



MARRIED TOO SOON: CHILD MARRIAGE IN ZIMBABWE

MAUREEN SIBANDA

THE RESEARCH AND ADVOCACY UNIT

OCTOBER 2011

Introduction

Several studies acknowledge that accurate data on the true extent of child marriage is difficult to obtain because many marriages go unregistered and girls' ages may be falsified (IPPF, 2006:11). However, UNICEF estimates that globally, some 64 million young women (aged 20-24) were married before the age of 18. One girl below the age of 18 is married off every three seconds worldwide, according to a British community development charity¹. A report from Plan UK, entitled '*Breaking Vows*', states that 10 million under-18s become child brides every year. In developing countries - in Southern America, North Africa and parts of Asia - one in seven of all girls, under 15, are married. Rates of early and forced marriages are also high in Europe, especially in Central and Eastern Europe, where 2.2 million girls are married before their 18th birthday. The highest rates are in Georgia (17%) and Turkey (14%).

Allowing people to marry under the age of 18 is against several United Nations conventions and the practice is outlawed in most countries, but other countries turn a blind eye, especially in poorer communities². Child marriage is now widely recognised as a violation of children's rights. It is also a direct form of discrimination against the girl child, who, as a result of the practice, is often deprived of her basic rights to health, education, development, and equality. Tradition, religion, and poverty continue to fuel the practice of child marriage, despite its strong association with adverse reproductive health outcomes and the lack of education for girls.

Child marriage is common in Zimbabwe, and 21% of children (mostly girls) are married before the age of 18³. According to the Girl Child Network (GCN), a civic organisation whose mission is to shelter, educate, and empower female victims, an estimated 8 000 girls have been forced into early marriages or were held as sex slaves since 2008⁴. Chief Chiduku, a senator for Manicaland province in Zimbabwe and a member of the African Apostolic Church was quoted as having said there was nothing wrong with marrying off underage girls in a Parliamentary Portfolio Committee meeting⁵. Statements like these from a chief do not come as a surprise because chiefs are the gatekeepers and custodians of custom and tradition. The question that arises is whether the 'tradition' of early marriages is something that society should perpetuate in view of the negative effects of the practice on the girl child as well as human rights standards that prohibit marriage under the age of 18 . Should not tradition evolve and do away with aspects that are harmful to children and the girl child in particular?

¹ World turning blind eye to 10 million child brides every year charity warns, Available on <http://www.guardian.co.uk/society/2011/jun/26/10-million-child-brides-each-year-charity-warns>. Accessed 10/5/2011.

² ibid

³ Available on <http://baobabtales.wordpress.com/2010/03/06/some-facts-about-marriage-in-zimbabwe/> Accessed 7/15/2011

⁴ Available on http://www.zimdiaspora.com/index.php?option=com_content&view=article&id=4070:betty-makoni-launch and http://www.zimbabwesituation.com/sep27_2010.html#es-protest-against-apostolic-sect-abuses-girls&catid=38:travel-tips&Itemid=18 Accessed on 7/16/2011

⁵ Available on <http://www.newsday.co.zw/article/2011-04-01-chiefs-defend-girlchild-marriages> Accessed 7/19/2011

Child marriage, also known as early marriage, is defined as “*Any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing*”⁶. Child marriage involves either one or both spouses being children and may take place with or without formal registration, and under civil, religious, or customary laws. In many societies, and mostly in developing countries, child marriages are used to build or strengthen alliances between families. Sometimes this may even include the betrothals of young children or babies. Child marriage affects both sexes, but girls are disproportionately affected as they are the majority of the victims. Their overall development is compromised, leaving them socially isolated with little education, skills and opportunities for employment and self-realization. This leaves child brides more vulnerable to poverty, a consequence of child marriage as well as a cause.

Background

There is a minimum marriageable age law in Zimbabwe, under general law of the country which is 16 for girls and 18 for boys but the practice of early marriage continues as customary law , which is also part of the legal system and is followed by any in personal matters, does not have a minimum age for marriage. The practice of early marriage is in conflict with modernization and development in society as it seriously undermines a girl child’s opportunities in the future because of lack of education. According to the Zimbabwe National Statistics Agency the median age at first marriage in Zimbabwe has been declining from 19 years for women currently aged 45-49 years to 16 years for those aged 15-19 years⁷. Five percent of women aged 15-49 years currently in marriage or union were married before the age 15 (rural 6%, urban 2%). Marriage before age 15 years decreased with education of women and household wealth, and increased with age of woman⁸. On the other hand, 32 percent of the women aged 20-49 years currently in marriage or union were married before age 18 years, (rural areas 39%, and urban areas 21%). Marriage before age 18 years decreased as education and wealth increased. The proportion of women aged 20-49 years who married before age 18 years was highest in the age group 45-49 years at 40% compared to around 31% in the rest of the age groups.⁹

⁶IPPF, Ending Child Marriage: A guide for Policy Action (2007), Available on <http://www.ippf.org/NR/rdonlyres/8415A7E9-0833-4500-AE53-9AA09F1A56D8/0/endchildmarriage.pdf> Accessed 7/13/2011. Also see Article 1 of the Convention on the Right of the Child.

