FACULTY OF LAW

PROTECTING GIRLS AGAINST CHILD MOTHERHOOD AND THE RIGHTS OF CHILD MOTHERS IN ZIMBABWE

A thesis submitted in partial fulfilment of the requirements for the LLD degree in the Department of Private Law

By

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DECLARATION

I Obdiah Mawodza, declare that Protecting girls against child motherhood and the rights of child mothers in Zimbabwe is my original work and has not been submitted for examination or degree in any other University or institution of higher learning. While, numerous materials and resources have been referred to, they have been properly referenced and duly acknowledged.
ACKNOWLEDGMENTS

My heartiest, most earnest, deepest and humblest appreciation goes to the two wise women I ever known, Professor Lea Mwambene and Professor Julia Sloth-Nielsen. I am indebted to you for prompting when the chapters took too long in the writing and then for giving insightful and thought-provoking feedback. Your reasoned guidance and excellent structuring skills have greatly attributed to this work. Your continuous guidance and support kept me on course throughout the difficult stages of the LLD process. Completing this study would not have been possible without a great, unparalleled supervision. You have been more than supervisors, but super mothers who always had their child’s best interests at heart.

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DEDICATION

To my wife, Teurai and son, Wenyasha.
ABSTRACT

The issue of child motherhood remains a key challenge, especially in developing countries such as Zimbabwe. Despite bearing the worst of its effects, Zimbabwe looks largely to have fallen short of answers to solve this problem. The focus has been on legal solutions to prevent and ban child marriages, which leaves the plight of child mothers and/or motherhood often forgotten. Interestingly, the 2016 landmark case of Mudzuru and another v Minister of Justice, Legal and Parliamentary Affairs which declared child marriages illegal serves as an eye opener to the challenges of how to legally protect child mothers in Zimbabwe. Though dealing with child marriages, the importance of the case is the fact that child marriages are the major contributor of adolescent motherhood in that married girls become predominantly child-bearers.

According to provincial statistics in Zimbabwe, Manicaland and Mashonaland Central provinces have the highest number of child mothers averaging 27 and 30 per cent, respectively. The Zimbabwe Demographic and Health Survey reported that nine out of 10 teens aged 15 to 19 are sexually active, and two out three first have had sex before the age of 15. Therefore, girls are at risk of becoming child mothers, without necessarily being married. Consequently, the need to protect girls from early motherhood, and give effect to the rights of girls who are already child mothers becomes a pressing issue.

Zimbabwe has made several international commitments to the realisation of children’s rights. It is a signatory to the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, which contain provisions that protect girls against child motherhood and the rights of child mothers. In 2013, Zimbabwe adopted a new Constitution. It espouses a regime of justiciable children’s rights. It has also promulgated subsidiary laws that are also relevant to children’s rights. Therefore, the main purpose of this study is to critically analyse legal and policy measures towards the protection of girls against child motherhood and the rights of child mothers in Zimbabwe.
KEYWORDS

Age
Child mothers
Children's rights
Girl
Harmful cultural practices
Marriages
Mudzuru
Pregnancy
Protection
Zimbabwe
<table>
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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ACERW</td>
<td>African Committee of Experts on the Rights and Welfare of the Child</td>
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<td>BEAM</td>
<td>Basic Education Assistance Module</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CEDAW Committee</td>
<td>Committee on the Elimination of Discrimination against Women</td>
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<td>CLCRA</td>
<td>Criminal Law (Codification and Reform) Act</td>
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<td>CRC Committee</td>
<td>Committee on the Rights of the Child</td>
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<td>CRC</td>
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<tr>
<td>Cultural Policy</td>
<td>National Cultural Policy</td>
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<td>ECSR Committee</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<td>Gender Policy</td>
<td>National Gender Policy</td>
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<td>Health Strategy II</td>
<td>National Adolescent Sexual and Reproductive Health Strategy II</td>
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<tr>
<td>ICECSR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>MoHTE</td>
<td>Ministry of Higher &amp; Tertiary Education</td>
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<tr>
<td>MoJLPA</td>
<td>Ministry of Justice Legal and Parliamentary Affairs</td>
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<tr>
<td>MoPSE</td>
<td>Ministry of Primary &amp; Secondary Education</td>
</tr>
<tr>
<td>MoWAGCD</td>
<td>Women Affairs Gender and Community Development</td>
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<tr>
<td>SADC Child Marriages Model</td>
<td>Law Model Law on Eradicating Child Marriages and Protecting Children already in Marriage</td>
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<td>SADC PF</td>
<td>SADC Parliamentary Forum</td>
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<td>The Commission</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<td>Term</td>
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<tr>
<td>The Framework</td>
<td>The Girl and Young Women’s Empowerment Framework</td>
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<td>TPA</td>
<td>The Termination of Pregnancy Act</td>
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<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>Youth Policy</td>
<td>National Youth Policy</td>
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<td>ZGCA</td>
<td>Zimbabwe Gender Commission Act</td>
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<td>ZIMSTAT</td>
<td>Zimbabwe National Statistics Agency</td>
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CHAPTER 1
INTRODUCTION TO THE STUDY

1.1. BACKGROUND OF THE STUDY.

The issue of child motherhood is a global problem that affects many girls, especially those living in developing countries.¹ The prominent feature of child motherhood is that it involves a girl child whom by definition in human rights law is ‘a person below the age of 18’.² This thesis, thus, defines child motherhood as a situation whereby a girl has given birth before the age of 18, whether they are single or married.³ While some girls may intend to become child mothers, many of them neither plan nor want pregnancy and childbirth.⁴ Due to many negative outcomes of a girl becoming a child mother, this thesis depicts child motherhood as harmful to girls, which leads to a number of children’s rights violations.⁵

Globally, an estimated 21 million girls and young women aged 15 to 18 years and 2 million girls aged less than 15 years become pregnant each year.⁶ A further estimated 16 million girls aged 15 to 18 years and 2.5 million girls under 16 years give birth each year.⁷ According to the World Health organisation (WHO), ‘the majority of adolescents (86 per cent) live in developing

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³ International human rights law does not define ‘child motherhood’. However, its definition of the child is useful in guiding what child motherhood could entail. Thus, this study defines a child mother as a person who has given birth before the age 18.
⁴ However, they face social pressure to, for example, marry and, once married, to have children. See United Nations Population Fund Girlhood, not motherhood: Preventing adolescent pregnancy (2015) 7-10. See also Yakubu I and Salisu WJ ‘Determinants of adolescent pregnancy in sub-Saharan Africa: a systematic review’ (2018) 15(15) Reproductive Health 4.
⁵ These include the right to education, health, equality and non-discrimination, freedom from all forms of exploitation, life and personal integrity. For a detailed discussion of these rights, see generally Chapters 3, 4 and 5 below.
countries. By the time they are 18 years old, half of adolescent girls in developing countries are sexually active, about 40 per cent are married and close to 20 per cent have children. At the regional level, African countries generally have the highest teen pregnancy and childbirth rates in the world. For instance, Ramaiya has recorded that sub-Saharan Africa is generally responsible for 50 per cent of child motherhood in Africa. The study by Worldatlas also reported that 25 countries in Africa rank highest relating to teen pregnancy rates in the world. Scholars, such as Loaiza and Liang, have further observed that though child motherhood is common in Africa, the rates of teenage mothers are higher in some areas (West and Central Africa, 28 per cent) than others (East Africa, 12 per cent).

Coming to Zimbabwe, which is the focus of this study, the national average rates of child pregnancy and childbirth currently stand at 22 per cent. According to the Zimbabwe National Statistics Agency (ZIMSTAT), 24 per cent of young women aged 15-19 years have started childbearing (either they have had a live birth or were pregnant with their first child).

The Ministry of Health and Child Care, through the 2016 Zimbabwe National Adolescent Fertility Study further revealed that 20 per cent of girls become child mothers at the ages between 12 and 17 years. Finally, UNICEF Zimbabwe in conjunction with ZIMSTAT have

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11These include; Niger; Mali; Angola; Mozambique; Guinea; Chad; Malawi; Cote d’ivoire; Sierra Leone; Tanzania; Madagascar; Uganda; Nigeria; Burkina Faso; Zimbabwe; Cameroon; Somalia; Gabon and Central African Republic. See Worldatlas ‘Highest Teen Pregnancy Rates Worldwide’ available at https://www.worldatlas.com/articles/highest-teen-pregnancy-rates-worldwide.html (accessed 14 August 2018).
reported that child motherhood rates are higher in rural areas (20 per cent) than in urban areas (10 per cent).\textsuperscript{16}

Apart from the statistics above, the 2014 case of \textit{Mildred Mapingure v Minister of Home Affairs and Others} (the \textit{Mapingure} case)\textsuperscript{17} also serves as a revelation to the existing challenges of protecting girls against child motherhood through termination of pregnancy. Briefly, in this case, robbers sexually assaulted Mildred Mapingure at her home.\textsuperscript{18} She immediately went to seek medical treatment to prevent the pregnancy, which the doctor had to administer within 72 hours and in the presence of a police officer.\textsuperscript{19} She rushed and obtained the police officer, only to learn that she must also provide a police report before availing the treatment. By the time she returned with the police report, 72 hours had elapsed and consequently failed to receive the necessary medication.\textsuperscript{20} She then went and notified the public prosecutor’s office of her intention to terminate the pregnancy, wherein she was advised to wait for the rape trial to complete before terminating the pregnancy.\textsuperscript{21} She finally got clearance to terminate the pregnancy 6 months after the rape incident.\textsuperscript{22} By this time, it was no longer safe to carry out the termination of pregnancy procedure, and she later gave birth to a child.\textsuperscript{23}

The \textit{Mapingure} case demonstrates the challenges many women, including girls, face in trying to solve the problem of pregnancy, which causes child motherhood in as far as girls are concerned. It is no wonder the 2016 landmark case of \textit{Mudzuru and another v Minister of Justice, Legal and Parliamentary Affairs} (the \textit{Mudzuru} case)\textsuperscript{24} declared child marriages illegal. The \textit{Mudzuru} case effectively protects girls against child motherhood because ‘premature

\begin{footnotes}
\item[17] Mildred Mapingure v Minister of Home Affairs and 2 Others (2014), Judgment No. SC 22/14, Civil Appeal No. SC 406/12, hereafter, the \textit{Mapingure} case.
\item[22] The \textit{Mapingure} case p2. See also Tsabora J ‘The challenge of constitutional transformation of society through judicial adjudication: Mildred Mapingure v Minister of Home Affairs and Ors SC 22/14’ (2014) 1 Midlands State University Law Review 59.
\item[23] The \textit{Mapingure} case p2.
\end{footnotes}
birth, low growth rate and poor mental and physical growth are some characteristics of babies born to young mothers’. Despite this progressive judgement, statistics obtained by various organs of the State and other organisations reveal that child marriages remain prevalent. It is, however, important to note that the Constitutional Court delivered the Mudzuru judgement in 2016 and it is probably much too soon to read anything in the statistics obtained in 2015. As noted earlier, many of the child brides become child mothers, which further necessitate the need to investigate how Zimbabwe protects the rights of girls who become child mothers.

Within the context of the above discussion, four reasons underlie the decision to examine Zimbabwe in particular. The first, as will be discussed in detail in Chapter 2, is that numerous aspects of Zimbabwe’s legal, social, economic and cultural contexts inhibit the advancement of children’s rights. The second reason, as will be discussed in detail in Chapter 3, is that Zimbabwe is a signatory to various human rights treaties, which lay a concrete foundation for State Parties to realise the rights of children, including child mothers, in their jurisdictions. This international framework gives rise for need to investigate how Zimbabwe fares in protecting girls against child motherhood as well as protecting the rights of those girls who are already child mothers. Finally, the author is a Zimbabwean national who is interested in promoting children’s rights generally.

1.2. PROBLEM STATEMENT.

As already alluded in the introductory section above, Zimbabwe is a State Party to various human rights treaties that could be useful in addressing the issue of child motherhood affecting many girls in the country. For example, Zimbabwe has ratified both the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights

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25The Court further reasoned that child mothers ‘also face far greater risks of complications in pregnancy because their bodies are not sufficiently developed and infant mortality is far greater among young mothers’. See Mudzuru case p40-41.
27See generally Chapter 2.

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of the Child (African Children’s Charter)\(^{29}\) in 1990 and 1995, respectively. The two treaties require States Parties, such as Zimbabwe, at all times to act in the best interests of the child.\(^{30}\) Zimbabwe has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);\(^{31}\) Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol);\(^{32}\) African Youth Charter;\(^{33}\) and the Southern African Gender Protocol (SADC Gender Protocol).\(^{34}\)

Collectively, these treaties contain substantive provisions, which require Zimbabwe to provide basic needs, such as education, health and parental care, protection against discrimination, neglect and exploitation, prevention of harm and participation of children in decisions that affect their lives.\(^{35}\) By ratifying these human rights instruments, Zimbabwe has obligated herself to protect, respect and fulfil the rights of every child under her jurisdiction.\(^{36}\)


\(^{30}\)See Articles 3 and 4 of the CRC and the African Children’s Charter, respectively. For a detailed discussion of best interests of the child, see generally Chapter 3 below.


\(^{34}\)The SADC Gender Protocol advocates for gender parity in all sectors within the sub-region.

\(^{35}\)See generally Chapter 3 below, which discusses these rights in detail.

\(^{36}\)It is important to note that Zimbabwe is a dualist state as envisaged by section 327 of the Constitution. As such, international treaties in Zimbabwe are binding only once enacted into law by parliament, with the President’s authority. Despite this, following a dualist approach is not reason enough for Zimbabwe not to comply with the international human rights law’s rules and principles, which have arguably become customary international law. Section 326 (1) of the Constitution expressly states that customary international law is part of the law of Zimbabwe and courts ‘must adopt any reasonable interpretation of the legislation that is consistent with customary international law applicable in Zimbabwe’. For a detailed commentary, see Kondo T ‘Socio-economic rights in Zimbabwe: Trends and emerging jurisprudence’ (2017) 17(1) African Human Rights Law Journal 172. Moyo OL The Human Rights Implications of the Application of the Death Penalty in Zimbabwe (unpublished LLM thesis, University of Venda, 2018) 52-54.
To ensure that she further aligns herself with international law, Zimbabwe adopted the Zimbabwe Amendment Act No. 20 of 2013 (the Constitution). Commentators have hailed the Constitution for some of its important provisions, including, for the first time, the inclusion of socioeconomic rights as justiciable rights. Its declaration of rights also contains a clause dedicated to the rights of children. This clause, as well as other clauses, declares equality for all children before the law and prohibits discrimination on any ground, including that of sex and gender. The Constitution further guarantees children’s rights to education, to health and parental care, to protection against neglect and exploitation, to the prevention of harm and to the participation of children in decisions that affect their lives.

As the supreme law of the land, the Constitution is binding on all organs of the State. For this reason, various pieces of legislation give effect to the provisions of the Constitution and relate to girls and child motherhood. These include the Children’s Act, the Criminal Law (Codification and Reform) Act and the Education Act, which give effect to the rights of children to protection from abuse and neglect, to family care and education. More importantly, the Termination of Pregnancy Act gives effect to the sexual reproductive health rights of women, including girls. A number of policies and strategies, such as the National Gender Policy, National Youth Policy, Girl and Young Women’s Empowerment

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37The 2013 Constitution ushered a new constitutional dispensation by replacing the old 1979 Lancaster House Constitution. According to commentators, such as Madebwe, the 1979 Lancaster Constitution ‘had become bulky, unclear and inaccessible’ and this necessitated the need for a new robust and codified Constitution. See Madebwe T ‘Constitutionalism and the new Zimbabwean Constitution’ (2014) 1 Midlands State University Law Review 8.


39See section 81 of the Constitution, as discussed in more detail in Chapter 4, section 4.2.

40See section 81 of the Constitution.

41See sections 51; 53; 56; 75 and 76 of the Constitution.

42Section 2 of the Constitution provides:
‘1. This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.
2. The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them’.

43See Chapter 4, section 4.3.1 below.

44See Chapter 4, section 4.3.2 below.

45See Chapter 4, section 4.3.6 below.

46See Chapter 5, section 5.2.2 below.

47See Chapter 5, section 5.2.3 below.
Framework,\textsuperscript{48} National Adolescent Sexual and Reproductive Health Strategy II\textsuperscript{49} envisage transformation of social structures and institutions with the aim that children, particularly girls, enjoy their rights without any kind of discrimination.

Despite a plethora of legislation, policies and strategies, however, many girls in Zimbabwe continue to face barriers to health care services, such as contraception.\textsuperscript{50} Therefore, it is clear that the current legislation, policies and strategies do not adequately protect girls against child motherhood as well as protecting the rights of those girls who become child mothers.

1.3. RESEARCH QUESTION AND RESEARCH OBJECTIVES

The central question of the research is: To what extent does Zimbabwe protect girls against child motherhood and ensure the rights of girls who are already child mothers?

The following main objectives will seek to address this research question in the following manner: Firstly, the study will discuss the context and the different factors that lead to child motherhood in Zimbabwe.

Secondly, the study will establish the obligations of government as contained in specified international treaties that it has ratified, with respect to children, including girls. This section of the thesis critically discusses the international and regional legal standards in the protection of girls against child motherhood and the rights of girls who are already child mothers.

Thirdly, the thesis will critically analyse constitutional provisions for children relating to child motherhood, since these create justiciable obligations for the State. This section will also review a number of laws giving effect to the identified constitutional provisions. The aim is to analyse Zimbabwe’s constitutional and legislative frameworks in their response to the issue of child motherhood, as well as their compliance with the State’s international legal obligations.

\textsuperscript{48}See Chapter 5, section 5.2.4 below.
\textsuperscript{49}See Chapter 5, section 5.2.5 below.
Fourthly, the thesis will analyse current policies and strategies that aim at realising the rights of girls and the extent to which these comply with the State’s international and constitutional legal obligations. It will also analyse whether the policies and strategies are in harmony in realising the rights of girls, which would be instrumental in combating child motherhood.

Finally, it will draw conclusions from the findings of the analysis as well as experiences of other countries dealing with same problem in order to make recommendations to assist government in protecting girls against child motherhood and the rights of girls who are already child mothers.

1.4. SIGNIFICANCE OF THE STUDY.

There is a vast body of literature, which can implicate the issue of child motherhood in Zimbabwe. Research indicates that child marriage is the key factor causing pregnancy among girls in Zimbabwe. Religious sects, such as Johannes Marange Apostolic Church also increase the rates of child motherhood because they teach doctrines that permit child marriage and encourage members to shun western health services. However, little research investigates how Zimbabwe protects the rights of those girls who are already child mothers. This unique contribution comes at a time when Zimbabwe is experiencing some legal shifts, which the majority of research has not extensively covered, thus far.

As noted earlier, Zimbabwe adopted a new Constitution in 2013. Many scholars have elaborated on socio-economic rights and the obligations of the government under the Constitution. However, there is need to clarify how the government protects girls against child motherhood and ensures the rights of those girls who are already child mothers. Most of the literature focuses on the health and social aspects of child motherhood and legal

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attempts are only limited to child marriages. This study goes a step further and investigates how Zimbabwe safeguards girls against child motherhood caused by other factors, such as sexual dalliance and *chinamwari*.\(^\text{54}\)

Thus, the thesis focuses on the laws and practices relating to the age of consent, civil, criminal and educational laws and laws against violence (domestic and public), which will be assessed against the international human rights standards on the protection of children’s rights. In the last Chapter, the thesis will propose recommendations to firstly, protect girls against child motherhood and secondly, to ensure the rights of child mothers. These policy and legislative recommendations strive to pave the way forward for upholding children’s rights in respect of girls and child mothers in Zimbabwe. Lastly, the recommendations emanating from this study are also useful in improving the domestic laws of other countries facing the similar challenge of child motherhood.

1.5. **METHODOLOGY OF THE STUDY.**

This thesis is a desktop research. It obtains information from primary sources, such as the CRC, African Children’s Charter, CEDAW, Maputo Protocol and other relevant treaties, protocols. Although not legally binding, the Concluding observations and recommendations provide an explanation of the practical nature of the rights contained in the various treaties and guide State Parties on how to realise such rights. The thesis will also draw lessons from legislation, policies and/or programmes of other countries in seeking ways to address the issue of child motherhood. The thesis also pays particular attention to court rulings (both domestically and regionally), which have implications with respect to children’s socio-economic rights, and girls in particular.

In addition to primary sources, the thesis also makes use of secondary primary sources, particularly textbooks and journal articles. Other sources such as General Comments and Recommendations, internet resources, reports of international commissions and organisations are also relevant in providing insights into the intentions underlying this study.

\(^{54}\)For a detailed discussion of other factors that contribute to child motherhood, see generally Chapter 2 below.
1.6. LIMITATION OF THE STUDY.

The study will not embark on an experimental research but rather places reliance on existing work (both qualitative and quantitative) carried out by various stakeholders on the subject matter. It is also acknowledged that fieldwork research could have strengthened many of the arguments on various issues raised in this study. However, conducting fieldwork required extensive travelling and adequate human resources, which was difficult to undertake due to lack of financial resources.

1.7. CHOICE OF JURISDICTION OF THE STUDY.

This study limits its scope to Zimbabwe for various reasons. Firstly, as mentioned above, the country has particularly high rates of child marriage in Southern Africa.\textsuperscript{55} Secondly, there also have been recent trends of a steady increase of teenage pregnancy, which leaves child mothers as the most burdened.\textsuperscript{56} Thirdly, Zimbabwe has a new Constitution that has adopted a number of fundamental rights, such as children’s rights. In implementing the Constitution, Mudzuru judgement has drawn a line in the sand declaring child marriages illegal. Therefore, Zimbabwe’s current wave of law reform gives room to investigate whether these constitutional guarantees are adequate in protecting girls against child motherhood and ensuring the rights of those who are already child mothers.

1.8. CHAPTER OUTLINE OF THE THESIS.

Chapter 1 introduces the subject matter and general overview of the study. This Chapter sets out the research question, which forms the bedrock of this thesis. It also sets out the roadmap that the study follows in addressing the research question.

Chapter 2 discusses the context and the different factors that lead to child motherhood in Zimbabwe. The aim is to highlight gender inequality (in socio-economic, legal and cultural

\textsuperscript{55}In 2017, Koski, Clark and Nandi analysed 31 sub Saharan African countries investigating whether there is a decline in child marriage. The study observed ‘little or no evidence of a decline in the proportion of girls married before age 18 in Chad, Malawi, Tanzania, Zimbabwe, and Namibia’. See Koski A, Clark S and Nandi A ‘Has Child Marriage Declined in sub-Saharan Africa? An Analysis of Trends in 31 Countries’ (2017) 43(1) Population and Development Review 17.

contexts) as an underlying challenge standing in the way of protecting girls against child motherhood as well as protecting the rights of child mothers.

Chapter 3 critically discusses the international law provisions that one can invoke, as minimum standards, in the protection of children’s rights. Since Chapter 2 establishes that some of these factors that lead to child motherhood are in conflict with children’s rights, there is need to survey international law to see how it protects the rights of girls against child motherhood and as child mothers.

Chapters 4 focuses on the obligations of Zimbabwe under international treaties, as established in Chapter 3, incorporated in the constitutional and other statutory provisions. The aim is to analyse Zimbabwe’s legal framework and its compliance with international and regional standards for the protection of girls against child marriages and the rights of child mothers. It also draws on a range of court rulings to ascertain how courts have interpreted particular provisions in the Constitution, in giving effect to the sexual reproductive health rights of women and girls.

Building on the previous two chapters, Chapter 5 contains a review of the policies and strategies that Zimbabwe has enacted to give effect to its international legal obligations and to the Constitution. The Chapter pays special attention to BEAM, Gender Policy, Youth Policy, Health Strategy II, and Cultural Policy; the Chapter evaluates this policy framework against the standards established in Chapters 3 and 4. Once again, the aim is to assess the extent to which they are useful in protecting the rights of girls against child motherhood as well as ensuring the rights of child mothers as girls.

Chapter 6 concludes the study. It draws conclusions from the findings of the analysis as regarding the Zimbabwe’s response in the protection of girls against child motherhood as well as protecting the rights of child mothers. The Chapter does recommend possible amendments to the Constitution, some laws and policies to make them effective in protecting girls against child motherhood and the rights of child mothers. These recommendations are also useful in drawing out lessons that could have implications on other African countries facing similar challenges of child motherhood.
CHAPTER TWO

FACTORS THAT ACCOUNT FOR CHILD PREGNANCIES AND MOTHERHOOD IN ZIMBABWE

2.1. INTRODUCTION

As observed in Chapter 1, girls are becoming mothers while they are young in Zimbabwe. As child mothers, girls face various obstacles, including discrimination, exclusion and marginalisation.\(^{57}\) For example, child mothers who bear children out of wedlock are blamed for having loose manners and being promiscuous.\(^{58}\) Girls who fall pregnant are also stigmatised for tarnishing the honour of their family names.\(^{59}\) This negatively affects their self-esteem, which can force them to drop out of school if they were schooling.\(^{60}\) It is therefore clear that child motherhood has some undesirable consequences of obscuring girls the enjoyment of their fundamental children’s rights and freedoms.\(^{61}\)

For this reason, this Chapter discusses different factors that lead to child motherhood in Zimbabwe. The aim is to highlight gender inequality (in socio-economic, legal and cultural contexts) as an underlying challenge standing in the way of protecting girls against child motherhood as well as protecting the rights of child mothers. The study is also mindful of the fact that there are many causes of child pregnancies and motherhood. Studies on teenage pregnancies identify a broad range of causative factors, beyond harmful cultural practices. Generic studies on child pregnancies point to the following factors as the primary causes: abuse of alcohol and drugs, rape and sexual violence against women and girls, lack of reproductive health information and sexual awareness, economic deprivation, peer pressure


\(^{58}\)In Zimbabwe, child mothers suffer from stigma and blamed for ‘kuda zvinhu’ (having excessive desire for sex) or having loose morals. They suffer the brunt of mainly taking care of their young even though they are not necessarily to blame. See also, Bowman CG and Brundige E ‘Sexism, Sexual Violence, Sexuality, and the Schooling of Girls in Africa: A Case Study from Lusaka Province, Zambia’ (2013) 23(1) Texas Journal of Women and the Law 68.

\(^{59}\)Zimbabwe is still largely a conservative country and society frowns upon unmarried pregnancies, which forces many pregnant girls to marry in order to preserve family honour or simply illegally terminate the pregnancy. See, Ministry of Health and Child Care Zimbabwe National Adolescent Fertility Study (2016) 62.


and, family breakdown/dysfunctional families. However, not all of these factors are examined as some of the factors are inter-linked.

Therefore, the discussion of the factors that account for child pregnancies and motherhood has ten sections. Sections 2.2, 2.3, 2.4 and 2.5 explore cultural beliefs such as child marriage, *chinamwari*, *kuzvarira* and sexual dalliance to determine how they contribute to child motherhood. Section 2.6 focuses on the age of sexual consent and child rape while section 2.7 discusses the effect of the religious beliefs of the African Apostolic Churches in predisposing girls to child motherhood. Section 2.8 links the relation between poverty, lack of education and child motherhood. The section further scrutinises the role of economic migration, especially on illegal migrants. Section 2.9 concludes the Chapter. It points out that the persistence of child motherhood in Zimbabwe is a result of discrimination against girls based on sex, gender and age. More importantly, the failure by Zimbabwe, which is a State Party to human rights treaties, to protect its girls against child motherhood in addition to the rights of child mothers is a violation of children’s rights.

### 2.2 Child marriage

A child marriage is a ‘statutory or customary union in which one party is a child or both of the parties are children’.\(^6\)\(^2\) Statistics on child marriage in Zimbabwe reveal that 28 and 4 per cent of girls were married under the ages of 18 and 15, respectively.\(^\)\(^6\)\(^3\) Thus, at least 31 per cent of girls are child brides in Zimbabwe. Provincial statistics of child marriage indicate that Mashonaland Central has the highest prevalence with 50 per cent, followed by Mashonaland West 42 per cent, Masvingo 39 per cent, Mashonaland East 36 per cent, Midlands 31 per cent, Manicaland 30 per cent, Matabeleland North 27 per cent, Harare 19 per cent, Matabeleland

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South 18 per cent, while Bulawayo has the lowest prevalence with 10 per cent. An estimated one in three girls marry before the age 18 in Zimbabwe.

Child marriages are also prevalent due to polygyny: a practice that allows a man to marry more than one wife. Data has shown that more than 11 per cent of women were married under the practice of polygyny. Furthermore, 14 per cent of the women in rural areas were in polygynous marriages compared to 6 per cent in urban areas. While 15 per cent of women in polygynous marriages were in the lowest wealth quintile, only 4 per cent belonged to the highest wealth quintile. In addition, 20 per cent of uneducated women, compared to only 3 per cent of educated women, were in polygynous marriages. Though statistics do not show the exact percentage of girls who marry under the practice of polygyny in Zimbabwe, the study draws inferences from this statistics to show the inverse relationship between education, geographical space and wealth, and polygyny in Zimbabwe. This inference points to the fact that girls living in rural areas are more likely to be in polygynous marriages than their urban counterparts.

Various commentators, such as Kurebwa, Sayi and Sibanda have attributed the widespread of child marriage in Zimbabwe to gender inequality. Chiweshe further argues that child marriage is a manifestation of social norms that perpetuate discrimination against girls. As

68ZIMSTAT and ICF International Zimbabwe Demographic and Health Survey 2015 (2016) 62.
69ZIMSTAT and ICF International Zimbabwe Demographic and Health Survey 2015 (2016) 63.
70ZIMSTAT and ICF International Zimbabwe Demographic and Health Survey 2015 (2016) 63.
73Chiweshe MK ‘Wives at the market place: Commercialisation of lobola and commodification of women’s bodies in Zimbabwe’ (2016) 16(2) The Oriental Anthropologist 241. While commenting on child marriage in Malawi, Mwambene and Mawodza similarly argued that child marriages negatively affect the rights of girls to
such, there is differential treatment between girls and boys in Zimbabwe because society perceives girls as inferior to boys.\textsuperscript{74} For instance, parents living with meagre earnings force girls into child marriages so that they acquire bride price, which they sometimes use to send boys to school.\textsuperscript{75} Indeed, Chinyoka and Naidu observed that parents living in rural areas tend to ‘argue that the girl child will get married, and that the boy child will need to support his family, hence the family always strives for him to have a career’.\textsuperscript{76}

In the same vein, Muzingili and Muchinako have reported that the value of girl education in rural and per-urban areas was still undermined compared to that of boys.\textsuperscript{77} According to Parsons et al:\textsuperscript{78}

‘Child marriage is most common among the poor who have fewer resources and opportunities to invest in alternative options for girls. Social norms around girls’ education and women’s participation in the formal labor force may mean that girls are not prioritised in a household’s education investment decisions. In other contexts, parents may assess the costs and benefits of marriage and decide to marry their daughters early if they are seen as an economic burden that can be relieved through marriage’.


\textsuperscript{77}One of the participants to their study exclaimed that ‘From the beginning girls produce nothing from school, so it’s wasting money to educate them, while boys know the value of school education in their lives’. See Muzingili T and Muchinako GA ‘Factors affecting school completion by the girl-child in Binga Rural District, Zimbabwe’ (2016) 28(1) Zimbabwe Journal of Educational Research 25-26.

What emerges from these studies is that parents living in poverty undermine the value of girl child education in Zimbabwe. Shoko has observed that one of the justifications of not investing in girls’ education is that girls must get married, as they are mostly important in the reproduction of children. It is therefore clear that gender inequality perpetuates discrimination against girls and continues to force girls into child marriages.

More important to the context of this study, child marriage exposes the majority of child brides to early sexual relations, which inevitably forces them to become child mothers. Data has shown that the high prevalence of child marriage has also led to an alarming 19 per cent of annual pregnancies that occur in Zimbabwe. This statistic supports the argument by scholars, such as Mugweni, who opine that child brides cannot negotiate safe sex with their husbands. According to Manjunatha, it is also difficult for child brides in polygynous marriages to refuse sex because the primary use of polygyny is to procreate. Chirozva concurs with Manjunatha and further asserts that some men use polygyny to promote competition for child bearing among co-wives. Thus, child brides remain at a disadvantage.

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80 Shoko further observed that parents do not prioritise the education of girls because they are ready to marry as soon as they reach the puberty stage, which makes it more risky to invest in their education. Instead, parents educate boys in order to prepare them to be head of the families. See Shoko T Karanga Indigenous Religion in Zimbabwe: Health and Well-being (2007) 30.


82 Ministry of Health and Child Care Zimbabwe National Adolescent Fertility Study (2016) 41.


of delaying or negotiating safe sex with their husbands. Moreover, girls cannot negotiate safe sex due to fear of physical as well as sexual abuse from their husbands. For these reasons, 19 per cent out of the 31 per cent of child brides fall pregnant annually and ultimately force these child brides to become child mothers.

2.3 Chinamwari

In Zimbabwe, chinamwari or khomba is an initiation ceremony that marks a girl’s transition from childhood to adulthood. With chinamwari, girls go into seclusion for a period of three to four weeks. During this period, girls stay in kushinyamari, which is the the initiation hut built outside the residential area for the celebration of the chinamwari. Chinamwari is

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88Indeed, Nsamenang has generally observed that a female who has children commands greater respect and importance in an African society than one who has not. In support of this supposition, Adhunga has also conceded that ‘marriage without procreation is incomplete’. Therefore, the pressure to conceive children forces married girls to become mothers when they are young. See Nsamenang AB ‘A West African perspective’ in Lamb ME (Ed) The Father’s Role: Cross-Cultural Perspectives (2013) 283. See also generally, Adhunga JO Woman as Mother and Wife in the African Context of the Family in the Light of John Paul II’s Anthropological and Theological Foundation: The Case Reflected within the Bantu and Nilotic Tribes of Kenya (2014).


90The Sunday Mail ‘New life after Chinamwali’ 6 September 2015.

viewed as a woman’s sexual secret in bed; hence, the need to teach the practice in isolation and particularly away from the sight of men.92

According to the 2017 study by Gondo, girls undergoing chinamwari initiation receive education ‘on menstruation, good morals, HIV and AIDS, information about woman’s place in the society, pulling of the labia minora and virginity testing is also conducted during initiation’.93 In support of Gondo, Ingwani observed that girls receive counseling on their personal hygiene from their instructors, who are usually the aunts of the initiates.94 Gondo further observed that chinamwari forbids menstruating girls to have sexual relations with men in order to avoid pregnancy.95 In light of these positive teachings, one can argue that chinamwari encourages girls to abstain from sexual relationships, which can ultimately lead to unwanted pregnancies.

