

**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**

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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.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
CCAs	Child Care Advocates
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRESS	Child Rights Education Support Services
FIDA(U)	Federation of Women Lawyers Uganda
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LSZ	Law Society of Zimbabwe
NGO	None Governmental Organisation
RSA	Republic of South Africa
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Fund
WHO	World Health Organisation
ZINATHA	Zimbabwe National Traditional Healers Association

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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

¹ K D Clark 'Innocent victims and blind justice, children's rights to be free from sexual abuse' *New York Law school journal for human rights* (1990) 214; Sexual abuse of children was practiced in ancient Greece, prostitution of children was widespread in 14 century, historical records from the 18 century indicate that homosexual child sex was accepted practice in Asia and Africa see D Kenny 'Opinion policy and practice in child sexual abuse: implications for detection and reporting' in M James (ed) *Paedophilia policy and prevention Research and public policy series 14&15* available at <http://0-www.fhs.usyd.edu.au.innopac.up.ac.za/bach/staff/kenny/Documents%20psych> (accessed on 27 September 2006).

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.

³ G van Bueren 'Child sexual abuse and exploitation: a suggested human rights approach' 2 *International journal of children's rights* (1994) 45.

⁴ N Bala 'Double victims: child sexual abuse and the criminal justice system' *Queens law journal* (1990) 233.

⁵ The Convention on the Rights of the Child (CRC) 34 came 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 of the Rights of the Child 1959 available at <http://www1.umn.edu/humanrts/instreet/auok.html> (accessed on 24 August 2006).

to disbelieving children.⁷ Sexual abuse of children within the home is also regarded as a form of violence by the United Nations.⁸

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),⁹ the Women Protocol to the African Charter on Human and People's Rights (the Protocol).¹⁰ Sexual abuse remains a problem in most parts of the world.¹¹ 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.¹² The ACRWC specifically prohibits traditional practices that are harmful to girls.¹³ It also prohibits customs and practices that are prejudicial to the health of the child.¹⁴

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.¹⁵ Other international instruments such as the Convention on the Elimination of Discrimination against Women

⁷ AH Young 'Recent Canadian law development in the treatment of children and their evidence in child sexual abuse cases' 1 *Annals of health law* (1992) 158.

⁸ Art 2 (a) of Declaration on the Elimination of Violence against Women available at <<http://www.un.org/documents/ga/res/48/a48r/104.htm>> (accessed on 23 September 2006).

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.

¹⁰ The Women's protocol to the African Charter on Human and Peoples' Rights (the protocol) Centre for Human Rights *Compendium of key human rights documents of the African Union* (2005); came into force on the 25 November 2005.; art 4(2) of the Protocol.

¹¹ International Labour Organisation 'Sexual exploitation of children' World of Work (42) 2002 available at <http://www.ilo.org/public/english/bureau/inf/magazine/42/yokohama.htm> (accessed on 24 August 2006).

¹² Art 21 of ACRWC.

¹³ Art 21(1)(b) & art 21(2) of ACRWC.

¹⁴ Art 21(1)(a) of ACRWC.

¹⁵ B Winter et al 'UN approach to harmful traditional practices: some conceptual problems' *International feminist journal of politics* (2004) 74.

(CEDAW) have condemned these practices.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.¹⁷ Recently the practice of virginity testing has been identified as being harmful to the girl child.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.¹⁹ Sexual abuse of children has a direct and potentially permanent impact on the self-esteem of the victim.²⁰ Few victims enter adulthood without the symptoms of the crime perpetuated against them as children.²¹ Extensive research has been conducted which focuses on the individual psychopathology associated with child sexual abuse.²² Sexual abuse is associated with disorders such as depression, anxiety, personality disorder, substance abuse and low self-esteem.²³ Sexual abuse is also associated with suicidal thoughts, plans and behaviour.²⁴ Some of the victims of sexual abuse have been infected with sexually transmitted infections such as H.I.V.²⁵

¹⁶ Art 5(a) of the Convention on the Elimination of Discrimination against Women (CEDAW) it came into force on 3 September 1981 available at <<http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>> (accessed on 26 August 2006).

¹⁷ B Winter (n 15 above).

¹⁸ L Vincent 'Virginity testing in South Africa: re-traditioning the post-colony' *Culture health and sexuality* (2006) 19.

¹⁹ Art 5(1) of ACRWC.

²⁰ J Steel et al 'Psychological sequelae of childhood sexual abuse, related characteristics coping strategies and attribution style' *Child abuse and neglect* (2004) 576; R Roberts 'The effects of child sexual abuse in later life' 28 *Child sexual abuse and neglect* (2000) 525.