⁷ See Table 1 below

⁸ Zimbabwe National Statistics Agency (ZIMSTATS) ,Zimbabwe Multiple Indicator Monitoring Survey (MIMS) 2009 report August 2010 pg 117

⁹ ibid

Age	% first married by exact date					% never married	no of women	Mean age of first marriage
	15	18	20	22	25			
15-19	5.6	n/a	n/a	n/a	n/a	76.4	2,616	16.3
20-24	9.7	44.2	64.1	n/a	n/a	26.1	2,412	18.0
25-29	10.3	44.4	63.0	76.2	87.6	9.5	2,129	18.9
30-34	10.8	42.2	63.7	77.6	88.7	4.8	1,459	19.4
35-39	13.0	43.1	65.1	78.2	88.8	2.6	1,208	19.5
40-44	14.0	45.2	65.1	75.2	87.3	3.1	828	19.6
45-49	15.7	52.3	74.2	83.6	92.6	1.1	687	18.8
20-49	11.4	44.5	64.8	n/a	n/a	11.1	8,723	18.9
25-49	12.0	44.6	65.1	77.6	88.6	5.3	6,311	19.2
15-49	10.0	39.3	55.2	63.9	70.3	26.1	11,339	18.7

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

Prevalence

Child Marriages are prevalent among the Johanne Marange Apostolic sect. This is a church commonly known as 'vapostori' that is believed to constitute approximately 1.2 million members in the country. Hastings¹⁰ states that Johanne Marange, the church founder, passed away in 1963, leaving 13 widows who were taken over by his son Abel. The African Apostolic Church has gone a long way in addressing Christianity in an African perspective¹¹, and, as an African initiated church, it has a leadership of Africans. Its songs are expressed in dialect (vernacular) language and are claimed to be inspired by the Holy Spirit. As a Zionist type of church, it put strong emphasis on the work of the Holy Spirit. They are distinct in their compulsory shaving of hair by both sexes. Although they strongly believe in polygamy, this practice is eroding the church membership due to AIDS pandemic¹². The vapostori have of late attracted the attention of prominent politicians such as the President Robert Mugabe, the Vice President Mai Mujuru, and Mr. Webster Shamu, but they have not taken the opportunity to discourage child marriage¹³.

¹⁰Hastings A. *The Church in Africa*: New York, Oxford Press, 1994, pp 81b

¹¹ In agreement with this fact Professor Julie Stewart in an interview 7/13/2011 stated that this church has wide membership because it is the only church that attempts to bridge the gap between tradition and religion.

¹² Rev Mujinga Mwamba Kura, *The Growth of one initiated Church in Zimbabwe, Johanne Marange's African Apostolic Church*.

¹³ Available on http://news.xinhuanet.com/english2010/indepth/2010-04/30/c_13273134.htm Accessed 7/14/2011

Regardless of the large following of this church, it carries astonishing weaknesses which are not of concern to its adherents due to their lack of education. To start with, the Holy Spirit is used as an intimidating tool, instilling fear in members not to do certain acts as they are threatened with curses. The same Holy Spirit is used to validate child marriages as the prophets would have been '*directed*' by the Holy Spirit to marry young girls. They also believe that girls should only have minimum schooling, and, therefore, as soon as a girl reaches puberty they are married off. The lack of education often disempowers the girls. They do not question certain harmful practices in the church such as the practice of not taking children to health institutions. The cross-generational nature of marriages in the church is also problematic because young girls cannot stand up for themselves in the marriage to demand sex safe or take part in decisions that affect their health such as child spacing.

Additionally, the general belief of this church is that whatever leader is in power has been ordained by God, and therefore they may be subject to political manipulation where they have de facto protection. The Zimbabwe African National Unity-Patriotic Front [ZANU PF] has targeted the Johanne Marange Apostolic church for political reasons because of its huge following¹⁴. This church is quoted as one of the largest growing spiritual groups in Zimbabwe at the moment, and therefore it is may be speculated that with its growth child marriages will also increase¹⁵. The growth of the church can also be explained as an expression of the despair of the people at the economic circumstances which often leads people especially the poor to seek solace through religion. Since the beginning of the year when the party started talking about elections, its senior officials have been visible at the church's gatherings where they are telling them to vote for ZANU-PF come election time¹⁶. Therefore, it appears that the fact the police and government turn a blind eye on this church's undesirable practices such as child marriage is not by default, but is a strategy meant to avoid alienating their electorate.

Child marriage is not only common among the '*vapostori*'; it is also common in secular groupings too. What reasons can be attributed to the perpetuation of this harmful practice in Zimbabwe? Are the laws that govern marriages in Zimbabwe inadequate and if so how? Do we have an enforcement problem in this country since the police appear to turn a blind eye to such activities? Is litigation the best way to solve the problem or are there wider social justice issues that need to be addressed to ensure that this practice is effectively eradicated? It may be that there is need for a multi-pronged approach to tackle the problem where litigation will only be one approaches, and where a large advocacy campaign may be necessary to deal with attitudes and beliefs.

¹⁴ See, for example, Anonymous, *The Anatomy of Terror* (June 10, 2011, distributed by Sokwanele). <http://www.sokwanele.com/thisiszimbabwe/archives/6800>.

¹⁵ Available on <http://www.africanaristocrat.com/?tag=zimbabwe-religion> Accessed 7/14/2011

¹⁶ Available on <http://www.zimbabwemetro.com/politics/zanu-pf-has-intensified-its-campaign-on-churches/> Accessed 7/14/2011

Zimbabwean Law

The practice of child marriages is one reflection of society's negative attitude towards women revealing the fact that important decisions such as marriage, choice of partner, and women's sexuality are all controlled by others from an early age until old age. At the core of the problem is the continued recognition of customary law alongside general law (Section 111B of the constitution).

