the Progressive Teachers Association has indicated that many girls are dropping out of school due to early marriages and early pregnancy see The Zimbabwean Situation available at \url{http://www.zimbabwesituation.com/oct20_2006.html} (accessed on 21 October 2006).
\item UNICEF (n 198 above).
\item As above.
\item Art 6 of ACHPR; art 9 of ICCPR.
\item Prosecutor v Delalic the ICTY held that rape can amount to torture cruel and inhuman and degrading punishment; The European Court of Human Rights has also concluded that rape is torture in \textit{Aydin v Turkey} 1997, in \textit{X v Y} 1985 it stated that rape infringes on the right to privacy of the victim see G Van Bueren (n 3 above).
\item Art 12 of ACRWC; The child will assume the role of a wife and mother and all the obligations accruing to such roles.
\end{itemize}
Marriages Act\textsuperscript{228} and the customary marriages that are either registered under the Customary Marriages Act\textsuperscript{229} or are unregistered customary unions recognised in cases of inheritance,\textsuperscript{230} divorce and custody of children.\textsuperscript{231}

The Constitution of Zimbabwe does not address the minimum age at which parties can enter into a valid marriage. It is silent on this issue. Marriage is therefore governed by the different laws applying to the type of marriage that the parties choose. Under the Marriages Act the minimum age of marriage is 18 years for boys and 16 for girls.\textsuperscript{232} Girls can be married at the age of 16 provided there is consent from the Minister of Justice, or the parents.\textsuperscript{233}

Marriage of girls who are below the age of 18 years is not compatible with the notion of childhood as articulated in the CRC and ACRWC. This leaves the girls vulnerable to sexual abuse due to these early marriages unlike boys who can enter into marriage at the age of 18. This provision is discriminatory. Under the unregistered customary law union there is no minimum age of marriage. If a girl marries below the age of 18 her parents have to agree on the bride wealth for the marriage to be valid in terms of the Customary Marriages Act.\textsuperscript{234} The minimum age limit for marriage of girls under all regimes in Zimbabwe is in practice below the age set in ACRWC.

The Customary Marriages Act prohibits the pledging of young girls into marriage.\textsuperscript{235} In practice however, the pledging of girls remains high as it is not compulsory to register all marriages in Zimbabwe and there are no effective measures in place to detect such practices.

\textsuperscript{228} Marriages Act Chapter 5: 11; Center for reproductive law and policy Women of the world: laws and policies affecting their reproductive lives, Anglophone Africa progress report (2001).
\textsuperscript{229} Customary Marriages Act Chapter 5: 06.
\textsuperscript{230} Amendment no. 6 of the Administration of Estates Act Chapter 6: 01.
\textsuperscript{231} Sec 3 of the Customary Marriages Act.
\textsuperscript{232} Sec 22(1) of the Marriages Act.
\textsuperscript{233} As above.
\textsuperscript{234} Sec 20(2) of the Customary Marriages Act.
\textsuperscript{235} Sec 11(1) of Customary Marriages Act.
4.6 Virginity testing

Virginity testing was common in African societies in the 19 century.\(^{236}\) This ancient practice is enjoying contemporary revival and popularity after a long period of dormancy.\(^{237}\) Virginity testing or *kurukova*\(^{238}\) is practised in Southern African countries such as Swaziland, South Africa and Zimbabwe.\(^{239}\) Virginity testing is normally done to control the sexuality of girls.\(^{240}\) Those who advocate for virginity testing such as the King of Swaziland applaud it for reducing HIV infections.\(^{241}\) It is an attempt by men to control women and the elders to control the young.\(^{242}\)

The practice is perpetuated by hierarchical family structures that locate men as heads of households and advocate for the subordination of women by endorsing enthusiastically cultural and tribal rituals such as virginity testing.\(^{243}\) Virginity testing places an absurd and unjustifiable burden of responsibilities of controlling the spread of HIV and AIDS upon the shoulders of young women.\(^{244}\)

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\(^{237}\) L Vincent (n 18 above) 18.