²¹ As above.

²² R Roberts (n 20 above) 525.

²³ As above.

²⁴ RK Oates 'Sexual abuse and suicidal behaviour' *Child Abuse and Neglect* 28 (2004) 487; R Roberts (n 22 above).

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 *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' *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

/media_35154.html> UNICEF shocked and outraged at latest case of child rape in Zimbabwe (accessed on 3 September 2006); at least 1800 children are infected by HIV/ AIDS they are below the age of 15 years and they account for 13% of the HIV/ AIDS global infections see UNICEF 'State of the world's children: 2006' (2006) 16 available at <<http://www.unicef.org/sowc06/pdfs/sowc06fullreport.pdf>> (accessed on 14 October 2006).

²⁶ X and Y v Netherlands available at < <http://worldii.org/eu/cases/ECHR/1985/4.html>> (accessed on 3 September 2006).

²⁷ Unicef 'Unicef outraged and shocked with latest case or child rape in Zimbabwe' available at http://www.unicef.org/media/media_3514.html accessed on 17 August 2006; in 1997 a report released by J Raath indicated that at least 3 in very ten children in Zimbabwe is sexually abused available at <http://pangea.org/street_children/africa/zimba3htm> (accessed on 3 September 2006).

²⁸ Zimbabwe- campaign against child sexual abuse available at<[http:// www.sadlynormal .wordpress.com/2006/09/20-zimabwe-campaign-against -child -sexual abuse- welcome/](http://www.sadlynormal.wordpress.com/2006/09/20-zimabwe-campaign-against-child-sexual-abuse-welcome/)> (accessed on 2 October 2006).

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.³² 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*.³³ These practices have become more common amongst the Shona, the largest tribe constituting at least 76% of the population and predominantly patriarchal.³⁴ 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.³⁵

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.³⁶ 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.³⁷ This is attributable to several factors that are social, cultural and

³² D Moore 'Neo-liberal globalisation and the triple crises of modernisation in Africa Zimbabwe, Democratic Republic of Congo and South Africa' 22 *Third World Quarterly* (2001) 916; Zimonline 'Girl children sacrificed into marriage as hunger bites Zimbabwe' 2006 available at <http://www.zimonline.co.za/headdetail.asp?ID=12104> (accessed on 23 August 2006).

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.

³⁴ J Decosas et al The profile and context of the epidemics of the sexually transmitted infections including H.I.V in Zimbabwe *Sexually transmitted infections* (2002) 1.

³⁵ J W Scott ' Gender as a useful category of historical analysis' in (ed) R Parker et al Culture, sexuality and society: a reader (1999).

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,³⁸ due to the current inflation levels most families cannot afford to send their children to school.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.⁴⁰

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 *chiramu*, virginity testing, bride wealth and early marriages. These practices can be directly linked

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).

³⁹ K Tomasveski 'The state of the right to education worldwide free or fee:2006 global report' (2006) 69 available at http://www.katarinatomasevski.com/images/Global_Report.pdf (accessed on 24 September 2006).

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.⁴¹ 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.⁴² Extensive research conducted has shown that contrary to popular beliefs, sexual abuse of children by strangers accounts for a small percentage.⁴³ Epidemiological studies show that abuse of children by strangers is low compared to the abuse perpetrated by relatives or acquaintances.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.⁴⁵

Events that occur within the family were not subject to international law until recently.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.⁴⁷

Culture has been identified to be one of the major obstacles in enforcing children's human rights in African countries.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.⁴⁹ Rwezaura

⁴² RJR Levesque 'Sexual use, abuse and exploitation of children; challenges in implementation of human rights' 60 *Brooklyn Law Review* (1994) 994.

⁴³ As above.

⁴⁴ RJR Levesque (n 42 above).

⁴⁵ J Kitzinger 'Defending innocence ideologies of childhood' 28 *Feminist review* (1988) 82.

⁴⁶ As above.

⁴⁷ RJR Levesque *Sexual abuse of children a human rights perspective* (1999) 100.

⁴⁸ C Himonga 'Implementing the rights of the child in African legal systems: the Mtembu journey in search of justice' 9 *International journal of children's rights* (2001) 90.

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.

⁵⁰ B Rwezaura 'Competing images of childhood in the social and legal systems of contemporary Sub Saharan Africa' 12 *International journal of law, family and policy* (1998) 253.

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

⁵³ J Ennew *The next generation* (1989) 8.