The state has the responsibility of changing customary practices that are not in consonance with human rights standards. Legal reform whilst useful is not always effective because people do not easily give up on customs and traditions. However, innovative ways including dialogue and awareness raising can be done to change customs. Culture, customs, and traditions are never static in any society. They are transformed by many influences and value systems. Human rights norms can therefore impact and help to reinforce aspects of culture and tradition that are positive, undermining those that contribute to violence against women and infringement of their human rights such as child marriages. The transformative nature of culture indeed suggests that values and norms on human rights can be internalized in different societies in the same manner as have other values been internalized over a period of time to become what are described as "traditional cultural practices".¹⁷

The Constitution of Zimbabwe in Section 23 prohibits discrimination on the basis of gender. In Zimbabwe, the minimum marriageable age for girls is sixteen and eighteen for boys. This law is clearly discriminatory; why should it be permissible for a girl to be married at 16 when she is the one who is mostly at risk of the consequences of early marriage? In terms of the law, no boy under the age of eighteen years and no girl under the age of sixteen years shall be capable of contracting a valid marriage except with the written permission of the Minister of Justice, which he may grant in any particular case in which he considers such marriage desirable¹⁸. In Zimbabwe protection against child marriages is only extended to boys in the Marriage Act¹⁹. This provision setting the minimum age of marriage at 18 for boys exposes girls to manipulation²⁰. Customary marriage is recognised under the Customary Marriages Act²¹, but does not provide for a minimum marriage age for either boys or girls. The Criminal Codification Act Section 70 criminalizes sexual activity with a young person (under 16); and a minor (under 12) is deemed "*incapable of consenting to sexual intercourse or a sexual act*"²². The Children's Act 2002 (Zimbabwe) defines a: minor as "*a person under the age of eighteen years*"; and young

¹⁷ http://www.unescap.org/sdd/publications/gender/SDD_pub_2530.pdf

¹⁸ Section 22 (1) of Marriage Act.

¹⁹ Section 22 Marriage Act.

²⁰ Section 22 (1) of Marriage Act.

²¹ Customary Marriages Act Chapter 5:07 consolidated as of 2004

²² Criminal Law (Codification and Reform) Act 2004 Chapter 9:23

person as “a person who has attained the age of sixteen years but has not attained the age of eighteen years”²³. The reason why Zimbabwe has two legal systems is because the British colonialists made general law the official law of the land but continued to recognise customary law in matters relating to the family, such as marriage and the administration of property.²⁴

Whilst it appears that the legal framework to protect girl child from child marriages in Zimbabwe exists, a problem lies in the Customary Marriages Act which does not provide a minimum marriageable age and has therefore been abused. There have been calls from the women’s movement in Zimbabwe for the government to harmonize the marriage laws in the country in order to rectify the discrepancies²⁵. However, governments are often either unable to enforce existing laws, or rectify discrepancies between national laws on marriage age and entrenched customary and religious laws. This is because of the “*official tolerance of cultural, societal and customary norms that shape and govern the institution of marriage and family life*”²⁶.

In many societies, men are expected to control women in all aspects of relationships. This involves decision-making on when and whom a girl/woman will marry, and when and how she will have sexual relations. However, the cultural beliefs that promote early marriage as an end all, even to the extent that they marry off young girls to rapists, should be stopped. Marrying off a young girl to her rapist because he has offered to marry her is exposing that child to revictimisation, and it amounts to is cruel inhuman and degrading treatment. Marriage is often used to legitimize a range of forms of sexual violence against women²⁷. Marrying the victim is often a ploy used by the rapist to ensure that he is exonerated for his crimes. Psychologist Seema Hingorany²⁸ states that:

"A woman should never marry her rapist. Rape is a big trauma and the victim requires intensive therapy to get out of it. Some people get married because of their insecurity and the stigma that no one will marry them. But these girls barely forgive the rapist."

²³ Children’s Act 2002

²⁴ WLSA, Lobola its implications for women’s reproductive rights in Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe p10. Weaver press

²⁵ Oppah Muchinguri was quoted in the Herald 26 June 2007 as saying that there is need to harmonize marriage laws in order to protect women from unfair treatment as there is no uniformity in the current legislation. As the then Women Affairs, Gender and Community Development Minister Cde. Oppah Muchinguri said women were being treated differently because of the dual legal system. Zimbabwe Women Lawyers Association has also been advocating for harmonization of marriage laws in the constitutional making process that the country is currently undergoing.

²⁶ IPPF, Ending Child Marriage: A guide for Policy Action (2007), Available on <http://www.ippf.org/NR/rdonlyres/8415A7E9-0833-4500-AE53-9AA09F1A56D8/0/endchildmarriage.pdf> Accessed 7/13/2011. Also see Article 1 of the Convention on the Right of the Child

²⁷ Available on http://whqlibdoc.who.int/publications/2002/9241545615_chap6_eng.pdf accessed 10/20/2011

²⁸ Clinical Psychologist and relationship specialist. India.

She goes on to add, "Also, you cannot completely ignore the psychological status of the man. Someone who can commit such a heinous crime has something incorrect in his character and such marriages can never work. It could lead to more violence"²⁹. Any decision made by the family on behalf of a child must be done to enhance the growth and development of the child. Marrying off a young girl to her rapist cannot possibly ensure the healthy growth of the girl child.³⁰

Role of lobola in promoting early marriages

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 them³¹. This problem is further compounded by the fact the family is the custodian of culture and some cultural practices such as the payment of lobola often expose the girl child to other harmful cultural practices such as child marriage. Culture continues to be the most dominant force. Culture evolves and is dynamic, but certain aspects of culture have largely failed to die away. In Zimbabwe, for example, the cultural practice of paying lobola³² is still going strong despite outcries that the practice treats women as commodities in the market place. The consequences of this practice include that women's labor is transferred to that of her husband's family. The man gets exclusive sexual rights and can expect children to be born to perpetuate the family line. In some societies, the number of cattle paid should correspond with the number of children that the woman is expected to have.

The practice of paying lobola is seen as positive in African culture. However, it is deeply embedded on the patriarchal system that feminist commentators argue oppresses women. It is also viewed to be one of the causes for child marriages. Why then, despite the negatives mentioned, is it still being practiced?

Lobola is considered as a means of establishing relationships between the groups of people and once established it creates a network of rights and obligations³³. The woman on whose behalf lobola is paid is bound to stay in the relationship because any decision of hers to move from such a relationship disturbs a whole network of obligations and duties³⁴. The consequences of lobola are far more serious in relation to child marriages where a child may be threatened from leaving an abusive husband because he paid lobola. The perceived financial gains to be reaped from payment of lobola also encourage parents to marry off their children at an early age.