\(^{238}\) Virginity testing is known as *kurukova* in Zimbabwe, literally translated *kurukova* means at the river, virginity testing ceremonies are usually conducted near a river.

\(^{239}\) In South Africa a ceremony known as *Umhlanga* is conducted annually by the Zulu people to celebrate virginity with the participants being certified virgins see L Vincent (n 18 above) 18; Southern Africa has one of the highest prevalence of HIV infections in Africa, it is predicted that at least 7.5 million people will be by the year 2010 see Vambe (n 213 above) 6.

\(^{240}\) P Kaarsholm (n 236 above) 143.

\(^{241}\) W Hlonga ‘Teens turn to anal sex to keep virginity’ South Africa News 24, Jun 26,2004 available at <http://www.news24.com/city_Press_News/0,1885,186-187_1548717,00.html> (accessed on 24 September 2006); some chiefs in Zimbabwe have also supported virginity testing as a way to ensure that young girls do not indulge in premarital sex hence reducing the chances of being infected with HIV see Family Health International (n 2 above) 14.

\(^{242}\) P Kaarsholm (n 236 above) 146.


\(^{244}\) S Anfred ‘Rethinking sexualities in Africa: introduction’ in (ed) S Anfred *Rethinking sexualities in Africa* (2004) 11; At least 2000 to 3000 people are believed to die of HIV/AIDS in Zimbabwe every week see MT Vambe (n 213 above) 473.
Until recently virginity testing was largely a private matter carried out in the home.\textsuperscript{245} When virginity testing is carried out in the home, the mother, aunt or neighbour inserts a finger in the vagina of the girl to check if the hymen is still intact.\textsuperscript{246} Virginity testing can however be done at a communal level in ceremonies by elderly women appointed in the local area through the same procedure of inserting a finger in the vagina. Inserting a finger in the vagina of a girl or women is known as digital penetration it amounts to sexual abuse.

Amongst the Shona, virginity is an important part of a girl’s identity and great value is placed on being a virgin.\textsuperscript{247} Traditionally virginity tests were used to bargain for a high bride price.\textsuperscript{248} In 2005 some traditional leaders in Zimbabwe issued directives in their jurisdictions to resume virginity testing of the girls in public ceremonies.\textsuperscript{249} Despite this open endorsement, virginity testing was being practiced around Zimbabwe mainly in the rural areas.\textsuperscript{250} Earlier on in 2002, about 5000 girls attended a virginity testing ceremony at Osborne dam in Makoni area, under the jurisdiction of Chief Makoni,\textsuperscript{251} in 2004 at least 4000 young girls were subjected to these virginity tests in that area.\textsuperscript{252} The girls who pass these virginity exams are given a certificate as proof.\textsuperscript{253} These traditional leaders who are

\begin{flushleft}
\textsuperscript{246} Family health international (n above )14.
\textsuperscript{247} As above.
\textsuperscript{248} M Kesby et al ‘Theorising the other, ‘other childhoods’: issues emerging from work on HIV in rural and urban Zimbabwe’ 4 Children’s geographies (2006) 185.
\textsuperscript{249} As above.
\textsuperscript{250} Chief Makoni revived virginity testing in 2001 as he stated that it preserves African culture and identity see S Chirawu (n 211 above) 21.
\textsuperscript{251} As above.
\end{flushleft}
usually chiefs have jurisdiction to deal with customary matters in their respective jurisdictions as in accordance with the Traditional Leaders Act.\textsuperscript{254}

Other than virginity testing being tantamount to sexual abuse and seriously violating other human rights of girls, it exposes the certified virgins at a big risk of being raped and infected by HIV positive men due to the myth that is harboured by some traditional healers who advise their patients to have sex with virgins so as to cure them by eradicating the infection.\textsuperscript{255} It is tantamount to discrimination on the basis of sex as only girls are tested.\textsuperscript{256}