⁵⁴ B Mayall 'The sociology of childhood and children's rights' *International journal of children's rights* (2001) 248.

⁵⁵ D Archard *Children: rights and childhood* (2004) 39.

⁵⁶ As above.

⁵⁷ D Archard (n 55 above).

as the period of preparation for the autonomous individuality of adulthood.⁵⁸ 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.⁵⁹ According to this conception children as a legal class do not have the same status as adults.⁶⁰ Anthropological evidence shows that children are universally regarded as relatively weak, helpless and in need of protection.⁶¹ Childhood is a process when children are, as Archard states in the 'continued process of becoming, an never ended maturity'⁶² They are therefore weak, inadequate, inexperienced and immature,⁶³ they are to be measured against an unexplained unproblematic rational adult world that is complete and desirable in contrast to childhood is static.⁶⁴ 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.⁶⁵

The terms child and adult are flexible social categories that are defined according to the stereotypes of aging.⁶⁶ Cultural variations and diversity do however limit the exact setting of childhood boundaries.⁶⁷ Different criteria define child the development and period of childhood.⁶⁸ The CRC that has been ratified by many states and considered to be

⁵⁸ WA Fitzgerald 'Maturity, difference and mystery; children's perspectives and the law' 36 *Arizona Law Review* (1994).

⁵⁹ T Shapiro 'Childhood and personhood' 45 *Arizona Law Review* (2003) 575.

⁶⁰ As above.

⁶¹ DT Evans 'Falling angels: the material construction of children as sexual citizens 2' *International journal of children's rights* (1994) 16.

⁶² AT Donso 'The political child' in (ed) A McIntyre *Invisible stakeholders: the impact of war on children* (2004) 12.

⁶³ M Freeman 'The sociology of childhood and children's rights' *International Journal of children's rights* (1998).

⁶⁴ As above.

⁶⁵ M Freeman (n 63 above).

⁶⁶ TW Bennett *Human rights and African customary law* (1995) 101.

⁶⁷ B Mayall (n 54 above).

⁶⁸ RJR Levesque *Sexual abuse of children a human rights perspective* (1999) 14.

universal introduces the notion of childhood from a western point of view.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.⁷⁰ In Africa childhood is comparatively shorter than in western regions.⁷¹ The child is also socialised to respect the parents, elders, those in a position of authority, to be cautious and generous to strangers.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.⁷³ Chronological age in these societies does not indicate childhood at all.⁷⁴ It has more to do with physical capabilities of the child.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.⁷⁶ In most African societies like the Shona, a child has been seen as a family asset or resource.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.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.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

⁶⁹ Art 1 of the CRC states that a child shall be anyone below the age of 18 years.

⁷⁰ Art 1 of CRC; art 2 of the ACRWC also defines a child as any person below the age of 18.

⁷¹ B Rwezaura (n 50 above) 255.

⁷² As above 257.

⁷³ B Rwezaura (n 50 above) 255.

⁷⁴ AT Donso (n 62 above) 12.

⁷⁵ As above.

⁷⁶ TW Bennet 'Using children in armed conflict; a legitimate African tradition? Monogram No. 32 Institute of Security studies, Pretoria (1998) 19.

⁷⁷ B Rwezaura (n 50 above) 253.

⁷⁸ AT Donso (n 62 above).

⁷⁹ B Rwezaura (n 50 above) 257.

their own right.⁸⁰ The concept of a child as property in African societies conflicts with contemporary ideas about childhood in international human rights law.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.⁸² This age limit of childhood has been incorporated by many states into their domestic legislations such as Zimbabwe,⁸³ South Africa⁸⁴ and Uganda.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.⁸⁶

Childhood is regarded as a distinct idyllic and a-sexual stage in the pre-adult personal development.⁸⁷ Cross cultural and historical evidence show that there is a customary separation of childhood and sexuality.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.⁸⁹

⁸⁰ As above.

⁸¹ B Rwezaura (n 50 above) 255.

⁸² RJR Levesque (n 69 above).

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.

⁸⁴ Sec 28(3) of the Constitution of South Africa.

⁸⁵ Sec 2 of the Children Act Chapter 59 of Uganda.

⁸⁶ B Rwezaura (n 50 above) 260.

⁸⁷ DT Evans 'Falling angles the material construction of children as sexual citizens' 2 *International Journal of children's rights* (1994) 1.

⁸⁸ As above 2.

⁸⁹ DT Evans (n 87 above) 3.