The pulling of the labia minora as well as training girls on sexual movements seeks to please men connubially.96 This position remains problematic. The practice exposes girls to increased early sexual activity due to such teachings. For example, in their survey, Pérez, Aznar and Namulondo observed labia minora elongation ‘is a prerequisite for marriage, necessary for women to achieve womanhood and conform to culture’ and also ‘in reducing pain during childbirth’.97 They also revealed that chinamwari elongates the labia minora of girls in order to arouse and increase men’s sex drive.98 Madzivire also noted that girls are under immense pressure to pull their labia minora because they are believed to make male partners remain

98According to most of their respondents, elongated labia minora or matinji are toys for the men to play with during sexual foreplay or during sexual intercourse. See Pérez GM, Aznar CT and Namulondo H ‘It’s all about sex: What urban Zimbabwean men know of labia minora elongation’ (2016) 27 Cadernos de estudos Africanos 135.
faithful to them. This notion finds support in Pérez, Aznar and Namulondo who recorded one male respondent praising labia minora elongation as ‘...great. If you don’t have matinji you don’t have a man. Men will be running away from you’. The study argues that such remarks responsible for putting chinamwari initiates under pressure to have sex in order to prove how good they are in bed to men or boys and possibly ready for marriage. Indeed, Moyo and Zwoushe have revealed that chinamwari graduates tend to have increased desire for sexual experimentation and gratification. In addition, Thabethe observed that chinamwari initiates had higher chances of becoming pregnant than other girls. According to Masama, chinamwari encourages girls into premature sexual relations. A local newspaper, Herald, also reported about girls who dropped out of school and started flocking the beer halls after graduating from chinamwari. Gondo also reported that some girls drop out of school regarding themselves as adult women ready for intimate relationship and marriage.

100Pérez GM, Aznar CT and Namulondo H ‘It’s all about sex: What urban Zimbabwean men know of labia minora elongation’ (2016) 27 Cadernos de estudos Africanos 141.
101This argument emanates from the fact postulated by Biri and Kwaramba that some communities in Zimbabwe regard chinamwari initiates as ‘ripe’ for marriage; hence the reason to teach them about sex life during the initiation. No wonder some scholars, such as Manguvo A and Nyanungo have argued that chinamwari is a rite of passage that prepares girls for marriage. See, Biri K ‘Same-sex relationships: Perspectives from Shona traditional religion and culture in Zimbabwe’ (2011) Journal of Gender and Religion in Africa 17(2) 160-174; Kwaramba J ‘Marriage and family life in Zimbabwean culture. An analysis of the cultural aspects of the marriage in the Shona traditional religion in Zimbabwe’ available at https://www.academia.edu/22174644/2_Marriage_and_family_life_in_Zimbabwe (accessed 12 January 2017). Manguvo A and Nyanungo M ‘Indigenous culture, HIV/AIDS and globalization in Southern Africa: Towards an integrated sexuality education pedagogy’ in Wanatebe Y (Ed) Handbook of Cultural Security (2018) 118.
In light of this, chinamwari pushes initiates into having premature sex, which increases the prevalence of child prostitution and child marriages in Zimbabwe. Furthermore, chinamwari predisposes girls to early sexual activity, which increases their risk of early pregnancy. Once pregnant, many of the girls ultimately become child mothers. As such, chinamwari is a contributory factor to child motherhood in Zimbabwe.

2.4 Kuzvarira

Kuzvarira is a practice also known as child pledging or betrothal of young girls to older men.\(^{107}\) Kuzvarira is a cultural practice whereby a ‘family, for some reason or other, such as debt or close friendship, undertakes to ‘bear’ a daughter who when grown up will become the wife of a member of the other family’.\(^{108}\) Scholars such as Mawere and Mawere have defined kuzvarira simply as ‘selling a daughter into marriage’.\(^{109}\) Chitereka is of the view that poor parents use kuzvarira to marry off their minor girls ‘to rich men in the community in exchange for cash and other provisions’.\(^{110}\) Himonga concurs with Chitereka arguing that customary law dictates that a girl attains majority status when she has reached puberty stage, and not by reaching 18 years.\(^{111}\)

While exact data on the prevalence of *kuzvarira* is scant, studies conducted on this practice seem to suggest that, although the *kuzvarira* is declining, it is still common. In 2011, Makoni’s study reported that almost 25 per cent of the female respondents had been married through *kuzvarira*. In 2012, Jackson further observed that 23 per cent of women in the Chivi communal area were married through the practice of *kuzvarira*. Lastly, the 2014 Multiple Indicator Cluster Survey has also recorded that 20 per cent of girls were in unions with much older men.

There are several justifications for the practice of *kuzvarira* in Zimbabwe. For instance, parents or guardians pledge their daughters as a form of debt payment. Parents also target rich and hardworking men so that they charge a high bride price, especially where the girl is a virgin. Furthermore, parents pledge their daughter’s hand in marriage so that they can secure and safeguard the wealth and riches of their son-in-law. *Kuzvarira* is also a means to bear children for the husband where the elder wife is barren. This prevents husbands from marrying elsewhere and enables parents to access the wealth of their son-in-law.

The study thus argues that *kuzvarira* is a prelude to marriage. Bearing in mind the age of majority under customary law, the study further argues that girls become marriageable once

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113 Chivi is a district in Masvingo Province. It is also a semi-arid and drought prone area. Due to low average rainfall, the government of Zimbabwe established several small-scale irrigation schemes for the populace to supplement their meagre harvests. This may explain why Jackson’s study revealed that *kuzvarira* has the second highest prevalence rate (23 per cent) of causing marriage below elopement or *kutizisa* (50 per cent) in Chivi. See Jackson C ’Conjugality as social change: A Zimbabwean case’ (2012) 48(1) *Journal of Development Studies* 47.


119 Scholars such as Mawere and Rembe have observed that ‘girls as young as eight or even before birth’ are pledged into marriage. See, Mawere M and Rambe P ’Violation and abuse of women’s human rights in the customary practice of ‘Kuzvarira’ among the Ndua people of Mozambique’ (2012) 3(3) *International Journal of Politics and Good Governance* 2.
they reach puberty; thereby, *kuzvarira* fuels child marriages. For instance, Chiweshe rightly observed that parents allow rich men to do what they please with their daughters, including having sex, so that they can safeguard and constantly access his wealth. This gives the man absolute control over the girl, which can include the right to demand sex whenever he so desires. This deprives girls the right to give sexual consent, which then exposes girls to increased risk of early pregnancies that lead to child motherhood.

In addition, *kuzvarira* also exposes girls to child motherhood because some parents and guardians solely pledge their daughter so that she can bear children to her brother-in-law if her sister is barren. In these instances, the primary purpose of *kuzvarira* would be procreation, which would cause the girls to become child mothers, married or single. For these reasons, *kuzvarira* also contributes to child marriages, which as observed in section 2.2 above, leads to child motherhood in Zimbabwe.

### 2.5 Sexual dalliance

Sexual dalliance is a common practice observed both in the Matebeleland and Mashonaland areas of Zimbabwe. Referred to as *chiramu* in Shona or *sibale* in Ndebele, sexual dalliance is a cultural practice whereby a man engages in a playful, teasing friendship with his sister-in-law(s). Some scholars, Muridzo, & Malianga believe this definition is the original meaning of the practice of sexual dalliance. They both described sexual dalliance as a custom where

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120In addition, parents may also hand over their girl children as an undertaking that the man would take care of them and would marry their daughter when grown up. See Chiweshe MK ‘Wives at the Market Place: Commercialisation of Lobola and Commodification of Women’s bodies in Zimbabwe’ (2016) 16(2) The Oriental Anthropologist 237-238.


elder sisters or aunts’ husbands flirt with their wives’ younger sisters or brothers’ daughters, without sexual undertones. 125

However, Wekwete has defined sexual dalliance as a practice that entails a husband of an elder sister having jokes or plays, with sexual undertones, with a younger sister-in-law. 126 Although the definition alludes to ‘sexual undertones’, Chiwome asserts that no actual sexual activity would take place because sexual dalliance is only ‘a joking relationship between brothers-in-law and their wives’ young sisters or aunts’ daughters’. 127 However, unlike Wekwete, Chitando has opined that sexual dalliance is like a mock marriage, and the man can actually fondle his younger sister-in-law. 128 Supporting this view, Gombe has further observed that though sexual dalliance permits fondling of breasts, it strictly prohibits sexual intercourse. 129 Concurring with Gombe, Chiweshe and Tshabangu have averred that sexual dalliance allows a man to do anything, such as fondling breasts, with his younger sister-in-law(s) as long as they have not had sex together. 130

Other scholars, such as Lowe and Makamure have categorically defined sexual dalliance as a practice ‘where a man has sex with a younger sister or paternal niece of his wife’. 131 Parade’s


definition suggests that some men try to have sexual intercourse with their sisters-in-law or nieces. One girl complained about the practice alleging that:132

‘I am a girl aged 18. My problem is that whenever I go to my aunt’s place my babamukuru (aunt’s husband) always touches my private parts. He even attempted to sleep with me. I ask him why he does that and he says its chiramu. Please tell me more about sexual dalliance before I get pregnant.’

As argued by Her Zimbabwe, ‘many girls have been socialised to think that “chiramu” is normal and expected of them’.133 Mahachi-Harper further argued that some poor families abuse the practice and force girls into marriage to older men for material gains.134 Through poetry, she exposes sexual dalliance as a:135

‘ssexual snare set by aMasaga and her subsequent rape is celebrated by her family. Although the narrative suggests that poverty is the primary cause of the exploitation of the three women by the businessman aMasaga, the latter expects Vaida, his muramu to be sexually available if he is to assist financially. Vaida proves to be a brave girl but is unfortunately socially silenced and invisible to the justice system such that she fails to protect herself’.

Another justification for sexual dalliance is that the practice teaches young girls how to look after their future husbands by having sex with their brothers-in-law.136 This involves giving a man the right to have a casual romantic or sexual relationship with his wife’s younger sister.137 All of these justifications explain why scholars, such as Lowe and Makamure, have defined sexual dalliance as a practice that allows a man to fondle or have sex with a younger sister or

133Her Zimbabwe ‘Chiramu: Cultural practices that compromise women’s rights’ available at: http://herzimbabwe.co.zw/2016/04/chiramu-cultural-practices-compromise-womens-rights/ (4 September 2018). For example, sexual dalliance objectifies girls sex subjects because, according to Chinodya, the practice teaches girls how to handle sexual advances made by men and boys. See Chinodya S Chairman of Fools (2007) 43.
paternal niece of his wife.\textsuperscript{138} According to Saidi, ‘the young sister to the married woman is regarded as her husband’s “young wife” and the two play “chiramu” by engaging in some social roles (meant to be done by the elder sister for her husband) such as cooking, making the bed and serving food’.\textsuperscript{139} Local musicians, such as Paul Matavire and Winky D have also exposed the practice as a haven for sexual engagements between the two, leading to pregnancies and eventual probable polygamous marriages or relations – a common feature in Zimbabwean society.\textsuperscript{140}

It is also important to note that, where sexual dalliance takes place with the consent of the girl, she is exercising her right to participate and express a choice.\textsuperscript{141} However, there is equally good reason to conclude that, in most cases, a man who invokes sexual dalliance as reason for having sex with his sister-in-law does so without her consent. For these reasons, there are probable linkages between sexual dalliance and sexual exploitation, which can cause unwanted pregnancies and eventually lead to child motherhood.

2.6 The age of sexual consent and child rape

The age of sexual consent is the minimum age at which an individual has the legal capacity to give her consent to participate in sexual activities.\textsuperscript{142} In Zimbabwe, the Criminal Law (Codification and Reform) Act (CLCRA) of 2004 has stipulated 16 as the age of sexual consent.\textsuperscript{143} Despite setting 16 as the age of sexual consent, the CLCRA is however ambiguous on how it treats sexual male offenders who sleep with girls below the age 16. For example, sections 64 and 70 of the CLCRA state that children under the age of 12 lack the capacity to

\textsuperscript{139}Saidi U ‘Tracing humour in Paul Matavire’s selected songs’ (2015) 12(1) Muziki 57.
\textsuperscript{140}In both Kamoto kamberevere (A small glitter of fire) and chiramu (sexual dalliance), Matavire and Winky D address the pregnancy saga that arises when a young sister is impregnated by her elder sister’s husband. They bring awareness concerning the abuse that comes with practice through music. See Matavire P ‘Kamoto kamberevere’ available at https://www.youtube.com/watch?v=cuRLS/7hvX8 (accessed 17 September 2018). See also Winky D ‘Chiramu’ available at https://www.youtube.com/watch?v=h0XI0aXgfw (accessed 17 September 2018).
\textsuperscript{141}See the discussion on the age of sexual consent and child rape in section 2.6 below.
\textsuperscript{142}Waites M The Age of Consent: Young People, Sexuality and Citizenship (2005) 18.
\textsuperscript{143}Section 61(1) of the Criminal Law (Codification and Reform) Act (CLCRA) defines ‘unlawful sexual conduct’ as ‘any act the commission of which constitutes the crime of rape, aggravated indecent assault, indecent assault, sexual intercourse or performing an indecent act with a young person or sodomy’. In addition, the same subsection defines a ‘young person’ as such a girl or boy who is below the age 16. By reading these two definitions together, one can conclude that section 61(1) of the CLCRA stipulates 16 as the age of sexual consent in Zimbabwe.
consent to sex. Thus, a person who has sexual relations with anyone under 12 is automatically guilty of rape.

However, the position is different when dealing with girls aged 12 but less than 14 years. Under this category, a man is guilty of rape if he cannot prove that the girl was capable of giving her consent, and that she in fact did not give her consent when the offence was committed. Similarly, there is also a rebuttable presumption of innocence for a man who has sexual intercourse with a girl above 14 but less than 16 years. According to the CLCRA in section 70, if a man has consensual sex with a girl aged between above 14 but below 16, he cannot be charged with rape but with ‘sexual intercourse with a young person’. The accused still gets a charge but with a lesser charge of performing a sexual act or indecent act with a minor, that also attracts a lesser sentence than rape.

In light of the above, determining the minimum the age of sexual consent under the CLCRA is problematic. While one may point 16 as the age of sexual consent, one is also correct to invoke 12 as the minimum age of consent. Despite these two different viewpoints, what remains clear is that Zimbabwe’s law allows girls as young as 12 years to have sex, which may expose them to child motherhood. Indeed, data has shown that at least 15 percent of adolescent girls have had unprotected sex before reaching 12 years. In addition, an alarming 17 and 5 percent of girls have given birth or fallen pregnant with their first child before the age 18, respectively.

The above position calls for reviewing laws in order to increase the age of sexual consent. The importance of amending the laws to protect girls also becomes evident when one considers

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144 Any sexual relations with anyone under 12 amount to rape. Even if the girl agreed and has even had sex before it is of no consequence and is no defence because children under 12 are completely incapable of consenting. Section 64 of the CLCRA. The girl is a child and all children depend on adults to protect them and to make decisions for them. Parents and guardians should protect children and ensure that they do not abuse their position of trust and influence to disadvantage the optimal survival and wellbeing. Sections 64 and 70. Majome MT ‘Your Rights: Consent and rape’ available at http://www.newsday.co.zw/2016/06/11/your-rights-consent-and-rape/ (accessed 14 February 2017).
145 Section 70 of the CLCRA.
146 Section 70 of the CLCRA.
147 Section 70 of the CLCRA.
148 Section 70(4) of the CLCRA.
150 Almost one in six teenagers (17 percent) has given birth and another 5 percent are pregnant with their first child. ZIMSTAT Inter-Censal Demographic Survey (2017) 108.
data, which states that about 11 out of 19 per cent of child marriages were a result of rape and/or sexual abuse. There has also been a rapid increase on the prevalence of child rape in Zimbabwe since 2012. In 2014, the Zimbabwe Republic Police noted with concern that there was a ‘4 per cent increase of child rape cases from 2012 to 2013, with young girls under the age of 16 being the major victims’. More alarming was a 14 per cent increase of child rape cases from the year 2013 to 2014. UNICEF also observed in 2016 that at least 100 girls are raped daily in Zimbabwe, ‘more than at any other time in the history of the country’.

A 2013 survey by Dube has emphasised the fact that child rape is ingrained by gender noting that:

‘It was perplexing to see that almost 45% of women responded saying that they did not know whose fault it would be when a child is raped. This response reveals the attitudes of most women who fail to realise that when a child is raped, it is always the fault of the perpetrators, and frequently they will try and protect the perpetrators be it a relation or their spouse, or if it is a stranger they may try and force a marriage to legitimise the ‘illegal sex’.

In the context of this study, the above discussion is clear that child rape is both a cause of trauma and pregnancies for girl victims. More importantly, Dube’s study has exposed some harmful practices that, for example, force a girl who is a victim of rape to live together with

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152 The Zimbabwe Republic Police noted with concern that that: ‘It is worrisome that we are still receiving more cases of rape of juveniles and we recorded 3 168 cases in 2012 compared to 3 297 cases in 2013 translating to a 4 percent increase...with young girls under the age of 16 being the major victims’. See, Media Monitoring ‘Reported rape cases by The Independent, The Newsday, The Herald and The Chronicle from January to June 2014’ (2014) 57-58. See also, ZIMSTAT ‘Compendium of Statistics 2014’ (2014) 67-70.


156 Dube R ‘She probably asked for it! A Preliminary Study into Zimbabwean Societal Perceptions of Rape’ (2013) 13.

her abuser. Such living arrangements expose girls to even greater risks of sexual abuse that may result in pregnancies and child bearing. In instances where the perpetrator has been convicted, sexually abused girls still withstand the worst of caring for children born because of rape. Therefore, it is argued that Zimbabwe must increase the age of sexual consent to reduce the incidences of child rape that may lead to unwanted pregnancies, and ultimately, to child motherhood.

2.7 Religious beliefs of the African Apostolic Churches

The African Apostolic Churches (the church) account for approximately 20 per cent of Zimbabwe’s population, and the majority of its members (73 per cent) live in the rural areas. Scholars such as Hallfors further estimated that females have the biggest membership percentage of the apostolic sects as compared to the male members. According to Musevenzi, ‘polygamy among the Johanne Marange apostolic group simply fills the gap of the numerical difference of the women to men ratio, and that this is why it is encouraged’. In this regard, the study asserts that the church has more girl child members than the boy child because it subscribes to polygyny and promotes child marriages.

This and other beliefs, teachings and practices of the church contributes to child motherhood in Zimbabwe. For example, the churches dissuade girls from pursuing secondary education,
but strongly encourage them to marry while young to ensure that they do so when they are still virgins.\textsuperscript{165} Virginity is associated with purity and all girls in the Johanne Marange and Johanne Masowe Churches need to pass a ceremonial virginity examination.\textsuperscript{166} Girls, who get married as virgins, are encouraged to become head-wives in polygamous marriages, especially if they marry men who had not been married before.\textsuperscript{167}

In addition, women who were married when they were no longer virgins need ‘to look for virgin for their husbands to marry as compensation’.\textsuperscript{168} Arranged marriages between adult men and young girls are also common within the church because its doctrines forbid premarital sexual relations.\textsuperscript{169} However, Musevenzi has observed that couples can have sex before marriage provided they obtain permission from parents and adhere to other prescribed religious ceremonies and rituals.\textsuperscript{170} It is important to highlight that the church members engage in unsafe sexual relations because the church prohibits any form of family planning.\textsuperscript{171} Thus, many girls who engage in sexual activities resultantly fall pregnant and bear children at a young age.\textsuperscript{172} According to Machingura, this attributes to a high illiteracy rate

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\textsuperscript{169}Chikwature and Oyedele reported that the majority of school going girls in Marange, some as young as ten, have been married to older men from their church, the Johanne Marange Apostolic sect, which is infamous for its following of the practice of polygamy. Chikwature W and Oyedele V 'Polygamy and academic achievement: A case of Johane Marange Apostolic Sect' (2016) 4(5) European Journal of Research in Social Sciences 31.


\textsuperscript{171}The participants to a study by Chimbera ‘reiterated that birth control mechanisms are satanic and a tool to deliberately subvert the will of God for people to multiply’. Thus, the main goal of denouncing family planning is to reproduce and multiply in multitudes. See Chimbera AP The influence of Apostolic beliefs and practices on community in a rural community in Zimbabwe: Implications for social work practice (unpublished Master of Arts thesis, University of Limpopo, 2017) 45.

\textsuperscript{172}Thus, UNICEF rightly argued that ‘the religious practice of virginity testing facilitates the process of marrying off young girls to older men in ultra-conservative apostolic sects’. For example, girls who are no longer virgins

http://etd.uwc.ac.za/
among the married women belonging to the church as young girls’ access to education is affected when they marry at an early age.¹⁷³

These churches are, therefore, notorious for marrying off ‘young girls’ under the guise of religion.¹⁷⁴ Since the church believes in the Holy Spirit, most prophets abuse their prophetic powers to handpick virgin girls as potential wives.¹⁷⁵ The prophets can also handpick girls to become co-wives of the church male elders.¹⁷⁶ It can then argued that the beliefs and practices of apostolic sects serve to satisfy ‘men who are only interested in sexually self-serving’.¹⁷⁷ This predisposes girls to pregnancies, which then forces them to become child mothers.

¹⁷⁷Vengeyi E ‘Gender-based violence in the Johane Marange Apostolic Church in Zimbabwe: A Critique’ in Chitando E and Chirongoma S (Ed) Justice not silence: Churches facing sexual and gender-based violence (2013) 64. Nenge RT ‘A hermeneutical challenge in the fight against HIV and AIDS in the Johane Marange Apostolic Church’ (2013) 42(3) Exchange 252–266. This is also now a common phenomenon in the Pentecostal churches. For instance, Manyonganise observed that some self-styled prophets are deceiving women into believing that it was their prophetic calling to sleep with them and eventually marry them in six months’ time. For a detailed discussion, see Manyonganzie M ‘Zimbabweans and the prophetic frenzy’ in Hunter J and Kügler J (Ed) The Bible and violence in Africa: Papers presented at the BiAS meeting 2014 in Windhoek (Namibia), with some additional contributions (2016) 277.
2.8 Poverty and the lack of education

The inability for young girls to acquire secondary education is high and worrisome in Zimbabwe.178 It is alarming to note that 47 per cent of secondary school aged girls are out of school.179 Provincial statistics has reported Harare as having the highest prevalence (73 per cent) of girls dropping out of secondary school while Matebeleland South has the lowest rate (38 per cent).180 In addition, the number of girls who have dropped out of secondary school is higher (60 per cent) in urban areas than in rural areas (40 per cent).181

Poverty remains one of the constant key drivers for school dropouts among girls in Zimbabwe.182 For example, adolescent parenthood is higher among poor teenagers and girl children raised in poverty have poorer employment records as adults.183 Furthermore, an increased likelihood of prostitution and teenage pregnancies is associated with poverty among children.184 As observed by ZIMSTAT, 29 per cent of girls who were out of school came from the poor families while 12 per cent came from rich families.185 Thus, poor families tend to prioritise boy education and force girls to stay at home or into marriage.186 These girls end

178 The Education Policy Data Center indicated that although almost 80 per cent of Zimbabwe’s children have attained primary education, access to secondary education has remained poor with nearly 45 per cent of the girls dropping out of secondary education. See, the Education Policy Data Center 'Zimbabwe National Education Profile: 2014 Update' (2014).
up in marriage, fall pregnant and become child mothers. In support of this view, data revealed that childbearing is common among girls who live in poor families.\(^{187}\)

Further, the lack of education in addition to poverty diminishes the capacity of married girls to negotiate safe sex practices.\(^{188}\) As in other parts of the world, Zimbabwean communities interpret a marriage simply ‘as granting men the right to unconditional sexual access to their wives and the power to enforce this access through force if necessary’.\(^{189}\) Due to reduced sexual autonomy, child brides are often powerless to refuse unwanted sex or to use contraception.\(^{190}\) As a result, coerced sexual activities lead to unwanted pregnancies.\(^{191}\)

Additionally, the lack of education, accompanied by poverty, can also force girls into prostitution or transactional sex relationships with older men or sugar daddies.\(^{192}\) Kaufman, Stavros and Chatterji define transactional sex as ‘the exchange of favors, gifts, or money for sexual activity’.\(^{193}\) Men usually pamper girls with money or gifts, and in turn require having sex with girls as a token of appreciation.\(^{194}\) In these relations, Gukurume noted that sugar

\(^{187}\)Without an education, poor girls are vulnerable to becoming child mothers when they marry to escape poverty because procreation fulfils the sanctity of a marriage. See ZIMSTAT Zimbabwe Demographic and Health Survey 2015: Key Indicators (2016) 10.


\(^{190}\)Child brides then fall to pressure by their old spouses to conceive children even when they are not ready. For these poor child brides, they only have the choices of pleasing their husbands because they (girls) solely depend on them (husbands) for survival. See Mugweni E, Pearson S and Omar M ‘Traditional gender roles, forced sex and HIV in Zimbabwean marriages’ (2012) 14(5) Culture, health & sexuality 581.


\(^{192}\)Girls have intimate relationships with usually older but wealthy men commonly known as ‘sugar daddies’ or ‘blessers’ as they are now currently known. See, Kuate-Defo B ‘Young people’s relationships with sugar daddies and sugar mummies: What do we know and what do we need to Know? ’ (2004) 8(2) African Journal of Reproductive Health 13-37. See also Selikow TA & Mbulaheni T ”I do love him but at the same time I can’t eat love”: Sugar daddy relationships for conspicuous consumption amongst urban university students in South Africa’ (2013) 27(2) Agenda 86-98.


\(^{194}\)According to a study by Dunbar et al, 5 percent of the participants had sex in exchange for food, money, or school fees although none of the respondents were pregnant yet. See Dunbar MS et al ‘Findings from SHA2I: A feasibility study of a microcredit and life-skills HIV prevention intervention to reduce risk among adolescent female orphans in Zimbabwe’ (2010) 38(2) Journal of prevention & intervention in the community 152. See also Masvawure T ‘I just need to be flashy on campus’: female students and transactional sex at a university in Zimbabwe’ (2010) 12(8) Culture, health & sexuality 865-867.
daddies control the conditions of sexual encounters, including condom and contraceptive use.\textsuperscript{195} This concurs with Luke & Kurz who argued that age and economic asymmetries between sugar daddies and young women limit the latter the power to negotiate safe sexual behaviors.\textsuperscript{196} Thus, imbalanced power relations between actors in transactional sex can lead to unintended pregnancies among girls, which eventually leads to child motherhood.\textsuperscript{197}

Poverty has also forced many Zimbabwean families into economic migration. \textsuperscript{198} The Cambridge English Dictionary defines economic migrant as ‘a person who leaves their home country to live in another country with better working or living conditions’.\textsuperscript{199} Zimbabwe is among the countries with the highest migration rates worldwide and the majority of low to medium families migrate to South Africa.\textsuperscript{200} As a result, 20 per cent of children in the urban areas are living with one or none of their biological parents.\textsuperscript{201} In rural areas, at least 29 per cent of children are living under kinship care.\textsuperscript{202}

These ordinary Zimbabweans come to South Africa in pursuit of basic human needs for food, clothing, electricity and money, which are essential for survival and are in short supply in Zimbabwe.\textsuperscript{203} Since many migrants lack money to acquire legal documentation to stay in South Africa, many find themselves living in informal settlements, which are prevalent in the urban areas of South Africa.\textsuperscript{204} These informal settlements lack basic amenities such as electricity, running water and access to healthcare.\textsuperscript{205} The lack of access to these basic amenities can lead to the spread of sexually transmitted infections, which can have long-term health consequences for both individuals and communities.\textsuperscript{206}

\textsuperscript{196}The fact that older partners in most cases provide material resources and gifts, young partners tend to have depleted bargaining and negotiating power concerning sexuality and reproduction. See Luke N and Kurz KM Cross-generational and transactional sexual relations in Sub-Saharan Africa: Prevalence of behavior and implications for negotiating safer sexual practices (2002) 5.
\textsuperscript{197}McCleary-Sills J et al ‘Gendered norms, sexual exploitation and adolescent pregnancy in rural Tanzania’ (2013) 21(41) Reproductive health matters 98.
\textsuperscript{199}Similarly, the Cambridge English Dictionary has defined an economic migrant as ‘a person who leaves their home country to live in another country with better working or living conditions’. See, United Nations High Commissioner for Refugees (UNHCR) ‘Migrant definition’ (2016) 1; Cambridge English Dictionary ‘economic migrant’ available at http://dictionary.cambridge.org/dictionary/english/economic-migrant (accessed 20 January 2017).
\textsuperscript{202}From the above statistics, the thesis opines that parents who seek better living standards leave their children behind under the care of their grandparents, aunts, uncles and/or older siblings. ZIMSTAT Zimbabwe Multiple Indicator Cluster Survey (MICS) 2014, Final Report (2015) 240.
South Africa, they are illegal immigrants and work casual jobs and earn menial income. As a result, these migrants lack adequate resources to look after themselves, let alone their family members and children back in Zimbabwe. In this regard, poor migrants face difficulties sending money for school fees and the general upkeep of children left in Zimbabwe. For girls, economic hardships can leave them with limited choices, which can force them into prostitution or early marriage. As already noted earlier, prostitution and child marriage increase the girls’ vulnerability to early pregnancies, which inevitably predisposes them to become child mothers.

2.9 HIV/AIDS

HIV/AIDS is undeniably an international public health challenge that has multifaceted effects. Globally, HIV/AIDS has remained as the unrelenting epidemic. In 2015, WHO recorded that at least 35 and 39 million people had died of HIV/AIDS and were living with the

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206 This observation concurs with Ndlovu and Tigere’s study, which revealed that ‘50% of the teachers, believed that students with migrating parents often do not pay school fees and developmental levies in full and on time’. See Ndlovu E and Tigere R ‘Economic migration and the socio-economic impacts on the emigrant’s family: A case of Ward 8, Gweru Rural district, Zimbabwe’ (2018) 10(1) Journal of Disaster Risk Studies 5.


208 See Chapter 2, sections 2.2 and 2.7 above.


virus, respectively. Though HIV/AIDS is a global crisis, Africa has remained the worst affected region. According to WHO, the percentage of the prevalence of the virus in Africa is at least four times higher than in other regions.

Zimbabwe is the fifth highest HIV/AIDS prevalent country in sub-Saharan Africa with 15 per cent. Researchers have also estimated that HIV/AIDS related deaths among adults has resulted in a cumulative 500 000 orphans in Zimbabwe as of 2015. In addition, 4 per cent of adolescent girls are reportedly living with HIV/AIDS. Moreover, transactional sex relationships exacerbate the HIV/AIDS rate in Zimbabwe. In this regard, it has been estimated that 15% of girls and young women aged 15-19 have had sex with older men for money.

The ‘HIV/AIDS pandemic has had a devastating impact on parental mortality’. In some precarious situations, the caregivers themselves are also living in poverty or have too many children to look after them. This may force children, especially girls, to sell their bodies as an alternative to fend for themselves and/or other family members. In the same vein,

211The latest global trends on HIV/AIDS have shown that the virus has killed at least 35 million people and an alarming 39 million people were infected. See WHO ‘HIV/AIDS: Fact Sheet’ available at http://www.who.int/mediacentre/factsheets/fs360/en/ (accessed 06 January 2017).
212WHO recorded the prevalence of HIV as follows: the African region was the most prevalent with 4.5 %. The Americas region (0.5 %), the European region (0.4 %) and the South-East Asia region (0.3 %) followed it. The Western Pacific Region and the Eastern Mediterranean Region were the least prevalent with 0.1 %. See, WHO ‘World health statistics 2016: monitoring health for the SDGs, sustainable development goals’ (2016) 51.
218Surviving children are usually economically vulnerable, especially where both parents are deceased. Martin FS and Garazi Z ‘Who cares for children? A descriptive study of care-related data available through global household surveys and how these could be better mined to inform policies and services to strengthen family care’ (2016) 3(2) Global social welfare 66.
transactional sex relationships also accelerate the risk of HIV/AIDS for young girls. In addition, the relationships predispose girls to unwanted pregnancies and the burden of being child mothers.

Furthermore, children whose parent(s) die of HIV/AIDS are also stigmatised in Zimbabwe. Stigma can inflict trauma and depression on surviving children due to the void left by the death of their parent(s). For girls in child headed families, stigma can be instrumental to girls making wrong and poor decisions in their lives. Thus, poor girls can either marry or enter into a union as means of escaping from both the stigmatising environment and poverty. These unions therefore increase the risk of girls to early childbearing.

2.10 Social media

Social media has become the most necessity of a person’s daily life in the 21st century. Recent statistics has revealed that 40 and 73 per cent of the world population are internet and mobile phone users, respectively. In Africa, the International Telecommunications Union has reported that 16 per cent of the population now have access to the internet. These trends show that social media usage is generally widespread both at global and regional levels.

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221See a detailed discussion of transactional sex relationships in Chapter 2, section 2.8 above.
224Operario et al has argued that ‘the experience of parental death can be a traumatic event leading to emotional difficulties or excessive anxiety among children’. This can also trigger girls to make irrational decisions. Operario D et al ‘Orphanhood and completion of compulsory school education among young people in South Africa: Findings from a national representative survey’ (2008) 18(1) Journal of Research on Adolescence 182.
226Social media has also become the key mode of communication. From the time we wake up to the time we go to sleep, and all the spaces in between, many of us are checking in to see what is happening with others online. McLellan A ‘Who to follow? When? Where? Why? A guide to social media’ YA Hotline 103 (2016) 1-4.
In Zimbabwe, ZIMSTAT has recorded that almost 20 per cent of girls have now been acquainted with digital technology.\textsuperscript{229} In addition, at least 19 per cent of girls are internet users or have the ability to access the internet.\textsuperscript{230} With these statistics in mind, it can be ascertained that social media has become the primary mode of communication used by almost 20 per cent of girls in Zimbabwe.

Although social media has various benefits,\textsuperscript{231} internet use also has tremendous negative effects on girl users. Sloth-Nielsen has rightly posited that, ‘given the rapid increase in access to digital media which is occurring in developing regions’ such as Zimbabwe, ‘the risk of harm to children via online activities is real rather than illusory’.\textsuperscript{232} For example, young girls are partakers in harmful activities such as sexting.\textsuperscript{233} Although data on the widespread of sexting among children is scarce in Zimbabwe, it is true that girls ‘who are into sexting are likely to engage in risky sexual behaviours’.\textsuperscript{234} Such activities may expose girls to unwanted pregnancies and child motherhood.