\textbf{4.7 The legal position in Zimbabwe}

In Zimbabwe there is no law that prohibits virginity testing although sexual abuse and exploitation of children is covered under the Criminal law Codification Act.\textsuperscript{257} This act recognises non-consensual sex commonly classified as rape.\textsuperscript{258} Where there is consent the crime is sexual intercourse or performing indecent acts with young persons.\textsuperscript{259} The Act is silent on virginity testing. There is no other law that purports to address virginity testing at present in Zimbabwe. It remains speculative as to whether provisions of the Domestic Violence Bill that is being currently debated in parliament that incorporates sexual abuse under physical abuse as domestic violence will cover virginity testing.\textsuperscript{260} This bill defines sexual abuse as any conduct that humiliates, degrades or otherwise violates the sexual integrity of the complainant.\textsuperscript{261} The yardstick of what conduct and by

\begin{itemize}
\item \textsuperscript{254} Traditional Leaders Act Chapter 29 (1998).
\item \textsuperscript{255} Family Health International (n 2 above) 14; There has also been an increased number of baby rapes in countries like South Africa and Zimbabwe due to the virgin curing HIV myth see H Moffett (n 218 above).
\item \textsuperscript{256} Discrimination against women and girls is prohibited art 1 of CEDAW; art 2(2) of CRC; art 3 of ACRWC; art 2 of Women’s Protocol.
\item \textsuperscript{257} Criminal Law (Codification and Reform) Act, Act no. 23 of 2004.
\item \textsuperscript{258} Sec 65 of Criminal Law (Codification and Reform) Act.
\item \textsuperscript{259} Sec 70 of Criminal Law (Codification and Reform) Act.
\item \textsuperscript{260} Sec 2 of the Domestic Violence Bill available at <http://www.allafrica.com/stories/200610170236.html?=2> (accessed on 19 October 2006).
\item \textsuperscript{261} As above.
\end{itemize}
whose standards is humiliating is not defined it is the subjective standard of the judicial officer. This bill is however of no force or effect until it is passed into law.

4.8 Bride wealth or Roora

The underlying theme of early marriages is the great desire of the father or legal guardian of the girl to acquire bride wealth or Roora or in the case of virginity testing determine the amount that is likely to be realised by marrying off the girl. Roora has been defined as payment in money or other material forms by a son in law or member of his family to the father or legal guardian of a women for the purpose of entering into a valid marriage. In Zimbabwe the acceptance of roora is an essential requirement for entering into a customary marriage.264

Bride wealth has the effect of perceiving girl children as property of male members of the family who can be the father, uncle or brother. This is tantamount to viewing children as an economic resource, with an exchange value disguised as the bride price. Some families conceive it as a source of income to the family. This has made the idea of child marriages more attractive. Poverty is perpetuating child marriages in most rural communities in Zimbabwe, such poverty being fuelled by the high inflation rate and being exacerbated by the notorious clean up campaign dubbed Murambatsvina or Operation Restore Order.267

262 Other cultural practices like virginity testing are done to ascertain how much bride wealth a girl will fetch as marrying a virgin is an honour amongst Shona people.

263 John Pwadzayi v Nhiwe Dzirutwe1964 AAC 73; the position of lobola appears to be unclear with the passing of the Customary Marriages Act that does not appear to make it compulsory, however most of the customary law that is relied upon in Zimbabwe is regarded as living law that is not written.

264 As above.

265 A Armstrong et al (n 195 above) 345.

266 As above.

Traditionally the bride wealth includes cattle, walking sticks and clothes to the parents with the underlying theme of cementing the relationship between the two families.\(^{268}\) Recently the practice has become commercialised with cash forming a major component of the transaction. In most communities bride wealth consists of cash, consumer goods or a combination of these and livestock.\(^{268}\) Some parents are demanding money or cellular phones.\(^{270}\) This has greatly distorted the original theme underlying this practice. Some parents calculate the gains to be derived from their daughters long before the children are born.