2.3 Concept of child sexual abuse

There is no universally accepted definition of child sexual abuse.⁹⁰ There are differences in how far sexual extends.⁹¹ Sexual encounters are intercourse, genital contact, fondling or an encounter with an exhibitionist.⁹² Others include anything that brings sexual gratification to the adult as sexual abuse.⁹³ Sexual abuse remains even if the child is not capable of knowing that it is.⁹⁴ It includes paedophilia,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;

.....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.⁹⁶

Child sexual abuse represents a key site in which unequal gender power relations play out.⁹⁷ It is noted that accurate statistics for the prevalence of intra familial and extra familial abuse of children are difficult to obtain.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

⁹⁰ M Freeman *The moral status of children: essays on the rights of the child* (1997) 261.

⁹¹ As above.

⁹² M Freeman (n 90 above) 261.

⁹³ As above.

⁹⁴ M Freeman (n 90 above) 262.

⁹⁵ A word used to describe those that are sexually attracted to children.

⁹⁶ M Freeman (n 90 above) 261; G van Bueren (n 3 above)46.

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.

⁹⁸ DT Kenny 'Opinion, policy and practice in child sexual abuse: implications for detection and reporting in ed M James Paedophilia: policy and prevention Research and public policy series no. 12 Australian series of criminology available at <<http://www2.fhs.usyd.edu.au/bach/staff/kenny/developmental.html>> (accessed on 2 October 2006).

observes the child when the child is naked.⁹⁹ Exposure is another form of sexual abuse this occurs when an offender exposes his private parts to a child.¹⁰⁰ Sexy talk can also occur when the offender tells the child about its sexual attributes.¹⁰¹

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.¹⁰² 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.¹⁰³

2.4 Concept of child sexual exploitation

Some authors such as Kempe have equated sexual exploitation of children to sexual abuse.¹⁰⁴ All forms of sexual exploitation are abusive.¹⁰⁵ However sexual exploitation is usually done for financial gain.¹⁰⁶ 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 remuneration in cash or kind to the child or third person or persons. The child is treated as a sexual and commercial object.¹⁰⁷

⁹⁹ KC Faller *Child sexual abuse* (1989) 12.

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.

¹⁰⁷ See para 5 of Declaration and Agenda for Action of the World Congress against Sexual Exploitation of children available at <<http://www.ilo.org/public/english/comp/child/standards/resolution/stockholm.htm>> (accessed on 1 October 2006).

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.¹⁰⁸ 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.¹⁰⁹ Child sexual abuse has recently been recognised as a significant social problem.¹¹⁰ The hesitancy of international law to address child sexual abuse has been attributed to the dichotomy of the private and public spheres.¹¹¹ International law is primarily concerned with the public sphere whilst domestic law deals with the private sphere.¹¹² Events that happen within families are usually not subject to international law.¹¹³ International law respects familial autonomy as articulated in the International Covenant of Economic Social and Cultural Rights (ICESCR).¹¹⁴ 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.¹¹⁵ The state is required to take all appropriate legal,

¹⁰⁸ SLB Mikhail 'Child marriage and child prostitution: two forms of sexual exploitation' 10 *Gender and development* (2002) 44.

¹⁰⁹ RJR Levesque 'Sexual use, abuse and exploitation of children: challenges in implementing children's rights' *Brooklyn Law Review* (1994) 994.

¹¹⁰ As above 994.

¹¹¹ RJR Levesque (n 109 above).

¹¹² As above.

¹¹³ KC Faller (n 99 above).

¹¹⁴ Art 10 of the International Covenant on Economic Social and Cultural Rights (ICESCR) that came into force on 3 January 1976 see T van Banning et al *Human rights instruments* (2004).

¹¹⁵ Art 19 of CRC.

administrative, social and educational measures to protect the child.¹¹⁶ Sexual exploitation of children is also prohibited.¹¹⁷

At the regional level, ACRWC expressly prohibits child sexual abuse and exploitation.¹¹⁸ It compels states to amongst the same grounds articulated in the CRC to protect children against sexual abuse by school authorities.¹¹⁹ ACRWC is applicable to all children under the age of 18 years regardless of national ages of majority.¹²⁰ It seeks to eliminate the possibility of sexual abuse of children within marriages by establishing 18 years as the minimum age of marriage.¹²¹ To reinforce this, states are obliged to make registration of all marriages compulsory in an official register.¹²² Child marriages are to be prohibited by enacting the necessary legal measures that sets a minimum age of marriage at 18 years.¹²³

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.¹²⁴ It is regarded as the principal preventive measure.¹²⁵ There is an additional duty on the state to establish social programmes for the prevention, identification and reporting of child sexual abuse.¹²⁶ 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.¹²⁷ There are reporting procedures in the CRC and ACRW to oversee compliance, state reporting is not a form of enforcement mechanism as such.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.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.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.