²⁹ Gupta Aarti , Should A woman marry her rapist ? Available on <http://toostep.com/insight/should-a-woman-marry-her-rapist>. Accessed 10/2011

³⁰ Art 6(2) of Convention on the Rights of the Child; art 5 (2) of ACRWC.

³¹ 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.

³² It is the process where the family of the man makes payments to the family of the woman in the process of marriage.

³³ WLSA, Lobola its implications for women's reproductive rights in Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe p18. Weaver press

³⁴ Ibid pg 18

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 minimized³⁵.

In general, there is seldom political will to act when it comes to women's and girls' human rights.³⁶ According to Abdullahi An-Na'im, sharing insights and experiences in internal discourse can over time help to mediate cultural and contextual differences, and thereby produce common standards on the principal of the best interests of the child³⁷. His view point is that standards on the best interests of the child differ vastly in countries in the North and the South. The family as an institution has facilitated child abuse and exploitation in Zimbabwe through cultural practices and customs as a survival tactic³⁸. Therefore, while countries in the North may be horrified that those in the South marry off young girls at the age of 12, this is the cultural reality in most developing countries, and An Na'im proposes internal discourse as part of the solution.

A woman's capacity to voluntarily enter into marriage, to dissolve a marriage, and to have equal rights within her marriage is essential to her ability to control her life and make voluntary, informed reproductive choices³⁹. It is a misconception that, *"the 'real' African woman...is content with her subordinate position as wife, mother and beast of burden. She is passive in the face of abuse, tolerant of all forms of infidelity; her only real ambition is to retain respectability by labouring for the maintenance of a stable marriage and family and seeing to the satisfaction of her husband's desires"*⁴⁰.

Child marriages were allegedly initially meant to protect children from unwanted sexual relations and to gain economic security. Those who marry children early also believe that the children are protected from HIV, but this is just a myth because studies have revealed that

³⁵ Hanzi Roselyn, 2006. 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 Democratization in Africa) University of Pretoria. Available on http://137.215.9.22/bitstream/handle/2263/1214/hanzi_r_1.pdf?sequence=1 accessed 10/20/2011

³⁶ Available on <http://www.ippf.org/NR/rdonlyres/8415A7E9-0833-4500-AE53-9AA09F1A56D8/0/endchildmarriage.pdf> Accessed 7/13/2011

³⁷ Abdullahi An Na'im, Cultural Transformation and Normative Consensus on the best interests of the Child, International Journal of Law and the Family 8,(1994),62-81

³⁸ Hanzi Roselyn, 2006. 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 Democratization in Africa) University of Pretoria.

³⁹ Legal Grounds: Reproductive and Sexual Rights in African Commonwealth Countries.

⁴⁰ Mama, Amina. 'Women' Studies and Studies of Women in Africa during the 1990s.' 1995. Available at <<http://www.gwsafrica.org/knowledge/index.html>> , Cited September 2006.

children who are exposed to penetrative sex too early tear and are more likely to be infected by the virus⁴¹.

International Human Rights Framework

It is well established under the African human rights system and international law that states have a three-fold obligation to respect, protect, and fulfil rights, and that the obligation to “protect” requires states to take positive measures to ensure that non-state actors or private persons do not violate the human rights of others. Such positive measures include adopting legislative and other measures to prohibit private persons from violating the human rights of other individuals. For instance, the African regional human rights system also has a treaty specifically on the rights of the child, the African Charter on the Rights and Welfare of the Child (ACRWC), which was adopted on the 11th July 1990 and came into force on the 29th November 1999.

Article 16(1) of the ACRWC states that:

States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has care of the child.

Article 1 of the African Charter also provides that states “shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.”

Article 4(2) of the Maputo Protocol on the African Charter on Human and People’s Rights on the rights of women in Africa⁴² requires states parties to take appropriate measures to ensure the prevention, punishment, and eradication of all forms of violence against women and to punish perpetrators of violence against women.

The Convention on the Elimination of Discrimination against Women (CEDAW) Article 16 (1) provides that men and women of full age have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. It further provides, in 16(2), that marriage shall be entered into only with the free and full consent of the intending parties. The African Charter on the Rights and Welfare of the Child (1990), Article XXI,

⁴¹ Clark, S. 2004, ‘Early Marriage and HIV Risks in Sub-Saharan Africa’, Studies in Family Planning, vol. 35, no. 3, September 2004, pp. 149–160. <http://www.ncbi.nlm.nih.gov/pubmed/15511059>

⁴²Zimbabwe is a signatory of the Maputo Protocol. Available on <http://www.achpr.org/english/women/protocolwomen.pdf>
Accessed on 10/10/2011

provides that child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years.

The 1989 Convention on the Rights of the Child (CRC), also stipulates the right to protection from traditional practices harmful to the health of the children. The CRC has been ratified by all countries with the exception of the United States and Somalia. A number of articles within the CRC have relevance to child marriage, such as Article 3, which states that in all actions concerning children... the best interests of the child shall be a primary consideration. Is marrying off a young girl of 8 to a man triple her age in the best interests of that child? Marriage is regarded as a moment of celebration and a milestone in adult life but early marriage gives no such cause for celebration. The imposition of a marriage partner on a child means that their childhood is cut short and their fundamental rights are compromised.⁴³

The “*best interests of the child*” principle in the CRC also provides a basis for evaluating the laws and practices of States with respect to the protection of children. To pursue the best interests of children, parents and governments are responsible for protecting their children’s health, education, development and overall well-being to the best of their capacities. Since child marriage harms the girl child’s health, particularly her sexual and reproductive health, which often results in maternal mortality and morbidity due to early pregnancies, States are obliged under the CRC “*to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children*”⁴⁴.

Article 19 of CRC provides for the right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian, or any other person. Often a young girl will be exposed to sexual activities before her body is fully developed and she is not mentally prepared for it. Rape is not uncommon in these relationships and the psychological effects are long lasting. Child marriage has negative ripple effects on other rights of the girl child, such as education, and this leads to further problems in future.