Bride wealth reinforces the patriarchal nature of the Shona people in Zimbabwe.\(^ {271}\) This has been one of the main reasons why girls have been married off early in Zimbabwe. In her study, Armstrong shows how local culture and traditions undermine protection of children’s rights in cases of rape and sexual abuse of girl children.\(^ {272}\)

Although the criminal law in Zimbabwe prohibits sexual intercourse with girls under the age of sixteen,\(^ {273}\) irrespective of her consent, local customs do not consider it a criminal offence as long as the girl has reached puberty if her parents consent.\(^ {274}\) Puberty is can be reached as early as 12 years, thus children below the age of 16 are considered to be competent sexual partners by men.\(^ {275}\) In her study Armstrong shows that at least 77\% of all cases reported to the police of sexual abuse the girls were under 12.\(^ {276}\) In cases where victims were over 12 years only 22\% of the rape cases were reported to the
police. Some reported cases were ultimately resolved by the families out of court.\textsuperscript{277} Such resolution would involve the payment of seduction damages or the initiation of the marriage of the victim to the perpetrator.\textsuperscript{278}

*Roora* is also viewed as perpetual consent to sexual intercourse with the husband because of the great monetary value attached to it.\textsuperscript{279} Sex is a marital obligation. A married girl or woman experiences immense social and cultural pressure to have sex with her husband.\textsuperscript{280} This exposes the girl child to the risk of contracting infectious sexually transmitted diseases like HIV/ AIDS.\textsuperscript{281} Women are regarded as property of their husbands due to this institution.\textsuperscript{282}

### 4.9 The legal position in Zimbabwe

*Roora* is not a requirement to enter into civil marriages.\textsuperscript{283} Under the Customary Law Marriages Act bride wealth is a requirement when a girl gets married before the age of 18 years.\textsuperscript{284} The payment of *roora* is regarded as a requirement in Zimbabwe especially with children who are below the age of 18. This makes them very vulnerable to child marriages as it is not mandatory to register all marriages and they is tacit recognition of unregistered unions in family law.

\begin{footnotes}
\footnotetext{277}{As above.}
\footnotetext{278}{B Rwezaura (n 126 above) 262.}
\footnotetext{279}{As above; G Goerke (n 211 above) 21.}
\footnotetext{281}{As above.}
\footnotetext{282}{S Tamale (n 265 above).}
\footnotetext{283}{n 248 above.}
\footnotetext{284}{Sec 4(2), 4(3) & 7 of the Customary Marriages Act states that a customary marriage with an African girl below the age of 18 is not valid without parental or guardian consent and agreement on the payment of bride wealth, this position does not apply to women over 18 years as stated in the case of Katekwe v Muchabaiwa SC87/84; Center for Reproductive law and Policy *Women of the world laws and policies affecting their reproductive lives* (2001) 145.}
\end{footnotes}
4.10 Other traditional beliefs and practices

Chiramu\textsuperscript{285} is one of the traditional practices that has been ignored by many feminists in Zimbabwe, it has not received enough criticism. The act is very private just like incest and is not easily detectable unless the victim discloses the abuse. In extreme cases, it is perceived as according sexual rights to the unmarried sisters of the wife.\textsuperscript{286}

Tradition alone has been identified as a cause of sexual abuse of children. Some people in Zimbabwe consult traditional healers when they are sick. Some of these traditional healers do however prescribe sexual intercourse with a minor as treatment for some diseases like HIV and AIDS. This practice continues despite the fact that the organisation that governs the work of traditional healers in Zimbabwe, ZINATHA has drawn up a code of conduct for its members entrusting them with the duty to help in the prevention of child sexual abuse by not prescribing sex as medication for treatment of ailments or boosting business.\textsuperscript{287}

4.11 Legal position in Zimbabwe

Currently there is no law that criminalises the practice of chiramu in Zimbabwe. It remains speculative however, on whether one can invoke the provisions of the Criminal Law (Codification and Reform) Act that makes it an offence to ‘commit upon a young person any act involving physical contact that would be regarded by a reasonable person to be an indecent act’.\textsuperscript{288} It is not clear what criteria a reasonable person should satisfy given the fact that there are some cases in which customary law applies and the system is dualist recognising both general and customary law. A reasonable person can be one that has a strong cultural background. The other shortcoming is that the indecent

\textsuperscript{285} For the definition of Chiramu see J Raath (n 27 above).