¹²⁷ M Evans et al 'Reporting mechanism of the African Charter on Human and Peoples' Rights' in (eds) M Evans and R Murray *The African Charter on Human and Peoples' Rights: the system in practice 1986 – 2000* (2004) 37.

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.

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 12th 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.

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

¹³¹ C Himonga 'Implementing the rights of the child in African legal systems: the Mthembu journey in search for justice' 9 *International Journal of children's rights* (2002) 90.

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.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.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.¹³⁷ There are a variety of family forms that differ from the western concept to the African concept.¹³⁸ In most African cultures the term family is used to define blood relations.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.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.

3.3 The family under international law

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

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.

¹³⁶ G van Bueren (n 133 above) 733.

¹³⁷ G van Bueren (n 133 above) 734.

¹³⁸ B Rwezaura (n 133 above) 27.

¹³⁹ B Rwezaura (n 133 above) 28.

¹⁴⁰ As above.

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.

¹⁴² See para 5 of preamble to CRC; art 18 of ACRWC states that the family is the natural unit and basis of society.

¹⁴³ T Khaime ' The Convention on the Rights of the Child and the cultural legitimacy of children's rights in Africa' 5 *African human rights law journal* (2005) 226.

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.¹⁴⁴ The survival, development and protection of children are dependant on their parents.¹⁴⁵ 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.¹⁴⁶ 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'¹⁴⁷ 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.¹⁴⁸ 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.¹⁴⁹

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.zimabwesitutaion.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 and beliefs to succeeding generations.¹⁵⁰ 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.¹⁵¹ 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.¹⁵²

Culture is recognised in international and regional instruments such as the ACHPR,¹⁵³ ICESCR¹⁵⁴ and the Women's Protocol in Africa.¹⁵⁵ 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.'¹⁵⁶ The notion of culture or tradition has been used to justify human rights violations.¹⁵⁷ 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.

¹⁵⁰ J Oloka Onyango 'Who's watching 'big brother' globalisation and the protection of cultural rights in present day Africa' 5 *African human rights law journal* (2005) 2.

¹⁵¹ As above.

¹⁵² D Ahn 'Profiling culture an examination of American and Asian gang bangers in Southern California' *Asian law journal* (2004) 65.

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.¹⁵⁸ 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.¹⁵⁹ There is tension between culture and children's rights, as with culture and human rights generally.¹⁶⁰ The CRC gives rights to children and at the same time acknowledge rights and duties of the family.¹⁶¹ 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.¹⁶²

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.¹⁶³ 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.¹⁶⁴ 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.¹⁶⁵ 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.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.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.¹⁶⁸ This relationship is endangered when the practices that are culturally correct conflict with the standards set out in the international human rights norms.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.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.¹⁷¹ Any decision made by the family must be done to enhance the growth and development of the child.¹⁷² There has to be a balance between cultural values and the best interests of the child with the best interests prevailing.¹⁷³ 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.

¹⁶⁶ Art 5 of CRC.

¹⁶⁷ W Ncube ' The African cultural fingerprint ? The changing concept of childhood' in W Ncube (ed) *Law, culture, tradition and children's rights in east and southern Africa* (1998) 14.

¹⁶⁸ T Khaime (n 143 above) 227.

¹⁶⁹ As above.

¹⁷⁰ T Khaime (n 143 above) 229.

¹⁷¹ Art 6(2) of CRC; art 5 (2) of ACRWC.

¹⁷² T Khaime (n 143 above).

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,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,¹⁷⁵ the child will not in the long run, be sexually abused or exploited.

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.

¹⁷⁴ C Himonga (n 48 above) 90.

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.

¹⁷⁶ G Melton et al *Protecting children from abuse and neglect: Foundation for a new national strategy* (1994) 132.

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 where 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

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.

¹⁸⁰ Unpublished R Hanzi 'To bear or not to bear: reproductive determination as an international human right; the Zimbabwean experience' unpublished LLB dissertation University of Zimbabwe (2003) 18.

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.

¹⁹⁵ A Armstrong et al 'Towards a cultural understanding of the interplay between children's and women's right: an Eastern and Southern Africa perspective' 3 *International journal of children's rights* (1995) 344.

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.