Furthermore, social media enables children to access inappropriate material such as nude pictures, adult movies, and dubious websites.\textsuperscript{235} Children who watch pornography can then

\begin{footnotesize}
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\item \textsuperscript{229} On average, ZIMSTAT noted that 83 per cent of young children use mobile phones while 28 per cent has access to computers. Zimbabwe National Statistics Agency (ZIMSTAT) Zimbabwe Multiple Indicator Cluster Survey (MICS) 2014 2014, Final Report (2015) 291; 297.
\item \textsuperscript{230} ZIMSTAT (2015) 291.
\item \textsuperscript{231} Social media has been revealed as having an impact on promoting ‘the mental health care and support of young people’. Social media has also enabled children to communicate better and to instantly share information as well as give each other academic support. Ahn J ‘The effect of social network sites on adolescents’ social and academic development: Current theories and controversies’ (2011) 62(8) Journal of the American Society for information Science and Technology 1444. 1435-1445. Best P, Manktelow R and Taylor B ‘Online communication, social media and adolescent wellbeing: A systematic narrative review’ (2014) 41 Children and Youth Services Review 27-36.
\item \textsuperscript{233} Sexting can be defined as ‘sending, receiving, or forwarding sexually explicit messages, photographs, or images via cell phone, computer, or other digital devices’. Berkshire District Attorney. Sexting. Pitts- field, MA: Commonwealth of Massachusetts; 2010 available at www.mass.gov/?pageID=berterminal&L3&L0Home&L1Crime Awareness&percentage26Prevention&L2Parents percentage26Youth&sidDber&bterminal&content%26parents_youth_sexting&csidDber (Accessed September 7 2018).
\item \textsuperscript{234} Mhlanga A, Bhunu CP and Mushayabasa S ‘Modelling the effects of sexting on the transmission dynamics of HSV-2check this? amongst adolescents’ (2015) 2(1) Cogent Mathematics 1; Hasinoff AA ‘Sexting as media production: Rethinking social media and sexuality’ (2013) 15(4) New Media & Society 449-465.
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imitate what they see or watch on the internet thinking it is socially and morally acceptable behaviour when it is in fact harmful.\textsuperscript{236} Scholars such as Weber et al have observed that children who watch pornography and other inappropriate likely have their first sexual experiences at a young age.\textsuperscript{237} Braun-Courville and Rojas have also observed that exposing children to sexually explicit material aggravates their sexually permissive attitudes.\textsuperscript{238} Thus, girls who watch pornography are likely to have sex at an early age, which increases their risk to pregnancy and child motherhood.

Moreover, social media can also expose girls to online paedophiles and pimps.\textsuperscript{239} These child abusers can force girls into prostitution and child pornography. For this reason, the UN Secretary General’s Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography worryingly posited that, the ‘internet operates as an instrument for offenders, multiplying the possibilities of obtaining, distributing and selling child abuse material...’\textsuperscript{240} Such activities have the tendency of sexually violating innocent online girl users. Therefore, social media disposes girls to sexual activities that may lead them to become child mothers.

2.11 Conclusion

This chapter set out to debate different factors that may lead to child motherhood in Zimbabwe. It further pointed out that the persistence of child motherhood in Zimbabwe is a result of discrimination against girls based on sex, gender and age. Child motherhood rates are still high because of practices, such as kuzvarira, child marriage and chinamwari that depict girls as reproducing machines whose main role is child bearing and rearing. The laws

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\textsuperscript{238}Braun-Courville DK and Rojas M ‘Exposure to sexually explicit Web sites and adolescent sexual attitudes and behaviors’ (2009) 45 Journal of Adolescent Health 156–162.
\end{flushleft}
on the age of sexual consent are also not clear, which is perpetuating child sexual abuse among girls. One can then argue that these laws negatively affect girls more than boys as some of the girl victims of rape fall pregnant and become child mothers. Pregnant girls also face challenges when they seek to terminate unwanted pregnancies, forcing them to end up seeking unsafe alternatives, which may be detrimental to their lives.

For that reason, it is emphasised that the failure to protect its girls against child motherhood in addition to the rights of child mothers is a violation of children’s rights. In light of the causes of child motherhood, Zimbabwe is a State Party to international human rights law on the protection of children’s rights. As a State Party to international and regional human rights law, Zimbabwe has an obligation under the ratified international instruments, more cogently the CRC and African Children’s Charter, to do all within its powers to protect children against human rights violation.

For this reason, Chapter 3 is a discussion of the international and regional human rights instruments in terms of their protection of girls against child motherhood. This discussion will lay a legal framework in analysing Zimbabwe’s legal and policy measures taken towards the protection of girls against child motherhood including the rights of child mothers in Chapters 4 and 5 below.
CHAPTER 3

THE INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW APPLICABLE AND THE PROTECTION OF GIRLS AGAINST CHILD MOTHERHOOD AND THE RIGHTS OF CHILD MOTHERS

3.1 Introduction

Chapter 2 has highlighted that girl children in Zimbabwe face a number of obstacles that prevent them from enjoying human rights on an equal basis with boys. It has identified child marriage, chinamwari, religious beliefs and a legal lacuna on the age of sexual consent as some of the major factors that lead to child motherhood. In this regard, girls continue to face such obstacles despite the fact that Zimbabwe has ratified human rights treaties, which safeguard against child rights violation.\(^\text{241}\)

The aim of this chapter is, therefore, to present and analyse the international human rights law framework that is relevant to the care and protection of girls against child motherhood. It will start with a critical analysis of the substantive rights applicable to child motherhood under international and regional human rights law. This section will particularly focus on the CRC, African Children’s Charter, the CEDAW and the Maputo Protocol.\(^\text{242}\) The substantive rights under discussion will also be limited to the rights to non-discrimination, health, education, freedom from sexual exploitation as well as guarantees against child marriage.

The next section discusses the recent African and SADC human rights developments that are relevant in the protection of girls against child motherhood and the rights of child mothers. On a regional level, the Chapter discusses the 2017 Joint General Comment of the African Commission on Human and Peoples’ Rights and the African Committee of Experts on the Rights and Welfare of the Child on ending child marriage.\(^\text{243}\) On a sub-regional level, focus is

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\(^{241}\)For example, the rights to education, non-discrimination, dignity, freedom from all forms of abuse and health.

\(^{242}\)Other human rights treaties to support the CRC, African Children’s Charter, the CEDAW and the Maputo Protocol.

\(^{243}\)For a detailed discussion on these recent developments, see sections 3.4.1 and 3.4.2 below.

3.2 Substantive rights in human rights law instruments applicable to child motherhood

3.2.1 The right to equality and non-discrimination

The CRC and the CEDAW guarantee human rights to all girls without discrimination. The CRC does not define ‘discrimination’. However, the CEDAW defines discrimination as a distinction made based on sex, which can impair women to enjoy their human rights. The CRC supplements the CEDAW by prohibiting any discrimination of a child based on sex, religion, ethnic or social origin, birth or another status such as gender. This principle also calls on State parties to act appropriately to prevent all forms of misperceptions. In the context of child motherhood, State Parties should adopt and implement measures that address harmful traditions that stigmatise girls in society.

As pointed out earlier in Chapter 2, practices such as sexual dalliance, chinamwari and child marriage are deeply rooted in traditions and customs. These practices target girls in particular. These practices expose girls to sexual abuse when they are married or have sexual intercourse with older men. The CEDAW Committee has also observed that gender disparities upset power relations and this leads to girls’ inability to refuse sex or insist on safe sex. In this way, these harmful traditional practices expose girls to the risk of contracting

244 The thesis will utilise the Southern African Development Committee Gender Protocol to support arguments relating to the Model Law on Eradicating Child Marriages and Protecting Children already in Marriage.
246 See Article 1 of the CEDAW.
247 Article 2(1) of the CRC requires:
‘States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’.
249 See Chapter 1 above.
250 See for example a discussion of child marriage, kuzvarira and chinamwari discussed in Chapter 2.
251 See Chapter 1 above.
STIs and HIV/AIDS. Furthermore, early marriages compromise the educational attainment of child brides. In the end, sexual dalliance and kuzvarira are some of the practices that are not only discriminatory, but also invariably infringe the girls’ enjoyment of other rights in the Conventions.

Within the above context, the 2014 Joint General Recommendation/General Comment No. 31 of the CEDAW Committee and No. 18 of the CRC Committee require State Parties to eliminate practices that negatively affect women and girls. State Parties must then adopt approaches that pro-actively address discrimination against girls. In doing so, State parties ‘cannot simply be passive, relying on evolutionary processes or prohibitions’ but have an obligation ‘to take non-discriminatory affirmative action’ to empower girls. Instead, they can provide for free secondary education for girls, which can keep many girls including child mothers in school.

256 In a concluding observation on Lesotho, the CRC Committee recommended the State Party to adopt proactive and comprehensive strategies that eliminate all forms of discrimination, especially against all vulnerable groups of children. See, Committee on the Rights of the Child Concluding observations on the second periodic report of Lesotho (2018) para 18.
257 Under international human rights law, discriminatory affirmative action is prohibited, but non-discriminatory affirmative action is not only lawful, it is mandatory ‘whenever the well-being of one segment of society is lagging behind the rest of the nation.’ See, Abramson B A commentary on the United Nations Convention on the Rights of the Child: Article 2: The right of non-discrimination (2008) 42. Boston: Martinus-Nijhoff Publishers. In a concluding observation to Malawi, the CRC Committee recommended the need for injecting resources to establish programmes that target most vulnerable groups as means of combating discrimination. See, Committee on the Rights of the Child Concluding observations on the combined third to fifth periodic reports of Malawi (2017) para 14.
Keeping girls in secondary school is beneficial in reducing early pregnancy and child marriages: factors that cause child motherhood. Access to secondary education allows girls to access to comprehensive sexuality education and friendly sexual and reproductive health information. Of note, however, is that accessing secondary education does not guarantee girls not falling pregnant, as data reveals that some school-going girls do get pregnant. Despite this, equipping girls with secondary education, which includes sexual and reproductive health information, increases their chances of engaging in safe sex practices that reduce early pregnancy. This would also be beneficial in reducing the incidences of girls who drop out of school due to early pregnancy. Ultimately, it will protect girls against child motherhood.

Furthermore, the Committee on Economic, Social and Cultural Rights (ECSR Committee) stated that non-discrimination is an essential principle for the exercise and enjoyment of rights guaranteed by the Convention. In order to promote gender equality, therefore, State parties must adopt and implement laws and policies that emancipate historically marginalised girls.

259 Mwambene observed that parents living in poverty force girls to swap school for marriage so that they can pay school fees for male siblings to continue schooling. See Mwambene L ‘Marriage under African customary law in the face of the Bill of Rights and international human rights standards in Malawi’ (2010) 10(1) African Human Rights Law Journal 90.
261 In the past four years alone, local newspapers have reported various incidences where girls fall pregnant while in school. See Dailynews ‘100 high school girls pregnant’ available at https://www.dailynews.co.zw/articles/2014/07/27/100-chingwizi-school-girls-pregnant (accessed 12 November 2018); Chronicle ‘6 girls pregnant: Ministry probes Founders High School’ available at https://www.chronicle.co.zw/6-girls-pregnant-ministry-probes-founders-high-sch/ (accessed 12 November 2018); AllAfrica ’Zimbabwe: Cops, Teachers Freely Impregnate Girls’ available at https://allafrica.com/stories/201711030434.html (accessed 12 November 2018).
groups, girls in particular. The ECSR Committee also expressly orders states to address gender-based violence, including protecting girls ‘from practices that promote child marriage, marriage by proxy, or coercion’. In doing so, special and affirmative action measures will afford girls the enjoyment of their human rights as well protect them against harmful practices that can lead to child motherhood.

In the African context, Article 3 of the African Children’s Charter guarantees every child the enjoyment of the rights and freedoms, without discrimination. It states that:

‘Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status’.

Various scholars have observed that Article 3 applies to both every child and to all rights contained in the Charter, which are dependent on this provision. Further, the enjoyment of other rights, such as education, health, and life is dependent on the realisation of the right to equality. For this reason, Article 3 is the non-autonomous provision, which is a principle of general application. Explaining its importance in Institute for Human Rights and Development in Africa and Others v Kenya, the African Committee of Experts on the Rights

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and Welfare of the Child (ACERWC) held that, Article 3 ‘fundamentally proscribes discrimination against the child so as to enable the enjoyment by the child of the rights and freedoms recognised and guaranteed in the Charter’. 272

Relevant from the above discussion is that Article 3 requires African governments to eliminate traditional practices, discriminatory laws and attitudes that inhibit the enjoyment of girls’ rights. 273 In Chapter 2, the study observed that sexual dalliance disproportionately affects girls on grounds of sex and birth. 274 In Binga, girls are married at puberty while child marriage widespread among the religious apostolic faith sects. 275

Due to the prevalence of discriminatory and exploitative attitudes in Zimbabwe, articles 21 and 27 of the Charter can protect vulnerable and marginalised girls. Article 21(1) enjoins African governments to eliminate practices that discriminate children based on sex to the detriment of their health. 276 Similarly, article 27 orders the elimination of ‘all forms of sexual exploitation and sexual abuse’. 277 More cogently, ‘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 18 years and make registration of all marriages in

272 Binga is located in Matabeleland North of Zimbabwe. It is south of Lake Kariba Lake and borders Zambia and the Tonga people inhabit the area. See also, Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v the Government of Kenya (2011) para 58 available at https://www.opensocietyfoundations.org/sites/default/files/ACERWC-nubian-minors-decision-20110322.pdf (accessed 08 October 2016). In summary, the case dealt with a major difficulty for children of Nubian descent in Kenya to acquire citizenship. The complainants averred that since many Nubians do not have ID cards, it leaves their children stateless, as the vetting process that is applicable to children of Nubian decent to acquire an ID is extremely arduous, unreasonable, and discriminatory.


an official registry compulsory’. Clearly, these provisions provide a strong basis for tackling religious practices that perpetuate child marriage and other discriminatory practices, such as *kuzvarira* that lead to child motherhood.

Moreover, the Maputo Protocol also proscribes discrimination against women, including girls. It defines ‘discrimination against women’ as:

> ‘any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life’.

Apart from the definition, Articles 2 and 5 of the Maputo Protocol call for the eradication of harmful practices and all forms of discrimination against women. The Maputo Protocol defines ‘harmful practices’ as ‘all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity’. This implies that States must not treat women and girls different from men and boys in a manner that impairs the realisation of their basic human rights. More importantly, governments must endeavour to modify harmful practices that treat women in an adverse manner. These provisions are therefore useful to address

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279See generally, the causes of child motherhood discussed in Chapter 2 above.

280Article 1(k) of the Maputo Protocol defines women widely to include girls.

281Article 1(f) of the Maputo Protocol.


283Article 1(g) of the Maputo Protocol.


discrimination and harmful practices and cultures that hinder women to enjoy their basic human rights.

The study further argues that the elimination of discrimination contemplated by the Protocol must target the protection of girls against all ‘forms of violence, abuse, and intolerance’. According to Banda, Article 5 of the Maputo Protocol does not only prohibit harmful practices but also requires the educating of communities so that they can change their patriarchal practices. As stated earlier in Chapter 2, girls in Zimbabwe are predisposed to child rape, which has the effect of causing stigma especially when the rape results in pregnancy and childbirth. Due to pregnancy, girls refrain from going to school because of bad name-calling and the fear of receiving embarrassing remarks from their peers and teachers. In addition, parents, teachers and other learners view pregnant girls as people with loose morals. Because of these derogatory remarks, pregnant girls are discouraged to continue schooling, causing them to drop out of school. By requiring State Parties to address such discriminatory attitudes, the Maputo Protocol provides a strong basis for girls to enjoy their rights without fear or want.

Collectively, the non-discrimination clause enables the enjoyment of other human rights. It further addresses harmful practices and discriminatory laws discussed in Chapter 2. To this end, non-discrimination is relevant in protecting girls against child motherhood as well as the rights of those girls who are already child mothers. Accordingly, Human Rights Watch

286 Article 5(d) of the African Women Protocol.
288 See Chapter 2, section 2.6 above.
291 Ncube D and Mudau T ‘Legalising the illegal’ interrogating the policy that allows pregnant school girls to go for maternity leave and come back to school: A case of selected secondary schools in Gwanda district’ (2017) 4(2) Global Journal of Advanced Research 75.
accurately pointed out that ‘all girls have a right to education regardless of their pregnancy, marital or motherhood status’, which will be discussed below.  

3.2.2 The right to education

As alluded in the above discussion, the right to education is also relevant in protecting girls against child motherhood and the rights of child mothers in Zimbabwe. Under the CRC, article 28(1) requires State Parties to ‘recognize the right of the child to education, and with a view to achieving this right progressively and based on equal opportunity, they shall, in particular, make education compulsory and available free to all’. Given the holistic nature of the CRC, State Parties must interpret Article 28 in conjunction with Article 29, which provides for the

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294 The CRC does not provide for a clear definition of education. However, Delbrück has observed that international legal instruments usually refer to ‘education’ in a double sense. First as the provision of basic skills and second as the development of the intellectual, spiritual, and emotional potential of the young person or in other words the broader development of his or her personality. Indeed, the CRC Committee has emphasised that the notion ‘basic skills’ does not only include ‘literacy and numeracy but also life skills such as the ability to make well balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life’. See Delbrück J ‘The Right to Education as an International Human Right’ (1992) 35 German Yearbook of International Law 94 and 99; Committee on the Rights of the Child, General comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1, para 9.

http://etd.uwc.ac.za/
aims of education’. The CRC Committee regards ‘education’ under Article 28(1) as referring to both formal and non-formal education.

In this regard, it urges State Parties to set up non-formal structures and to use informal educational programmes, especially when it is impossible for children to access formal education. More importantly, State Parties must ensure that these non-formal education opportunities share the same standards of learning applied to schools and comply with the human rights requirements in education, such as the principle of equal opportunity.

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295 Article 29 of the CRC provides:

‘1. States Parties agree that the education of the child shall be directed to:
(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(d) 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;
(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State’.

Formal education is structured, chronologically graded instruction, given in an educational institution while non-formal education is an organised educational activity outside the established formal classroom system, such as village, community-based, or open air schooling. The CRC Committee, *General Guidelines regarding the form and the contents of the periodic reports* (UN Doc. CRC/C/58, 1996), para. 106. Cattrijssen, L. ‘Children’s Rights and Education: The Right TO, IN and THROUGH Education: three interrelated imperatives’ in Verhellen E (Ed.) *Understanding Children’s Rights* (2000) 621; Coomans, F.‘In search of the core content of the right to education’ in Chapman A and Russell S (Ed) *Core obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 226.


Realising its importance, the Committee on Economic Social and Cultural Rights interpreted education as ‘both a human right in itself and an indispensable means of realizing other human rights’. It further stated that education is the primary vehicle for female emancipation. For this reason, the CRC Committee has emphasised the need for States parties to ensure that all young children receive education ‘in the broadest sense’.


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Informal educational programmes enable girls who drop out of school due to pregnancy, child mothers staying at home, and those living in poverty, to realise their right to education.\(^\text{299}\)

In addition, Verheyde has argued that Article 28(1)(a) imposes positive obligations on State Parties to progressively provide primary education that is both compulsory and cost-free.\(^\text{300}\) The term ‘progressively’ takes cognisance of the fact that the rights to education is a second generation right, which will generally not be achieved fully in a short period owing to lack of resources.\(^\text{301}\) Regardless, progressive realisation ‘does not imply that States have unfettered discretion to do as they please when it comes to the fulfilment of socio-economic rights’ such as the right to education.\(^\text{302}\) Rather, Sloth-Nielsen and Mezmur argued that ‘progressive realisation’ requires State Parties to take the necessary steps within a reasonably short period for them to make primary education free and compulsory.\(^\text{303}\) Accordingly, the CRC Committee obligates State Parties to purchase uniform and school books, at least for children of poor families as part of the obligation to provide for cost-free primary education.\(^\text{304}\)

In support of the CRC Committee, Article 11(1) of the African Children’s Charter obligates State Parties to guarantee every child the right to education. More importantly, unlike Article 28 of the CRC, the African Children’s Charter obligates State Parties to provide free and compulsory basic education.\(^\text{305}\) Indeed, the African Children’s Charter, as does the CRC


\(^{300}\) According to Verheyde, ‘because education can serve two mutually conflicting purposes; to systematically discriminate against certain vulnerable groups and retain inequality or as a means to eliminate inequality, the drafters of the CRC came to a decision to put considerable weight on equality in education by reinforcing the general non-discrimination principle of Article 2(1) of the CRC. Verheyde M ‘Article 28: The right to education’ in Allen A et al (Eds) A commentary on the United Nations Convention on the Rights of the Child (2006) 11 and 36.


\(^{302}\) Thus, State Parties do not have the liberty to justify doing nothing or moving forward in a sluggish manner in the implementation of socio-economic rights. Moyo K ‘The jurisprudence of the South African Constitutional Court on socio-economic rights’ in Foundation for Human Rights Socio-economic Rights: Progressive Realisation? (2016) 58.

\(^{303}\) Sloth-Nielsen J and Mezmur BD ‘Free Education is a Right for Me: A report on Free and Compulsory Primary Education’ University of the Western Cape, Save the Children Sweden (2007) 11

\(^{304}\) This follows the view of the ESCR Committee that ‘free education’ means education should be free of charge and State Parties should abstain from imposing registration fees and other costs, such as compulsory levies on parents. See ESCR Committee General Comment No. 11 (1999) para 7. Brems E Human Rights: Universality and Diversity (2001) 139.

Committee,\textsuperscript{306} considers the cost free aspect of primary education as key and therefore State Parties should make free primary education immediately realisable to all children.\textsuperscript{307} The provision of free primary education reinforces Articles 28(1)(e) and 11(3)(d) of the CRC and African Children’s Charter, respectively. These provisions enjoin State Parties to take measures to encourage regular attendance at schools and the reduction of drop-out rates. To this end, the obligation to provide free primary education would be meaningless if State Parties do not address obstacles that hinder girls from attending school.

The phenomenon of children dropping out of school is common. In Zimbabwe, poverty, religious and cultural practices are the main driving causes why girl children fail to enrol or drop out of school.\textsuperscript{308} Since many pregnant girls and child mothers face obstacles to access education in Africa, Article 11(6) of the African Children’s Charter requires State Parties ‘to ensure that children who become pregnant before completing their education shall have an opportunity to continue their education on the basis of their individual ability’. Thus, State Parties must take steps to ensure that what happens in school is sufficiently valuable and attractive to keep children there.\textsuperscript{309} One can then argue that keeping girls in school is beneficial in minimising unwanted pregnancy as well as ensuring that child mothers realise their right to education, without restrictions.

Similarly, the CEDAW and Maputo Protocol also call upon State Parties to ‘promote the enrolment and retention of girls in schools’ and provide non-formal education for girls who leave school prematurely.\textsuperscript{310} In the context of this study, implementation by the State Parties

\textsuperscript{306}Committee on the Rights of the Child Concluding observations on the second periodic report of Zimbabwe (2016) para 67.
\textsuperscript{307}Committee on the Rights of the Child Concluding observations on the second periodic report of Zimbabwe (2016) para 69.
\textsuperscript{308}See generally Chapter 2 above.
\textsuperscript{309}The CRC Committee has taken a keen interest in State’s implementation of this obligation, not least because the children with the highest rates of school dropout tend to come from the groups generally discriminated against in education – among others, children with disabilities. The Committee has also encouraged countries to give priority to a variety of measures combating school dropout, including comprehensive policy reviews. The Committee has also encouraged countries to give priority to a variety of measures combating school dropout, including comprehensive policy reviews. Hodgkin R and Newell P Implementation Handbook for the UN Convention on the Rights of the Child (2002) 320.
\textsuperscript{310}Articles 10(f) and 12(2)(c) of the CEDAW and Maputo Protocol, respectively. Commenting on these provisions, Durojaye posited that the promotion of literacy must include ‘information related to the sexual health needs of female adolescents’. In addition, Durojaye indicated the existence of gender disproportions ‘between boy and girl enrolment’ especially in secondary schools and concluded that Article 12 of the Maputo Protocol particularly ‘provides a good opportunity to bridge the enrolment gap and to equip girls with sexual health education’.

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of these obligations should have a positive impact on young girls, especially regarding their knowledge on sexual and reproductive health and information.\textsuperscript{311} They also affirm that education is a fundamental tool necessary for the survival and development of young girls.\textsuperscript{312} Indeed, Articles 10(h) and 14(1)(g) of the CEDAW and Maputo Protocol guarantee girls ‘access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning’.\textsuperscript{313} Equipped with sexual health education, adolescent girls can delay early pregnancy and marriage, which are major determinants of child motherhood.\textsuperscript{314}

Furthermore, the CEDAW Committee correctly observed the importance of education as ‘reducing female student drop-out rates, which are often both a cause and a result of premature pregnancy’.\textsuperscript{315} This is why both the CEDAW and Maputo Protocol place a negative obligation on State Parties to refrain from keeping pregnant girls or child mothers from continuing their education.\textsuperscript{316} In doing so, State parties have a positive duty to address negative barriers that may hinder pregnant girls or child mothers’ access to education.\textsuperscript{317} As commonly observed, uneducated girls are less likely to be successful than their educated

\textsuperscript{311}Explaining the importance of education, the African Commission noted that:

‘Education is a fundamental right that affects the growth, development, and welfare of human beings, particularly children and youth. As a human right, education is the primary vehicle by which economically and socially marginalised children and adults can lift themselves out of poverty and obtain the means to participate fully in their community. It has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth’.


\textsuperscript{314}Patel V et al accurately argued that ‘education equips children and adolescents with the core abilities to access resources, to assert their rights, and to serve as agents of change for several social and family problems’. See Patel V et al ‘Promoting child and adolescent mental health in low and middle income countries’ (2008) 49(3) Journal of child psychology and psychiatry 322.


counterparts. As a result, retention of girls in schools and provision of non-formal education for girls who leave school prematurely enables girls to empower themselves economically and socially. For example, education enlightens girls on issues, such as family planning, which is important to control their fertility. Thus, the right to education enables girls to learn responsible behaviours that assist in delaying unwanted pregnancy that leads to child motherhood. It also allows child mothers to ‘develop the knowledge and skills needed to make full contributions in all spheres of public life’ on an equal basis with other girls and boys.

Additionally, Article 12(1)(c) of the Maputo Protocol requires State Parties ‘protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices’. Article 12(1)(c) no doubt will benefit school going adolescent girls who are often sexually targeted by their teachers and fellow students. By addressing issues such as sexual abuse in schools, Zimbabwe will firstly protect pupils against risks such as pregnancy, child marriage, and child motherhood, and secondly, maximise the opportunity of child mothers to access education on an equal basis with other girls and boys.

318 Suen S ‘The education of women as a tool in development: Challenging the African maxim’ (2013) 1(2) Hydra 64.
322 Committee on the Elimination of Discrimination against Women, CEDAW General Recommendation No. 36 (2017) on the right of girls and women to education, CEDAW/C/GC/36, para 24(g).
323 Commenting on these provisions, Durojaye posited that the promotion of literacy must include ‘information related to the sexual health needs of female adolescents’. In addition, Durojaye indicated the existence of gender disproportions ‘between boy and girl enrolment’ especially in secondary schools and concluded that article 12(1)(a) ‘provides a good opportunity to bridge the enrolment gap and to equip girls with sexual health education’. See Durojaye E ‘Realizing access to sexual health information and services for adolescents through the protocol to the African Charter on the Rights of Women’ (2009) 16(1) Washington and Lee Journal of Civil Rights and Social Justice 152.
324 State Parties must also develop and implement safety measures to protect schoolchildren, particularly girls on their way to and from school. African Commission ‘Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples’ rights’ (2011) 36.
325 Thus, the denial of education for adolescent girls based on gender, age or marital status, is a violation of the girls’ right to education. Zimbabwe is on a mission to reduce the adolescent teenage pregnancy rate from 24 per cent to 12 per cent by 2020. Among women ages 15-49, about one in twenty (4.9 percent) were married before age 15, while among women ages 20-49 years, about one in three (32.8 percent) were married before age 18. See ZIMSTAT Zimbabwe Multiple Indicator Cluster Survey 2014, Final Report (2015) 230.
It is also important to highlight that the CRC, African Children’s Charter, CEDAW and Maputo Protocol only oblige State Parties to provide ‘free’ and compulsory primary education. Free secondary education must be progressively realised. The study argues that while free primary education as a vital tool for better child development, secondary education is equally important for the continued growth and development of adolescents, especially girls, as they mature into adult women. The prevalence of girl school dropouts in Zimbabwe is higher at secondary than primary education level. Many of them never enrol or drop out of school due to poverty, or practices, which regard the education of girls as less important than that of boys. Thus, obligating State Parties to provide free secondary education, at least for poor girls, reduces school dropouts associated with pregnancy and early marriages.

In addition, the CRC Committee emphasised that ‘school’ ‘plays an important role in the life of many adolescents, as the venue for learning, development, and socialization’. Indeed, many of the girls become adolescents in secondary school. It is also in secondary school

326 The question as to when exactly the failure of a State to use the available resources to the maximum extent amounts to a breach of the Convention is, therefore, difficult to answer. This is mainly because the obligations to protect and to fulfill are obligations of result, leaving a large discretion to the State as to the means to accomplish these obligations. The precise content of these obligations is, therefore, likely to vary from one State to another; and over time in relation to the same State. Verheyde M ‘Article 28: The right to education’ in Allen A et al (Ed) A commentary on the United Nations Convention on the Rights of the Child (2006) 53.


328 Mawere has argued that more girls drop out of secondary school than primary school because of unwanted pregnancies and early marriages, which they conceive or enter at adolescent stage that normally takes place at secondary level of education. Mawere M ‘Girl Child Dropouts in Zimbabwean Secondary Schools: A Case Study of Chadzamira Secondary School in Gutu District’ (2012) 3(3) International Journal of Politics and Good Governance 3.


330 Moreover, international human rights bodies have also called upon State parties to ensure that ‘no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life’. In its General Comment No. 1, the CRC Committee explained that: ‘Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life’.


331 As argued by Mawere, girls drop out of school more at secondary level than primary level they are prone to unwanted pregnancies and early marriages in secondary school than in primary school. Mawere M ‘Girl Child
where girls learn about sexual and reproductive health, including safe and unsafe sexual behaviours. Attending secondary education would be vital given that sexuality education which is not an open topic to discuss in many home settings. Given the emphasis of the importance of secondary school for adolescents by the CRC Committee, the study argues that State Parties must provide free secondary education for girls. This protects girls from early marriages and unwanted pregnancy, which leads to child motherhood.

In summation, the above provisions lay out the foundation for the right to education. These standards also insist that education should be ‘child-centred, child-friendly and empowering’. Together, these provisions provide a strong basis for sending girls to school on an equal basis with boys. In school, girls learn responsible behaviours that assist in delaying pregnancy and ultimately early motherhood. Child mothers also develop their knowledge and skills essential to empower themselves and contribute to civic responsibility and national development.

### 3.2.3 The right to the highest attainable standard of health

The CRC and the African Children’s Charter in Articles 24(1) and 14(1) guarantee every child the right to have the best attainable standard of physical, mental and spiritual health. According to Eide and Eide, ‘Article 24(1) does not provide for a right of the child to be healthy, which no agent or authority can guarantee’ but a right to ‘the highest attainable standard of...’

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health'. In order to have the best attainable standard of health, Articles 21(1) and 24(3) of the African Children’s Charter and the CRC respectively enjoin State Parties to remove all practices that are prejudicial to the health of children. Thus, State Parties must ensure that parents or guardians guard against the use of practices that are prejudicial to the health of children. Regrettably, Chapter 2 observed that some parents and guardians in the country force their girl children to conform to practices, such as kuzvarira and sexual dalliance. These practices are harmful because they expose girls to sexual exploitation and further affect their mental and spiritual health. Hence, parents and guardians who force their daughters to conform to kuzvarira and sexual dalliance neglect or ill-treat their girl children violate the CRC and the African Children’s Charter.

General Comment 15 of the CRC also gave normative content to Article 24(1) of CRC. The CRC Committee emphasised that Article 24(1) guarantees a child the right to control his or her health and body, as well as sexual and reproductive freedom to make responsible choices. This interpretation is also pertinent to child motherhood. Firstly, it bestows upon girl children, not their parents nor guardians, the sole authority to make sexual and reproductive choices concerning their bodies. Secondly, Article 24(1) forbids parents and guardians to subject girls to cultural practices discussed in Chapter 2 because they directly and negatively affect...
the sexual and reproductive wellbeing of their girl children.344 Thus, Articles 24(1) and 24(3) of the CRC are significant in addressing the issue of child motherhood in Zimbabwe.

Moreover, Article 24(2)(a), which obligates State Parties to reduce ‘infant and child mortality’ is also significant in protecting girls against child motherhood.345 Sexual intercourse is a natural process, which also happens to be common among adolescents and has known health risks.346 This is why the CRC Committee has argued that while Article 24(2)(a) enjoins State Parties to reduce infant mortality, they should also equally reduce ‘adolescent morbidity and mortality, which is generally under-prioritized’.347 Therefore, addressing cultural practices, such as child marriage and chinamwari, can reduce adolescent morbidity and mortality because these practices cause pregnancy among girls.348 Some of these pregnant girls die due to lack of natal medical services,349 and others due to pregnancy complications or childbirth complications.350 Due to stigma, some girls engage in unprotected sex and when they fall pregnant, they carry out risky illegal abortions, which can lead to mortality.351

344 See generally Chapter 2 above.
345 Beracochea et al observed that article 24(2)(a) of CRC is one of the international key provisions that give expression to the Goal 4 of the Millennium Developments Goals that deals with the issue of reducing child mortality. See, Article 24(2)(a) of the CRC, Beracochea E, Sawhney M and Chhetry U ‘Rights-based approaches and millennium development goals’ in Beracochea E, Weinstein C and Evans D (ed) Rights-Based Approaches to Public Health (2011) 92.
346 Traditional research on the psychosexual development of adolescents emphasises that adolescent (or premarital) sexual activity is potentially risky and harmful due to high prevalence rates of sexually transmitted infections (STIs) and unwanted teenage pregnancies. However, emerging research is no longer focusing on potentially risky aspects of young people’s sexual behavior but also on positive outcomes associated with sexual activity in adolescence and emerging adulthood. Thus, emerging research on psychosexual development of adolescents is aligning with the human-rights based approach as regards the autonomy of children on their sexual and reproductive rights. See Boislard MA, van de Bongardt D and Blais M ‘Sexuality (and lack thereof) in adolescence and early adulthood: A review of the literature’ (2016) 6(1) Behavioral Sciences 1-2. 1-24; Kar SK, Choudhury A and Singh AP ‘Understanding normal development of adolescent sexuality: A bumpy ride’ (2015) 8(2) Journal of human reproductive sciences 70-74.
347 Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 17 April 2013, CRC/C/GC/15, para 33.
348 See Chapter 2, sections 2.2 and 2.3, respectively.
351 It is also imperative to address the societal stigma in Zimbabwe associated with the use of condoms and other contraceptives among adolescents, which prevents pregnancy. According to Mr Bernard Madzima, head of family health in the health ministry, illegal abortions are the highest contributory factor causing adolescent maternal mortality at 16 percent. It is then necessary for Zimbabwe to make abortion reforms. See Reuters ‘As teenagers die, Zimbabwean lawmakers call for abortion reform’ available at

http://etd.uwc.ac.za/
While Articles 24(1), 24(2)(a) and 24(3) are significant in protecting girls against child motherhood, Article 24(2)(d) protects the rights of child mothers, as follows: It requires State Parties to take all appropriate measures to ensure that mothers have access to appropriate and adequate pre-natal and post-natal health care.\textsuperscript{352} As noted in Chapter 1, while many girls neither plan nor want pregnancy and childbirth, some intend to become child mothers.\textsuperscript{353} Hence, the latter must equally enjoy right to adequate pre-natal, natal and post-natal health care (emphasis added). For this reason, General Comment 15 of the CRC rightly argued that:\textsuperscript{354}

‘the care that women receive before, during and after their pregnancy has profound implications for the health and development of their children. Fulfilling the obligation to ensure universal access to a comprehensive package of sexual and reproductive health interventions should be based on the concept of a continuum of care from pre-pregnancy, through pregnancy, childbirth and throughout the post-partum period. Timely and good quality care throughout these periods provides important opportunities to prevent the intergenerational transmission of ill-health and has a high impact on the health of the child throughout the life course’.