\textsuperscript{287} H Moffett (n 243 above).

\textsuperscript{288} Sec 70(1)(b) of the Criminal Law (Codification and Reform) Act.
act is not defined at all and is therefore left to the discretion of the judicial officer to determine the extent of the indecency and what is indecent.

4.12 Conclusion

Several factors continue to contribute to sexual abuse and exploitation of children in Zimbabwe. Lack of adequate legislation, education and poverty are some of the factors at play. There is a great need for the state to take effective measures to curb sexual abuse and exploitation of children as the effects can affect the victim throughout life. At least 45% of the population of Zimbabwe is under 15 years. 24.6% of the adults are already infected with HIV/AIDS. Children and youths are therefore critical to the future health of the nation. The next generation has to be healthy to enable it to bolster the weak economy.

289 For the effects of sexual abuse on children see (n 20 above); n 22 above; (n 25 above).

290 M Kesby (n 248 above) 185.

291 As above.

292 M Kesby (n 248 above) 185.
Chapter 5

Conclusion and recommendations

5.1 Conclusion

Protection of children against sexual abuse falls within the public and private debate. One school of thought regards the family as a private sphere beyond the control of the state. The other school perceives the family as a social institution that can preserve power structures under which certain members like men are able to exert control over the weaker subordinate members such as children and women.\(^{293}\)

A central dilemma that faces the state in its protective mandate is the potential conflict with family privacy or parental autonomy in child rearing. Parents cannot however have the absolute right to determine the upbringing of the children.\(^{294}\) This century has seen a considerable increase in the power of the state to intervene in the lives of children within their families.\(^{295}\)

It is trite that there should always exist a formal separation between childhood and sexuality as intersection can have a boomerang effect on the overall enjoyment of the rights of the girl child. Child sexual abuse and exploitation is wrong. The lack of a viable solution in Zimbabwe to the problem is also wrong. Child sexual abuse can be regarded as a moral disaster. The Zimbabwean government has acknowledged in its reports to the Committee on the Rights of the Child that there are cultural practices by some ethnic groups in Zimbabwe that conflict with fundamental rights of the child and has identified some of them to be child marriages, pledging of girls for economic gain, and

\(^{293}\) A Bainham *Children, parents and the state* (1988) 85.

\(^{294}\) As above 7.

\(^{295}\) R Dingwall et al ‘Rethinking child protection’ in (ed) MD Freeman *The state, law and the family* 1984) 94.
appeasement of the spirit of a murdered person (ngozí). However sexual abuse through these practices still persists.

Poverty affects young children more and they are the most vulnerable. It affects their rights to survival, growth and development. Poverty defines every aspect of a child’s existence and it is one of the underlying causes of the abuse and exploitation of children. Poverty has to be addressed in order to minimise cases of child sexual exploitation that are inherently abusive.

Zimbabwe has shown political will in protecting children who have become victims of sexual abuse by implementing programmes like the multi-sectoral approach for management of child sexual abuse. The purpose of the protocol is to create a coherent, multi-sectoral plan to assist victims of sexual abuse. It involves a number of departments such as the judiciary, the Law Society of Zimbabwe (LSA), ministry of health and child welfare, department of social welfare and NGOs that work and support victims of sexual abuse. Zimbabwe needs to work more towards prevention of sexual abuse and exploitation than merely making efforts to assist the victims as some of the effects will not be reversible at all. There is a need for Zimbabwe to turn more towards empowering the child and the community to reduce incidence of sexual abuse by adopting a holistic approach that will include the measures outlined below.