¹⁹⁹ The Forum of Marriage on Rights of Women and Girls ' Early marriage, sexual exploitation and human rights of girls' (2001) available at <http://www.eenet.org.uk/key_issues/gender/emarriage_exploit.pdf> (accessed on 2 October 2006).

²⁰⁰ Vienna Declaration and Programme for Action available at <[http://www.unhchr.ch/huridocda/huridocda.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridocda.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)> (accessed on 2 October 2006).

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.²⁰¹ 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.²⁰² 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.²⁰³ 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.²⁰⁴

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.²⁰⁵ 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 country.²⁰⁶ These marriages are usually done without the free consent of the child.²⁰⁷ 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*.²⁰⁸ Rwezaura terms it homicide bride.²⁰⁹ 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.²¹⁰ 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.²¹¹ Girls as young as 14 years old have been married off into polygamous marriages to men who are 54 years old.²¹² The state has an obligation to intervene in the family to protect children who are constantly being sexually abused or exploited in this regard.

²⁰⁶ Mail and guardian Hunger forces Zim girls into forced marriages 17 May 2006 available at <http://www.mg.org.za/articlePage.aspx?area=breaking_news_africa/articleid=271977> (accessed on 16 September 2006).

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) 5 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 betrothal²¹³

Kuzvarira is also known as the pledging into marriage of a girl child.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 were able to accumulate young wives through pledging in exchange for grain during times of food shortages.²¹⁵ This traditional practice has been revived due to the harsh economic conditions currently facing the country.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.²¹⁷ The right to reproductive self-determination is greatly curtailed as the girl is not able to decide freely when to have children.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.²¹⁹ The young girls are therefore not able to negotiate safe sex with their husbands,²²⁰ and are at a great risk of being infected with sexually transmitted diseases.²²¹

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.

²¹⁴ J Raath (n 27 above).

²¹⁵ D Jeater ' *Marriage, perversion and power: the construction of moral realm in Southern Rhodesia 1894 – 1930* (1993) 21.

²¹⁶ n 32 above).

²¹⁷ G van Bueren (n 3 above).

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.

²¹⁹ Family Health International (n 2 above) 7.

²²⁰ As above.

²²¹ As above; few men 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.²²² Approximately about 15 million girls between the ages of 15 and 19 give birth every year in the world.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.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,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).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.²²⁷

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

(accessed on 2 October 2006); HIV infections impact on the right to enjoy the highest attainable standard of living as enshrined in the

²²² 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 <http://www.zimbabwesituation.com/oct20_2006.html> (accessed on 21 October 2006).

²²³ UNICEF (n 198 above).

²²⁴ As above.

²²⁵ Art 6 of ACHPR; art 9 of ICCPR.

²²⁶ 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 *Aydin v Turkey* 1997, in *X v Y* 1985 it stated that rape infringes on the right to privacy of the victim see G Van Bueren (n 3 above).

²²⁷ Art 12 of ACRWC; The child will assume the role of a wife and mother and all the obligations accruing to such roles.

Marriages Act²²⁸ and the customary marriages that are either registered under the Customary Marriages Act²²⁹ or are unregistered customary unions recognised in cases of inheritance,²³⁰ divorce and custody of children.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.²³² Girls can be married at the age of 16 provided there is consent from the Minister of Justice, or the parents.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.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.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.

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).

²²⁹ Customary Marriages Act Chapter 5: 06.

²³⁰ Amendment no. 6 of the Administration of Estates Act Chapter 6: 01.

²³¹ Sec 3 of the Customary Marriages Act.

²³² Sec 22(1) of the Marriages Act.

²³³ As above.

²³⁴ Sec 20(2) of the Customary Marriages Act.

²³⁵ Sec 11(1) of Customary Marriages Act.

4.6 Virginit testing

Virginit 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 Virginit testing or *kurokova*²³⁸ is practised in Southern African countries such as Swaziland, South Africa and Zimbabwe.²³⁹ Virginit testing is normally done to control the sexuality of girls.²⁴⁰ Those who advocate for virginit 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 virginit testing.²⁴³ Virginit testing places an absurd and unjustifiable burden of responsibilities of controlling the spread of HIV and AIDS upon the shoulders of young women.²⁴⁴

²³⁶ P Kaarsholm 'Moral panic and cultural mobilisation: responses to transition, crime and HIV/AIDS in Kwazulu Natal' *Development and Change* (2005) 146.

²³⁷ L Vincent (n 18 above) 18.

²³⁸ Virginit testing is known as *kurukova* in Zimbabwe, literally translated *kurokova* means at the river, virginit 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 virginit 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 virginit' 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 virginit 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.