CRC Articles 28 and 29 provide for the right to education on the basis of equal opportunity. Once married young girls drop out of school they become full time housewives or servants for their new husbands; this negatively impacts on the community and society as a whole as well as the well being of future generations⁴⁵. This practice is also in direct conflict with the objectives of Millennium Development Goals such as the promotion of basic education and the fight

⁴³ UNICEF Innocenti Research Centre.2001.Early Marriage: Child Spouses. No 7.Florence,Italy:UNICEF

⁴⁴ CRC, Article 24.3

⁴⁵ Jeannette Basiyange, *Early Marriage as a barrier to girl’s education: A development challenge in Africa*, National University of Rwanda, page 1. Available on <http://www.ifuw.org/fuwa/docs/Early-marriage.pdf> Accessed 7/12/2011

against poverty as well as gender equality⁴⁶. Cutting off a young girl's education has a drastic effect on her employment opportunities in the future and this effectively undermines development efforts in Africa. Women with primary education are significantly less likely to be married or in union as children than those who received no education. In Zimbabwe, for example, 48% of women who had attended primary school had been married by the age of 18 compared to 87% of those who had not attended school⁴⁷.

Studies show a correlation between girls' educational levels and age at marriage: Higher median age at first marriage directly correlates with higher rates of girls in school. Conversely, getting and keeping girls in school may be one of the best ways to foster later, chosen marriage.⁴⁸

Further Article 29 of the CRC states that⁴⁹

...the education of the child shall be directed to:

The development of the child's personality, talents and mental and physical abilities to their fullest potential;

The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.

But how realistic is it to expect any of that to be achieved for a child forced into early marriage and burdened with the ensuing household chores?

Child marriages can also expose children to sexual exploitation. CRC article 34 provides the right to protection from all forms of sexual exploitation and sexual abuse, and Article 36 further states that the child has a right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare. Child marriage is culturally packaged as a social necessity, but in many cases this amounts to "*socially licensed sexual abuse and exploitation of a child.*" It is one of the most persistent forms of sanctioned sexual abuse of girls and young women⁵⁰. According to a UNICEF report in 2006, child marriage is a violation of human rights whether it happens to

⁴⁶ *ibid*

⁴⁷ Available on <http://hatefvoice.wordpress.com/2011/02/25/child-marriages-%E2%80%93-robbing-them-of-their-innocence/> Accessed 7/11/2011

⁴⁸ UNFPA, Child Marriage Fact Sheet 2005, Available on http://www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm Accessed 10/14/2011

⁴⁹ <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

⁵⁰ IPPF, Ending Child Marriage: A guide for Policy Action (2007), Available on <http://www.ippf.org/NR/rdonlyres/8415A7E9-0833-4500-AE53-9AA09F1A56D8/0/endchildmarriage.pdf> Accessed 7/13/2011. Also see Article 1 of the Convention on the Right of the Child

a girl or a boy, but it represents perhaps the most prevalent form of sexual abuse and exploitation of girls⁵¹. The harmful consequences include separation from family and friends, lack of freedom to interact with peers and participate in community activities, and decreased opportunities for education. Child marriage can also result in bonded labour or enslavement, commercial sexual exploitation and violence against the victims⁵². Because they cannot abstain from sex or insist on condom use, child brides are often exposed to such serious health risks as premature pregnancy, sexually transmitted infections, and, increasingly, HIV/AIDS. They are exposed to marital rape because in some cases very young girls are married before menarche and are raped by their adult husbands. Such treatment can cause permanent, serious physical damage to the child, and one can only imagine the accompanying mental agony. Even when girls have begun to menstruate, they are still vulnerable to damage from penetration by an adult man.

While the saying is that “*children are the future*”, it is clear that children are also the “*present*”. The future depends on their healthy development today. They are the most vulnerable and the most resilient, as well as the most precious in society. In African society, as in many cultures around the world, children are a gift and a means for parents to secure their own futures. In traditional African societies, children are to be protected and supported, and assisted to reach their full potential. However, child marriages point to a different set of values that are robbing children of their future and committing them to a life sentence of misery and suffering.

Child brides are frequently susceptible to domestic violence because the age difference emphasizes the powerlessness of the girl child. There is some empirical evidence that child marriage is associated with increased risk of girl’s experiencing domestic violence and sexual abuse. An International Centre for Research on Women survey in the states of Bihar and Jharkhand, India, in 2004, found that girls who were married before 18 were twice as likely to report being beaten, slapped, or threatened by their husbands than girls who married later. They were also three times as likely to report being forced to have sex without their consent in the first six months of their marriage.⁵³

The Convention on the Elimination of all forms of Discrimination against Women Committee in its concluding observations in 1996 notes with concern the persistence of behavioural attitudes in the society as well as cultural and religious practices which, as recognized by the State party, hamper the implementation of children's rights. Early marriages were cited as one of these

⁵¹Available on <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/095/78/IMG/NR009578.pdf?OpenElement>. Accessed 7/13/2011

⁵²UN publishes IHEU statement: child marriage is child abuse (2009). Available on <http://www.iheu.org/un-publishes-iheu-statement-child-marriage-child-abuse> Accessed on 7/12/2011

⁵³ICRW, 2007, ‘New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programs’, International Center for Research on Women, Report prepared for USAID. Washington
Available on <http://www.icrw.org/docs/2007-new-insights-preventing-child-marriage.pdf> Accessed 7/18/2011

cultural practices that hamper children's rights in Zimbabwe⁵⁴. Zimbabwe authorities know about the harmful custom of early marriage and dare not take adequate legislative, judicial, or other measures to prevent this practice which subjects young women to physical harm, sex discrimination, and other rights violations. Why is indulgence in sex with a 12 year old girl referred to statutory rape and yet when a girl the same age is married off to an older man the state is not equally horrified even though that girl will be exposed to 'marital rape'? Paradoxes and legal contradictions are rife in the institution of child marriage. While consensual sex with girls below a minimum age constitutes statutory rape, the same act with a similar aged girl goes unsanctioned by the protective mantle of "marriage". The synergy between human rights norms, constitutional principles of equality, and antidiscrimination norms and domestic laws on freedom of marriage combine to militate against child marriage⁵⁵.