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296 n 235 above.
298 UNICEF above.
300 As above; Zimbabwe has also been applauded for setting up victim friendly courts that are benefiting victims of sexual abuse as they can now give evidence through an intermediary and not face the accused person as this had the effect of intimidating them. There has also been the development of a family support unit that provides medical and psychosocial support to the victim, medical services are for free to those who cannot afford see ANPPCAN ‘Here is something we can copy from Zimbabwe’ Child link Uganda (2002) 6 & 7.
5.2 Recommendations

There is a need to have a supporting legal framework to regulate family relations and curb cultures that result in sexual abuse and exploitation of the girl child. Experiences from other countries like Uganda show that stiff penalties for sexual abuse of children known as defilement do not deter offenders at all. The Penal Code Act makes a person liable to capital punishment for defiling a child. 301 Child sexual abuse still remains high in the country. In implementing measures to stop child sexual abuse and exploitation the state must realise the interrelatedness, indivisibility and interdependence of rights. 302 There is therefore, a need for a holistic approach with the government adopting several measures that include economic, social, educational and legal measures in order to stop sexual abuse and exploitation of children. Measures should be aimed more at preventing rather than treatment of sexual abuse as effects caused by sexual abuse on the health of the child cannot be reversed.

There is a need to plan preventive programmes with an understanding of the complex requirements inherent in such programmes. There has to be a conceptual framework that views child sexual abuse as a complex multi factorial phenomenon and not a simplistic cause and event. 303 For the measures to be effective there have to be culture sensitive. 304 In Zimbabwe such measures especially if educational should be directed at all members of society like traditional leaders that include the chiefs, herdmen or kraal herds and traditional healers who interact with the general public. The programmes should not be started in isolation there should be part and parcel of an umbrella policy of child protection.

301  Sec 123 of the Penal Code of Uganda.


304  As above.
5.2.1 Socio-economic measures

There must be increased support for families. There should be a general right to social welfare support to children whose parents are poor. Food aid and eradication of poverty are important. Child protection strategies cannot be divorced from macro-economic development strategies.\textsuperscript{305} Currie states that several factors contribute to the abuse of children such as poverty, unemployment and illiteracy.\textsuperscript{306} They should therefore be high-level strategies to combat unemployment, poverty and crime.\textsuperscript{307} Economic pressures and poverty have led to an increase in the cases of child sexual abuse and exploitation. Girls are encouraged or persuaded to go into marriage for pecuniary benefits.\textsuperscript{308} Bride wealth is one of the forces that encouraging child marriages resulting in the sexual abuse and exploitation of the girl child. Early marriages largely motivated by economic gain have led to the increase in the vulnerability of the girl child in many countries.\textsuperscript{309}

There must be a general right to family and parental care as in the South African Constitution,\textsuperscript{310} placing a duty on the family to provide care for the children and by implication on the state to provide support on the institution of the family.\textsuperscript{311} This can include a minimum grant to needy families.

Zimbabwe as a state has a positive role to play that is supportive in relation to families that is reflected in the provision of social welfare, health and housing benefits directed specifically to families with children.\textsuperscript{312} Other support that can be offered to families can

\begin{itemize}
  \item \textsuperscript{306} I Currie et al \textit{The Bill of rights handbook} (2005) 614.
  \item \textsuperscript{307} RL September (n 305 above) s72.
  \item \textsuperscript{308} D Kyalondo (n 177 above).
  \item \textsuperscript{309} UNICEF/ FIDA Uganda (n 289 above) 2.
  \item \textsuperscript{310} Sec 28(1)(b)
  \item \textsuperscript{311} I Currie et al (n 306 above) 605.
  \item \textsuperscript{312} This role has been greatly undermined by some programmes that Zimbabwe undertook in 2005 that include the operation code named \textit{Murambatsvina} aimed at cleaning up the street or driving out the filth that resulted in destruction of homes that were deemed to be illegal and not built in accordance with the city council regulations. This operation resulted in many people being left homeless and without an income as all informal trading places were either shut down or destroyed.
\end{itemize}
be moral support which can include home visitation, South Africa had a pilot project in Cape town, this project was concerned with education and awareness of parents on methods of preventing exposure of children to dangerous situation that result in burning of a child within the home. This project can be adopted with a different focus. The focus will be on training Child Care Advocates (CCAs) who must be respectable members of society trained to educate their communities on rights of children. Government ministries like justice and education in conjunction with the Law Society of Zimbabwe (LSZ) can provide training. NGOs can be involved in this project. This approach has been adopted in Uganda by FIDA Children’s Right Education Support Services (CRESS) that is sponsored by Save the Children Uganda. In Zimbabwe such an approach can be adopted by training community leaders that have been trained on the negative effects and illegality of sexual abuse and exploitation and entrusting them with a duty to ensure that their communities are aware. This can also be used as a way to regulate family activities especially in cases of suspected family violence leading to abuse of children as CCAs will be in regular contact with communities and they can closely monitor activities in the family.