²⁴³ H Moffett 'Those women they force us to rape them: rape as a narrative of social control in post apartheid South Africa' *Women and the politics of gender in Southern Africa* (2006) 32.

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.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.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.²⁴⁷ traditionally virginity tests were used to bargain for a high bride price.²⁴⁸ In 2005 some traditional leaders in Zimbabwe issued directives in their jurisdictions to resume virginity testing of the girls in public ceremonies.²⁴⁹ Despite this open endorsement, virginity testing was being practiced around Zimbabwe mainly in the rural areas.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,²⁵¹ in 2004 at least 4000 young girls were subjected to these virginity tests in that area.²⁵² The girls who pass these virginity exams are given a certificate as proof.²⁵³ These traditional leaders who are

²⁴⁵ C Ndhlovu 'Virginity testing raises many questions' 23 *Network Family health international* (2005) 14 available at <<http://www.fhi.org>> (accessed on 15 September 2006).

²⁴⁶ Family health international (n above)14.

²⁴⁷ As above.

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.

²⁴⁹ As above.

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.

²⁵¹ As above.

²⁵² News from Africa Zimbabwe virginity and HIV tests before marriage available at http://www.newsfromafrica.org/articles/art_3476.html (accessed September 11 2006).

²⁵³ Zimbabwe country report on human rights practices released by the bureau of democracy, human rights, and labour. U.S. Department of State 2005, released March 8 2006 available at <<http://www.state.gov>> (accessed on 14 September 2006).

usually chiefs have jurisdiction to deal with customary matters in their respective jurisdictions as in accordance with the Traditional Leaders Act.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.²⁵⁵ It is tantamount to discrimination on the basis of sex as only girls are tested.²⁵⁶

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.²⁵⁷ This act recognises non-consensual sex commonly classified as rape.²⁵⁸ Where there is consent the crime is sexual intercourse or performing indecent acts with young persons.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.²⁶⁰ This bill defines sexual abuse as any conduct that humiliates, degrades or otherwise violates the sexual integrity of the complainant.²⁶¹ The yardstick of what conduct and by

²⁵⁴ Traditional Leaders Act Chapter 29 (1998).

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).

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.

²⁵⁷ Criminal Law (Codification and Reform) Act, Act no. 23 of 2004.

²⁵⁸ Sec 65 of Criminal Law (Codification and Reform) Act.

²⁵⁹ Sec 70 of Criminal Law (Codification and Reform) Act.

²⁶⁰ Sec 2 of the Domestic Violence Bill available at <<http://www.allafrica.com/stories/200610170236.html?=#2>> (accessed on 19 October 2006).

²⁶¹ As above.

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.²⁶² *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.²⁶³ 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,²⁶⁵ with an exchange value disguised as the bride price.²⁶⁶ 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 Nyiwe Dzirutwe 1964 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.

²⁶⁷ J Duvall ' Non violent reality and violent myths' 17 *Peace Review: a journal of social justice* (2005) 404.

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.²⁶⁹ 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

²⁶⁸ S Chirawu (n 211 above) 18.

²⁶⁹ B Rwezaura (n 126 above) 35.

²⁷⁰ S Chirawu (n 211 above) 18.

²⁷¹ Combined tradition of patrilineality and bride wealth entrench patriarchy see S Tamale 'Sick and tired of being sick and tired: say no to a culture of gender violence' 3 *Donor news: focus on development* (2003) 36.

²⁷² B Rwezaura (n 126 above).

²⁷³ AS above.

²⁷⁴ B Rwezaura (n 126 above) 261.

²⁷⁵ As above.

²⁷⁶ B Rwezaura (n 126 above) 261.

police. Some reported cases were ultimately resolved by the families out of court.²⁷⁷ Such resolution would involve the payment of seduction damages or the initiation of the marriage of the victim to the perpetrator.²⁷⁸

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

4.9 The legal position in Zimbabwe

Rooru is not a requirement to enter into civil marriages.²⁸³ Under the Customary Law Marriages Act bride wealth is a requirement when a girl gets married before the age of 18 years.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.

²⁷⁷ As above.

²⁷⁸ B Rwezaura (n 126 above) 262.

²⁷⁹ As above; G Goerke (n 211 above) 21.

²⁸⁰ Human Rights Watch 'Domestic violence and HIV/AIDS' available at <<http://www.hrw.org/capaigns/women/aids/factshhet.htm>> (accessed 2 October 2006).

²⁸¹ As above.