It is all too apparent that the world is no longer short of declarations and treaties that recognize human rights. What the world, and not least the African region, is woefully short of, though, is the realization of human rights. The challenge now is to secure not just the respect and protection, but the fulfilment of human right guarantees. Unless rights are fulfilled, they remain rhetoric at best. Writing about international human rights law in Africa, Frans Viljoen has said that "[t]he ultimate test of international human rights law is the extent to which it takes root at the national level, and its ability to flourish in the soil of states and to bear fruit in the lives of people"⁵⁶

Reasons for early marriage

Poverty

Poverty is one of the major reasons for early marriage because when families are very poor a young girl is considered to be an economic burden to the family; therefore, if she gets married that is one mouth less to feed. There is a case of a 10 year old Zimbabwean girl who was married off in 2001 to a 40 year old man in order to obtain food. She was allegedly sold for 2000 Zimbabwe dollars which was equivalent to 7US\$⁵⁷.

According to the Zimbabwe Herald, girls aged between 10 and 15 have been forced into marriages by their parents owing to poverty at Somerby settlement near Snake Park in Harare.⁵⁸

⁵⁴ Available on <http://www1.umn.edu/humanrts/crc/crc-Zimbabwe96.htm> Accessed 7/12/2011

⁵⁵ UNICEF(2008), Child Marriage and the Law. Available on http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law%281%29.pdf Accessed 7/11/11

⁵⁶ Legal Grounds: Reproductive and Sexual Rights in African Commonwealth Courts, Volume II

⁵⁷ Jeannette Basiyange, *Early Marriage as a barrier to girl's education: A development challenge in Africa*, National University of Rwanda, page 1. Available on <http://www.ifuw.org/fuwa/docs/Early-marriage.pdf> Accessed 7/12/2011

⁵⁸ The Herald 5 September 2011.

Zimbabwe Women's Lawyers Association Director, Mrs. Emilia Muchawa, said authorities should intervene urgently. *"It is unlawful to marry a minor or allow a minor to be married off. Children should be given their time to fully develop. But if they are to be married this restricts them from fully developing and realizing their full potential in life."* Mrs. Muchawa said that marrying minors also exposed them to various diseases.⁵⁹ There is a primary and a secondary school in the settlement but most children have dropped out because their parents have no money. Many marriages in the area are related to poverty, with parents needing the bride price of a daughter to feed, clothe, educate, and house the rest of the family.

Although child marriage is seen as a way to escape the cycle of poverty, child marriage in fact worsens the cycle of intergenerational poverty. It's also important to highlight the core relation between the economic recession and the size of the apostolic sect. Some of these practices are carried out for financial gain by the parents of the children. Child marriage not only perpetuate an inter-generational cycle of poverty and lack of opportunity, but also reinforces the subordinated nature of communities that traditionally serve the powerful classes by giving a girl child in marriage to an older male.

Beliefs

The value placed on virginity, marriage and the prevalence of HIV/AIDS are other common factors cited. According to An Na'im, an intelligent strategy to protect and promote human rights must address the underlying causes of violations of these rights. Human rights violations in the most part are due to human action or inactions. These actions even when driven by selfish motives of power or greed for wealth human rights violators seek to rationalize their behaviour as consistent with or conducive to some morally sanctioned purpose⁶⁰. Whilst there are many reasons given in defence of child marriages the true motivation behind child marriages these days are more sinister and perverted than meets the eye. It is probable that young girls are being forced into marriage with men twice their age because of ridiculous beliefs such as the fact that if an HIV positive man sleeps with a virgin he will be cured. This cure for HIV is commonly suggested by the 'vapostori'. The other real reason is the desire to control women as mentioned by Mr. Gideon Mombeshora, a member of the apostolic sect⁶¹. He is of the view that older man want to marry young girls because they are easier to control. This is one of the true reasons behind the practice: patriarchy, power, and control.

⁵⁹ ibid

⁶⁰ Abdullahi An Na'im, Human rights in Cross Cultural Perspectives: A quest for consensus. Pennsylvania Studies in Human Rights.

⁶¹ Article by Kachere Phyllis , Religion and Poverty Force girls into early marriage. Available on <http://www.infosdelaplanete.org/5308/religion-and-poverty-force-girls-into-early-marriages.html?L=EN> Accessed 10/10/2011.

Religion

Exploitation and abuse of children are also other reasons for the practice but people hide behind religion and custom. One member of the Apostolic sect said, *“The reason why it is rampant is that most of these men hide behind prophecies”*⁶². They usually abuse their position as prophets to hand-pick girls for the elderly men in the church who already have other wives.

Impunity

Weak laws and inadequate implementation of the laws result in child marriages being conducted with impunity. In fact, advocates against child marriage argue that the conviction rate in breach of the prohibitions against child marriage in most countries is virtually nil⁶³. With regards the issues of child marriages in Zimbabwe police officers often turn a blind eye and this might be why it continues to happen. No one should be allowed to rape a 13 year old girl, impregnate her, and then marry her after the fact, and still be protected by the law. Paradoxes and legal contradictions are rife in the institution of child marriage. While consensual sex with girls below a minimum age constitutes statutory rape, the same act with a similar aged girl goes unsanctioned by the protective mantle of “marriage”⁶⁴.

Tradition

The ICCPR Human Rights Committee’s General Comment 28 elaborates on the obligation of the State in terms of equality of rights between men and women. It states: *“Inequality in the enjoyment of rights by women is deeply embedded in tradition, history, and culture including religious attitudes. States parties should ensure that traditional, historical, religious and cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights”*⁶⁵.