The provision of appropriate and adequate natal health care would enable girls who fall pregnant to prevent risk situations that can occur during pregnancy and post pregnancy periods that have direct linkages to adolescent morbidity and mortality.\textsuperscript{355} Failure to provide such health care services by State Parties would amount to grave violation of the human rights

\textsuperscript{352}Similarly, Article 12(2) (a) of the ICESCR obliges State Parties to reduce stillbirth rate and infant mortality in order to realise the right to have the best attainable standard of health. See Committee on Economic, Social and Cultural Rights, \textit{General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)}, 11 August 2000, E/C.12/2000/4, para 44. It stressed that failure by State Parties to take all the necessary steps to reduce maternal mortality, violates a series of human rights including the right to have the best attainable standard of health.


\textsuperscript{354}Committee on the Rights of the Child (CRC), \textit{General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health} (art. 24), 17 April 2013, CRC/C/GC/15, para 53.

of girls and child mothers, posing serious threats to their own and their infants’ right to health.\textsuperscript{356}

Finally, a discussion of Article 24(2)(a) has shown that some adolescents engage in unprotected sexual intercourse due to stigma against the use of contraceptives by young children.\textsuperscript{357} In addressing this problem, Article 24(2)(f) of the CRC requires States Parties ‘to develop preventive health care, guidance for parents and family planning education and services’. Commenting on the requirement to ‘develop preventative health care’, the CRC Committee argued that States Parties should create an environment that protects children from violence at home, in schools and in public spaces.\textsuperscript{358}

Furthermore, a lower prevalence in child pregnancy also minimises child infant mortality and morbidity rates.\textsuperscript{359} Due to these positives outcomes, the Zimbabwean government must ensure access to family planning methods as a means of curbing child mortality.\textsuperscript{360} In the same vein, the denial of contraceptives is double jeopardy for girls: first, it is a violation of the adolescent girls’ right to health; second, it leads to the birth of infants by young girls; thereby, becoming child mothers.


\textsuperscript{358}Committee on the Rights of the Child, \textit{General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child}, 1 July 2003, CRC/GC/2003/4, paras 24-27. The Committee on Economic, Social and Cultural Rights in General Comment No. 22 further emphasised that the right to sexual and reproductive health is also indivisible from and interdependent with other human rights. Therefore, State parties must have ‘an adequate number of functioning health care facilities, services, goods and programs’ that their populations should access in order to enjoy the fullest possible range of sexual and reproductive health care. See Committee on Economic, Social and Cultural Rights, \textit{General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)}, 2 May 2016, E/C.12/GC/22, paras 9, 12 and 15.

\textsuperscript{359}In Africa, young pregnancies are associated with complications that can lead to the death of both the adolescent mother and her infant child. Hence, interventions such as the provision for family planning greatly minimises unintended pregnancy and other risks such as early motherhood. See, Katz \textit{et al} ‘Mortality risk in preterm and small-for-gestational-age infants in low-income and middle-income countries: a pooled country analysis’ (2013) 382(9890) \textit{The Lancet} 417-425; Sinha \textit{et al} ‘Association between maternal age at childbirth and perinatal and under-five mortality in a prospective birth cohort from Delhi’ (2016) \textit{Indian Pediatrics} 5.


Apart from the CRC and the African Children’s Charter, the CEDAW and the Maputo Protocol also provide for the right to have the best attainable standard of physical, mental and spiritual health. These treaties are applicable to child motherhood because they define ‘women’ to include girls and adolescents.\(^{362}\) In addition, ‘girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy’.\(^{363}\) Starting with the CEDAW, Article 12(1) read together with Article 14(2)(b) calls upon State Parties to eliminate discrimination against women so that they can have access to health care services, including those related to family planning.\(^{364}\) Article 12(2) further calls upon State Parties to ensure that women have adequate services in relation to, amongst others, pregnancy, confinement and post-natal period.\(^{365}\)

According to Cusack and Cook, Article 12 is significant in that it gives women the right to access reproductive services, which are largely inaccessible to women in need.\(^{366}\) In the context of child motherhood, the exclusion of girls from accessing medical services, such as contraceptives, amounts to unfair discrimination.\(^{367}\) In light of this, General Comment 24 of CEDAW calls upon State Parties to put in place all appropriate measures to ensure that


\(^{366}\)Cusack and Cook observed that single women do not often enjoy their right to access sexual and reproductive services based on their marital status. This argument is valuable in the context of adolescent girls as well because they fail to family planning services, such as condoms based on age, sex, and marital status. See Cusack S, Cook RJ ‘Stereotyping Women in the Health Sector: Lessons from CEDAW’ (2009) 16(1) *Washington and Lee Journal of Civil Rights and Social Justice* (2009) 50.

\(^{367}\)Article 12 of the CEDAW.
women realise their right to health care. For example, State Parties should address biological, socio-economic and psychosocial conditions specific to women that hinder them from effectively enjoying their health rights. They should also put in place sanctions for violations of rights by private persons and organisations. More importantly, State Parties should prioritise the prevention of unwanted pregnancy through family planning and provision of sexuality education, including safe motherhood programmes. Finally, State Parties should amend legislation that criminalises abortion.

Coming to the Maputo Protocol, Article 14 provides for the ‘health and reproductive rights’ of women. Article 14(1)(a) specifically requires State Parties to respect and promote the right of women to control their fertility. This provision is fundamental in giving women their sexual autonomy, especially in African societies where men (as heads of the family) want to decide if, when and how often their wives should have children. As a result, the Maputo Protocol empowers African women, including girls to control their sexuality and reproductive

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371 In addition, State Parties should also monitor the provision of health services for women, infuse gender-sensitive courses on women’s health in training curricular for health workers and ensure that women’s rights to privacy, autonomy, choice, informed consent and confidentiality are respected within health systems. See Hardee K et al ‘Voluntary Family Planning Programs That Respect, Protect, and Fulfil Human Rights—A Conceptual Framework’ (2014) 11.


374 See Article 14(1)(a) of the Maputo Protocol.

capacity; thereby, addressing male dominance, which perpetuates patriarchy and undermines women and children’s rights.\(^\text{376}\)

The right of women to control their fertility has direct linkages with Articles 14(1)(b) and (c) of the Maputo Protocol. They respectively guarantee women ‘the right to decide whether to have children, the number of children, and the spacing of children’ and choose any method of contraception. General Comment 2 of the Maputo Protocol gave normative content to Articles 14(1)(a), (b) and (c). It emphasised that ‘the rights to exercise control over one’s fertility, to decide one’s maternity, the number of children and the spacing of births, and to choose a contraception method, are inextricably linked, interdependent and indivisible’.\(^\text{377}\) In support of the African Commission, Tamale has argued that:\(^\text{378}\)

‘when a woman can control her fertility; when she can choose whether to have children; when she can determine how often she can have children; when she can have sex and not fear that the outcome will be an unwanted pregnancy, she breaks the chains that permanently condemn her to the domestic arena’.

To this end, Articles 14(1)(a), (b) and (c) of the Maputo Protocol lay down normative standards for the protection of girls against becoming child mothers. They call upon State Parties to address laws, policies, socio-cultural attitudes and standards that impede access to contraception/family planning.\(^\text{379}\) Thus, State Parties violate a woman’s right to life, non-

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\(^\text{376}\) Tamale has opined that ‘there is considerable power reposed in the function of reproduction, which is the direct consequence of possessing a womb. Recognising this power, capitalist-patriarchal societies have worked hard to regulate and control it in many different ways. First, society links the direct function of women in the biological reproductive process to their gender roles. Hence, society ‘naturalises’ and ‘normalises’ the role of nurturing and rearing children to women’. This conflicts with Article 14(1)(a) and violates other rights, such as non-discrimination in the Maputo Protocol. See, Tamale S ‘Controlling Women’s Fertility in Uganda’ (2016) 13(24) Sur International Journal on Human Rights 119.

\(^\text{377}\) African Commission on Human and Peoples’ Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, para 23. It is important to highlight that the discussion in this General Comment of Articles 14(1)(a), (b) and (c) is all too brief (three sentences only). The African Commission ought to elucidate further on these provisions in order to give proper normative content and guidance to the State Parties when implementing these provisions. Certainly, there is need for thorough and insightful normative content on Articles 14(1)(a), (b) and (c) by the African Commission since General Comments are soft law.


\(^\text{379}\) In light of Article 14(1), Gawaya and Mukasa rightly argued that the Maputo Protocol ‘legitimises the struggles for gender equality and the promotion and protection of women’s rights as an African struggle. If properly harnessed, it can serve as an effective tool to be used by African women, to support their
discrimination and health if they ‘deprive her of her decision-making power and force her to undergo early pregnancy, unsafe or unwanted pregnancy, with as consequence, the temptation to seek unsafe at the risk of her health and her life’. By clearly setting out what constitutes a violation of Articles 14(1)(a), (b) and (c), the African Commission is unequivocal: gender inequalities that adversely affect girls in receiving sexual health information and accessing medical services, such as contraception necessary in preventing pregnancy, are not to be tolerated.

Furthermore, Article 14(2)(b) of the Maputo Protocol, which is similar to Article 12(2) of the CEDAW, also relevant for the protection of the rights of pregnant girls and child mothers. It requires State Parties to ‘establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breastfeeding’. Article 14(2)(b), therefore, reinforces Articles 14(1)(a), (b) and (c). The right to control fertility and decide the number of children is meaningless if pregnant girls and child mothers lack appropriate and adequate pre-natal, delivery and post-natal health and nutritional services.

Lastly, Article 14(2)(c) authorises legal abortions and gives women the right to terminate a pregnancy, which results from incest or rape or where the continuation of the pregnancy will endanger the health or life of the mother. The African Commission urges State Parties not to put the lives of women by denying them access to legal security procedures, which would...
cause them to resort to unsafe, illegal abortions. Durojaye and Ngwena further emphasised that the right to reproductive health is meaningless if women faced with unwanted pregnancies are forced either to become mothers or to resort to unsafe abortions. Therefore, State Parties must ensure that abortions are not performed in unhealthy conditions, which adolescent girls particularly seek to terminate pregnancies through unqualified or unspecialized service providers. This protects adolescent girls from resorting to unsafe abortions, which may ultimately contribute to their sudden death or life-long illnesses.

However, Article 14(2)(c) of the Maputo Protocol excludes socio-economic reasons and mere request as grounds for abortion. Ngwena has thus argued that the circumscribed abortion grounds do not give sufficient ‘enabling rights’ for women to request abortion. He further argued that excluding socio-economic reasons and mere request as grounds for abortion ‘is a refusal to accept that the majority of women seek abortion because of their socio-economic circumstances and that women are entitled to safe, legal abortion’. Although the Maputo Protocol does not provide for abortion on request and on socio-economic grounds, Nabaneh has argued that the African Commission ‘can employ a purposive interpretation by reading implicitly into Article 14(2)(c) these two grounds or broadly interpreting the right to health’.

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384 African Commission on Human and Peoples’ Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, para 39.


386 Article 14(2)(c) of the Maputo Protocol provides: ‘States Parties shall take all appropriate measures to protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus’.


This would enable girls faced with pregnancy not directly linked with the circumscribed grounds under Article 14(2)(c) to make a choice whether to abort or keep the pregnancy. Therefore, that State Parties must provide abortion upon request, given that the previous Chapter observed that the lack of abortion upon request is contributing to child motherhood.

3.2.4 The right to be free from sexual exploitation

The right to be free from sexual exploitation is also important in protecting girls against child motherhood and other rights of child mothers. The CRC in Article 19 requires State Parties to take extensive measures that protect children against all forms of abuse that they may incur while in the care of their parents and guardians.\textsuperscript{391} Similarly, Articles 34 and 36 of the CRC also obligate State Parties to protect girls against sexual exploitation.\textsuperscript{392} Bennett \textit{et al} have observed that the duty to protect the child against exploitation undoubtedly advances the promotion of the rights of girls given their position as a vulnerable group.\textsuperscript{393} Indeed, protection against sexual exploitation enables the optimal well-being, health, survival and development of girls.\textsuperscript{394}


\textsuperscript{392} The CESCR and ICCPR be careful with abbreviations that you have not introduced Articles 7 and 8 also order State Parties protect children and young persons from economic and social exploitation, including all forms of slavery. They consider that freedom from slavery and economic abuse affords girls the necessary protection from sexual abuse. This argument flows from the fact that both economic abuse and slavery amass elements of control over girls, which forces them to depend on the perpetrator financially. This indicates that child prostitutes can be sexually enslaved for own or their perpetrator’s financial gain. Human Rights Committee, \textit{CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women)}, 29 March 2000, CCPR/C/21/Rev.1/Add.10, para 12. Human Rights Committee, \textit{CCPR General Comment No. 20:}
Moreover, the CRC Committee has recognised girls as being particularly vulnerable to sexual abuse as well as mental and physical violence.\textsuperscript{395} For this reason, State Parties must prevent sexual violence of children by their caregivers because violence against girls is not only unjustifiable, but also preventable.\textsuperscript{396} The CRC Committee has further called upon State Parties to respect the best interests of girls as well as treating them as rights-holders, especially when they are victims of sexual violence.\textsuperscript{397} This is significant since Chapter 2 revealed that parents and guardians sometimes force victims of sexual abuse to marry their perpetrators to cover up the crime, which constitutes about 11 per cent of child marriage in Zimbabwe.\textsuperscript{398} Thus, sexual abuse exposes girls to mental, psychological and physical violence and girls require maximum protection from such sexual danger, which includes child prostitution, cohabitation, and forced marriage.\textsuperscript{399}

Further, the CEDAW Committee has urged State Parties to enlighten parents and guardians on the need to respect girls as rights-holders, whose interests are of paramount consideration.\textsuperscript{400} In its Concluding Observations to Zimbabwe, for example, the CEDAW Committee has urged the State Party to ‘address barriers to girls’ education, such as negative cultural attitudes, early marriage, excessive domestic duties, and take steps to retain all girls


\textsuperscript{396}Committee on the Rights of the Child, \textit{General comment No. 13 (2011): The right of the child to freedom from all forms of violence}, 18 April 2011, CRC/C/GC/13, para 16 and 19. Nifosi-Sutton I \textit{The Protection of Vulnerable Groups under International Human Rights Law} (2017) available at https://books.google.co.za/books?id=_kYrDwAACBAJ&pg=PT42&dq=The%20CRC%20Committee%20has%20recognised%20girls%20as%20being%20particularly%20vulnerable%20to%20sexual%20abuse%20as%20well%20as%20mental%20and%20physical%20violence&hl=en&sa=X&ved=0ahUKEwjdn82J4s_eAhXrA8AKHUFCKgQ6AEILDA#v=onepage&q=The%20CRC%20Committee%20has%20recognised%20girls%20as%20being%20particularly%20vulnerable%20to%20sexual%20abuse%20as%20well%20as%20mental%20and%20physical%20violence&f=false (accessed 12 November 2018).


\textsuperscript{398}See generally, Committee on the Rights of the Child, \textit{General comment No. 13 (2011): The right of the child to freedom from all forms of violence}, 18 April 2011, CRC/C/GC/13,


\textsuperscript{399}Committee on the Rights of the Child, \textit{General comment No. 13 (2011): The right of the child to freedom from all forms of violence}, 18 April 2011, CRC/C/GC/13, para 25.

in school’. In addition, caregivers from the rural areas must be educated on the importance of treating children, regardless of sex, as equals. This will afford girls better access to educational opportunities, since Chapter 2 observed that poverty forces some parents to prioritise the education of boys and the expense of girls. To this end, the CEDAW in Article 6 requires State Parties to take comprehensive measures that ‘suppress all forms of traffic in women and exploitation of prostitution of women’. It affirms the proscription of child prostitution by law and obliges State Parties to address the key determinants of sexual exploitation that render girls susceptible to abuse.

The CEDAW Committee has also been vocal as regards to freedom of women from violence. In its General Recommendation No. 19 for instance, the CEDAW Committee has observed that degrading treatment such as child prostitution is a form of gender-based violence that prejudices the enjoyment of human rights by girls. It has further mandated State Parties to address socio-economic factors such as poverty and unemployment as responsible drivers for child prostitution. The CEDAW Committee has thus recommended State Parties to put in

406 See generally, CEDAW General Recommendation No. 12 that deals with the prohibition of violence against women and girls. The CEDAW Committee recommended that states adopt and implement legislation ‘to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the workplace’. Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I.
408 Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 19: Violence against women, 1992, para 14-15. In addition, the Human Rights Committee has further enjoined State Parties to protect girls against any type of violence, including rape because they are vulnerable persons. It has also ordered the provision of ‘access to safe abortion to women who have become pregnant as a result of rape’. Human Rights Committee, CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), 29 March 2000, CCPR/C/21/Rev.1/Add.10, para 11.
place special measures that give girls adequate protection against sexual assault.\textsuperscript{409} Thus, State Parties that provide for weak and ambiguous laws on the age of consent, as observed in Chapter 2, fail to protect girls against sexual abuse and consequently violate the CEDAW.

Elsewhere, the CEDAW Committee emphasised the indivisibility and interdependence of the rights under the Convention. For instance, General Recommendation No. 34 has urged State Parties to deal with sexual exploitation while paying special attention to rural women and girls.\textsuperscript{410} As such, the CEDAW Committee recommended State Parties to address poverty and lack of education as root causes of sexual exploitation.\textsuperscript{411} Furthermore, sexual exploitation also leads to ill health.\textsuperscript{412} As shown in Chapter 2, child prostitution and rape adversely lead girls to contract STIs and HIV/AIDS in addition to pregnancy.\textsuperscript{413} Being mindful of these health hazards, the CEDAW Committee in its General recommendation No. 15, has recommended State Parties to combat AIDS pandemic by giving exceptional care to the rights and needs of girls.\textsuperscript{414} This implies that State Parties should address sexually exploitative practices because they lead to ill health and early motherhood.


\textsuperscript{410}Committee on the Elimination of Racial Discrimination, General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent, 3 October 2011, CERD/C/GC/34, para 26.

\textsuperscript{411}Committee on the Elimination of Racial Discrimination, General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent, 3 October 2011, CERD/C/GC/34, para 27.

\textsuperscript{412}A study conducted by Bruce on behalf of Population Council and UN Adolescent Girls Task Force showed that at least 50 per cent of sexual assault victims in Africa are girls 18 years and below. See, Bruce J 'Violence against adolescent girls: A fundamental challenge to meaningful equality' (2011) 3.

\textsuperscript{413}Indeed, the Human Right Committee opined that State Parties to protect all deprivations of liberty must broadly interpret the right to liberty and security of persons, including sexual abuse. General Comment No. 14 of the CCPR pointed out that the right to life 'is the supreme right from which no derogation is permitted'. Therefore, State Parties must address sexual maltreatment to prevent ill health that unduly deprives girls of the right to life. Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 5; Human Rights Committee, CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life, 9 November 1984, 14 para 1. Human Rights Committee, CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, para 5; Dinstein Y 'The right to life, physical integrity, and liberty' in Henkin L (ed) The International Bill of Rights: The Covenant on Civil and Political Rights (1981) 126.

In the context of child motherhood as discussed in Chapter 2, the prevalence of sexual exploitation of girls is widely documented. UNICEF Zimbabwe also revealed, among others, school dropout as a negative consequence associated with sexual abuse. Article 27 of the African Children’s Charter is, however, relevant in addressing sexual exploitation that affects all children and girls in particular. It stipulates that:

‘States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

(a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
(b) the use of children in prostitution or other sexual practices;
(c) the use of children in pornographic activities, performances, and materials’.

It is clear from the wording of African Children’s Charter that regional State Parties must adopt special measures to protect the girl child against sexual abuse. These provisions not only protect girls against discrimination and exploitation, but also enable girls to enjoy their human rights. For that reason, the African Youth Charter enjoins State Parties to ‘enact and enforce legislation that protects girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution, and pornography’.

Closely linked with Article 27 is Article 16(1), which requires State Parties to adopt ‘legislative, administrative, social and educational measures to protect the child from sexual abuse’.

These provisions are necessary when dealing with issues such as transactional sexual

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415 A study conducted by Bruce on behalf of Population Council and UN Adolescent Girls Task Force showed that at least 50 per cent of sexual assault victims in Africa are girls 18 years and below. See, Bruce J ‘Violence against adolescent girls: A fundamental challenge to meaningful equality’ (2011) 3.
417 See, article 27 of the African Children’s Charter
418 The importance of Article 23(l) of the African Youth Charter is that it is gender sensitive. The provision requires State Parties to afford, particularly girls, adequate protection against the listed grounds of violence. To achieve this, African governments must enact and enforce legislation, including policies and other institutional measures necessary to promote the emancipation of the girl child. Iroanya RO Human Trafficking and Security in Southern Africa: The South African and Mozambican Experience (2018) 201.
relationships that are rampant in Zimbabwe, which also fuel early pregnancy among girls.\textsuperscript{420} For these reasons, Articles 16(1) and 27 of the African Children’s Charter enjoin African nations to create laws and policies that specifically deal with sexual exploitation of girls.\textsuperscript{421}

Emanating from the above discussion is the link between sexual exploitation and the enjoyment of other human rights by girls. As already established in Chapter 2, the lack of education, accompanied by poverty, can also force girls into prostitution or transactional sex relationships with older men or \textit{sugar daddies}.\textsuperscript{422} While men give the girls money and/or gifts, girls in turn give sex as a token of appreciation.\textsuperscript{423} Chapter 2 further observed that \textit{sugar daddies} have absolute power in these transaction relationships, which forces many vulnerable girls to have unprotected sex if so requested.\textsuperscript{424} It is, therefore, argued that the imbalanced power relations that exist in transactional relationships exposes girls to unintended pregnancies, which may leads to being child mothers.

More importantly, the Maputo Protocol proscribes sexual abuse by defining ‘violence against women’ as ‘all acts perpetrated against women that cause or could cause them,’ among others sexual harm.\textsuperscript{425} Article 3(4) further obligates member states to adopt and implement special measures that safeguard girls from violence, particularly sexual violence.\textsuperscript{426}

\begin{enumerate}
\item[421] These include enacting legislation that protects particularly young girls from abuse by way of putting in place provisions that specify penalties and sanctions that target perpetrators of girl child abuse. See, article 15(2) of the African Children’s Charter; Sloth-Nielsen J \textit{Children’s Rights in Africa: A Legal Perspective} (2013); Gose M \textit{The African Charter on the Rights and Welfare of the Child} (2002) 61-64.
\item[422] Girls have intimate relationships with usually older but wealthy men commonly known as ‘sugar daddies’ or ‘blessers’ as they are now currently known. See, Kuate-Defo B ‘Young people’s relationships with sugar daddies and sugar mummies: What do we know and what do we need to Know?’ (2004) 8(2) \textit{African Journal of Reproductive Health} 13-37. See also Selikow TA & Mbulaheni T “I do love him but at the same time I can’t eat love”: Sugar daddy relationships for conspicuous consumption amongst urban university students in South Africa’ (2013) 27(2) \textit{Agenda} 86-98.
\item[423] According to a study by Dunbar \textit{et al}, 5 percent of the participants had sex in exchange for food, money, or school fees although none of the respondents were pregnant yet. See Dunbar MS \textit{et al} ‘Findings from SHAZ!: A feasibility study of a microcredit and life-skills HIV prevention intervention to reduce risk among adolescent female orphans in Zimbabwe’ (2010) 38(2) \textit{Journal of prevention & intervention in the community} 152. See also Masvawure T ‘I just need to be flashy on campus’: female students and transactional sex at a university in Zimbabwe’ (2010) 12(8) \textit{Culture, health & sexuality} 865-867.
\item[424] See Chapter 2, section 2.8.
\end{enumerate}
preserve their bodily integrity and dignity, State Parties must protect girls against ‘rape and other forms of sexual exploitation’ that lead to unwanted pregnancies and ultimately child motherhood. The Maputo Protocol also observed how sexual exploitation affects the enjoyment of other human rights, such as the right to health. As such, African governments must safeguard girls protected against ‘sexually transmitted infections (STIs), including HIV/AIDS’. Moreover, the African Commission also adopted a General Comment on HIV/AIDS. It purposively argued that the duty ‘to be protected against sexually transmitted infections, including HIV/AIDS, should not be read and understood in isolation from other provisions of the Protocol dealing with other aspects of women’s human rights’. Protecting girls from STIs and HIV/AIDS is peculiar since Chapter 2 revealed *kuzvarira*, sexual dalliance and *chinamwari* as sexually exploitative practices that lead to child motherhood. Thus, the General Comment is relevant in enjoining State Parties to ensure that they take all appropriate measures to protect girls against any form of sexual abuse detrimental to their health, including the risk of contracting STIs and HIV/AIDS.

More importantly, African governments must ‘create an enabling, supportive, legal and social environment that empowers women to be in a position to fully and freely realise their right

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427 Article 4(3) of the Protocol.
430 The adoption of this General Comment is important given that ‘the reproductive and sexual rights of women in the context of HIV still remain inadequately addressed in Africa’. See, K Stefiszyn *et al* Addressing the reproductive health rights of women living with HIV in Southern Africa (2009) 6; Asante AD ‘Scaling up HIV prevention: Why routine or mandatory testing is not feasible for sub-Saharan Africa’ available at http://www.who.int/bulletin/volumes/85/8/06-037671/en/ (accessed 11 October 2016).

http://etd.uwc.ac.za/
to self-protection and to be protected’.\textsuperscript{434} This implies that the Maputo Protocol envisaged a reciprocal protection and enjoyment of human rights of women and girls.\textsuperscript{435} In the context of child motherhood, sexually exploitative practices, such as child marriage, sexual dalliance and 
kuzvarira, impede the health of girls and compromise their future due to lack of education violate their rights. The Maputo Protocol, therefore, advances the rights of women in the region by denouncing gender stereotypes, such as sexual exploitation that negatively affects girls.

Within the above discussion, it is clear that international and regional human rights laws and their treaty bodies afford the enjoyment of human rights for all people. More importantly, these covenants have called upon states to undertake comprehensive, special measures that eliminate inequalities between men and women, boys and girls. Furthermore, State Parties must thoroughly address sexual exploitation and its root causes. To this end, State parties must adequately address the social and economic factors that cause sexual abuse in order to prevent and/or reduce the prevalence of child motherhood.

\textbf{3.2.5 Guarantees against child marriage as a harmful practice}

As discussed in Chapter 2, child marriage is one of the drivers of child motherhood in Zimbabwe. Provisions for the minimum age for marriage at international human rights law are, therefore, important aspects that are applicable to the issue of child motherhood. Article 16 of the CEDAW states that ‘the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage’.\textsuperscript{436} Although Article 16 proscribes child marriage, the convention does not


\textsuperscript{435}See Article 14 of the Maputo Protocol.

\textsuperscript{436}Article 10(1) of the CESCR also requires ‘the free and full consent’ of both intending spouses to render the marriage valid and so does Article 23(3) of the CCPR. The Human Rights Committee has ordered State Parties to specify a universal minimum age for marriage for both men and women. Human Rights Committee, \textit{CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women)}, 29 March 2000, CCPR/C/21/Rev.1/Add.10, para 23.
stipulate the minimum age of marriage.\textsuperscript{437} Similarly, the CRC defines a child as any person below the age 18, unless national laws prescribes a lower age for attaining majority.\textsuperscript{438}

In addition, the Joint General Recommendation/General Comment No. 31 of the CEDAW Committee and No. 18 of CRC Committee of 2014 proscribes child marriage and sets 18 as the marriageable age with some exceptions.\textsuperscript{439} Sloth-Nielsen has argued that the provision for allowing exceptional circumstances to a marriage implies that the legal of marriage set by these treaty bodies is effectively 16 years.\textsuperscript{440} This age of marriage is lower than the one prescribed by African regional treaties.\textsuperscript{441} Consequently, it fails to address the issue of child marriage that affects many African girls.

Notwithstanding this soft approach on child marriage, the CRC and the CEDAW Committees unanimously held that a marriage is invalid if the consent of one other party were obtained through duress, threat or coercion.\textsuperscript{442} Hence, it is a prerequisite that the intending parties to the marriage must give their consent fully and freely.\textsuperscript{443} In addition, CEDAW General Recommendation No. 24 defined child marriage as a harmful practice that predisposes girls to early pregnancy and childbirth.\textsuperscript{444} In addressing morbidity and mortality rates, the CRC and the CEDAW Committees recommended State Parties to register all marriages.\textsuperscript{445} Registering


\textsuperscript{439}Committee on the Elimination of Discrimination against Women Committee on the Rights of the Child Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, 2014 CEDAW/C/GC/31-CRC/C/GC/18 para 20.


\textsuperscript{441}See Articles 2 and 21(12) of the African Children’s Charter and Article 6 of the Maputo Protocol.

\textsuperscript{442}Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, 2014 CEDAW/C/GC/31-CRC/C/GC/18 para 16(d).

\textsuperscript{443}Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994, para 16.


\textsuperscript{445}Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, 2014 CEDAW/C/GC/31-CRC/C/GC/18 para 55(g). The call to reduce mortality rates leads to the promotion and protection of the girls’ right to health. It would be in the best interests of girls not be married while under age so as to protect them from early childbearing as well as preventing them from contracting endemic diseases

http://etd.uwc.ac.za/
all marriages serves as a verification process that can stop every girl without the necessary capacity from entering into marriages.\textsuperscript{446} In the context of child motherhood, the registration of all marriages would ensure that child marriage, a key factor forcing girls become mothers, is effectively addressed.

In the African context, Article 8 of the African Youth Charter provides that ‘young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities’.\textsuperscript{447} Importantly, the African Youth Charter defines \textit{youth} or \textit{young people} as ‘every person between the ages of 15 and 35 years’.\textsuperscript{448} Surprisingly, it does not specify a fixed minimum age of marriage, which is important to tackle child marriage that lead to child motherhood in Zimbabwe.\textsuperscript{449} The African Youth Charter only states that young people of full age can marry. Understood this way, the African Youth Charter effectively stipulates 15 as the minimum marriageable age if one considers the definition of young people as persons between 15 and 35 years old. The standard set in the African Youth Charter is clearly problematic in addressing child marriage and child motherhood.\textsuperscript{450} It prescribes a lower minimum age of marriage than that of the African Children’s Charter and the Maputo Protocol, which is set at 18 years.\textsuperscript{451} As will be shown in Chapter 4 below, the legal gap created by the African Youth Charter encourages parents to bypass the age requirement stipulated by section 78 of the Constitution and marry off their young girls.\textsuperscript{452}


\textsuperscript{447}Article 8(2) of the Youth Charter. Though the Banjul Charter does not provide for the marriageable age, article 18 does guarantee the right to a family.

\textsuperscript{448}Sloth-Nielsen and Mezmur observed the gender bias that is embodied by many traditional practices in Africa. As such, traditional practices, such as child marriage disproportionately affect girls than boys; hence, the need for the Youth Charter to increase its marriageable age. See, Sloth-Nielsen J and Mezmur BD ‘Surveying the research landscape to promote children’s legal rights in an African context’ (2007) 2 \textit{AHRLJ} 348.

\textsuperscript{450}This provision is an oversight as it stands in the way of all attempts to end child marriages and other akin marriages. See a discussion of child marriage in the Malawian context by Mwambene L and Mawodza O ‘Children’s Rights Standards and Child Marriage in Malawi’ (2017) 17(3) \textit{African Studies Quarterly} 21-43.

\textsuperscript{452}See Chapter 4, section 4.2.
Despite the African Youth Charter’s legal confusion about the minimum marriageable age, Article 21(2) of the African Children’s Charter clearly stipulates 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 18 years and make registration of all marriages in an official registry compulsory’. Sloth-Nielsen correctly observed that the minimum marriageable age resonates with the Charter’s definition of a child as any person below 18 years. The African Children’s Charter is, therefore, clear: marrying off girls below the age 18 amounts to child marriage. Article 21 of the African Children’s Charter provides a strong basis for protecting girls by prohibiting practices, such as child marriage, that are prejudicial to their well-being. This is relevant in addressing child marriage and kuzvarira, which Chapter 2 identified as the main drivers of child motherhood.

In addition to the African Children’s Charter, Article 6 of the Maputo Protocol also provides 18 as the age of marriage. Furthermore, the Maputo Protocol requires the free and full consent of intending spouses to the marriage and calls for such marriages to be registered in order for them (marriages) to enjoy legal recognition. These provisions challenge African nations, especially those with lower prescriptions, to increase the marriage age to 18 in order to protect girls against, among others, child motherhood. Moreover, the Maputo Protocol establishes a strong basis to denounce marriages, which take place against the free and full consent of girls. Banda precisely argued that the registration of marriages has ‘the triple benefit of checking to ensure consent, that children under 18 are not being married and, of

455 By defining a child as a person below 18 years as well as setting the marriageable age at 18, this enables marriages to be concluded voluntarily free of duress or threat. See, Alfredsson GS and Eide A The Universal Declaration of Human Rights: A Commentary (1992) 333; Gose M (2002) 53; Sloth-Nielsen J ‘Child marriage in Zimbabwe? The constitutional court rules “no”’ in Atkin B (Ed) International Survey of Family Law (2016) 552.
457 Article 6(b) of the Protocol.
460 Article 6(a) of the Maputo Protocol.
Thus, measures that, among others, prosecute the perpetrators of child marriage are significant to safeguard girls’ rights violations committed various factors that cause child motherhood, as discussed in Chapter 2.462

Lastly, the right of the child to privacy expressly recognised in Article 16 of the CRC is relevant in addressing child pregnancies and motherhood in Zimbabwe. It declares that:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

This is important in the context of the Mildred Mapingure case, where the woman who was a survivor of horrendous criminal acts of rape denied access to reproductive health care including post-exposure Anti-Retroviral therapy and emergency contraception unless a police officer accompanied her. The State further contravened the Mapingure’s right to privacy when she could not access pregnancy options, which was the result of criminal acts of rape. It appears the affected child’s personal predicament and victimhood was turned into a public and social issue, in which she was subjected to police supervision and surveillance, despite the failure of the State system to protect her from so much harm and suffering in the first place.