Sexual violence lies in the construction of dominant masculinities found in all patriarchal social systems. Such patriarchal beliefs should be shattered. Child protection legislation alone will not work. There should be establishment of spaces to facilitate broader debate and inclusion of families and communities to influence the imperative shift of mindsets pertaining to the children’s worth in society. Sexual violence is an effective tool of social control. It combines the unpleasantness of physical violence and

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313 P Lachman (n 303 above).
315 FIDA (U) Role of Child Care Advocates (CCAs) in our communities (2001).
316 S Chirawu (n 211 above).
317 RL September (n 305 above) s71.
deep shame and self blame on the part of the victim. This leads to self-punititive and self-monitoring behavior changes by the victim who is unlikely to report her attack or seek legal advice particularly if the perpetrator is in the immediate circle. Effective regulation of families by trained CCAs can help reduce incidence of sexual abuse of children.

Other forces contributing to increased sexual abuse are the HIV/AIDS pandemic and its related myth of sex with a virgin. There is a need to provide anti retroviral treatment to those infected and extensively educating them and shattering myths like sex with a virgin curing HIV. Patients must be aware that there is currently no cure for HIV. Families, especially parents have to be educated so that they are not lured into marrying off their children to HIV positive men who offer large amounts of bride wealth thereby placing the health and life of the child at risk.

5.2.3 Mandatory reporting of all cases of sexual abuse

There has to an obligation on anyone working with children to report sexual abuse as in South Africa were the Child Care Act places an obligation on nurses, teachers, health professionals, social workers or even priests and day care centers to report any child abuse that they come across. Accordingly children specific rights involve the setting up of enforcement agencies to supervise the care that is provided by families as children lack the capacity to enforce rights on their own. There is a need to intrude on the family autonomy constantly, this is despite the basic right to family integrity that children should enjoy that requires the privacy of the family life under parents who are autonomous. An uninterrupted parent child relationship can damage the child. There should be compulsory reporting of all cases of sexual abuse in Zimbabwe that extends to teachers, traditional healers, priests and other professions that are regularly in contact with young children.

318  H Moffett (n 243 above).
319  I Currie et al  (n 306 above) 614.
320  R Dingwall (n 295 above) 7.
321  R Dingwall (n 295 above).
5.2.4 Mandatory registration of all marriages

In order to curb child sexual abuse there is a need to ensure that all marriages are registered in a central registry book. Registration of marriages can be done and monitored by the community leaders especially when it comes to the most common customary unions. Although the private sphere should not be eliminated completely by international law, states should interfere more within the private sphere, the public-private distinction cannot be allowed to stand, as that is where most of the interfamilial violence occurs.322

In countries like Namibia there have been recent moves to introduce a law that requires registration of all customary marriages.323 The government of Namibia involved the traditional leaders in the drafting of the new law on customary marriages and consulted them on implementation.324 This is necessary as traditional leaders administer customary law in many countries. This is also the position in Zimbabwe. Another provision that was included in the Namibian draft bill is the role of traditional leaders administering the law on compulsory registration of all customary marriages with the relevant support from the Minister of Local government and Housing.325 The Minister of Home Affairs has to keep a centralised register of all marriages.326 A grace period of two years is given to all couples to register their marriages.327 Zimbabwe can follow the same reform process and seek to involve traditional leaders in the registration of all customary marriages after harmonising the minimum age under all marriage regime to be 18 years in accordance with international standards.