²⁸² S Tamale (n 265 above).

²⁸³ n 248 above.

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.

4.10 Other traditional beliefs and practices

*Chiramu*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.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.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'.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

²⁸⁵ For the definition of Chiramu see J Raath (n 27 above).

²⁸⁶ Equality now submission to the UN Human Rights Committee 62nd Session March 1998 1 available at <http://www.equalitynow.org/english/campaigns/un/unhcr_reports/unhcr_zimbabwe_en.pdf (accessed on 21 September 2006).

²⁸⁷ H Moffett (n 243 above).

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.²⁸⁹ At least 45% of the population of Zimbabwe is under 15 years.²⁹⁰ 24.6% of the adults are already infected with HIV/AIDS.²⁹¹ 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.²⁹²

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 (*ngozi*).²⁹⁶ 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.²⁹⁷ Poverty defines every aspect of a child's existence and it is one of the underlying causes of the abuse and exploitation of children.²⁹⁸ 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.²⁹⁹ 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.³⁰⁰ 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.

²⁹⁶ n 235 above.

²⁹⁷ UNICEF *The state of the world's children 2001: early childhood* (2001) 32.

²⁹⁸ UNICEF above.

²⁹⁹ UNICEF/ FIDA Uganda *Baseline survey on girl child sexual abuse* (1997) 2.

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.

³⁰² NB Pityana 'The challenge of culture for human rights in Africa: the African Charter in a comparative context' in (eds) M Evans and R Murray *The African Charter on Human and Peoples' Rights: the system in practice* (2004) 226.

³⁰³ P Lachman 'Child protection in Africa: the road ahead' 20 *Child abuse and neglect* (1996) 245.

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.³⁰⁵ Currie states that several factors contribute to the abuse of children such as poverty, unemployment and illiteracy.³⁰⁶ They should therefore be high-level strategies to combat unemployment, poverty and crime.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.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.³⁰⁹

There must be a general right to family and parental care as in the South African Constitution,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.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.³¹² Other support that can be offered to families can

³⁰⁵ R L September ' The progress of child protection in South Africa' 15 (Supplement) *International journal of social welfare* (2006) s65.

³⁰⁶ I Currie et al *The Bill of rights handbook* (2005) 614.

³⁰⁷ RL September (n 305 above) s72.

³⁰⁸ D Kyalondo (n 177 above).

³⁰⁹ UNICEF/ FIDA Uganda (n 289 above) 2.

³¹⁰ Sec 28(1)(b)

³¹¹ I Currie et al (n 306 above) 605.

³¹² This role has been greatly undermined by some programmes that Zimbabwe undertook in 2005 that include the operation code named *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.

be moral support which can include home visitation, South Africa had a pilot project in Cape town,³¹³ 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.³¹⁴ 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.³¹⁵ 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.³¹⁶ 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.³¹⁷ Sexual violence is an effective tool of social control. It combines the unpleasantness of physical violence and

There was an increase in rural migration by the urban population. During that period cases of child sexual abuse increased as some families were forced to stay with relatives who did not have enough room to accommodate them see D Potts 'Restoring order?': operation *Murambatsvina* and the urban crisis in Zimbabwe 32 *Journal of Southern Africa studies* (2006) 273 & 276; at least 700 000 people are believed to have lost their source of income because of the operation.

³¹³ P Lachman (n 303 above).

³¹⁴ MRC SA and UNISA 'Crime, violence and injury lead programme: Annual report 2005' (2006) 8&9 available at<<http://www.unisa.ac.za/contents/faculties/humanities/shs/docs/2005%20CVI%20ANNUAL/20%REPORT.pdf>> (accessed 22 October 2006).

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-punitive 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.³¹⁸ 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.³¹⁹ 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.³²⁰ 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.³²¹ 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).

³²³ Government of Namibia 'Law reform and development Commission Report on Customary law Marriages' (2004) 1 available at <<http://www.moj.gov.na/pdf/customary/pdf>> (accessed on 3 October 2006).

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 18.³²⁸ 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.³²⁹ This can be done by involving NGOs that are willing to sponsor education for poor children.³³⁰ 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.³³¹ Children who engage in educational activities to enhance their empowerment may gain great

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.³³² 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.³³³ 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 a an obligation to protect the child.³³⁴ 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.³³⁵

³³² As above.

³³³ Girl Child Network available at <http://www.idex.org/partner.php?partner_id=13>(accessed on 23 October 2006).

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.

Word count (17 900)

³³⁶ See L Vincent (n 18 above) 18.

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