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462 See generally, Chapter 2 above.
3.3 Recent regional human rights developments in the protection of girls against child motherhood and the rights of child mothers

3.3.1 Model law on eradicating child marriage and protecting children in marriage

The SADC Parliamentary Forum (SADC PF) adopted the Model Law on Eradicating Child Marriages and Protecting Children already in Marriage (SADC Child Marriages Model Law) in 2016.\textsuperscript{463} Due to the global initiatives undertaken to end child marriage, the SADC Child Marriages Model Law specifically aims to end the scourge of child marriage in the Southern African region.\textsuperscript{464} It also serves ‘as a yardstick and an advocacy tool for legislators in the SADC Region’ in addressing child marriage, which violates many of the girls’ human rights.\textsuperscript{465} More importantly, it provides ‘for the training of key government officials and other relevant stakeholders on how to eradicate child marriage and protect children already in marriages and victims of child marriage’.\textsuperscript{466}

Although the SADC Child Marriages Model Law is soft law, it is, however, useful in providing mechanisms that effectively address the issue of child marriage.\textsuperscript{467} In the same vein, the SADC Child Marriages Model Law will also ensure the total commitment to domestication of children’s rights standards in the region.\textsuperscript{468} To this end, this section highlights some of the SADC Child Marriages Model Law provisions that are relevant to protecting the rights of girls against child motherhood in the following:

First, in line with international and regional human rights standards that precede the model law, it guarantees all children the right to equality and non-discrimination.\textsuperscript{469} More precisely, children have ‘equal protection before the law’.\textsuperscript{470} State Parties must then adopt laws,
policies and programmes that treat girls on an equal basis with boys and without any prejudice.\textsuperscript{471} In the same vein, child mothers must also receive equal treatment compared to other girls and boys who are not already in marriage or child bearers.\textsuperscript{472} Thus, the SADC Child Marriages Model Law is important in protecting child mothers and against the violation of their based on marital status, pregnancy or motherhood.

Second, the SADC Child Marriages Model Law also obligates SADC nations to provide equal access to sexual and reproductive health services, which enables girls ‘to enjoy the best attainable state of physical and mental health’.\textsuperscript{473} This implies that girls should access sexual reproductive health services, such as contraception, which are beneficial in minimising the risk of early pregnancy.\textsuperscript{474} As observed in Chapter 1, many SADC countries including Zimbabwe deny girls access to contraception, including free and safe abortion upon request.\textsuperscript{475} This violates the right of girls to enjoy the best attainable health and equal treatment.\textsuperscript{476} It also denies girls who are already child mothers the right to use contraception in order to delay or limit their births.\textsuperscript{477} This violates the girls’ right to have safe sex practices and contraception, which are necessary to maintain their best attainable state of physical and mental health.\textsuperscript{478} As such, the SADC Child Marriages Model Law enjoins State Parties to treat

\textsuperscript{471}Section 5(5)(c) of the SADC Child Marriages Model Law. In addition, Article 11(1)(a) of the SADC Gender Protocol requires ‘State parties shall adopt laws, policies and programmes to protect the girl child by eliminating all forms of discrimination against the child’. The order to eliminate any kind of discrimination requires SADC nations to ensure that girls have equal access to education and health care.

\textsuperscript{472}Section 1(r) of the SADC Child Marriages Model Law.

\textsuperscript{473}Section 10(1) of the SADC Child Marriages Model Law. Similarly, Article 27 of the SADC Gender Protocol enjoins SADC nations to ‘take every step necessary to adopt and implement gender policies and programmes, enact legislation’ that protect women and girls from contracting HIV and AIDS. In order to achieve this, State parties must strive to address the major social, economic and religious factors that perpetuate sexual abuse, in particular. SADC nations should also endeavour to guarantee girls access to sexual and reproductive information, education and health care so that they can enjoy best safe sex practices. In this way, safe sex practices are also relevant in preventing unwanted pregnancy.


all children in an equal manner and necessary to enjoy the best attainable sexual, mental, physical and spiritual health.\footnote{In General Comment 22, the ESCR Committee emphasised that the right to sexual and reproductive health is an integral part of the general right to health because it is interdependent with the enjoyment of other rights, including the rights to life, education and equality. Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, E/C.12/GC/22, paras 1, 5, 9 and 10.}

In addition, the SADC Child Marriages Model Law has expressly recognised ‘a girl child’ as a vulnerable child.\footnote{See also Sloth-Nielsen J ‘Child Marriage in Zimbabwe: The Constitutional Court Rules “No”’ in Atkin B (Ed) International Survey of Family Law (2016) 553; Muchacha M and Matsika AB ‘Developmental social work: A promising practice to address child marriage in Zimbabwe’ (2018) 3(1) Journal of Human Rights and Social Work 5.} This resonates with observations made in Chapter 2 that child marriage, chinamwari and sexual dalliance predispose girls to early sexual relations, which inevitably forces them to become child mothers.\footnote{Section 6(2) of the SADC Child Marriages Model Law.} To circumvent any risk of exploitation, SADC governments should take measures that support girls already in a marriage and prevent any other girl from becoming a victim of child marriage.\footnote{Section 6(1) of the SADC Child Marriages Model Law.} They should adopt laws and policies that give ‘special attention and assistance’ to girls, especially to ‘a vulnerable child in marriage or victim of a child marriage’.\footnote{Section 13(1) of the SADC Child Marriages Model Law.} They must also ‘put in place measures and interventions to mitigate the effects of child marriage and protect a child already in marriage, which measures shall be funded from an anti-child marriage fund’.\footnote{Section 27(1) of the SADC Child Marriages Model Law.} The SADC Child Marriages Model Law also calls upon State Parties to prohibit and protect a girl child to be ‘used in sexual work, induced or coerced to engage in any sexual activity, exposed to obscene or pornographic materials or sexually abused’.

Subsequently, the right to education in section 9 is also relevant to protecting girls from sexual abuse, which is pertinent in addressing child motherhood.\footnote{http://etd.uwc.ac.za/} By making secondary education accessible to all children, the SADC Child Marriages Model Law guarantees adolescent girls and 26. Savage-Oyekunle OA and Nienaber A ‘Adolescents’ access to emergency contraception in Africa: An empty promise?’ (2017) 17(2) African Human Rights Law Journal 517.

http://etd.uwc.ac.za/
access to receive sexual reproductive health information imparted in school (emphasis added). Further, section 26 of SADC Model Law on Child Marriages requires State Parties to:

‘provide opportunities for girls to continue their secondary education, including life skills and vocational training; support the retention of girls in school; support innovative programmes for adolescent girls that provide alternatives to marriage; support awareness programmes in primary and secondary schools on sexual reproductive health matters and the benefits of not marrying before the minimum age of marriage’.

Allowing pregnant girls and child mothers to continue their secondary education is important to enlighten them and other girls about harmful practices that delay or hinder their schooling.488 It has therefore been argued that the better girls are educated, the lesser the risks of them being targeted victims of sexual abuse leading to child motherhood.489 In this regard, education is an important tool a girl must be equipped with to challenge harmful practices that can compromise her education and/or perpetuate sexual abuse. It has extended its mantle of protection by enjoining State Parties to establish community watch committees, under the auspices of traditional leaders or religious authorities, for the prevention of child marriages and protection of children already in marriages’. 490 This is relevant in addressing parental attitudes shown in Chapter 2 that prioritise the education of boys more than that of girls.491 Thus, parents have a duty to ensure that they treat their children equally, including keeping girls and child mothers in school regardless of their marital

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487 Section 26 of the SADC Child Marriages Model Law.
488 Article 11(1) of the SADC Gender Protocol calls upon State Parties to eliminate cultural practices that are harmful and subject girls to economic exploitation and other forms of violence, such as sexual abuse. Chapter 2 has highlighted that child marriage, among others, is one of the major harmful practices that can trigger physical, mental and sexual violence on girls. In addressing this problem, Article 8 of the SADC Gender Protocol prohibits a child, which is a person below the age of 18, to marry ‘unless otherwise specified by law’. This study argues that the ‘claw back’ clause under article 8 weakens the mantle of protection the instrument sought to achieve in addressing gender inequality and inequity.
489 This is why Article 14(1) of the SADC Gender Protocol guarantees girls ‘access to and retention’ in primary and secondary education. The importance of keeping girls in schools cannot be over-emphasised. Sufficient to say, however, is that school-going girls are generally more knowledgeable about sexual and reproductive health issues than girls who stay at home. At the same time, educated girls are more likely to know about their rights including having ‘access to information, education, services and facilities on sexual and reproductive health and rights’. Hence, equal access to education enables girls to become knowledgeable about sexual and reproductive services, such as safe sex behaviours can ultimately prevent early motherhood. It also enables child mothers to realise their right to education, which is pivotal in developing their skills and sustain their survival and development. See Article 11(1)(e) of the SADC Gender Protocol.
490 Section 32(2) of the SADC Child Marriages Model Law.
491 See Chapter 2, section 2.8 above.
status and pregnancy.\textsuperscript{492} By obligating State Parties to respect and promote children’s rights, the SADC Model Law on Child Marriages is pivotal in protecting girls against rights violations caused by child marriage, as discussed in Chapter 2.\textsuperscript{493}

Finally, the SADC Child Marriages Model Law in section 17 prohibits the betrothal of children.\textsuperscript{494} It has defined child betrothal as ‘...any coerced act that may lead to marriage or results in a marriage’.\textsuperscript{495} The importance of this definition is that it categorises girls who cohabit as belonging to a betrothal institution. Indeed, young girls cohabit because of many reasons, among others pregnancy, poverty and child abuse.\textsuperscript{496} In this regard, the SADC Child Marriages Model Law proscribes institutions, such as child cohabitation because they encourage and/or perpetuate child marriage.\textsuperscript{497} Equally important is the imposition of sanctions that deter would-be perpetrators of child betrothal and marriage.\textsuperscript{498} Realising that adolescent pregnancy is one of the key consequence of cohabitation, prohibiting child betrothal that includes cohabitation minimises the risk of child motherhood.\textsuperscript{499}

3.3.2 The Joint General Comment of the African Commission on Human and Peoples’ Rights and the African Committee of Experts on the Rights and Welfare of the Child on ending child marriage

The Joint General Comment of the African Commission on Human and Peoples’ Rights and the African Committee of Experts on the Rights and Welfare of the Child (Joint General Comment) on ending child marriage was adopted in 2017.\textsuperscript{500} This makes the Joint General Comment the latest significant normative development recorded in the African human rights system. As its name suggests, the Joint General Comment aims to prohibit child marriage and

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\textsuperscript{492} See, sections 12(3)(a) and 26(1)(d) of the SADC Child Marriages Model Law.
\textsuperscript{493} This also ensures that girls can maximise their chances of achieving a sustainable livelihood.
\textsuperscript{494} Section 17 of the SADC Child Marriages Model Law.
\textsuperscript{495} See the definition of ‘betroth’ under section 2 of the SADC Child Marriages Model Law.
\textsuperscript{496} Vunganai S ‘Marriage as a survival strategy: The case of young women in Overspill, Epworth’ available at https://www.academia.edu/11075481/MARRIAGE_AS_A_SURVIVAL_STRATEGY?auto=download (accessed 15 November 2018).
\textsuperscript{497} See section 25 of the SADC Child Marriages Model Law that proscribes child marriage.
\textsuperscript{498} Sections 17(3) and 23 of the SADC Child Marriages Model Law.
\textsuperscript{499} Sections 29(1)(e) of the SADC Child Marriages Model Law.
to protect the rights of those at risk of or affected by child marriage, such as child mothers. Thus, it is significant in protecting girls against child motherhood.

In the context of this study, the Joint General Comment is noteworthy for protecting girls against child motherhood and rights of child mothers in the following manner: Firstly, it defines ‘marriage’ as a formal and informal union between a man and woman ‘recognised under any system of law, custom, society or religion’. This implies that the man and the woman must be 18 years or above since the definition of a ‘child’ is a person below 18 years, even if majority is attained earlier under national law. Thus, a ‘child marriage’ is a union entered when both or either one of the parties were under the age of 18. The Joint General Comment also proscribes betrothal or promise of girls into marriage and other harmful practices that negatively affect the fundamental rights of girls.

The prohibition of child marriage or betrothal of girls into marriage is premised on the notion that children under the age of 18 are incapable of giving full and free consent to a marriage. More precisely, the Joint General Comment held that the ‘child’s inability to consent to marriage cannot be supplemented or cured with the addition of parental consent given on behalf of a child’.

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502 Indeed, the Joint General Comment in paragraph 5 noted that its scope ‘includes children in child marriages, children at risk of child marriage and women who were married before the age of 18’. Noting that child marriage disproportionately affect girls, the African Commission and the ACERWC specifically aims to address those factors predispose girls to child marriage. The Joint General Comment on ending child marriage (2017) para 5.


person entering into the union to do so freely and voluntarily, without any undue influence.\textsuperscript{509} Thus, State Parties must address practices such as child marriage, \textit{kuzvarira}, and sexual dalliance identified in Chapter 2 since the Joint General Comment regards these as harmful practices that negatively affect the fundamental rights of girls.\textsuperscript{510}

Secondly, the Joint General Comment has enjoined African governments to domesticate the principle of the best interest of the child in their national law.\textsuperscript{511} The African Children’s Charter provides in Article 4(1) that the best interests of the child shall be the primary consideration in all actions undertaken by any person or authority concerning the child.\textsuperscript{512} Since Articles 4 is similar to Article 3 of the CRC, the CRC General Comment No. 14 noted that this principle must apply to children taking into consideration their personal context, situation and needs.\textsuperscript{513} Thus, it is in the best interest of the child that the government of Zimbabwe, parents, guardians and caregivers keep girls in school regardless of being in a marriage, pregnant or a child mother.\textsuperscript{514} By doing so, the principle of the best interest of the child ensures that child mothers can also enjoy the right to education, which is fundamental for them to maximise their chances of achieving a sustainable livelihood.

As observed in Chapter 2, \textit{kuzvarira}, sexual dalliance, discriminatory religious beliefs and child marriage give priority to the interests of parents at the expense of girl children.\textsuperscript{515} The Joint General Comment further argued that ‘child marriage gives rise to negative physical, psychological, economic and social consequences and curtails the enjoyment of children’s human rights and fundamental freedoms’.\textsuperscript{516} This shows that parental interests that predispose girls to child marriage are inconsistent with the protection of the best interests of

\textsuperscript{509}However, the Joint General Comments requires State Parties to recognise and respect the capacity of adolescent children to make decisions about their lives, the capacity to consent to sex, medical treatment and other acts.

\textsuperscript{510}See Chapter 2, sections 2.2, 2.4 and 2.5.

\textsuperscript{511}The Joint General Comment on ending child marriage (2017) para 8.


\textsuperscript{513}Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para 32-35.

\textsuperscript{514}The Joint General Comment on ending child marriage (2017) para 31.

\textsuperscript{515}See Chapter 2, sections 2.4, 2.5 and 2.7 above.

\textsuperscript{516}The Joint General Comment on ending child marriage (2017) para 8.
the child.\footnote{Therefore, States Parties must ensure that parents, traditional and community leaders must always act in the best interest of children, particularly girls to eradicate child marriage and other akin unions. The Joint General Comment on ending child marriage (2017) para 9; Mwambene L and Mawodza O ‘Children’s Rights Standards and Child Marriage in Malawi’ (2017) 17(3) African Studies Quarterly 24. 21-44.} As will be noted in Chapter 4 below, the Marriages Act prescribes 16 and 18 as the marriageable ages for boys and girls, respectively.\footnote{Chapter 4, section 4.3.4 below.} This has also been established in Chapter 2 that child marriage discriminates against girls more than it affects boys based on sex discrimination.\footnote{Chapter 2, section 2.2 above.} In resolving this inconsistency, the Joint General Comment enjoins Zimbabwe to adopt and enforce legislation that sets the minimum age of marriage at 18 for both boys and girls.\footnote{Furthermore, the principle of the best interest of the child also requires the adoption of effective prevention and redress measures to address those at risk and those already affected by child marriage. The Joint General Comment on ending child marriage (2017) para 9.} This also means that parents cannot force their unmarried pregnant daughters into marriage as this violates human rights law. Ultimately, this can effectively combat discrimination and improve the welfare of girls, including child mothers.

Thirdly, the right to survival and development also protects girls against child marriage, child motherhood and rights of child mothers.\footnote{The Joint General Comment on ending child marriage (2017) para 8.} Article 5 of the African Children’s Charter enshrines the child’s right to survival and development, as does Article 6 of the CRC.\footnote{Mezmur BD ‘The African Children’s Charter versus the UN Convention on the Rights of the Child: A zero-sum game?’ (2008) 23(1) SA Public Law 4.1-29.} Hodgson described ‘survival’ as the meeting of basic needs, which sustain human life.\footnote{Hodgson D ‘Child’s Right to Life, Survival and Development’ (1994) 2 International Journal of Children’s Rights 383.} Thus, the right to survival and development has direct linkages with the right life\footnote{Detrick SL A Commentary on the United Nations Convention on the Rights of the Child (1999) 126.} Indeed, the CRC Committee in General Comment No. 5 has urged State Parties to adopt and implement measures that increase life expectancy.

Similarly, Sloth-Nielsen argued that Article 5 of the African Children’s Charter requires State Parties, such as Zimbabwe, to ensure it provides girls with ‘a healthy and safe environment by accessing medical care, food, education and be free from physical, psychological or mental harm or abuse which can be accompanied by harmful practices leading to child marriages’.\footnote{Sloth-Nielsen J ‘The international framework’ in Sloth-Nielsen J and Gallinetti J (eds.) Child Justice in Africa: A Guide To Good Practice (2004) 23.} This right is therefore relevant in addressing child motherhood since child marriage has direct linkages with the child’s right to survival and development. Therefore, States Parties must ensure that parents, traditional and community leaders must always act in the best interest of children, particularly girls to eradicate child marriage and other akin unions. The Joint General Comment on ending child marriage (2017) para 9; Mwambene L and Mawodza O ‘Children’s Rights Standards and Child Marriage in Malawi’ (2017) 17(3) African Studies Quarterly 24. 21-44.
correlations with early and frequent pregnancy, which in turn is associated with significantly higher rates of infant and adolescent maternal mortality and morbidity.526

In addition, the CRC Committee has called upon State Parties to interpret ‘development’ as achieving the optimal physical and mental growth for all children.527 As observed in Chapter 2 above, child marriage curtails the right to development, as those who marry young often drop out of school.528 Addressing this problem, Kaime has observed that the right to development requires State Parties remove all obstacles that hinder equality of opportunity and distributive justice for all children.529 Likewise, the ACERWC held that the child’s right to development ‘enables children to grow up in a healthy and protected manner, free from fear and want, and to develop their personality, talents and mental and physical abilities to their fullest potential consistent with their evolving capacities’.530 Chirwa has argued that the rights to survival and development are essential preconditions for the enjoyment of other rights.531 Thus, girls must develop into adults who can make their own free choices and enjoy their fundamental human rights, such as the right to choose their own spouses and the right to control their fertility.

Fourthly, the right to child participation is also relevant in protecting girls against child marriage, child motherhood and rights of child mothers. The right to child participation is contained in Articles 7 and 12 of the African Children’s Charter and the CRC, respectively.532 This Joint General Comment has argued that Article 7 must be read together with Article 4(2) of the African Children’s Charter to ensure that a child’s right to communicate and express his or her views and opinions, must be heard and taken into consideration in all judicial and administrative proceedings affecting and concerning him or her.533 Thus, the right to

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526 The Joint General Comment on ending child marriage (2017) para 12.
528 See Chapter 2, section 2.2.
532 See Articles 7 and 12 of the African Children’s Charter and the CRC, respectively.
533 Similarly, the CRC Committee interpreted the right to child participation as ‘a social contract which fully recognises children as rights-holders entitled both to receive protection and to participate in all matters affecting them’.

http://etd.uwc.ac.za/
participation includes three main components: the right to express views; the right to do so freely; and the right to have those views given due weight.\footnote{Morag T ‘The principles of the UNCRC influence on Israeli law’ (2014) 22 Michigan State International Law Review 539.}

Further, Mezmur and Sloth-Nielsen have also observed that the principle of child participation is useful in the protection of girls against cultural practices that lead to child marriages.\footnote{Mezmur B and Sloth-Nielsen J ‘Free education is a right for me: A report on free and compulsory primary education’ (2007) 18.1-58. Mezmur BD ‘Happy 18th birthday to the African Children’s Rights Charter: not counting its days but making its days count’ in Pretoria University Law Press African Human Rights Yearbook (2017) 125.}

Hence, ‘Articles 4(2) and (7) of the African Children’s Charter are violated when children are betrothed or married without giving their personal, free and full consent’.\footnote{The Joint General Comment on ending child marriage (2017) para 13.} Similarly, it is a violation of the right to child participation if sexual offenders were to marry their victims of rape in order to avoid criminal sanctions.\footnote{The Joint General Comment on ending child marriage (2017) para 13.} Taking cognisance to the interdependence of rights in the African Children’s Charter, the African Commission and the ACERWC held that:\footnote{The Joint General Comment on ending child marriage (2017) para 13.}

‘a child’s right to participate in decisions and matters affecting and concerning them shall not be used to justify any exception to the minimum marriageable age of 18 years. For a number of reasons, a child might express an interest in forming a union or entering into a marriage before the age of 18. Although a child has the right to express these views, pursuant to Article 7 of the African Children’s Charter, and should be afforded an opportunity to communicate such views in matters affecting them, the best interests of the child require that no exceptions to the minimum marriageable age of 18 can be tolerated’.

Understood this way, the right to child participation allows girls and child mothers to voice their concerns, needs and views to the extent that they can challenge harmful practices and attitudes that expose them to child motherhood or hinder the enjoyment of their rights s child mothers.

Lastly, the Joint General Comment is also relevant to child motherhood as it proscribes discrimination. It is important to note that in this chapter, section 3.2.1 above undertook a detailed analysis of the relevance of the right to equality and non-discrimination in protecting girls against child motherhood and the rights of child mothers.\footnote{See a discussion of the right to equality and non-discrimination in Chapter 3, section 3.2.1 above.}
General Comment is that it regards child marriage as a manifestation of gender inequality and constitutes sex and gender-based discrimination.\footnote{The Joint General Comment on ending child marriage (2017) para 11.} It views child marriage as a harmful practice that entrenches patriarchy and sex discrimination.\footnote{The Joint General Comment on ending child marriage (2017) para 6.} As such, the African Commission and the ACERWC require States Parties to recognise child marriage as a form of sex and gender based discrimination and respond appropriately towards its elimination.\footnote{The Joint General Comment on ending child marriage (2017) para 21.} Thus, the call to eliminate sex discrimination also enables child brides and child mothers (married or unmarried) to enjoy all their rights guaranteed in the African Children’s Charter on an equal basis with other girls and boys.

3.4 Conclusion

This chapter has examined the international human rights standards that could be implicated in the issue of child motherhood. Moreover, it has been shown that child motherhood has the negative effect of nullifying the enjoyment of human rights that a girl child is entitled to, such as the right to health, education, equality and the right to life, survival and development. In this regard, the chapter has discussed some of the substantive standards set out by international human rights instruments that State parties, which include Zimbabwe, must adopt and implement at domestic levels. These standards ensure that girls can exercise and enjoy human rights on an equal basis with others.

The chapter has also shown that though international legal framework is sometimes ambiguous and incompatible with the realities of the African girl child, it has been gradually developed by soft law and more precisely by regional instruments. More importantly, international human rights instruments place a legal obligation on Zimbabwe to promote, protect, fulfil and respect the rights of girls and protect them from child motherhood. Collectively, the international legal framework provides a sound basis for Zimbabwe to act against adolescent motherhood.

It should be stressed that the protection of girls against child motherhood requires that States Parties not only domesticate international and regional human rights standards, but also implement them accordingly. In light of the international normative framework. The aim of
Chapter 4 is, therefore, to analyse Zimbabwe’s legal framework and its compliance with international and regional standards for the protection of girls against child marriages and the rights of child mothers.
CHAPTER 4

ASSESSING THE COMPLIANCE OF ZIMBABWE’S LEGAL FRAMEWORK WITH HUMAN RIGHTS LAW IN PROTECTING GIRLS AGAINST CHILD MOTHERHOOD AND THE RIGHTS OF CHILD MOTHERS

4.1 Introduction

The previous chapter has laid down the standards for ensuring the appropriate domestic implementation of the international human rights law in Zimbabwe. The preceding chapter has done this by discussing six human rights international standards, namely: the right to health, education, equality, and freedom from sexual exploitation, child marriage, and the age for sexual consent for girls. What then can be derived from the previous chapter is that States parties are required to adopt and implement measures which comprise constitutional, legislative, policy and administrative mechanism; in addition to ensuring the domestication of the relevant treaties, concluding observations and recommendations so that they conform to international human rights law. In summary, chapter three has prescribed the

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543 The importance of examining the conformity of a state party, including Zimbabwe to human rights law has received much jurisprudential and scholarly acclaim. According to De Schutter, human rights standards are internationally accepted norms that have the binding effect of rendering any treaty or law, which is in conflict with them invalid. Furthermore, the Inter-American Court of Human Rights elaborated the supremacy of human rights norms in the Sawhoyamaxa Indigenous Community v Paraguay case. In this case, the Court had to determine whether the bilateral investment treaty between Paraguay and a German investor was justifiable cause to deny to the indigenous community’s right to property over their ancestral lands because the land now belonged to the former. The Court held that enforcing such bilateral investment treaties ‘negates vindication of non-compliance with state obligations under the American Convention; on the contrary, their enforcement should always be compatible with the American Convention’. See, De Schutter O International Human Rights Law: Cases, Materials, Commentary (2010) 59-61; Sawhoyamaxa Indigenous Community v Paraguay (judgment of 29 March 2006, Series C No. 146) paras 140-141.

544 As highlighted in Chapter 3, the international right to health enables girls to access health care services, such as family planning and abortion that are pivotal in reducing the prevalence of child motherhood. The guarantees to freedom from sexual exploitation and cultural discriminatory practices are also useful in tackling contributory factors to child motherhood, such as child marriage, chiramu and kuzvarira as discussed in Chapter 2. The same applies to the guarantees to education, equality and non-discrimination. See also, Chigona A and Chetty R ‘Teen mothers and schooling: lacunae and challenges’ (2008) 28(2) South African Journal of Education 277; CRC General Comment 4 para 26 CRC General Comment No. 15 (2013) para 24.

545 Indeed, the CRC Committee in its 2014 Concluding Observations commended Portugal for adopting child-related legislative measures that conform to the CRC provisions. The CRC Committee further urged the state party ‘to continue to take steps to ensure that domestic legislation is fully compatible with the principles and provisions of the Convention and ensure the effective implementation of child-related laws at the national, provincial and municipal levels’. Thus, it is the duty of State parties, such as Zimbabwe to ensure that they domesticate and enforce human rights norms in their respective domestic bureaucratic and political structures. See, CRC Committee ‘Concluding observations on the combined third and fourth periodic report of Portugal’ (2014) paras 9-10; CRC Committee General Comment No. 5: General measures of implementation of
implementation measures that should be at the core of a country’s domestic implementation framework on child motherhood and the rights of child mothers.

While State parties have an obligation to adopt legislative, policy, administrative and other necessary measures to ensure conformity with international law, this chapter specifically examines the extent to which Zimbabwe’s legislative framework complies with the international human rights standards laid down in Chapter 3 to combat the various causes of child motherhood discussed in Chapter 2. The main justification for this is that Zimbabwe recently enacted a new Constitution in 2013 that replaced the 1979 Lancaster Constitution. According to Madebwe, the 1979 Lancaster Constitution ‘had become bulky, unclear and inaccessible’ which necessitated the need for a new robust and codified Constitution.

In addition, Nhede observed that the former Constitution ‘was not democratic enough to allow full public participation in their areas of interest’. Indeed, the 1979 Lancaster Constitution had been amended so extensively (at least 19 times) since Zimbabwe gained independence in 1980. These amendments made the former Constitution redundant to the extent that it compromised clarity and accessibility to the citizens it intended to serve. 

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Owing to the challenges encountered by the 1979 Lancaster Constitution, the new Constitution ushers a new era of constitutional democracy encapsulated by clear and accessible provisions that are to sustain the Zimbabwean legal system going forward. Indeed, Guzura has posited that ‘constitutions are the bedrock of democratic governance in the contemporary world and any state claiming democratic credentials needs to base its claims on a good constitution and positive constitutionalism’.\textsuperscript{551} It is therefore unsurprising that the Constitution contains a justiciable Declaration of Rights in Chapter 4.\textsuperscript{552} The inclusion of a Declaration of Rights has led Sloth-Nielsen to observe that ‘the new Zimbabwean Constitution has a strong bias towards the protection and promotion of human rights’.\textsuperscript{553}

It is then trite to argue that the new Constitution provides a platform for the transformation and progressive development of the nation ‘through judicial activism, adjudication and constitutional interpretation and also through the realignment of the country’s laws by the government’.\textsuperscript{554} For this reason, the chapter assesses how the Constitution complies with the international treaty law laid down in Chapter 3 and how its provisions can combat the various causes of child motherhood discussed in Chapter 2. Thereafter, the chapter analyses other Acts of Parliament with the view of gauging how they complement the Constitution, comply with human rights treaties, and protect girls against child motherhood and the rights of child mothers in Zimbabwe. The last section concludes the chapter.

\textsuperscript{552}Chapter 4 of the Constitution.
\textsuperscript{554}Tsabora J ‘The challenge of constitutional transformation of society through judicial adjudication: Mildred Mapingure v Minister of Home Affairs and Ors SC 22/14’ (2014) 1 Midlands State University Law Review 54.
4.2 The Constitution

As previously discussed in chapter 2, there are several causes of child motherhood, such as child marriage, which disproportionately affect girls more than boys in Zimbabwe.\[555\] Chapter 3 then additionally observed that Zimbabwe is a state party to various human rights treaties that have provisions, which could be useful in protecting girls against the causes of child motherhood, such as child marriage.\[556\] Several provisions in the Constitution are relevant in addressing child marriage. For example, section 78 guarantees for marriage rights; providing that\[557\]

1. Every person who has attained the age of eighteen years has the right to found a family.
2. No person may be compelled to enter into marriage against their will.
3. Persons of the same sex are prohibited from marrying each other’.

According to Banda, Mavedzenge and Coltart section 78(1) guarantees any person aged 18 or above ‘the right to enter into a marriage and establish a family’.\[558\] This assertion finds support in Sloth-Nielsen who, while commenting on the case of Mudzuru that outlawed child marriage in Zimbabwe, argued that a purposive reading of the right to ‘found a family’ in section 78(1) implies that persons below the age of 18 cannot marry.\[559\] Understood this way, section 78(1)

\[555\] For example, Part 1.1 of Chapter 1 has established that at least 60 per cent of child rape victims are prone to early motherhood. In addition, the Zimbabwe Multiple Indicator Cluster Survey of 2014 by Zimbabwe National Statistics Agency revealed that girls between 15 and 19 years account for 12 per cent of the annual births in the country and approximately 1 in 3 girls marry before reaching 18 years. See, Dube R ‘She probably asked for it! A Preliminary Study into Zimbabwean Societal Perceptions of Rape’ (2013) 13; Zimbabwe National Statistics Agency (ZIMSTAT) Zimbabwe Multiple Indicator Cluster Survey (MICS) 2014 2014, Final Report (2015) x; 18+:


\[556\] Chapter 3 discussed various treaties, such as the CEDAW, CRC, African Children’s Charter and Maputo Protocol as having instrumental provisions that could address the issue of child motherhood. These included provisions such as health, education, non-discrimination, freedom against sexual exploitation and child marriage that the subsequent sections of this chapter shall discuss in more detail.

\[557\] Section 78 of the Constitution provides for the right to marry and found a family. The Mudzuru case affirmed this position when it held that the interpretation of section 78(1) must give the provision a holistic, purposive and transformative meaning. Unlike adopting a restrictive interpretation of the provision as envisaged by the respondents, the apex court commendably argued against the respondents’ contention that ‘whilst persons under eighteen years would, according to them, have the right to marry they would not have the right to found a family’. See Mudzuru case, p42-43.


\[559\] In the case of Mudzuru, the learned DCJ Malaba rightly argued that section 78(1) of the Constitution has the effect of rendering ‘a person who has not attained the age of eighteen...no legal capacity to marry’. See, Mudzuru case, p46; Sloth-Nielsen J and Hove K ‘Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others: A review’ (2016) 15 African Human Rights Law Journal 564.

http://etd.uwc.ac.za/
is consistent with Articles 6(b) and 21 of the Maputo Protocol and the African Children’s Charter, which stipulate 18 as the minimum marriageable age.\footnote{Although international human rights instruments, such as the CRC and the CEDAW do not do not set a minimum age of marriage, their joint Committees have set the age of marriage at 18 years. It is therefore clear that the human rights bodies have unanimously 18 as the universally accepted age of marriage. See, Articles 6(6(b) and 21 of the African Protocol on Women’s Rights and ACRWC and Njun and Ngwe EN ‘International protection of children’s rights: An analysis of African attributes in the African Charter on the Rights and Welfare of the Child’ (2009) 3(1) Cameroon Journal on Democracy and Human Rights 18.}

In addition, section 78(2) buttresses section 78(1) by prohibiting any person to compel another into marriage against their will. This is in keeping with Article 16(2) of the CEDAW, which requires the consent of the parties to marriage.\footnote{Although the minimum age of marriage in international law is not uniform, it vehemently prohibits the ‘betrothal and marriage of a child’. See, Articles 10(1), 16(2) and 23 of the CESC, CEDAW and ICCPR, respectively. For a detailed discussion of the provisions, see Saul B, Kinley D and Mowbray J The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials (2014) 721-861. Freeman MA ‘Article 16: Violence Against Women’ in (eds) Freeman MA, Rudolf B and Chinkin C The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials (2012) 437. Joseph S and Castan M The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary (2013) 666-701.}

Furthermore, the recent 2014 joint General Comment by the CEDAW and the CRC Committees established 18 as the minimum marriageable age for girls and boys, with or without parental consent.\footnote{The CEDAW Committee, in its 2017 Concluding observations on the combined third and fourth periodic reports of the Niger, noted concern on extremely high rates of child marriage due to absence of any legal framework or strategic action that prohibit these harmful practices. Guided by General Comment No. 21 recommended Niger to adopt 18 as the minimum age of marriage and simultaneously obtain the full and free consent of both future spouses to any marriage to combat the prevalence of child marriage. See, Paragraph 16 of the CEDAW/C/GC/21(1994); CEDAW Committee ‘Concluding observations on the combined third and fourth periodic reports of the Niger’ (2017) paras 42 and 43.}

Accordingly, there is full legal protection entitled to girls when state parties set 18 as the minimum age for marriage, and simultaneously require the free and full consent of the intending spouses.