Teenage sex

Teenage pregnancy can be defined as *‘a teenaged or underage girl, who usually between age 13 to 19 years old, becomes pregnant’*.⁶⁶ Most young girls nowadays are willing to engage in sex for various reasons such as the economic benefit or just plain promiscuity and experimenting. In Zimbabwe families value marriage such that when a young girls falls pregnant she is married off if the father of the child accepts responsibility. Teenage pregnancies therefore cause early marriages.

⁶² ibid

⁶³ UNICEF (2008) Child Marriages and the Law: Legislative Reform Initiative Paper Series, page 46

⁶⁴ UNICEF (2008) Child Marriages and the Law: Legislative Reform Initiative Paper Series, page 13

⁶⁵ Covenant on Civil and Political Rights General Comment no 28, Available on [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument) Accessed 10/10/2011

⁶⁶ Available on <http://www.scribd.com/doc/37847388/Teenage-Pregnancy> accessed 10/23/2011

Strategies to end child marriages

Amendment of the Law

The combined strength of the women's and children's movements should be directed towards the practice of child marriage, a tradition which constitutes one of the most severe forms of child abuse⁶⁷. Litigation and the constitutional making process can be used to ensure that there is harmonization of laws, and that the Customary Law Marriages Act specifies marriage age in line with other statutes such as the Marriages Act. Introducing laws to raise the legal age of marriage to 18 years, as agreed in the African Charter on the Rights and Welfare of the Child, would be another useful legislative step. Certainly, raising the awareness of all stakeholders, including parents, on the negative impacts of child marriage can have a positive impact and compliment legal reform.

Litigation

Law reform has the potential to review local traditions and customs in light of international standards. Article 2(f) and 5(a) of CEDAW are premised on the notion that where cultural constraints on gender hinder the achievement of women's equality, it is the cultural practice that must give way. In *Smt. Seema v. Ashwani Kumar*⁶⁸, a private matrimonial case, the Court issued an order making registration of all marriages mandatory. The Court placed on record the National Commission on Women's recommendations for the compulsory registration of marriage and directed the central and state governments to develop procedures for marriage registration and for the appointment of official to register all marriages in India.⁶⁹ In the famous *Velasquez - Rodriguez case*⁷⁰, the Inter-American Court of Human Rights held that States have an affirmative legal obligation to investigate and prosecute rights violators (including private persons who are not agents of the government). The court also held that the government must compensate victims of rights violations. This norm can be used creatively by women's rights advocates to hold the State responsible for private acts of discrimination and violence like child marriage⁷¹.

Internal discourse and Cross Cultural Dialogue

The international human rights framework has been put in place with clear guidelines to prevent child marriages, but they continue to occur. The reason for this is the illusiveness of universal normative consensus in view of the diversity of cultural and contextual realities which

⁶⁷ UNICEF (2008) Child Marriages and the Law: Legislative Reform Initiative Paper Series, page 13

⁶⁸ *Smt. Seema v. Ashwani Kumar*. T.P. (Civ.) No. 291 of 2005, Supreme Court of India, Nov. 18, 2005.

⁶⁹ *ibid*

⁷⁰ Case 4, Inter-Am.C.H.R.35, OAS/ser.L./V)111.19, doc.13, app.VI (1988).

⁷¹ UNICEF, (2008). Child Marriage and the Law, Available on http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law%281%29.pdf Accessed 7/11/11

condition people's beliefs and behaviour in daily life with respect to the rights of the child.⁷² An Na'im further asserts that, although clearly distinguishable from each other, human cultures are also characterised by their own internal diversity, propensity to change, and mutual influence. These characteristics can be used to promote normative consensus within and among cultures through processes of cultural transformation⁷³. Therefore, it is possible to change the harmful cultural or religious practice of child marriages through cultural transformation.

Non-governmental organisations can influence the adoption of alternative perspectives on the issue through internal discourse. They may be viewed as outsiders, but they can still influence culture by engaging in their own internal discourse thereby enabling participation in one culture to point to similar processes elsewhere in other cultures. NGOs can also support the rights of children and women who are involved in the practice by encouraging them to challenge the prevailing status quo or perceptions whilst at the same time avoiding overt interference because this will undermine the credibility of internal actors. This is a strategy that can be used to deal with the Johanne Marange Apostolic sects because they are a very closed group that doesn't take kindly to external interference especially when these challenge their beliefs. It might be possible to find members of the sect who do not particularly agree with this practice and they can themselves challenge the prevailing perceptions. NGOs can also initiate cross cultural dialogue to exchange insights and strategies of internal discourse. Cross cultural dialogue can seek to promote universality by highlighting moral and philosophical commonalities of human cultures and experiences.⁷⁴ Sharing insights and ideas or experiences will over time help to mediate cultural and contextual differences and thereby produce common standards on the principle of the best interests of the child. The best way to combat the norms of cultural relativity is to challenge its basis in the consciousness of the relevant people. In this case the communities that are still carrying out child marriages in Zimbabwe.

Advocacy

There is need for an advocacy campaign to end child marriages in Zimbabwe involving the different organisations working on children rights as well as the relevant government officials and the police force. The aim of the campaign will be to end child marriage in Zimbabwe by showing that it is detrimental to the health and wellbeing of the girl child. This maybe a better approach rather than litigation as it attempts to change the attitudes and mindset of the

⁷²Abdullahi An Na'im, Cultural Transformation and Normative Consensus on the best interests of the Child, International Journal of Law and the Family 8,(1994),62-81

⁷³Abdullahi An Na'im, Cultural Transformation and Normative Consensus on the best interests of the Child, International Journal of Law and the Family 8,(1994),62-81

⁷⁴ ibid

nation. Following the technical consultation by the Forum on the Rights of Women and Girls⁷⁵ on early and forced marriage held in Ouagadougou, October 2003, participants drew up a declaration, stating:

- *We call on governments and international development agencies to recognize the efforts being made by civil society organizations in addressing the concerns and situation of girls and women affected by child marriages by providing the necessary support and resources to respond to the challenges posed by child and forced marriages.*
- *That our governments and the African Union adopt a clear and unambiguous position on child and forced marriages and rectify the legislative loopholes between religious, customary and civil marriages, and sign the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and ensure that special measures are taken to help end this practice.*

Therefore, governments have to be encouraged through advocacy work to adopt a clear and unambiguous position on child and forced marriages and rectify the legislative loopholes between religious, customary and civil marriages⁷⁶. However, above and beyond taking the liberal approach, an advocacy campaign is needed to effectively deal with the attitudes and beliefs of the people who practice child marriages for whatever reason.