322  G van Bueren 'The international protection of family members rights as the 21st century approaches' 17 Human rights quarterly (1995).


324  Customary law Marriages Bill (n 323 above).

325  As above.

326  n 324 above.

327  As above.
There should be provision of a penalty for traditional leaders who fail to conduct their duties diligently. There should also be intensive awareness programmes in rural communities by the ministries of education and justice, legal and parliamentary affairs on the desirability of registering all marriages and the illegality of child marriages such as pledging or simply forced marriages. The Constitution as the supreme law, should have a provision that sets out the minimum age of marriage to be 18. Communities have to be educated on the minimum age of marriage with the police and local councils and traditional leaders working together. An office of the Ombudsperson dealing with children’s rights should be set up with the mandate of following up on all reported cases of sexual abuse and exploitation thereby ensuring that these cases are not unduly withdrawn.

**5.2.5 Educational measures**

Reducing poverty should be one of the priorities for the government of Zimbabwe. One way of doing this will be by making sure that all children get basic education. This can be done by involving NGOs that are willing to sponsor education for poor children. Recommending that Zimbabwe makes education free for all will be impossible given the current economic situation facing the country.

Making it a priority that all children are in school will go a long way in ensuring that children receive the basic education on human rights in general and rights not to be sexually exploited or abused in particular. The participation and empowerment of children and young persons is central to a holistic child protection strategy. Children who engage in educational activities to enhance their empowerment may gain great

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328 This is the position with the Constitution of Malawi sec 22(6) although those below 18 are allowed to marry with the consent of the parents sec 22(7); art 31 of the Constitution of Uganda stipulates 18 as the minimum age of marriage.

329 The right to education is recognised in art 11 of ACRWC; art 28 & 29 of CRC; art 13& 14 of ICESCR

330 There is a need for the Ministry of education to exempt children who are unable to pay their school fees it will not be feasible to demand immediate realisation of the right to education as it is subject to progressive realisation as a socio-economic right.

331 RL September (n 305 above) s71.
insights but not the skills to protect themselves in the homes. Children should be taught from an early age what amounts to sexual abuse as some children are ignorant and cannot distinguish between bad or good touching.

Human Rights education must be included in all school curricula at all levels from primary to tertiary. There will also be a need to train teachers on preventive education on sexual abuse. These educational measures should involve NGOs that are involved in cases of child sexual abuse such as the Girl Child network that has formed clubs around the schools to sensitise children on preventive measures on sexual abuse. This will ensure that children have the appropriate knowledge, attitudes and skills on child sexual abuse. Extensive media campaigns should be carried out to ensure outreach to all children even those who are not attending schools.

Educating all children is the key, efforts should be made to ensure that all children are in educated. The campaign that has been launched in the schools in Zimbabwe is a noble cause but it will not benefit all children. A human rights based approach demands that every effort must be made to reach all children without exception.

5.2.6 Legal measures

When the family fails to protect children for any reason the state has an obligation to protect the child. Children must be protected by the supreme law of the land. Section 28(1) of the Constitution of South Africa protects children against all forms of abuse. Zimbabwe does not have any municipal reinforcement of CRC provisions relating to child sexual abuse and exploitation in the Constitution unlike its South African counterpart that seeks to protect children against sexual abuse.

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332 As above.


334 art 20 & 22 of CRC.

335 Sec 28(1) of the Constitution of South Africa; In some cases the judiciary sites and refers to the obligations of Zimbabwe regarding sexual abuse and exploitation see S V Nyemudzai Chikunguruse HH125/2004.
Virginity testing should be a criminal offence that is liable to a penalty. In South Africa a bill is before parliament that criminalises virginity testing.\(^{336}\) Practices such as *chiramu* should be interpreted to fall under the provisions of the Criminal Law (Codification and Reform) Act that seek to prevent indecent touching of young people until specific laws to address this problem are enacted.

\textit{Word count (17 900)}

\(^{336}\) See L Vincent (n 18 above) 18.
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