The decision of \textit{Mudzuru} case has accurately domesticated the international position set above by outlawing child marriage in Zimbabwe.\footnote{Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices para 55(f)} The court argued that since a person below 18 years has no legal capacity to marry; this implies that he/she has no legal capacity to marry, which is consistent with Articles 6(b) and 21 of the Maputo Protocol and the African Children’s Charter, which stipulate 18 as the minimum marriageable age.\footnote{Scholars, such as Sloth-Nielsen have observed that the \textit{Mudzuru} case has not only ‘been hailed with acclaim worldwide’ but has already had regional impact on the litigation of child marriage in Tanzania. See, Sloth-Nielsen J and Hove K ‘\textit{Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others: A review}’ (2016) 15 African Human Rights Law Journal 566-567.}

\url{http://etd.uwc.ac.za/}
to consent to such a marriage.565 Section 81(1) of the Constitution puts the matter of the legal effect of s 78(1) of the Constitution beyond any reasonable doubt. It defines a child as a person who is below 18 years of age.566 The effect of section 81(1) on section 78(1) would be that the Constitution guarantees the enjoyment of right to enter into marriage and found a family to the exclusion of anyone who is below the age of 18 years.567 Thus, the Mudzuru judgement unequivocally held that a child lacks the right to found a family; neither can she consent to a marriage.

The absolute prohibition of child marriage is in line with Articles 6 and 21(2) of the Maputo Protocol and the African Children’s Charter that respectively prohibit any form of child marriage. Thus, the purpose of section 78(1) as read together with section 81(1) of the Constitution is to ensure adequate application, interpretation and enforcement of international human rights law in Zimbabwe, which ultimately addresses the issue of child motherhood perpetrated through child marriage.

The fulfillment of the guarantees against child marriage also enables Zimbabwe’s compatibility with international law in the realisation of other human rights, such as non-
discrimination, education, health and freedom from sexual exploitation. As regards the right to non-discrimination, section 56(1) of the Constitution provides that ‘all persons are equal before the law and have the right to equal protection and benefit of the law’. The right to equality and non-discrimination is framed in clear and simple language to the extent that it is easy to deduce its scope and content. For instance, the reading of section 56(1) shows that the provision generally guarantees every person equal protection and benefits of the law. The general guarantee to equal protection is, thus, also applicable to all children, meaning that Zimbabwe must commit to the realisation of equality before the law and equal protection of the law between boys and girls. It also protects the rights of child mothers, such as the right to education that are infringed based on their status as child mothers.

In addition to an encompassing and important right to ‘equality before the law and protection under the law’, section 56(3) goes further and proscribes ‘unfair discrimination’ to which the term is given its meaning in section 56(4). According to section 56(3), ‘unfair discrimination’

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568Articles 2 and 3 of the CRC and the African Children’s Charter respectively provide for the principle of non-discrimination. The Human Rights Committee has defined discrimination as: ‘Any distinction, exclusion, restriction or preference based on a number of grounds such as sex, gender, or birth, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, on equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’. According to Vandenhole, provisions such Articles 2 and 3 of the CRC and the African Children’s Charter respectively prohibit any form of differential treatment of boys and girls without objective and reasonable justifications. This argument is relevant in addressing any impediment that forces girls to become child mothers based on their sex or gender. See, Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination (1989) para 7; Vandenhole W Non-Discrimination and Equality in the view of the UN Human Rights Treaty Bodies (2005) 79; Cusack S and Pusey L ‘CEDAW and the rights to non-discrimination and equality’ (2013) 14 Melbourne Journal of International Law 11.

569As previously discussed in Chapter 3, the ECSR Committee interpreted education as ‘both a human right in itself and an indispensable means of realizing other human rights’. The CEDAW Committee further observed the importance of education as ‘reducing female student drop-out rates, which are often a result of premature pregnancy’. According to the CRC Committee, in General Comment No. 1, education should be ‘child-centred, child-friendly and child empowering’. See, CESC Committee, General Comment No. 13: The Right to Education (1999) para 1; CEDAW Committee, CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health) (1999) para 28; CRC Committee, General comment No. 1 (2001), Article 29 (1), The aims of education paras 2, 3 and 9.

570See Chapter 3, section 3.2.1. Under the African treaties, the right to education is contained in Articles 11 and 12 of the African Children’s Charter and the Maputo Protocol, respectively.

571See Chapter 3, section 3.2.4 above.

572Section 56(1) of the Constitution

573Section 56(1) of the Constitution is derived from section 9(1) of the South African Constitution verbatim. While commenting on the latter provision, Didcott J in S v Ntuli argued that section 9(1) entitles ‘everybody, at the very least, to equal treatment by our courts of law’. In Prinsloo vs Van der Linde, the Court held that section 9(1) makes clear that ‘no-one is above or beneath the law and that all persons are subject to law impartially applied and administered’. See, S v Ntuli 1996 (1) SA 1207 (CC); 1996 (1) BCLR 141 (CC) para 18; Prinsloo vs Van der Linde, 1997 (6) BCLR 759 (CC) para 22.

574Section 56 generally provides that:
occurs when a person has been treated in an unfairly discriminatory manner based on the grounds of, amongst others, religious belief, custom, culture, sex, gender, age. Section 56(4) stipulates two conditions in which unfair discrimination could take place; firstly, ‘if he/she is subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected; or’ secondly, ‘if other people are accorded directly or indirectly a privilege or advantage which they are not accorded’. Scholars, such as Andrews, have argued that provisions such as section 56(3) prohibit any derogation from the constitutional protection of equality with respect to ‘unfair
discrimination solely on the grounds of sex, gender or religious beliefs’. As regards section 56(4), chapter 2 has clearly shown that customary practices such as sexual dalliance, child marriage, kuzvarira directly expose girls to discrimination to which boys are not exposed. Moreover, these practices directly accord boys privileges, which girls do not enjoy. Thus, section 56(3) read together with section 56(4) is vocal in protecting girls from unfair discrimination that manifests through customary practices, such as sexual dalliance, child marriage, and kuzvarira. It also protects child mothers from unfair discrimination that manifests through child marriage and societal attitudes that treat child mothers differently to other girls.

Section 56(5) of the Constitution, however provides for an exemption to the rule of unfair discrimination if it can proved that the discrimination is ‘fair, reasonable, and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom’. The equality issue is also relevant to assess the conformity of cultural practices, such as kuzvarira with section 56(5). For example, it is clear that the practice of kuzvarira, which involves parents giving a daughter to the husband of a sister or another family member who has not been able to have children, for giving birth on their behalf, trumps over the girls’ consent to marriage. Clearly denying girls, which is a vulnerable group of people the right to consent to marriage because of their sex or gender is irrational, and violates girls’ dignity, equality and freedom.

577 Andrews further argued that the inclusion of religious belief, custom, culture, sex, gender and age as grounds for proscribing discrimination protects women from discrimination based on both biological and physical attributes, as well as social and cultural stereotypes about their perceived role and status in society. This argument is relevant to child motherhood since it is a result of social and cultural stereotypes as well as the biological and physical attributes of girls. See, Andrews PE ‘Striking the rock: Confronting gender equality in South Africa’ (1998) 3(2) Michigan Journal of Race Law 328.

578 For a detailed discussion on chiramu, child marriage and kuzvarira, see Chapter 2 section 2.2 on ‘harmful traditions and cultures’.

579 For a detailed discussion on chiramu, child marriage and kuzvarira, see Chapter 2 section 2.2 on ‘harmful traditions and cultures’.

580 Section 56(5) provides for rebuttable presumption that discrimination on any of the grounds listed in section 56(3) constitutes unfair discrimination, unless justified otherwise. Scholars such as Basson, du Plessis and Corder have observed that provisions such as section 56(5) ‘facilitate the proof of unfair discrimination, provided that the discrimination is on the basis of one of the listed grounds’. See, Basson DA South Africa’s interim Constitution. Text and notes (1995) 25; du Plessis LM and Corder H Understanding South Africa’s transitional bill of rights (1994) 145.

581 For a detailed discussion of kuzvarira, see Chapter 2 section 2.2.3.
In line with international human rights law, the right to equality and non-discrimination requires Zimbabwe to:\textsuperscript{582}

‘take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and--

a. such measures must be taken to redress circumstances of genuine need;

b. no such measure is to be regarded as unfair for the purposes of subsection (3)’.

Indeed, the Constitutional Court in the case of \textit{Mudzuru} appositely took upon itself to redress the unfair discrimination girls were suffering through child marriage as a matter of genuine need.\textsuperscript{583} The judgment makes it clear that girls were and remain a vulnerable group of people who need protection from child marriage.\textsuperscript{584} Thus, the Court took an appropriate measure to redress the plight of girl rights violations by outlawing child marriage. However, as the guardian of all children in Zimbabwe, the Constitutional Court was supposed to put in place more stringent measures to ensure maximum protection of girls against child marriage. For example, the Court outlawed child marriage but did not criminalise the practice; neither did it give Parliament a prescribed a time by when its remedial actions of amending laws that allow child marriage must be implemented.\textsuperscript{585}

\textsuperscript{582}Section 56(6) of the Constitution gives effect to various human rights treaties that require state parties to enact legislation that modify discriminatory laws and eliminate societal and cultural attitudes that perpetuate discrimination. See, Articles 2 and 3 of the CRC and ACRWC; Arts 2, and 6 of the CEDAW and the Maputo Protocol; CESCR Committee, \textit{General comment No. 20: Non-discrimination in economic, social and cultural rights} (2009) para 8; CRC Committee, \textit{General Comment 5} (2003) para 12.

\textsuperscript{583}Earlier in 2017, the decision earned Zimbabwe’s Constitutional Court an international award, which was sponsored by a Rwandan organisation (Women’s Link Worldwide) in recognition of the apex court’s judicial milestone. See generally, \textit{Mudzuru} case; The Herald ‘Child marriages: Concourt scoops global award’ available at \url{http://www.herald.co.zw/child-marriages-concourt-scoops-global-award/} (accessed 08 November 2017).


\textsuperscript{585}The study argues that the Court is guilty of playing double standards. For example, the Court had impressively criticised ‘the failure of the CRC to protect the girl–child against’ child marriage. The Court further argued that ‘such a gap reveals discrimination against the girl–child in the sense that the reality of her situation is not taken into account or specifically addressed’. Despite having set such compelling arguments against child marriage, the Court’s decision lacks teeth because it only outlawed but did not criminalise child marriage. This means that any child marriage entered after the decision was handed down (20 January 2016) would only be annulled without taking further criminal action against the wrongdoers. See, Klaaren J ‘Judicial remedies’ in Chaskalson M \textit{et al} \textit{The constitutional law of South Africa} (1998) chapter 9.
Despite the weaknesses of Mudzuru case, section 56 is still vocal: it prohibits inequality and all forms of discrimination. According to Dworkin, ‘the right to equality means the right to be treated as equals...’ Thus, the preferential treatment of boys over girls, perpetrated by cultural practices, discussed in Chapter 2, which have the adverse effects of forcing girls become child mothers, is no longer in conformity with the new constitutional dispensation.

To this end, the right to equality and non-discrimination is imperative to address practices, such as child marriage, kuzvarira and ensure the realisation of a new constitutional order in which all children in Zimbabwe are accorded equal dignity and respect regardless of their sex, gender or age.

As regards the right to education in Zimbabwe, section 75(1) of the Constitution states that:

‘1. Every citizen and permanent resident of Zimbabwe has a right to-
   a. a basic State-funded education, including adult basic education; and
   b. further education, which the State, through reasonable legislative and other measures, must make progressively available and accessible’.

Section 81(1)(f) further buttresses section 75(1), targeting a special group of people by providing that ‘every child, that is to say every boy and girl under the age of eighteen years’ has, amongst others, the right to education.

UNESCO has thus accurately argued that ‘education is a “sacred duty” for countries to fulfill, supporting educational opportunities for all and educational methods best suited to prepare children of the world for the responsibilities of freedom’. The advantages of realising the

586 Dworkin R Taking Rights Seriously (1977) 227. The Human Rights Committee in General Comment No. 18 held that the right to equality and non-discrimination has the desired effect of ‘nullifying or impairing the recognition or enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms’. See, Human Rights Committee, CCPR General Comment No. 18: Non-discrimination (1989) para 6; Mayerson A and Yee S ‘The ADA and Models of Equality’ (2001) 62(1) Ohio State Law Journal 544; Fidan A and Bui HN ‘Intimate partner violence against women in Zimbabwe’ (2016) 22(9) Violence against women 1076.


588 Section 75(1)(f) of the Constitution.

589 Section 81(1)(f) of the Constitution.

590 By reading the two provisions together, sections 75(1) and 81(1)(f) provide an unqualified human right that everyone, but most importantly children are entitled to. This is true when one considers the fact that basic education in formal schooling is ‘primary education’. See, UNESCO ‘World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs Adopted by the World Conference on Education for All Meeting Basic Learning Needs’ (1990) available at http://unesdoc.unesco.org/images/0012/001275/127583e.pdf (accessed 08 November 2017).

591 UNESCO’s assertion received much support from CRC Committee which, in General Comment, held that:
right to education for girls, contained in sections 75(1) and 81(1)(f) of the Constitution, cannot be overstated. First, it is consistent with international human rights standards that oblige state parties to ensure that all children, regardless of their sex, exercise and enjoy their human rights, including education rights. Secondly, it is important to keep girls in school, given that Chapter 2 revealed that many of the girls who do not go to school end up in child marriages or falling pregnant and becoming child mothers. Therefore, keeping girls in school for longer is instrumental in protecting girls against child motherhood as well as protecting the rights of child mothers.

Lastly, keeping girls in school can prevent girls ending up in street situations. Indeed, the CRC Committee in its recent General Comment No. 21 of 2017, observed ‘exclusion from education...and families’ inability to accept children’s resistance to harmful practices, such as child marriage’ as some of the key drivers for children ending up in street situations. This is true in the context of Zimbabwe where Chapter 2 has shown that child marriage, poverty and child relinquishment through HIV/AIDS are contributory factors to child motherhood. Therefore, by ensuring that girls are in school, Zimbabwe would not only theoretically comply

These sentiments were also echoed in a South African case of Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others. The Court held that ‘the right to basic education is an unqualified human right which may be limited only “in terms of a law of general application which is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”’. See, UNESCO ‘Operational definition of basic education’ available at http://www.unesco.org/education/framework.pdf (accessed 08 November 2017); CRC Committee, General comment No. 1, Article 29 (1), The aims of education (2001) para 3; Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others 2011 (8) BCLR 761 (CC) paras 36-38.

See generally Chapter 2 above.

See Parts 2.2.1, 2.5 and 2.8 of Chapter 2. These three drivers exacerbate the risks of girls suffering from sexual abuse on the streets, which can invariably force them to engaging in transactional sex as means of street survival. See, Olsson J ‘Violence against children who have left home, lived on the street and been domestic workers: A study of reintegrated children in Kagera Region, Tanzania’ (2016) 69 Children and Youth Services Review 237; Reza MH ‘Poverty, violence, and family disorganization: Three “Hydras” and their role in children's street movement in Bangladesh’ (2016) 55 Child Abuse & Neglect 66-68.
with international law, but also practically ensure the protection of girls against all forms of abuse or prejudices that lead and/or associated with child motherhood.\textsuperscript{597}

Also in line with international law on the protection of girls against prejudices that lead to child motherhood is the constitutional guarantee to freedom from sexual exploitation.\textsuperscript{598} Section 81(1)(e) closes the net against girl child abuse by providing that they have a constitutional right ‘to be protected from economic and sexual exploitation... and from maltreatment, neglect or any form of abuse’.\textsuperscript{599} The recent 2016 case of \textit{S v Banda; S v Chakamoga}\textsuperscript{600} that dealt with two male adults who, firstly had unlawful sexual intercourse

\textsuperscript{597}The guarantees to ‘a basic State-funded education’ provide a strong basis for sending girls to school on an equal basis with boys. The provision for a basic State-funded education can also encourage girl children to pursue further education that ‘provides a good opportunity to bridge the enrolment gap and to equip girls with sexual health education’. Ultimately, this assists girls to decrease the risks of being child mothers by either abstaining from sex or by practicing safe sex methods. See, Durojaye E, Okeke U and Oludo O ‘Sex Work, HIV/AIDS and Sexual Rights in close gap Africa: The Nigerian Experience’ (2009) \textit{Indian Journal of Human Rights and the Law} 13-58; Biddlecom AE \textit{et al} \textit{Protecting the next generation in Sub-Saharan Africa: Learning from adolescents to prevent HIV and unintended pregnancy} (2007) 24.

\textsuperscript{598}Article 19 of the CRC prohibits all forms of violence in all settings that interact with children. Article 27 of the African Children’s Charter is more specific; it prohibits all forms of sexual exploitation against all children. In the context of child motherhood, the CRC Committee observed that the abuse or violence against children ‘often has a gender component’ that normally affects girls more than boys even though ‘both girls and boys are at risk of all forms of violence’. This argument finds support from chapter 2, which showed that girls experience more sexual violence than boys do. See, CRC Committee, \textit{General comment No. 13: The right of the child to freedom from all forms of violence} (2011) para 18. See also, Sloth-Nielsen J ‘The child’s right to social services, the right to social security, and primary prevention of child abuse: Some conclusions in the aftermath of Grootboom’ (2001) 17(2) \textit{South African Journal on Human Rights} 210-231; Prinsloo IJ ‘How safe are South African schools?’ (2005) 25(1) \textit{South African Journal of Education} 9.

\textsuperscript{599}Section 81(1)(e) of the Constitution. In its 2016 Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the CRC Committee recommended the State party to prevent and tackle all forms of sexual exploitation against girls. These include, measure to prevent the sale of children, child prostitution, child pornography, online child sexual exploitation and abuse. See generally, CRC Committee, \textit{Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography} (2016). Mushunje M ‘The role of social work in the protection of children: Lessons from Zimbabwe’ in Gray M (ed) \textit{The Handbook of Social Work and Social Development in Africa} (2017) 108-120.

\textsuperscript{600}The case of \textit{S v Banda; S v Chakamoga} was brought before the High Court as a matter for criminal review. Briefly, the facts of the matter were that the two were male adults (more than 30 years old) who both had sexual intercourse and impregnated girls aged 15 years. Both accused were charged and found guilty of contravening section 70 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] for having sexual intercourse with a young person. They were sentenced to an effective 12 months direct imprisonment by the trial court. The High Court then challenged the sentence handed down by the magistrate. The High Court then rightly argued that judicial officers must ‘ensure paramountcy of children’s interests in all proceedings before them, including handing down appropriate sentences that deter those preying on children to refrain from doing so in order to give the maximum protection accorded to children by law’. More accurately:

‘The questions judicial officers must always ask themselves in sentencing predatory adults who sexually exploit young persons should be: what message is the judicial service sending, when a person more than twice the age of a child, is sentenced to serve a mere 12 months in jail? Is it in the
with girls aged 15 and secondly, impregnated them, pertinently gave judicial effect to section 81(1)(e). The High Court had to review the sentence handed down by the court a quo, in which the former had found the two accused guilty of the two allegations charged against and had been sentenced 12 months imprisonment.

In handing down judgment, Charewa J held that ‘the courts must be seen to apply the law in a manner that achieves...to effectively protect children from predatory older persons and ensure the eradication, or seriously attempt to eradicate the problem’ of sexual exploitation against vulnerable girls. In addition,

‘the prevalence of sexual offences, the consequential incalculable damage they cause in preventing young persons from attaining their full potential, the damage to the social fabric, coupled with its impact on national development and the need to conform to international standards in the protection of children ought to be additional grounds for handing down deterrent sentences’.

Thus, the court condemned the lower court for handing down a lenient sentence of 12 months direct imprisonment, despite having incumbent constitutional and international law duty ‘to protect children by passing sentences which effect is to ensure that would be marauding adults stop targeting vulnerable and immature young persons’. The study, therefore, argues that girls need protection through strong worded judgements, such as that of S v Banda; S v Chakamoga that send a clear message to the public about Zimbabwe’s paramount best interests of young persons to hand down a sentence that seems to suggest that were it not for S70 of Cap 9:23, this conduct would be perfectly acceptable?’

The High Court then held that the sentence of the trial court was too weak to act as a deterrent measure against other older men from preying on young and immature persons. See generally, S v Banda; S v Chakamoga [2016] ZWHHC 47.


Charewa J proposed a sentence no less than three years as more suitable. The court also alluded to the fact that Zimbabwe is a signatory to both international and regional human rights instruments that prohibit any form of child abuse and require member states to adopt all necessary measures to end all forms of violence, including sexual exploitation. See, Articles 11, 14, 16 and 27 of the African Children’s Charter; S v Banda; S v Chakamoga [2016] ZWHHC 47 p4-S. See also, CRC Committee on the Rights of the Child, General comment No. 20 on the implementation of the rights of the child during adolescence (2016) para 78.
commitment of enforce international law and the courts’ intolerance to ‘predatory older men who prey on young persons by handing down appropriately severe sentences’. This would inevitably address factors, such as sexual dalliance, polygyny, child marriage, kuzvarira, and child rape that expose girls to blatant sexual exploitation inherent to child motherhood.

Another importance of section 81(1)(e) of the Constitution lies in how it could be useful in protecting children who use social media against cyber-sexual abuse in Zimbabwe. The protection against online child sexual abuse is in keeping with Articles 19 and 27 of the CRC and the African Children’s Charter, as respectively discussed in Chapter 3. While commenting on the latter provision, Sloth-Nielsen has argued that the duty to protect children against sexual exploitation and sexual abuse extends:

‘to online behaviours..., such as inappropriate sexting, posting of sexually explicit material on social media, and so forth. Given the rapid increase in access to digital media (especially via cellphones) which is occurring in developing regions, the risk of harm to children via online activities is real rather than illusory.

Indeed, Sloth-Nielsen’s argument dovetails with Article 34 of the CRC that enjoins Zimbabwe to protect children from all forms of sexual abuse, including protection against sexting that may lead to sexual engagements and ultimately unwanted pregnancies. Of note is that sexting has not been widely discussed in Zimbabwe. However, a recent 2015 study by Chatira has shown that ‘42 per cent of individuals reported receiving nude sexts, 20% reported sending semi-nude sexts, 15% reporting sending nude sexts, and 14% reported receiving semi-nude sexts’. According to some female respondents in this study, they

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606 The exercise of the court’s judiciary powers was also in line with section 81(3) of the Constitution. Children are entitled to adequate protection by the courts, in particular by the High Court as their upper guardian. See also, S v Ncube [2013] ZWHHC 335 p5.
609 Sexting is ‘the practice of sending sexually explicit images or text through mobile phones or via Internet applications’.
610 Chatira revealed that 41 per cent of her respondents received sext messages while 32% reportedly sent these kind of messages. Most important to this study is. Chatira FC ‘Exploring teenage sexting in the city of Harare central business district’ (2015) (Africa University Unpublished Thesis) 54.
received and sent sext messages because sexting ‘is a way boys ask out girls these days’.\textsuperscript{611} It is therefore not surprising that some of the respondents perceive sexting as one of the key drivers of early pregnancies among girl teenagers.\textsuperscript{612} Despite the dangers of social media on girl children, Zimbabwe is yet to take tangible measures to reduce the effects of inappropriate use of social media that may lead to child motherhood.

Apart from guarantees of education, non-discrimination and freedom from sexual exploitation, section 76(1) of the Constitution, which specifically guarantees health rights, could be instrumental to address the issue of child motherhood in Zimbabwe. In keeping with Article 14 of the Maputo Protocol, section 76(1) provides that ‘every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services’.\textsuperscript{613} As discussed in chapter 2, some factors that cause child motherhood also affect the girls’ right to health. For example, their parents or guardians would sometimes force girl victims of sexual dalliance, child rape or unlawful sexual intercourse to marry the perpetrators in order to legitimise the ‘illegal sex’.\textsuperscript{614} Thus, giving a purposive and transformative interpretation to section 76(1) would mean that Zimbabwe must give girls access to reproductive health-care services, such as abortion.\textsuperscript{615} Not only does

\textsuperscript{614} Dube R ‘She probably asked for it! A Preliminary Study into Zimbabwean Societal Perceptions of Rape’ (2013) 13.
\textsuperscript{615} The right to access health care services undoubtedly assists girls to prevent both early pregnancy and motherhood. For example, access to basic health care services enables girls to utilise different methods of contraception that may be at their disposal. This enables girls to maximise on safe sex methods while reducing the risks of early pregnancies that normally lead to child motherhood. These arguments echo the CRC Committee which noted, in its General Comment 4, as follows:

‘Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours’.

access to abortion protect girls against child motherhood, but it also prevents girls from pregnancy complications such as obstetric fistula in addition to the realisation of other rights, including education, freedoms from sexual exploitation and child marriage.616

Despite the progressive realisation of access to basic health-care services, including reproductive health-care services pursued by section 76(1), the provision is problematic. The provision is partially inconsistent with international human rights treaties to which Zimbabwe is a party.617 For instance, the guarantees of health rights to people who are either citizens or permanent residents of Zimbabwe ‘only’, contravenes its international obligation of realising the right of ‘everyone’ in the country to the enjoyment of the highest attainable standard of health.618 Accordingly, Sloth-Nielsen has argued that state parties that do not ‘ensure that girls have a healthy and safe environment by accessing medical care, food, education and be free from physical, psychological or mental harm or abuse’ are inconsistent with Articles 5 and 6 of the CRC.619

Section 76(1), however, infringes its counterpart, section 56(3) by treating all temporary residents of Zimbabwe in an unfairly discriminatory manner on such grounds as their nationality.620 It is important to note that, although discrimination is permitted by section 56(5), there are no possible reasonable justifications that can sustain as to why excluding girls from reproductive health services while they are in the country

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617This also conflicts with the CRC General Comment No. 5 that requires Sate parties to adopt measures, such as the provision of health care services to all that increase life expectancy. Thus, the broad aim of various human rights treaties is to see not only a certain group but everyone, irrespective of their gender, age, and nationality increases their physical, mental, spiritual, moral, psychological and social development. See, CRC Committee, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (2003) para 12; CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017) para 14-15.

618For example, Zimbabwe is in breach of Article 24(1) of the CRC that enjoins all states parties ‘to ensure that no child is deprived of his or her right of access to such health care services’. In addition, Zimbabwe has failed to follow the lead taken by the South African and Kenyan Constitutions, which guarantee ‘everyone’ the right to health despite having borrowed most of the constitutional provisions from these jurisdictions. See, sections 27(1) and 43(1) of the Constitutions of South Africa and Kenya, respectively.


620See a discussion on section 56 of the Constitution above.

http://etd.uwc.ac.za/
temporary residents from enjoying the right to access health care services ‘is fair, reasonable and justifiable...based on openness, justice, human dignity, equality and freedom’. Clearly denying temporary residents the right to health simply because of their nationality is irrational and a violation of their dignity (emphasis added). Arguably, section 76(1) of the Constitution exposes girl children who are temporarily resident in Zimbabwe to child motherhood if sexually abused, impregnated and denied health rights, such as abortion and contraception.

Despite the drawbacks found in section 76(1) above, section 76(3) that enjoins Zimbabwe to ensure that ‘no person may be refused emergency medical treatment in any health-care institution’ could be used to address violation rights of child mothers who are temporarily resident in Zimbabwe. However, the Constitution does not define ‘emergency medical treatment’ nor describe what a medical emergency entails. It is, therefore, important to ascertain the meaning of emergency medical treatment in order to see the relevance of section 76(3) in addressing child motherhood generally. Olive et al have defined emergency medical care as ‘that care delivered in the first few hours after the onset of an acute medical or obstetric problem.’ Moore also defines emergency medical service as ‘a comprehensive

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621 This provision is particularly disturbing given that many Zimbabweans have legally or illegally emigrated, some on a temporary basis and others permanently, to other countries especially South Africa where they can access health care services regardless of their status. It is then surprising to understand what Zimbabwe can raise as legitimate reasons to refuse people with a temporary status, whom some may well be South Africans for that matter, access to health care services. There is no doubt section 76(1) is a clear, blatant violation of human rights treaties to which she voluntarily became a member state. For similar arguments, see Crozier B ‘Constitutionality of discrimination based on sex’ (1935) 15(4) Boston University Law Review 728.

622 Section 76(3) is a constitutional provision that provides a constitutional right, which may only be limited in accordance with section 86(2) of the Constitution which states the following:

‘The fundamental rights and freedoms set out in this Chapter may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors, including:

a. the nature of the right or freedom concerned;
b. the purpose of the limitation, in particular whether it is necessary in the interests of defence, public safety, public order, public morality, public health, regional or town planning or the general public interest;
c. the nature and extent of the limitation;
d. the need to ensure that the enjoyment of rights and freedoms by any person does not prejudice the rights and freedoms of others;
e. the relationship between the limitation and its purpose, in particular whether it imposes greater restrictions on the right or freedom concerned than are necessary to achieve its purpose; and
f. whether there are any less restrictive means of achieving the purpose of the limitation’.

623 Olive et al further argue that developing countries, such as Zimbabwe have misconceptions about what emergency care entails. They opine that these low-income countries often give emergency care low priority in

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system which provides the arrangements of personnel, facilities and equipment for the effective, coordinated and timely delivery of health and safety services to victims of sudden illness or injury’.  

In light of the abovementioned definitions, the study argues that section 76(3) of the Constitution enjoins Zimbabwe to provide timely emergency medical care to victims of sudden and/or life-threatening health conditions, such as obstetric fistula, in order to prevent needless mortality.  

This provision is further buttressed by section 81(1)(e) of the Constitution that guarantees ‘every child’ the right to health care services. The importance of reading these two provisions together is that they enjoin Zimbabwe to provide for health care services, such as abortion, that particularly prevent pregnant girls and child mothers suffer from life-threatening health complications, such as obstetric fistula caused by prolonged obstructed labour.

In addition, providing all children access to health care services, including emergency medical treatment, reinforces the rights of the child to equal treatment before the law and to have their interests treated as paramount. Zimbabwean health care institutions and personnel are now constitutionally duty bound to show that any decision affecting a child respects, protects and fulfils a child’s best interests.  

This requires medical workers to give children

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626 Interestingly, the Constitution regards the best interests principle to be ‘a’ as opposed to ‘the’ primary consideration. The study opines that the principle lacks ‘the’ overriding effect in the manner envisaged by the human rights instruments. However, the provision is still instrumental in protecting girls from the risk of child motherhood. For a detailed discussion on the best interests of child principle, see Moyo A ‘Reconceptualising the ’paramouenty principle’: Beyond the individualistic construction of the best interests of the child’ (2012) 1 African Human Rights Law Journal 142-177; Salter EK ‘Deciding for a child: A comprehensive analysis of the best interest standard’ (2012) 33(1) Theoretical Medicine and Bioethics 179-198.

contraceptives if such requests were made and girl children the right to free choice of abortion, without any impediments. Of noteworthy, girls can terminate pregnancies caused by discriminatory and patriarchal practices, such as kuzvarira and sexual dalliance because they expose girls to sexual abuse which conflicts with their best interests as children. Ultimately, the right to health is relevant to prevent girls from becoming child mothers and to realise other rights, such as life and dignity by preventing pregnant girls suffering from obstetric complications that may pose imminent risk to their life. It also enables child mothers to control their fertility; thereby, enjoying the right to health guaranteed by Article 14 of the Maputo Protocol.

The Constitution also lays down the framework that can be useful to address child motherhood in section 63. Section 63 of the Constitution provides that ‘every person has the right...to participate in the cultural life of their choice; but no person exercising these rights may do so in a way that is inconsistent with this Chapter’. By echoing the equality and non-discrimination principle in section 56(2), the Constitution unequivocally prohibits any person to trump another person’s right based the exercise of the right to culture contained in section 63. This means that parents or guardians can no longer force girls to conform to practices,

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628 CEDAW Committee, General Recommendation No. 24: Article 12 of the Convention on women and health (1999) para 2. While commenting on the Best interests principle in Article 3 of the CRC, the CRC Committee observed that best interests of children ‘must be determined on a case-by-case basis’ and ‘attention must be placed on identifying possible solutions which are in the child’s best interests’. The Committee further opined that the words ‘shall be a primary consideration’ means that member states, including Zimbabwe must not consider the best interests of the child ‘on the same level as all other considerations’. For a detailed discussion principle, see CRC Committee, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (2013) p5-6.


630 Sections 29 and 32 of the Constitution. Moreover, the Constitution protects all children ‘from economic and sexual exploitation, from child labour, and from maltreatment, neglect or any form of abuse’. Sections 53 and 54 further complement section 81(1)(e) by respectively prohibiting any subjection of ‘a person to physical or psychological torture’ or cruelty, and ‘slavery or servitude’. The prohibition of slavery is pertinent to the issue of child motherhood given that it (child motherhood) can lead to child marriage, which the Slavery Convention identified as a form of slavery.


632 The provision of the right to culture, subject to respecting the equality and non-discrimination principle complies with Article 2 of the Maputo Protocol, which draws its inspiration from Article 2 of CEDAW. Scholars such as Durojaye, Murungi and Banda have argued that the Maputo Protocol is the most progressive human rights treaty that contains progressive provisions among others, ‘addressing gender inequality and the advancement of women’s sexual and reproductive health and rights’. See, Durojaye E and Murungi N ‘The African Women’s Protocol and Sexual Rights’ (2014) 18(7-8) The International Journal of Human Rights 881–
such as *kuzvarira*, child marriage that violate their girls’ rights to dignity, personal liberty and freedom from sexual exploitation. Section 63 also implies justifications of brothers-in-law who used to sexually abuse girls in the name of *chiramu* no longer hold; neither can religious groups use religious teachings to violate the rights of children. Thus, the explicit specification that customs and culture are subject to the non-discrimination and equality provisions is a huge step protecting girls against various forms of abuse mentioned in Chapter 2 that lead to child motherhood.

Finally, the constitutional entrenchment against any form of abuse forbids parents and guardians to mistreat their children. Indeed, section 81(d) of the Constitution recognises parents as duty bearers of the children’s upkeep. Thus, parents and guardians should shy away from abusive behaviours towards their children so that they can grow up within functional family settings. This is vital to prevent and/or reduce the risks of child abuse that may act as push factors and force girls to early pregnancy, early marriages and ultimately early child bearing.

### 4.3 Other legislative frameworks

Apart from the Constitution, Zimbabwe also has a number of statutes that are relevant in protecting girls from becoming child mothers. These include: the Children’s Act; the Criminal

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897; Banda F ‘Blazing a Trail: The African Protocol on Women’s Rights comes into Force (2006) 50(1) *Journal of African Law* 72–84. To do so, Zimbabwe has an obligation under the Protocol to remove cultural practices that discriminate against women, including girls by, as prescribed by the ECSR Committee, taking all appropriate steps to eliminate social and cultural patterns and practices that are discriminatory against women, including remedial measures to address past injustices to women. See, CESC Committee, *General comment no. 21 on the right of everyone to take part in cultural life* (2009) para 16; HRC, *CCPR General Comment No. 28: Article 3 on the equality of rights between men and women* (2000) para 1.

633 Of noteworthy is that provisions, such as section 63 of the Constitution are ‘aimed at protecting and upholding the best interests of the child’ principle contained in section 81(2) against child marriage, *kuzvarira,* *chiramu* and religious beliefs that violate the rights of vulnerable children, especially girls. See similar arguments in Mwambene L ‘Child Care, Protection and Justice Act: Merging Customary Family Law’ (2012) *International Survey of Family Law* 201-214. See also a similar discussion on the relevance of polygyny in African constitutional societies in Mwambene L ‘What is the future of polygyny (polygamy) in Africa?’ (2017) 1 Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad 1-33.