Creating safety nets for girls and young women who escape a forced, and often violent, marriage will help to save the life of a child. Creating and maintaining birth, death and marriage data registries with full national coverage in all countries as recommended in the Pinheiro report on violence against children (2006).

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

⁷⁵ The Forum on Marriage and the Rights of Women and Girls is a network of organisations, mainly based in the UK but with international affiliates, sharing a vision of marriage as a sphere in which women and girls have inalienable rights. Available on <http://www.forwarduk.org.uk/key-issues/child-marriage/forum> accessed 10/17/2011.

⁷⁶ Ouagadougou Declaration on Child Marriage, October 2003. Available on <http://www.wluml.org/node/1211> accessed on 10/10/2011.

Education and Training

There are a number of key activities here that may assist with changing attitudes:

- Train key government officials, judiciary, law enforcement officers and policy makers, at all levels, on the law and related gender equity and human rights to support the effective implementation and enforcement of the law and related policies.
- Support awareness raising and public education programmes about the negative effects of child marriage, and related human rights of girls and women, to help change attitudes, and strengthen duties of parents, guardians and the community to protect vulnerable girls.
- Promote and protect the sexual and reproductive health and rights of girls and young women, through legislation, availability of services and information and community outreach⁷⁷.
- Promoting gender equality and the right of girls and young women to education and choice in marriage is important. The state must have an obligation under the Education Act to put in place mechanisms to ensure that all children are attending school. The Education Act recognises that all children have a fundamental right to education⁷⁸. It should be an offence for parents or 'husbands' to keep children of school going age at home.

Conclusion

Child marriages must be viewed within a context of force and coercion, involving pressure and emotional blackmail, and children that lack the choice or capacity to give their full consent. Child marriage must therefore always be considered forced marriage because valid consent is absent-and often considered unnecessary⁷⁹. In the context of child marriage, although it is conducted by private individuals and not directly by the state, the state can be held responsible for "lack of diligence in preventing through its executive, legislative, or judicial organs the private act of contracting child marriage"⁸⁰. Child marriages are caused by various reasons and clearly have serious consequences on the rights and well-being of the girl child. The advocacy

⁷⁷Available on <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2006/endchildmarriage.pdf> accessed 10/10/2011

⁷⁸ Section 4 Education Act.

⁷⁹Available on <http://www.thefreelibrary.com/Child+marriage%3a+a+violation+of+human+rights%2fMarriage+des+enfants%3a+une...-a0171018170> accessed 10/10/2011.

⁸⁰Ending Child Marriage: A guide for global policy action, IPPF, UNFPA 2006 Available on <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2006/endchildmarriage.pdf> accessed 10/13/2011.

strategies will inevitably face resistance from the custodians of culture and religious groups who believe in the practice. However, changing attitudes and people's perceptions takes time and patience and in the long run the results will be visible and there will be a decrease in the numbers of people who will continue to view it as a valid cultural practice.

Bibliography

An-Na'im, Abdullahi, (1994) '*Ch.7: State Responsibility Under International Human Rights Law to Change Religious and Customary Laws*' in Cook, Rebecca J. (ed): 'Human Rights for Women. National and International Perspectives', University of Pennsylvania Press p. 167-188

Basiyange Jeannette, *Early Marriage as a barrier to girl's education: A development challenge in Africa*, Assistant Lecturer Department of Social Sciences, National University of Rwanda. <http://www.scribd.com/doc/37131480/Early-Marriage>

Bruce, J. (2005), *Child marriage in the context of the HIV epidemic, promoting healthy, safe and productive transitions to adulthood*. Population Council Brief No. 11. New York: Population Council.

ICRW, (2007), '*New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programs*', International Center for Research on Women, Report prepared for USAID. Washington. <http://www.icrw.org/docs/2007-new-insights-preventing-child-marriage.pdf>

ICRW, (2006), '*Too Young to Wed: Education and Action Towards Ending Child Marriage*', International Center for Research on Women, Washington http://www.icrw.org/docs/2006_cmtoolkit/cm_all.pdf

IPPF and UNFPA, (2006), '*Ending Child Marriage: A Guide for Global Policy Action*', International Planned Parenthood Federation (IPPF), London

<http://www.unfpa.org/webdav/site/global/shared/documents/publications/2006/endchildmarriage.pdf>

Jenson, R. and R. Thornton, (2003) '*Early female marriage in the developing world*', *Gender and Development*, vol. 11, no. 2, pp. 9-19

Legal Grounds: Reproductive and Sexual Rights in African Commonwealth Courts, Volume II. (2010) Center for Reproductive Health Rights, the [International Reproductive and Sexual Health Law Programme](#) of the University of Toronto, and the LLM Programme on Reproductive and Sexual Rights of the [University of the Free State](#), South Africa. http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/pub_legalgrounds_vol_2_2.10.pdf

UNICEF, Innocenti Research Centre, (2001).*Early Marriage: Child Spouses*. No 7. Florence, Italy: UNICEF

U N. (2007), *The Millennium Development Goals*, Report 2007. New York. UNICEF(2008), *Child Marriage and the Law*, Available on

[http://www.unicef.org/policyanalysis/files/Child Marriage and the Law%281%29.pdf](http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law%281%29.pdf)

Accessed 7/11/11