634 Machingura has argued that religious groups, such as Apostolic Faith Sects force girls to marry while young and has significantly contributed to child motherhood and pregnancy complications in teenage mothers. See Machingura F ‘A Diet of Wives as the Lifestyle of the Vapostori Sects: The Polygamy Debate in the Face of HIV and AIDS in Zimbabwe’ (2011) 5(2) *Africana* 202.

635 Section 81(d) of the Constitution.

Law (Codification and Reform) Act; the Education Act; the Marriages Act; the Customary Marriages Act; the Sexual Offences Act; the Gender Commission Act; and the Termination of Pregnancy Act.

4.3.1 Children’s Act [Chapter 5:06]

The Children’s Act, which is the principal child protection legislation in Zimbabwe, has provisions that are a direct response to the country’s obligation to address the issue of child motherhood. For example, section 7(1) of the Children’s Act provides:

‘if any parent or guardian of a child or young person... ill-treats, neglects, abandons or exposes him or allows, causes or procures him to be... ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or to injure or detrimentally to affect his health or morals or any part or function of his mind or body, he shall be guilty of an offence’.

This provision is consistent with both section 81(1)(e) of the Constitution, Articles 19 and 21 of the CRC and the African Children’s Charter that respectively oblige state parties to protect children, including girls against any form of abuse. As discussed in Chapter 2, parents tend to condone and perpetuate practices, such as chiramu and child marriage that are sexually abusive towards girls. For example, chiramu allows older brothers-in-law to have sexual

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637 The Children’s Act [Chapter 5:06].
638 As observed by Jonas, parents often take it upon themselves or influence to decision of other elder family members to decide to whom their daughters get married. Hence, section 7(1) is relevant in addressing those cultural practices discussed in Chapter 2 that empower parents and guardians to ill-treat, neglect or expose girls to unnecessary suffering when they force their children into early marriage that mostly result in child motherhood. See, Jonas O ‘The practice of polygamy under the scheme of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa: A critical appraisal’ (2012) 4(5) Journal of African Studies and Development 147; paragraph 18 of the CEDAW Committee General Recommendation No. 21 of 1994.
639 Sloth-Nielsen has further argued that provisions, such as Article 19 of the CRC ensure that ‘girls have a healthy and safe environment by... being free from physical, psychological or mental harm or abuse which can be accompanied by’ practices that cause child marriage and lead to child motherhood. See, Sloth-Nielsen J ‘The international framework’ in Sloth-Nielsen J and Gallinetti J (Ed) ‘Child Justice in Africa: A Guide To Good Practice’ (2004) 23. See also a commentary of Article 27 of the African Children’s Charter by Thompson B ‘Africa’s Charter on Children’s Rights: a normative break with cultural traditionalism’ (1992) 41(2) The International and Comparative Law Quarterly 437-438.
640 See part 2.2.4 of Chapter 2. In addition, scholars such as Mahachi-Harper and Togarasei have observed that the practice of chiramu entitles a brother-in-law enjoyment of exclusive ‘rights and privileges’ of having casual romantic or sexual relationship with his wife’s younger sisters or nieces. More worrying is the observation that ‘when the son-in-law visits the in-laws without his wife, he is given a sister-in-law to “entertain” him over the night’. This clearly shows that parents and guardians in Zimbabwe take active roles in perpetuating the practice of chiramu since the practice is also widely viewed as ‘nothing more than just flirtatious banter which is quite acceptable and harmless’. See, Togarasei L ‘Healing Culture, Healing AIDS1: A Review of some African Cultural and Religious Beliefs and Practices in Contexts of HIV and AIDS’ (2015) 1(1) Journal for the Study of the Religions of Africa and its Diaspora 52; Mahachi-Harper SN Echoes in the shadows (2004) 47.
intercourse with their younger sisters-in-law, including minor girls under the guise of teaching them how to please men with sex in bed once they get married. These practices violate section 7 of the Children’s Act as girls succumb to forced and/or unwanted pregnancies, resulting in child motherhood as well as emotional and psychological health suffering.

Therefore, Section 7(1) is pivotal in enjoining Zimbabwe to address cultural practices such as *chiramu* and child marriage that ill-treat, neglect, and expose girls to child motherhood.

In addition, section 7(2) of the Children’s Act places a duty on parents and guardians to ensure that they give their children adequate care and protection. The provision specifically enjoins parents and guardians to provide their children with adequate food, clothing and medical care as well as any other necessities, including adequate supervision of the children themselves.

Relevant to child motherhood is section 7(2)(d) of the Children’s Act that can be construed as requiring parents and guardians to take all the necessary steps to protect girls from, amongst others, risks of child rape. The provision further places a duty on parents and guardians to

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642 Therefore, section 7(1) of the Children’s Act is relevant in stopping the perpetuation of *chiramu* and child marriage by parents or guardians because they cause young girls unnecessary suffering as child mothers and detrimentally to affect their physical health through pregnancy complications, such as obstetric fistula. For a further discussion on obstetric fistula, see [http://www.ics.org/committees/fistula/publicawareness/obstetricfistulaanintroduction](http://www.ics.org/committees/fistula/publicawareness/obstetricfistulaanintroduction) (accessed 04 January 2018).

643 Section 7(2) of the Children’s Act provides that:

‘subject to subsection (4), a parent or guardian of a child or young person shall be deemed to have abandoned or neglected that child or young person if he has—

(a) failed to provide or to pay for adequate food, clothing or lodging for him or failed to pay for the maintenance of a child or young person who has been placed in an institution; or

(b) failed to provide or pay for dental, medical or surgical aid or other effective remedial care necessary for his health or well-being; or

(c) left the child or young person in the care of some other person or an institution and thereafter has shown inadequate interest in the well-being of that child or young person for a period in excess of one year; or

(d) in the case of a child, failed to provide adequate supervision of that child; or

(e) in the case of an infant, left that infant unattended in circumstances which were likely to cause the infant physical or mental distress or harm’.

644 Section 7(2)(d) of the Children’s Act regards parents and guardians who fail to provide adequate supervision of their children as having abandoned or neglected them. This prevents girls to suffer from the effects of maltreatment during their growth as young children. For a detailed discussion on the maltreatment of adolescents, see Erikson MF, Egeland B and Pianta R ‘The effects of maltreatment on the development of young children’ in Cicchetti D and Carlson V (Ed) *Child maltreatment theory and research on the causes and consequences of child abuse and neglect* (1989) 647–684.
report cases of child rape to relevant stakeholders, such as the police, immediately upon knowledge of commission of such crime.\(^{645}\)

Reporting child rape cases does not only bring sexual offenders to justice but also ensures that girl rape victims receive necessary medical care services, such as terminating pregnancies conceived as a result of unlawful intercourse.\(^{646}\) By taking these steps, both parents and the State would be complying with section 81(1) of the Constitution that guarantee every child the right to parental care, freedom from sexual exploitation, and access to health care services.\(^{647}\) Ultimately, adequate supervision of children would ensure firstly, the protection of girls from sexual violence through child rape and secondly, the protection of girls from child motherhood when they terminate pregnancies conceived because of unlawful intercourse. Adequate supervision of children also implies that parents and guardians must always act in the best interests of the children, regardless of the fact that they are boys or girls, have children of their own or not.

Moreover, the requirement by section 7(2) of the Children’s Act for parents to provide adequate food, clothing and medical care ensures that children, especially girls are neither ill-treated, neglected, abandoned nor exposed to risky practices, such as prostitution.\(^{648}\) This provision complements section 81(e) of the Constitution that enjoins the State to protect all

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\(^{645}\)This ensures that parents and guardians can no longer partake nor condone sexually abusive activities that affect their girl children because the law obliges them to report incidents of an alleged case of sexual violence committed on their young ones. This also uproots the culture of covering up for sexual offenders who would otherwise be close family or community members. Reporting crimes of child rape also ensures that parents and guardians can no longer cover up for such crime by forcing victims of child rape into marriages to legitimise the ‘illegal sex’. See also, Dube R ‘She probably asked for it! A Preliminary Study into Zimbabwean Societal Perceptions of Rape’ (2013) 13.

\(^{646}\)This would comply with section 76(1) of the Constitution that, in keeping with Article 14 of the Maputo Protocol, specifically provides that ‘every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services’. Access to medical services, such as abortion, would ensure the prevention of early pregnancy, as well as early motherhood by girls who would unfortunately be victims of child rape. For a commentary on Article 14 of the Maputo Protocol, see Durojaye E ‘The potential of the Expert Committee of the African Children’s Charter in advancing adolescent sexual health and rights in Africa’ (2013) 46(3) *Comparative and International Law Journal of Southern Africa* 389-390. See also; Centre for Reproductive Rights (CRR) Briefing Paper: The Protocol on the Rights of Women in Africa; an instrument for advancing reproductive and sexual rights (2005) 4–7.

\(^{647}\)See a discussion of sections 81(1)(d), (e) and (f) under part 4.2 of Chapter 4 above.

\(^{648}\)Chapter 2 section 2.5 observed that poverty and the lack of education are some of the contributory factors that expose girls to child motherhood. They do so in the sense that girls of school going age usually drop out of secondary school due to lack of school fees. ZIMSTAT 2015 statistics has shown that 60 and 40 per cent of girls in urban and rural areas respectively drop out of school, which increases their risk of being forced by parents into early marriage. See, Zimbabwe National Statistics Agency (ZIMSTAT) ‘Zimbabwe Multiple Indicator Cluster Survey 2014’ (2015) 212; see also Abuya BA, Onsomu EO & Moore D ‘Determinants of educational exclusion: Poor urban girls’ experiences in-and out-of-school in Kenya’ (2014) *Prospects* 44(3) 391.
children from economic and sexual exploitation. The Children’s Act further holds parents and guardians criminally liable to a fine or up to two-year imprisonment if they ill-treat or neglect their children or fail to prevent another person from inflicting harm that is detrimental to the children’s wellbeing.

The criminal liability sanctioned by the Children’s Act on parental child neglect is consistent with the CRC Committee’s recommendations that State parties must take all the necessary measures to prevent, among others, girl child prostitution. Section 7 is buttressed by section 12(1) of the Children’s Act that forbids parents to expose girls ‘to the risk of seduction or prostitution or living a life of prostitution’ by requiring them to exercise due care and supervision of the girl children. The study, therefore, argues that the less girls are exposed to risks of prostitution, the less their chances of falling pregnant and becoming child mothers.

Although the Children’s Act does not explicitly criminalise a person who exposes girls to prostitution, such parents and guardians face prosecution for neglecting the general wellbeing of girls under section 7. This then signifies that parents must guard against the perpetration of practices and crimes, such as chiramu, kuzvarira, child marriage, child rape and prostitution because they ill-treat the physical, sexual as well as mental wellbeing of girl

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649 See a discussion of sections 81(1)(e) under part 4.2 of Chapter 4 above. In addition, section 7(2) of the Children’s Act also complies with Article 12 (1) of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) that enjoins Zimbabwe to address all forms of sexual exploitation that affect girls.

650 Section 7(3) of the Children’s Act.

651 In addition, the 2016 Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography by the CRC Committee recommended the State party to prevent and tackle all forms of sexual exploitation against girls. These include, measure to prevent the sale of children, child prostitution, child pornography, child sex tourism, online child sexual exploitation and abuse. See generally, CRC Committee, Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2016). See also, Mushunje M ‘The role of social work in the protection of children: Lessons from Zimbabwe’ in Gray M (ed) The Handbook of Social Work and Social Development in Africa (2017) 108-120.

652 Section 12(1)(a) of the Children’s Act

653 This position finds its basis from section 2(h) of the Children’s Act that has given the Children’s Court the power, under section 7, to hear matters relating to children in need of care, which includes those children living in circumstances that may expose them to prostitution. In addition, prosecution of parents and guardians who neglect their children is fundamentally important to ensure that caregivers do not fail to take proper control, care and to the detriment to their children’s welfares or interests. See, sections 2(c) and (j) of the Children’s Act.
children. Therefore, parents who encourage the perpetration (either expressly or impliedly) of the ill-treatment of girls should be prosecuted.

In addition, the Children’s Act gives the Children’s Court the power to hear matters relating to children in need of care under section 19. Relevant to child motherhood is the power by the Children’s Court to hear matters relating to pledging of girls by their parents to another person to settle a customary dispute. This implies that parents who subject girls to the practice of girl child pledging, commonly known as kuzvarira, can be summoned before the Children’s Court. As discussed in Chapter 2, research has shown that 25 percent of adolescent girls in Zimbabwe are in unions akin to the practice of kuzvarira.

The prevalence of kuzvarira predisposes girls to child motherhood because its primary function is to marry off young girls so that they bear children for their husbands where the elder wives are barren. For this reason, section 19 of the Children’s Act is critically important for the following reasons: first, the provision complements section 81(3) of the Constitution that entitle all children adequate protection by the courts, including the Children’s Court. Secondly, section 19 of the Children’s Act prevents girls from subjection to the practice of kuzvarira. Lastly, the provision mandates the Children’s Court to prosecute parents and guardians who perpetuate such practice since it forces young girls into becoming

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654 See Chapter 2 for detailed discussions on chiramu, kuzvarira, child marriage, child rape and prostitution.
655 For example, section 7(3) of the Children’s Act provides that any person, including a parent or guardian ‘may be convicted of an offence specified in subsection (1) notwithstanding that—
(a) actual suffering or injury or detriment to health, morals, mind or body has been obviated by the action of another person; or
(b) actual suffering or injury or detriment to health, morals, mind or body has not occurred; or
(c) the child or young person, who is the subject of the charge, has died’.
656 Section 19(1) of the Children’s Act prescribes the Children’s court to hold inquiry in respect of child or young person to ‘determine whether he is a child in need of care and, if such be the case, shall inquire into and determine the appropriate order to be made in terms of this Act’.
657 See, section 2(m) of the Children’s Act.
659 Statistically, the Zimbabwe Demographic and Health Survey (ZDHS) reported that ‘nine out of 10 girls aged 15 to 19 are sexually active, and two out three first have had sex before the age of 15’. See ZIMSTAT Zimbabwe Multiple Indicator Cluster Survey (MICS) 2014 2014, Final Report (2015) x.
child mothers, as part of putting in place deterrent measures against girl child abuse in Zimbabwe.

Apart from the power to hear matters relating to pledging of girls by their parents to another person to settle a customary dispute, section 2(n) of the Children’s Act vests the Children’s Court with power to hear matters relating to parents who interfere with the education as well as physical and mental development of their children.661 This is in line with section 75 of the Constitution and Articles 10 and 20 of the CEDAW and the African Children’s Charter that urge Zimbabwe to prioritise education as a prerequisite for girls to combat poverty and other abuses such as sexual exploitation.662 Section 2(n) of the Children’s Act is particularly relevant in addressing the prevalence of child motherhood because: firstly, the lack of education can force girls living in poor families to marry while young.663 The lack of education in addition to poverty diminishes the capacity of married girls to negotiate safe sex practices, which increases the risks of early childbearing and rearing.664 Secondly, poor families tend to persuade their daughters into polygynous marriages as means of receiving lobolo as well as access to their son-in-law’s wealth.665

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661 Section 2(n) of the Children’s Act. The prohibition against interference with the education as well as physical and mental development of girls is important given that the incidence of early marriages in Zimbabwe is a widely reported challenge. Analysing its impact, Innocenti Research Centre provided that, ‘the imposition of a marriage partner on children or adolescents who are in no way ready for married life, and whose marriage will deprive them of freedom, opportunity for personal development, and other rights including health and well-being, education, and participation in civic life…’ See, Innocenti Research Centre ‘Early marriage: Child spouses’ (2001) 17; see also Her Zimbabwe ‘Child Marriages Still a Cause for Concern’ available at http://herzimbabwe.co.zw/2015/07/child-marriages-still-a-cause-for-concern/ (accessed 08 January 2018).

662 Focusing specifically on the African Children’s Charter, Article 20(1) unequivocally places duty of care not only on parents, but also on ‘legal guardians’ meaning that ‘the extended family and other de facto care-givers play a role especially in traditional and rural communities in Africa’ in child upbringing. If parents and guardians, with the aid of State assistance where necessary, were to provide material assistance especially with regard to health, education, clothing and housing, then Zimbabwe can start moving in the right direction towards realising the rights of girls that includes freedom from sexual exploitation, emotional and psychological violence that comes with child motherhood. See, Mezmur BD ‘The African Children’s Charter versus the UN Convention on the Rights of the Child: A zero-sum game?’ (2008) 23(1) SA Public Law 25-26.

663 The right to education affords all children to enjoy other rights, such as equality, personal integrity and dignity without any discrimination and based on equal opportunity. Realising its importance, ECSR Committee interpreted education as ‘both a human right in itself and an indispensable means of realizing other human rights’. In a similar fashion, the CRC Committee has expressly stated that articles 28 and 29 of the CRC must be read together as giving both ‘access’ and ‘content’ to the right to education. See, CRC General Comment No. 1 para 10; UNICEF (2007) 407 and ESCR General Comment 13 para 1.

664 For poor child brides, they must always please their husbands because they (girls) solely depend on them (husbands) for survival. Without an education, poor girls are vulnerable to becoming child mothers when they marry to escape poverty. See also, Leclerc-Madlala S ‘Age-disparate and intergenerational sex in southern Africa: the dynamics of hypervulnerability’ (2008) 22 Aids 18.

665 For a further discussion on child marriages and kuzvarira, see Chapter 2, sections 2.2.1 and 2.2.3 above.
Thirdly, research has shown that poor families often have a tendency of prioritising boy child education\textsuperscript{666} at the expense of girls’ who are forced to stay at home doing household duties or into early marriage.\textsuperscript{667} Lastly, interfering with girls’ education can also force them into having transactional sex relationships with rich and often elderly men.\textsuperscript{668} These relationships often empower men to demand sex be performed by their standards, usually without a condom.\textsuperscript{669} Such sexual activities may result in unintended pregnancies leading girls into child motherhood.\textsuperscript{670} Hence, the power of the Children Court to adjudicate matters where parents interfere with the education of children is vocal in removing all obstacles that may cause girls to become child mothers or interfere with the rights of girls as child mothers.

The Children’s Act further provides for adoption of children in need of care in section 57.\textsuperscript{671} Given that poverty is one of the common factors for child motherhood, adoption of babies of teenage girls could be instrumental in alleviating girls from poverty, thereby enabling them to ‘grow up with dignity among other children and to develop their potential and self-

\textsuperscript{668}Girls have intimate relationships with usually older but wealthy men commonly known as ‘sugar daddies’ or ‘blessers’ as they are now currently known. See, Selikow TA & Mbulaheni T “I do love him but at the same time I can’t eat love”: Sugar daddy relationships for conspicuous consumption amongst urban university students in South Africa’ (2013) 27(2) Agenda 86-98.
\textsuperscript{670}In Chapter 2 section 2.2, it was observed that initiation ceremonies, such as chinamwari that teach girls how to please men with some sexual acts in bed, cause girls to have stronger desires for sexual experimentation and gratification than those who do not undergo such rituals. This has led scholars, such as Masama and Thabethe, to argue that chinamwari encourages its girl initiate into premature sexual relations, thereby increasing its chances of becoming pregnant and child mothers. See, Masama J ‘Childline’s counselling services for survivors of child sexual abuse in Zimbabwe: A descriptive study’ (Unpublished LLM thesis, University of South Africa, 2014) 55. See also, Thabethe SN ‘A case of culture gone awry: An investigation of female initiation ceremonies and Nyau dance vigils on the rights of teenage girls to education and sexual reproductive health amongst migrant communities in Norton, Zimbabwe’ (Unpublished LLM thesis, University of Zimbabwe, 2008) 38.
\textsuperscript{671}Section 57 of the Childrens Act implements Article 24 of the African Children’s Charter that obligates Zimbabwe to provide for the appropriate adoption processes as well as monitoring of the well-being of the adopted child. In addition, the CRC seriously regards adoption that it is the only issue within the entire convention that ‘the best interests of the child are to be the primary consideration’. See, Gose M The African Charter on the Rights and Welfare of the Child (2002) 110. Mezmur has reckoned the CRC’s approach towards adoption as clearly demonstrating the primacy of a “child-driven” approach to adoption issues’. See also, BD Mezmur ‘From Angelina (To Madonna) to Zoe’s ark: What are the ‘A–Z’ Lessons for Intercountry Adoptions in Africa?’ (2009) 23(2) International Journal of Law, Policy and the Family 150.
In keeping with Articles 19 and 27 of the CRC and the African Children’s Charter that protect girls against sexual abuse, section 59(2) of the Children’s Act prohibits the Children’s Court from granting adoption orders to sole male applicants who intend to adopt minor females. Thus, the Children’s Act plays a fundamental role in making sure that not only do the State and parents or guardians not ill-treat or expose their children to abuse, but also ensures that other measures that support the growth and well-being of children, such as adoption, do not expose girls to sexual abuse that may lead to child motherhood.

Despite its positive attributes, the Children’s Act does not dedicate a provision that domesticates the principle of the best interests of the child to be of paramount consideration in all matters relating to children. According to Zermatten, the importance of the best interests of the child principle is two-fold: first, it ‘ensures that the child is fully able to exercise her/his rights and that all concomitant obligations towards children are fulfilled’ and second, ‘the best interests principle is applied to help decision-makers render the most appropriate decision for children’. This implies that whenever a decision-maker, such as parents, guardians and the State must decide on any matter concerning a child or children, their decisions must have the most positive or the least negative impact.

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673 However, an exception to this rule is that the Children’s Court can approve sole male applicants who intend to adopt minor females if it ‘is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order’. Overall, section 59(2) of the Children’s Act is an invaluable provision that would ensure that Zimbabwe complies with international children’s rights law through the implementation of a child-driven approach championed by the CRC and the African Children’s Charter.

674 According to Zermatten, the principle of the best interests of the child principle ‘is an innovative concept introduced by the United Nations Convention on the Rights of the Child. It serves as a foundational element of the Convention and has been identified by the Committee on the Rights of the Child as one of the Convention’s four general principles’. Zermatten J ‘The best interests of the child principle: Literal analysis and function’ (2010) 18(4) The International Journal of Children’s Rights 483. Unsurprisingly, this Western principle has also been the bedrock of the African Children’s Charter, which recognises the right of the best interests of the ‘African’ child to be heard whenever a decision is to be taken concerning a child or a group of children. See, Thompson B ‘Africa’s Charter on Children’s Rights: A normative break with cultural traditionalism’ (1992) 41(2) The International and Comparative Law Quarterly 435.

675 Zermatten J ‘The best interests of the child principle: Literal analysis and function’ (2010) 18(4) The International Journal of Children’s Rights 483. He goes on to argue that it is of paramount importance that the decision-makers must always uphold the best interest of the child principle whenever they make a decision concerning children, especially with matters concerning family law, child protection, children in alternative care and migration.

676 Decisions concerning children must have the most positive or the least negative impact because girls, for example, are a vulnerable group not only in Zimbabwe, but also in all communities in general. Even in the Western world, the Council of Europe has also recognised that ‘children must remain at the heart of decision makers’ concerns’ because ‘socially vulnerable children and youth have a higher risk of being excluded from
In the context of child motherhood, the best interests of the child principle is relevant in challenging practices and attitudes that give priority to the interests of parents at the expense of girl children in Zimbabwe.\(^{677}\) For example, it addresses practices such as *kuzvarira* and child marriage that allow parental interests to take priority over that of girl children when they marry off the latter as form of debt payment.\(^{678}\) The best interests of the child principle also tackles the practice of *chiramu* that perpetuates girl child sexual abuse in the country because it allows brothers-in-law to have sexual intercourse with their younger sisters’ wives or nieces without their consent.\(^{679}\) It is evident that these practices serve the interests of adults at the expense of children, which then expose girls to risks of early marriages and child motherhood since they are sexual in nature.\(^{680}\) Therefore, the lack of such a significant provision from a child specific legislative framework shows that Zimbabwe is not yet ready to defend the rights of the girl child or children so that they can realise their fullest potential.

In addition, the definition of a ‘child’ contained in the Children’s Act is also problematic. Section 2 of the Act defines a child as a person below the age of 16, which firstly contradicts with the Constitution, the African Children’s Charter and the Maputo Protocol that stipulate 18.\(^{681}\) Guided by the Constitution, all persons under the age of 18 are still minors, which mean


\(^{679}\) The observation by Mahachi-Harper that *chiramu* is condoned as a socially acceptable harmless ‘innocent, flirtatious banter’ shows parents sometimes exhibit negative influences towards girls that affect them negatively, for example when a young girl has been impregnated by her brother-in-law resulting in early motherhood. See, Mahachi-Harper SN *Echoes in the shadows* (2004) 47.


\(^{681}\) Guided by the Constitution, all persons under the age of 18 are still minors, which mean participatory trajectories’. Council of Europe ‘The best interests of the child – A dialogue between theory and practice’ (2016) 7; 43. Although vulnerable, this does not mean that children are incapable but must be accorded full human rights, which require more, not less protection. See de Boer-Buquicchio M ‘Raising Children Without Violence’ available at [http://krinarchiv.org/resources/infoDetail.asp?ID=6407](http://krinarchiv.org/resources/infoDetail.asp?ID=6407) (accessed 22 January 2018); Ennew J *Street and Working Children: A guide to planning* (1994) 35.
that, by defining a child as anyone at 16 years, the Children’s Act does not send a strong message of legal protection against abuses, such as child marriage that is both prevalent and a contributory factor to child motherhood in Zimbabwe.

Secondly, as the principal child protection legislation, the prescription of 16 years as majority age has arguably led to legal deficiencies in supporting legislation that seek to complement the Children’s Act in protecting and enhancing the welfare of children. For example, the Criminal Law (Codification and Reform) Act (CLCRA), as was discussed earlier on in chapter 1, prescribes 16 as the age of sexual consent on the basis the Children’s Act stipulates 16 as the majority age. Since the Constitution and its landmark Mudzuru judgment have set and confirmed the age majority as 18, the differences between the ages of majority (marriage) and consent has the ‘undesirable effect of encouraging sexual irresponsibility among men’ which increases the girls’ risk of early pregnancy and ultimately, child motherhood.

In conclusion, the foregoing discussion has observed that despite the weaknesses of the Children’s Act, the legislation remains one of the main enabling factors in implementing the rights of children and girls in particular.

becoming child mothers more than those it protects. The study also argues that the CRC can be the root cause for stipulating such an age because Article 1 defines a child as any person less than 18 years ‘unless under the law applicable to the child, majority is attained earlier’. For a criticism of the absence of minimum age, see McGoldrick D ‘The United Nations Convention on the Rights of the Child’ (1991) 5(2) International Journal of Law, Policy and the Family 132-169.

Section 70 of the Code. In addition, Feltoe argues that the crime of statutory rape, for example, ‘seeks to protect children between 12 and 15 from sexual exploitation. A person who engages in sexual activity with a child in this age group with the consent of the child is still guilty of statutory rape as the law lays down that the consent of the child is no defence to this charge’. See, Feltoe G ‘Strengthening Our Law on Child Sexual Abuse’ (2017) The Zimbabwe Electronic Law Journal available at https://www.zimlii.org/zw/journals/Strengthening%20Our%20Law%20on%20Child%20Sexual%20Abuse.pdf (accessed 25 January 2018).

Mushohwe B ‘A positive step towards ending child marriages: A review of the Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others case’ (2017) 1 Midlands State University Law Review 22-23. This dissertation contends that the prescription of a lower age of sexual consent than marriage encourages males to behave more irresponsibly given the lack of legal sanction for having sexual intercourse with a 16 or 17 year old (emphasis added). See also, Chapter 1 section 1.2 above.

http://etd.uwc.ac.za/
4.3.2 Criminal Law (Codification and Reform) Act [Chapter 9-23]

The Criminal Law (Codification and Reform) Act (the Code) aims to ‘consolidate and amend the criminal law of Zimbabwe’. The main contribution of this Code towards the protection of children is that, despite lack of stand-alone provisions in various international human rights instruments that deal with the issue of sexual consent, it contains provisions that deal with ‘sexual crimes’ that cause child motherhood in Zimbabwe. For instance, section 94 of the Code prohibits the pledging of any girl below the age of 18. Section 94 provides:

‘(1) A lawful custodian or relative of a female person who—

(a) at a time when the female person is under the age of eighteen years, or without her consent, hands her over to another person as compensation for the death of a relative of that other person, or as compensation for any debt or obligation; or

(b) at a time when the female person is under the age of eighteen years, or without her consent, enters into an arrangement whereby the female person is promised in marriage to any man, whether for any consideration or not; or

(c) by force or intimidation compels or attempts to compel a female person to enter into a marriage against her will, whether in pursuance of an arrangement referred to in paragraph (a) or (b) or otherwise,

shall be guilty of pledging a female person and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding two years or both.

(2) Any party to an arrangement or marriage referred to in subsection (1) may be charged as an accomplice to pledging a female person’.

This provision is compatible with Articles 16(2) and 21(2) of the CEDAW and the African Children’s Charter as well as sections 2 and 17 of the SADC Model Law on Child Marriages, which expressly prohibit the betrothal of girls and boys. This compliance has two main positive implications: first, section 94 of the Code sends a strong message that Zimbabwe is

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684 See Preamble of the Criminal Law (Codification and Reform) Act (the Code).

http://etd.uwc.ac.za/
willing to cooperate with international actors in ending girl child abuse. Second, the abuse of
girl children under the guise of culture is no longer justifiable. Furthermore, section 94 of the
Code complements section 63 of the Constitution, which provides that ‘every person has the
right...to participate in the cultural life of their choice; but no person exercising these rights
may do so in a way that is inconsistent with this Chapter’. This is in line with international
human rights law that guarantees the right to equality and non-discrimination and requires
Zimbabwe to ‘take reasonable legislative and other measures to promote the achievement of
equality and to protect or advance people or classes of people who have been disadvantaged
by unfair discrimination’.687

As regards child motherhood, Section 94 of the Code protects girls against ‘unfair
discrimination’, which is embedded in most cultural practices and religious beliefs, such as
kuzvarira and child marriage as discussed in Chapter 2.688 These practices often discriminate
against girls and child mothers based on the grounds of, amongst others, religious belief,
custom, culture, sex, gender, age.689 By outlawing child pledging which often results in
marriage, section 94 of the Code also conforms to section 56(3) of the Constitution that
prohibits any derogation from the constitutional protection of equality with respect to ‘unfair
discrimination solely on the grounds of sex, gender or religious beliefs’.690 Thus, parents or
guardians can no longer force girls to conform to practices, such as kuzvarira because they
violate girls’ rights to dignity, personal liberty and freedom from sexual exploitation. In the
event where parents or guardians continue or intend to perpetuate child pledging, section 94

686 See also a commentary on ‘contradictory perspectives on the notions of justice and the constitutional
imperatives of equality, particularly on women and the girl child’ in Mwambene L and Kruuse H ‘The thin edge
687 Section 56(6) of the Constitution gives effect to various human rights treaties that require state parties to
enact legislation that modify discriminatory laws and eliminate societal and cultural attitudes that perpetuate
discrimination. See, Articles 2 and 3 of the CRC and ACRWC; Arts 2, and 6 of the CEDAW and the Maputo
Protocol; CESCR Committee, General comment No. 20: Non-discrimination in economic, social and cultural
688 Machingura has argued that religious groups, such as Apostolic Faith Sects force girls to marry while young
and has significantly contributed to child motherhood and pregnancy complications in teenage mothers. See
Machingura F ‘A Diet of Wives as the Lifestyle of the Vapostori Sects: The Polygamy Debate in the Face of HIV
689 See, section 56(3) of the Constitution discussed in Chapter 4 section 4.2 above.
690 Andrews further argued that the inclusion of religious belief, custom, culture, sex, gender and age as
grounds for proscribing discrimination protects women from discrimination based on both biological and
physical attributes, as well as social and cultural stereotypes about their perceived role and status in society.
This argument is relevant to child motherhood since it is a result of social and cultural stereotypes as well as
the biological and physical attributes of girls. See, Andrews PE ‘Striking the rock: Confronting gender equality in
of the Code has the desirable effect of criminally sentencing such perpetrators and/or accomplices to a fine or direct imprisonment.

Apart from section 94, section 87 of the Code is also relevant to the prevalence of child motherhood in Zimbabwe. It provides:

‘Any parent or guardian who causes or allows his or her child under the age of eighteen years to associate with prostitutes or to be employed by any prostitute as a prostitute or to reside in a brothel shall be guilty of allowing a child to become a prostitute and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding ten years or both’.

This provision is also in keeping with Article 34(b) of the CRC, which expressly enjoins state parties to protect children from all forms of exploitation, including prostitution or other unlawful sexual practices. More specifically, section 87 of the Code dovetails with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), which states in Article 1 that states parties ‘shall prohibit the sale of children, child prostitution and child pornography’. The reading together of section 87 of the Code with Articles 1 and 34(b) of the OPSC and CRC shows that the former complies with Articles 19 and 27 of the CRC and the African Children’s Charter by taking such a legislative measure to protect the girl children ‘from all forms of sexual exploitation and sexual abuse’.

Section 87 further imposes a criminal punishment on any person who perpetuates child prostitution. This complies with the CRC/CEDAW Committees, which recommended State
Parties ‘to draft and amend criminal laws must be coupled with protection measures and services for victims and those who are at risk of being subjected to harmful practices’.

The Code has fulfilled this obligation by imposing criminal punishments to persons who observe harmful practices, such as child prostitution that are detrimental to the girls’ wellbeing. Section 87 of the Code is, thus, vocal in dealing with parents or guardians in poverty-stricken families who force their minor daughters into prostitution or engage in transactional sexual activities that may lead to early pregnancy. Hence, the reduction of girl child prostitution would also minimise risks of early pregnancies and child motherhood in Zimbabwe.

Section 65(1) further buttresses section 87 of the Code, stating that:

“If a male person knowingly has sexual intercourse or anal sexual intercourse with a female person and, at the time of the intercourse—

(a) the female person has not consented to it; and

(b) he knows that she has not consented to it or realises that there is a real risk or possibility that she may not have consented to it;

he shall be guilty of rape and liable to imprisonment for life or any shorter period’.

Just like section 87, section 65 is also consistent with Articles 19 and 27 of the CRC and the African Children’s Charter, respectively. According to Mezmur, these human rights treaties position Zimbabwe as the guarantor of enforcing the protection, respect and fulfilment of child rights. As such, Zimbabwe (through the Code) has put in place these legislative mechanisms as part of its international law mandate of protecting girls from all forms of sexual exploitation, including rape. Furthermore, the study argues that the emphasis on the issue of ‘consent’ in section 65 is borrowed and/or in keeping with Articles 6(a) and 16(1)(b) provided in exchange of money’. Cedrangolo U ‘The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the jurisprudence of the Committee on the Rights of the Child’ (2009) 7. See also, Rafferty Y ‘International dimensions of discrimination and violence against girls: A human rights perspective’ (2013) 14(1) Journal of International Women’s Studies 1-23.

Paragraph 54(k) of the CEDAW/C/GC/31/CRC/C/GC/18 (2014).

As discussed above, the main objectives of Articles 19 and 27 of the CRC and the African Children’s Charter are to mandate state parties to ensure that they take all necessary measures at their disposal to protect all children from all forms of sexual exploitation, including child rape.

of the Maputo Protocol and CEDAW, which provide that a marriage is valid only if it was entered with the free and full consent of both parties.\textsuperscript{697} While the former deals with sexual consent and the latter marriage, the study opines the desired result sought to be achieved by these remain largely the same, which is ensuring ‘that women and men enjoy equal rights and are regarded as equal’ in matters relating to all spheres of life.\textsuperscript{698}

As such, this legislative framework is progressive towards addressing all forms of sexual violence, such as child rape, polygyny, \textit{kuzvarira} and \textit{chiramu} that can force girls into child motherhood. Hence, the Code undoubtedly fosters the protection of girls as well as the enjoyment of their rights in Zimbabwe.

**4.3.3 Education Act [Chapter 25-04]**

The Education Act, which is the principal legislation that domesticates the right to education contained in the human rights instruments, is also a significant piece of legislation that can address the issue of child motherhood in Zimbabwe.\textsuperscript{699} The Education Act explicitly states, in section 4(1), that ‘notwithstanding anything to the contrary contained in any other enactment, but subject to this Act, every child in Zimbabwe shall have the right to school education’.\textsuperscript{700} An interpretation of this provision unambiguously would imply that education is a fundamental right in Zimbabwe and more importantly, it is a fundamental right that all children who reside in the country must exercise and enjoy fully.

\textsuperscript{697}Both Articles 6(a) and 16(1)(b) of the Maputo Protocol and the CEDAW require states parties to ‘ensure that women and men enjoy equal rights and are regarded as equal partners in marriage’. In order to achieve this equality, the two instruments further require states parties to ‘enact appropriate national legislative measures to guarantee that no marriage shall take place without the free and full consent of both parties’. This implies that any marriage concluded without the free and full consent of the female spouse shall have no legal effect.

\textsuperscript{698}See Articles 6(a) and 16(1)(b) of the Maputo Protocol and the CEDAW.

\textsuperscript{699}The Education Act gives effect to section 75 of the Constitution. Section 75(1) provides that ‘every citizen and permanent resident of Zimbabwe has a right to (a) a basic State-funded education, including adult basic education; and (b) further education, which the State, through reasonable legislative and other measures, must make progressively available and accessible’.

\textsuperscript{700}Section 4 is in line with various human rights treaties that provide for education. On an international level, see Articles 10, 13, 26 and 29 of the CEDAW, ECSR, UDHR and CRC that respectively guarantee girls the right to education. For a commentary on Article 29 of the CRC, see generally, CRC Committee, General comment No. 1 (2001), Article 29 (1), \textit{The aims of education}. Similarly, the guarantees of the right to education are also contained Articles 11, 12 and 17 of the African Children’s Charter, Maputo Protocol and Banjul Charter, respectively.
In addition, section 4(1) of the Education Act is in keeping with section 75 of the Constitution and other international treaties that guarantee the right to education. For example, the CEDAW Committee regards education as an indispensable right in ‘reducing female student drop-out rates, which are often a result of premature pregnancy’. Scholars, such as Brown, have supported this view arguing that access to education is a key driver to delay child marriage. This is important to tackle child motherhood because research has demonstrated that child motherhood, as caused by factors such as child marriage, poverty, *kuzvarira* and *chiramu*, most of the time violate the rights of girl children, including their right to education. Section 4 is also important in ensuring that child motherhood does not negatively affect Zimbabwe’s realisation of Millennium Development Goals, such as universal primary education.

Section 5 further buttresses section 4 of the Education Act by purposely stating that: ‘...primary education for every child of school-going age shall be compulsory and to this end it shall be the duty of the parents of any such child to ensure that such child attends primary school’. This study argues that section 5 encompasses three important aspects regarding education. First, the expression ‘primary education for every child of school-going age shall be compulsory’ implies that the state is duty-bound to ensure that all children attain primary education. Second, in order to realise compulsory primary education, parents or guardians...

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701 For example, Article 28(1)(a) of the CRC provides that every child has a right to education and state parties must achieve this right by making ‘primary education compulsory and available free to all’. The ECSR Committee interpreted education as ‘both a human right in itself and an indispensable means of realizing other human rights’. See, CESCR Committee, *General Comment No. 13: The Right to Education* (1999) para 1.
706 According to the CRC Committee, the right to education is also critical for girls since uneducated girls are generally more likely to become child mothers than their educated counterparts are. See, CRC Committee, *General comment No. 1* (2001), Article 29 (1), *The aims of education* para 10.
are then duty-bound by the state to make sure that all their children attain primary education.\footnote{Section 6 supplements section 5 in that ‘it is the objective that tuition in schools in Zimbabwe be provided for the lowest possible fees consistent with the maintenance of high standards of education, and the Minister shall encourage the attainment of this objective by every appropriate means, including the making of grants and other subsidies to schools’.}

Third, section 5 is consistent with the principle of non-discrimination contained in section 56 of the Constitution that requires boys and girls be treated in an equal manner.\footnote{Vandenhole W Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies (2005) 33-36. Oxford: Intersentia.} As discussed earlier, this provision disallows differential treatment of boys and girls without objective and reasonable justifications. This means that parents or guardians cannot refuse to send their girl children to school, simply because they are girls. Thus, parents or guardians lack the legal basis to compel girls to conform to practices, such as *kuzvarira*, child marriage and *chiramu* because they violate girls’ right to education. In the end, the enjoyment of the right to education enables girls to enjoy other rights, such as dignity, equality, and to be free from abuse, with specific reference harmful practices discussed in chapter 2, including child motherhood.

However, the Education Act does not recognise the right to free primary education for all children.\footnote{Unlike the CRC and ACRWC, which require state parties to ensure free basic education, the Education Act is silent on whether basic education is free or not. The implication of this silence is that the Education Act does not provide for free basic education in Zimbabwe.} Section 4 contradicts with the African Children’s Charter, which states in Article 11(3)(a) that ‘states parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular, provide free and compulsory basic education’.\footnote{See generally, Article 11 of the African Children’s Charter. For a commentary on Article 11 of the African Children’s Charter, see Chirwa DM ‘Combating child poverty: The role of economic, social and cultural rights’ in Sloth-Nielsen J (Ed) Children’s Rights in Africa: A Legal Perspective (2008) 96.} Similarly, section 5 is also in breach with of Article 13 of the ESCR, which provides that it shall be the primary duty of the state, and not parents, to provide free and compulsory basic education for all children of school-going age.\footnote{See generally, Article 13 of the ESCR. See also a commentary of Article 13 of the ESCR in Beiter KB The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights (2006) 461.} Of course, parents have a duty to look after their children, but in this case, the state must provide free and compulsory basic education, and then parents: secondary or even tertiary education.
Understood this way, the right to education would be influential, especially in developing countries such as Zimbabwe, in leading the way to abolition of discriminatory traditions, including early marriage and sexual dalliance that are no longer beneficial to the modern society. Education also assists in realising and exploiting one's abilities, which would be essential for Zimbabwe’s economic growth and development. Ultimately, the provision for free and compulsory primary education would be essential in protecting girls from early motherhood as well as the right to education for child mothers.

Another drawback of the Education Act is that though section 4(2) prohibits refusal of a child to enroll at any school nor be discriminated based on gender, section 4(5) provides an exception to this rule. More relevant to child motherhood is section 4(5)(b)(1) that allows for discrimination based on gender provided that it ‘was reasonably justified in view of physiological differences between children of different genders’. The defence of gender discrimination under section 4(5)(b)(1) of the Act is problematic for two reasons. Firstly, it justifies why girls cannot enroll in schools due to their perceived physical and physiological maturity and not on the satisfaction of the actual age appropriateness. This limits the array of choices girls can make in their lives had they been educated. This is why girls without an education tend to marry earlier than the educated ones; thereby, exposing them to early motherhood.

Secondly, the justification of gender discrimination under section 4(5)(b)(1) of the Act condemns girls to a life of sexual exploitation and physical abuse leaving them trapped in a vicious cycle of poverty. Indeed, the Education Act does not afford girls the enjoyment of educational rights without any discrimination based on equal opportunity. For this reason, the right to education would be influential, especially in developing countries such as Zimbabwe, in leading the way to abolition of discriminatory traditions, including early marriage and sexual dalliance that are no longer beneficial to the modern society. Education also assists in realising and exploiting one's abilities, which would be essential for Zimbabwe’s economic growth and development. Ultimately, the provision for free and compulsory primary education would be essential in protecting girls from early motherhood as well as the right to education for child mothers.

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the justification under section 4(5)(b)(1) categorically places emphasis on the protection of the educational rights of boys more than of girls. Once again, this reiterates that parents often force uneducated girls into marriage and ultimately becoming child mothers. It also reiterates Zimbabwe perpetuates discrimination against child mothers, who often drop out of school due to pregnancy and face difficulty to finish schooling.

Overall, the Education Act could be useful in the protection girls against child motherhood. However, it has an educational gender discrimination gap that renders it inconsistent with international human rights instruments and subject girls to child marriage and/or motherhood.

4.3.4 Marriages Act [Chapter 5-11] and the Customary Marriages Act [Chapter 5-07]

The Marriages Act is Zimbabwe’s principal legislation that deals with the solemnisation of civil or statutory marriages while the Customary Marriages Act is the principal legislation that regulates customary marriages in Zimbabwe. The thesis discusses these two laws simultaneously because they have similar provisions applicable to child motherhood.

For instance, section 20(2) of the Marriages Act allows parents and/or legal guardians to give consent on behalf of their minor girls to marry before they reach age of majority. It provides:

‘The marriage of a minor shall not be solemnized without the consent in writing of the persons who are, at the time of the proposed marriage, the legal guardians of such minor or, where a minor has only one legal guardian, without the consent in writing of such legal guardian:

Provided that—

(i) if the consent of any legal guardian cannot be obtained by reason of absence or inaccessibility or by reason of his being under any disability, a judge of the High Court may grant consent to the marriage, and the consent of the judge so given shall have the same effect as if it had been given by the legal guardian whose consent cannot be obtained;

(ii) if any legal guardian refuses his consent, a judge of the High Court may grant consent to the marriage, and the consent of the judge so given shall have the same effect as if it had been given by the legal guardian whose consent is refused’.

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720 This demonstrates that Zimbabwe is still a patriarchal milieu that is bend on perpetuating male supremacy.
721 Marriages Act [Chapter 5-11] and the Customary Marriages Act [Chapter 5-07]

http://etd.uwc.ac.za/
Similarly, section 5 of the Customary Marriages Act allows parents and/or legal guardians to give consent on behalf of the ‘woman’ to enter into marriage.\(^{722}\) It is clear that, by allowing parents and/or legal guardians to give consent on behalf of a female person, these two pieces of legislation do not conform to Article 16(1)(b) of the CEDAW, which authoritatively prescribes that men and women have an equal right to freely enter into marriage.\(^{723}\) Gaffney-Rhys has observed that the right to marry, as provided by Article 16(1)(b) of the CEDAW, has an ancillary right ‘that both parties to a marriage must genuinely consent to the union’.\(^{724}\) In support of this view, the CEDAW Committee has reiterated the right to freely consent to marriage as central to the life, dignity and equality of girls.\(^{725}\) To this effect, it is not surprising that section 78(2) of the newly adopted Constitution has expressly stated that, ‘no person may be compelled to enter into marriage against their will’\(^{726}\) because this accords the full protection of the law especially when girls are required to provide their consent.\(^{727}\) Thus, the

\(^{722}\) Section 5 of the Customary Marriages Act provides:

‘If the guardian of a woman who wishes her marriage to be solemnized withholds or refuses to give his assent to the marriage, the parties to the proposed marriage may appeal to a magistrate for the province in which the woman resides, and such magistrate may—

(a) authorize the solemnization of the marriage if, after due inquiry, he is satisfied that such consent is unreasonably or improperly withheld or refused; and

(b) after consultation with the guardian of the woman, fix the marriage consideration. (2) If no guardian of a woman who wishes her marriage to be solemnized can be found, a magistrate for the province in which the woman resides may, after due inquiry, authorize the solemnization of her marriage.’

\(^{723}\) It is lamentable that instead of courts to play the role of a ‘guardian angel’ as promoters, guardians, impartial enforcers and defenders of children, they legally enforce the perpetration of girl-child rights violations in Zimbabwe. This has the negative consequences of giving parents the liberty to continue perpetrating discriminatory cultural practices, such as child marriage that expose girls to sexual exploitation because the law allows them to do so. By legally promoting child marriage and protecting its perpetrators, the Marriages Act effectively exposes girls to child motherhood.


\(^{725}\) Paragraph 16 of the CEDAW/C/GC/21(1994).

\(^{726}\) Furthermore, the recent 2014 joint General Comment by the CEDAW and CRC Committees established 18 as the minimum marriageable age for girls and boys, with or without parental consent. The decision of Mudzuru case has accurately domesticated the international position set above by outlawing child marriage in Zimbabwe. The court argued that since a person below 18 years has no legal capacity to marry; this implies that he/she has no legal capacity to consent to such a marriage. Accordingly, there is full legal protection entitled to girls when state parties set 18 as the minimum age for marriage, and simultaneously require the free and full consent of the intending spouses.

\(^{727}\) The CEDAW Committee, in its 2017 Concluding observations on the combined third and fourth periodic reports of the Niger, noted concern on extremely high rates of child marriage due to absence of any legal framework or strategic action that prohibit these harmful practices. Guided by General Comment No. 21, it recommended Niger to adopt 18 as the minimum age of marriage and simultaneously obtain the full and free consent of both future spouses to any marriage to combat the prevalence of child marriage. See, Paragraph 16 of the CEDAW/C/GC/21(1994); CEDAW Committee ‘Concluding observations on the combined third and fourth periodic reports of the Niger’ (2017) paras 42 and 43.
Marriages Act and the Customary Marriages Act have the undesirable effect of increasing the prevalence of child motherhood because research has shown that girls who marry young tend to drop out of school.\textsuperscript{728}

Apart from section 20(2) of the Marriages Act, section 22(1) provides that, ‘...no girl under the age of sixteen years shall be capable of contracting a valid marriage’. By allowing girls aged between 16 but below 18 to marry, section 22(1) does not conform to section 78(1) of the Constitution, the CEDAW, the African Children’s Charter and Maputo Protocol, which explicitly specify eighteen as the minimum age for marriage and declare that child betrothals and/or marriages shall have no legal effect. As discussed earlier, scholars such as Sloth-Nielsen, Banda, Mavedzenge and Coltart rightly argued that the current position is that only persons aged 18 or above have ‘the right to enter into a marriage and establish a family’ in Zimbabwe.\textsuperscript{729} Since the supreme law of the country stipulates 18 as the marriageable age, the Marriages Act perpetuates child motherhood by allowing girls below this age limit to marry and requires amendments to be in line with the Constitutional Court’s decision.\textsuperscript{730}

Another drawback of the Marriages Act and the Customary Marriages Act is that while section 22 of the former treats girls less favourably than boys by providing differential marriageable ages, which are 16 and 18, respectively the latter does not protect girls against child marriage because it does not prescribe the minimum marriageable age at all.\textsuperscript{731} This conflicts with sections 56(1) and 81(1)(a) of the Constitution, which guarantee equality and non-discrimination, providing that ‘all persons are equal before the law and have the right to equal protection and benefit of the law’. For the purpose of this discussion, setting 18 as the minimum marriageable age for girls would be a serious response to the legal protection of all


\textsuperscript{730}The court argued that since a person below 18 years has no legal capacity to marry; this implies that he/she has no legal capacity to consent to such a marriage. See, Mudzuru case, p46-47; Sloth-Nielsen J ‘Child Marriage in Zimbabwe: The Constitutional Court Rules No’ in (Ed) Atkin B International Survey of Family Law (2016) 550.

\textsuperscript{731}See section 22 of the Marriages Act and the Customary Marriages Act.
children, particularly girls who, according to Odala, physically appear to be of marriageable age when in fact they are not.\footnote{Odala V ‘Childhood under Malawian laws as the Constitution becomes of age’ (2012) 6(1) Malawi Law Journal 97-120.}

In support of Odala, the Court in Mudzuru case held that the contention that justifies ‘marriage under section 22(1) of the Marriage Act on the ground that a girl physiologically, psychologically and emotionally matures earlier than a boy... is without scientific evidence to support it’.\footnote{Instead, the Zimbabwe Human Rights Commission has argued that 18 is the minimum age for marriage because ‘a person of that age is considered to be psychologically and physiologically developed enough for the responsibilities and consequences of marriage and is capable of giving free and full consent to marriage’. See also Mudzuru case, p51.} As noted in chapters 1 and 2, the prevalence of child marriage, \textit{kuzvarira} and \textit{sexual dalliance} mostly result in child motherhood; a phenomenon that affects girls only.\footnote{Research has shown that girls between 15 and 19 years account for 12 per cent of the annual births. According to provincial statistics, Manicaland and Mashonaland Central provinces have the highest number of child mothers averaging 27 and 30 per cent, respectively. Data from the Zimbabwe Statistical Agency estimates that more than 30 per cent teenage girls are raped annually. According to a 2013 survey by Dube, women tend to protect the perpetrators of child rape and sometimes ‘force a marriage to legitimise the illegal sex’. See, Zimbabwe National Statistics Agency \textit{Zimbabwe Multiple Indicator Cluster Survey} (2014) 25; Dube R ‘She probably asked for it! A Preliminary Study into Zimbabwean Societal Perceptions of Rape’ (2013) 13.} As such, the Marriages Act and the Customary Marriages Act discriminate girls based on sex and does not take into account ‘the specific vulnerability of a girl child, as a child and as a girl’\footnote{See a similar argument by Andrianasolo who argues that child marriage, which is prevalent in Madagascar, is ‘generally considered a harmful practice and as such is prohibited in international human rights law’. See, Andrianasolo N ‘The girl child marriage practice in Madagascar: a critical analysis’ (Unpublished LLM thesis, University of Pretoria, 2013) 5 and 13.} when it specifies a lower and different age of marriage for girls than boys.\footnote{Jenson R and Thornton R ‘Early female marriage in the developing world’ (2013) 11(2) \textit{Gender and Development} 9–19; Makhubele JC ‘Religious beliefs and practices contributing towards child abuse and neglect: The case of Johanne Masowe Yechishanu Apostolic sect, Harare, Zimbabwe’ (2016) 17(2) \textit{Child Abuse Research: A South African Journal} 40. 37-48.} To this end, the preferential treatment of boys over girls, perpetrated by cultural practices and other factors which have adverse effects of forcing girls become child mothers, is no longer in conformity with the constitutional and human rights principle of equality and non-discrimination.

On a positive note however, the Customary Marriages Act prohibits the pledging of girls and women in marriage. Section 11 of the Act provides:

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‘(1) Any agreement in which a person, whether for consideration or otherwise, pledges or promises a girl or woman in marriage to a man shall be of no effect.

(2) Any person who enters into an agreement referred to in subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment’.

The prohibition of pledging girls and women in marriage is in keeping with the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Convention). For example Article 1(c) of the Convention requires states to abolish ‘any institution or practice whereby a woman without the right to refuse is promised in money or in kind to her parents, guardian, family or other person or group’. As regards the pledging of minor girls, UNICEF has identified lobola (bride wealth) as a common feature of child marriage, which has the effect of infringing the Convention. In addition, the practice of kuzvarira, polygyny and child marriage closely resemble slavery because child brides are forced to be subservient to their husbands. Therefore, section 11 of the Customary Marriages Act is relevant to address practices such as kuzvarira, polygyny and child marriage because they involve the sexual exploitation of girls, which can result in pregnancy and ultimately, child motherhood.

Ultimately, the foregoing discussion has shown that the Marriages Act does not afford appropriate legal protection to girls, especially against child motherhood. Although the Customary Marriages Act could be useful in protecting girls from child motherhood by prohibiting the pledging of girls into marriages, its main drawback is that it does not set the

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737 Complete this footnote
740 The Pan-African forum against Sexual Exploitation has indicated that early marriage is a form of sexual abuse, which is psychologically damaging (UNICEF 2008). Furthermore, a child bride is likely to become pregnant at a young age, which is problematic because it can cause obstetric fistula, because there is an increased risk of maternal and infant mortality, and because it can affect a girl’s fertility. See, Gaffney-Rhys R ‘A comparison of child marriage and polygamy from a human rights perspective: are the arguments equally cogent?’ (2012) 34(1) Journal of Social Welfare and Family Law 56. See also, Gaffney-Rhys R ‘International law as an instrument to combat child marriage’ (2011) 15(3) International Journal of Human Rights 359–373.
minimum age of marriage at 18 years. This shows that the Act has conflicting provisions, which weakens its mantle in the protection of girls against child motherhood.

4.3.5 Zimbabwe Gender Commission Act [Chapter 10-31]

The Zimbabwe Gender Commission Act (ZGCA) gives effect to section 245 of the Constitution that requires the government to establish and compose the scope of Zimbabwe Gender Commission (Gender Commission). More specifically, the ZGCA has enjoined the Gender Commission to remove ‘systemic barriers prejudicial to gender equality, gender equity or gender mainstreaming’. Section 2(2) of the ZGCA defines ‘systemic barriers prejudicial to gender equality, gender equity or gender mainstreaming’ as:

‘any barrier, practice, custom, law or other impediment prejudicial to the achievement of gender equality, gender equity or gender mainstreaming, including equality of opportunities and outcomes in the following spheres of activity or sectors of the society or economy’.

As regards child motherhood, this definition is relevant because it imposes a duty on the state to remove barriers that hinder girls from ‘accessing social services, including those relating to education’. As previously discussed in Chapter 2, most of the socio-economic as well as religious factors that lead to child motherhood discriminate against girls based on sex and gender. Statistics have further shown that child motherhood often violates the right to education contained in section 75 of the Constitution because a girl’s education is usually curtailed when she becomes a child mother. For this reason, section 2(2) of the ZGCA is vocal in addressing inequalities perpetrated by parents who send boys to school and subject girls to early marriages and child motherhood.

Closely linked with section 2(2) is section 4(1)(a) of the ZGCA imposes a duty on the Gender Commission ‘to conduct investigations’ and to make recommendations on the removal of barriers to achieve gender equality, which is critical in removing barriers that perpetuate

741 For a detailed discussion of the formation and mandate of Zimbabwe Gender Commission, see section 245 of the Constitution.
742 Section 2(2)(a) of the ZGCA
743 See generally Chapter 2 above.
744 It is also evident that girls who do not attend primary school are more likely to be married before the age of 18 than girls who do receive a primary education. Heymann J and McNeill K Children’s Chances: How Countries Can Move from Suffering to Thriving (2013) 37.
745 Section 4(1) provides:
the prevalence of child motherhood in the country. The Gender Commission must also annually ‘organise, convene and host a Gender Forum to discuss any issue or issues of concern related to its constitutional and statutory functions’. The importance of convening a Gender Forum, setting up investigations to identify systemic gender barriers as well as reporting the findings to the Parliament is helpful in exposing customs, laws and other impediments prejudicial to girls in Zimbabwe. In addition, the investigation findings of the Gender Commission are helpful in accelerating the need by the Parliament to amend and/or repeal laws, such as the Marriages Act and the Customary Marriages Act that perpetuate gender inequality. The investigation findings can also enjoin the Parliament to enact new legislation that strengthens the protection of girls against gender inequity. This strengthens the protection of girls against child motherhood and the rights of child mothers.

4.3.6 Termination of Pregnancy Act [Chapter 15-10]

The Termination of Pregnancy Act (TPA), which regulates the use of abortion in Zimbabwe, could also be relevant in addressing child motherhood. Abortion is a contentious issue in Zimbabwe because of its regulation by this highly restrictive Act. As regards child

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‘In addition to the provision of section M6 of the Constitution, the functions of the Commission shall be
(a) to conduct investigations in accordance with Part III; and
(b) to convene and host the Gender Forum in accordance with Part IV; and
(c) to do any other thing that the Commission may be required or permitted to do by or under this Act or any other enactment.
(2) The Second Schedule sets out the ancillary powers of the Commission’.

746 Section 8(1) of ZGCA

747 The African Child Policy Forum has noted, in 2014 that Africa still needs to make reforms and initiatives that tackle customs and attitudes that condone violence against children. It is then clear Zimbabwe is taking these recommendations seriously, which is the reason why legislation, such as ZGCA has provisions that call for the removal of barriers that propagate gender equality. See, The African Child Policy Forum ‘The African Report on Violence against Children’ (2014) 60-62; Nour NM ‘Child marriage: A silent health and human rights issue’ (2009) 2(1) Reviews in Obstetrics and Gynecology 51-56.

748 See a discussion of the Marriages Act and the Customary Marriages Act in part 4.3.4 above. As was held in the Mudzuru case regarding section 22(1) of the Marriages Act:
‘No law can validly give a person in Zimbabwe who is aged below eighteen years the right to exercise the right to marry and found a family without contravening s 78(1) of the Constitution. To the extent that it provides a girl who has attained the age of sixteen can marry, s 22(1) of the Marriage Act is inconsistent with the provision of s 78(1) of the Constitution and therefore invalid’.

See, Mudzuru case p50.

749 This addresses customs such as child marriage and renders legislation such as the Marriages Act that supports this institution invalid since they condone child motherhood. Walker JA ‘Early Marriage in Africa-trends, harmful effects and interventions’ (2012) 16(2) African Journal of Reproductive Health 231-241.

750 The Act prohibits any abortion that fails to fall within the circumstances defined within section 4 of the TPA. Accordingly, the TPA permits abortion to save a woman’s life, if child to be born will suffer from a physical or
motherhood, section 4(c) of the TPA permits abortion where there is a reasonable possibility that the foetus is conceived because of unlawful intercourse such as incest or rape.\(^{751}\) In addition to being compatible with Article 14(2)(c) of the Maputo Protocol that guarantees the right to abortion,\(^{752}\) the TPA has a positive effect of reducing and/or preventing unwanted early pregnancy that ultimately lead to child motherhood. This is because child rape and sexual dalliance are some of contributory factors, as identified in Chapter 2 that are leading to child motherhood.

However, the TPA prohibits any abortion that falls outside the circumstances defined within section 4. It is regrettable that the TPA permits abortion only to save the woman’s life, or where the unborn child will permanently be seriously handicapped; or where the foetus was conceived through unlawful intercourse such as incest or rape. More worrisome is that the Code makes any termination, which falls out of the scope of this Act, a criminal offence.\(^{753}\) Clearly, this is a violation of Article 14(2)(c) of the Maputo Protocol, which enjoins states parties to ‘ensure that the right to health of women, including sexual and reproductive health is respected and promoted’, including ‘the right to choose any method of contraception’ such as abortion.\(^{754}\)

In addition, section 4 of the TPA violates section 76(1) of the Constitution, which empowers every citizen and permanent resident of Zimbabwe with the right to basic health care services, including reproductive-healthcare services.\(^{755}\) In the context of child motherhood, the right to basic health care services implies that girls can be able to have a satisfying and safe sex life, which includes the right to legal and safe abortion. Since Speroff and Darney have argued that ‘no contraceptive is absolutely efficient and all contraceptives can fail’,\(^{756}\) abortion is a useful backup to contraception for girls, which prevents or reduces their risks of becoming child mothers. Hence, section 4 of the TPA is incompatible with the right to reproductive health care provided by the Constitution, which is inseparable from the right to have an abortion.

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\(^{751}\)Section 4(c) of the TPA.


\(^{753}\)See section 60 of the Code.

\(^{754}\)Article 14(2)(c) of the Maputo Protocol

\(^{755}\)Section 76(1) of the Constitution

Although the TPA guarantees the right to abortion to female persons whose pregnancies were because of rape and incest, they too have to strenuous conditions in order for them to enjoy fully this right. These strenuous conditions are contained in section 5, which authorises a designated medical practitioner the right to terminate a pregnancy if firstly; he/she receives a court order satisfying that the victim lodged a complaint for the alleged unlawful intercourse.\(^{757}\) Secondly, the victim must reasonably believe that the pregnancy is because of unlawful intercourse.\(^{758}\) Finally, the impregnated woman must make statement under oath that the pregnancy could be the result of unlawful intercourse.\(^{759}\) Section 5 is so complicated to the extent that it even retracts the right to abortion that the TPA has already restricted to circumstances defined within section 4.\(^{760}\) Indeed, the Mapingure case\(^ {761}\) bears testimony to how the law is still oppressive concerning women’s reproductive freedom. In this case, robbers raped Mapingure at her home. She intended to have the pregnancy terminated in accordance with section 4(c) of the TPA but for her to do so; she needed both a police report confirming that indeed she had been raped and receive the within 72 hours of the sexual intercourse having occurred.\(^ {762}\) However, because of the delays from the police side, the 72-hour prescription lapsed before she could terminate the pregnancy.\(^ {763}\) After further delays and frustrations from the public prosecutor as well as the magistrate, Mapingure finally acquired all the documentation needed; it was already unsafe to perform the termination.\(^ {764}\) She eventually gave birth to her child.

On appeal, the Supreme Court handed a judgement, which overlooked the loss of autonomy in respect of termination of pregnancy. The court rather found that the obligations of the state authorities (public prosecutor and magistrate) did not extend to the duty to initiate that Mapingure obtain the certificate of termination even though the facts show that advice was indeed offered to the victim by both the prosecutor and through the magistrate and the advice offered was erroneous.\(^ {765}\) The study does not seek to go into depth and breadth of the

\(^{757}\)Section 5(4)(i) of the TPA  
^{758}\)Section 5(4)(ii) and (b) of the TPA.  
^{759}\)Section 5(1) of the TPA  
^{760}\)Article 14(2)(c) of the Maputo Protocol.  
^{761}\)Mapingure v Minister of Home Affairs & Others (SC 406/12) [2014] ZWSC 22 hereafter Mapingure case.  
^{762}\)Mapingure case p2  
^{763}\)Mapingure case p2.  
^{764}\)Mapingure case p2.  
^{765}\)Mapingure case p31.
judgment of the case, but to highlight how seriously difficult it is to receive legal and safe medical abortion service. It is clear from the facts of the Mapingure case that the termination conditions of a pregnancy are complex and the normal procedure of termination of pregnancy is prone to administrative delays, one of the reasons being the different functions of the various offices that are involved in authorising the termination.

It is also clear that the Supreme Court did not take into account the interests of justice and most importantly the provisions of the Constitution, such as section 76, in making its decision. The study argues that the Supreme Court should have attempted to determine the law on abortion from a constitutional perspective. By doing so, the Court would have appreciated the fact that safe abortions have a time limit and the older the pregnancy is, the more unsafe it becomes to terminate. In addition, the Supreme Court, guided by section 76 and other founding values and principles contained in section 3, would also have appreciated that a procedure such as one stipulated by section 5 of the TPA most often delays into a period which is unsafe for a woman to abort; thereby, infringing on the right to have an abortion.

To this end, it is evident that the TPA is patriarchal in nature because it ignores the rights of pregnant women and girls that are infringed in protecting the foetus. More worrisome is also the approach taken by the judiciary post the new constitutional dispensation, as evidenced by the Mapingure case, which Tsabora dubbed a ‘dangerously doctrinaire’. He argues that the failure by the Supreme Court as a superior court ‘to develop the common law, taking into consideration the interests of justice and most importantly the provisions of the Constitution’ has given an impression that ‘despite constitutional and legislative instruments, the common law is immovable’. It is therefore evident from the above that abortion laws in Zimbabwe force women to carry unwanted pregnancies to term and for girls, they force them into becoming child mothers.

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4.4 Conclusion

The chapter has analysed legislation that is applicable in the protection of girls against child motherhood in Zimbabwe. It highlighted that the country’s progressive Constitution has various provisions that can be invoked to protect girls against child motherhood. For example, section 78 read together with section 81 of the Constitution expressly proscribes child marriage and any other practice or attitudes that discriminate girls and perpetuate child motherhood. Furthermore, provisions such as sections 7, 4 and 94 of Children’s Act, ZGCA and the Code that respectively denounce the mistreatment of children address sexual dalliance, kuzvarira and child rape because these ill-treat the physical, sexual as well as mental wellbeing of girl children.\textsuperscript{769}

The analysis has also criticised some of the provisions in these legislations that are incompatible with human rights treaties. For example, section 76(1) of the Constitution discriminates on the right to health based on citizenship. As argued in this chapter, although discrimination is permitted by section 56(5), there are no possible reasonable justifications that can sustain as to why excluding temporary residents from enjoying the right to access health care services ‘is fair, reasonable and justifiable...based on openness, justice, human dignity, equality and freedom’.\textsuperscript{770} Therefore, it is clear that section 76(1) of the Constitution exposes girl children, for example, who are temporarily resident in Zimbabwe, to child motherhood if sexually abused, impregnated and denied health rights, such as abortion and contraception.

In addition, the definition of a ‘child’ contained in the Children’s Act is also problematic. Section 2 of the Act defines a child as a person below the age of 16, which firstly contradicts with the Constitution, the African Children’s Charter and the Maputo Protocol that stipulate 18. Guided by the Constitution, all persons under the age of 18 are still minors, which mean that, by defining a child as anyone at 16 years, the Children’s Act does not send a strong message of legal protection against abuses, such as child marriage that is both prevalent and a contributory factor to child motherhood in Zimbabwe. Similarly, most pieces of legislation

\textsuperscript{769}See Chapter 2 for detailed discussions on chiramu, kuzvarira, child marriage, child rape and prostitution.

that supplement the Constitution do not expressly guarantee the principle of the best
interests of the child.

The *Mapingure* case has further elucidated the urgent need to amend legislation such as the
TPA to place the duty upon state authorities dealing with rape victims to guide and assist rape
victims through the processes necessary to obtain contraception to avoid pregnancy or,
where the victims wish this, to obtain termination of pregnancies. The amendment should
require the authorities to act with expedition in this sort of case.

In view of the above, what remains is the implementation of the provisions of the legislation
that positively influence the reduction and/or prevention of child motherhood in Zimbabwe.
For those provisions that subject girls to child motherhood, there is need to amend these laws
so that they comply with the international and regional normative standards. The next
chapter analyses the provisions of the Basic Education Assistance Module, National Gender
Policy, National Youth Policy, National Adolescent Sexual and Reproductive Health Strategy,
National Cultural Policy, Girls and Young Women Empowerment Framework, Orphan Care
Policy, and Cash Transfer Programme as policies that can be used to supplement the existing
legislation in addressing child motherhood in Zimbabwe.
CHAPTER 5

ASSESSING THE COMPLIANCE OF ZIMBABWE’S POLICY FRAMEWORK WITH INTERNATIONAL AND NATIONAL LAWS IN PROTECTING GIRLS AGAINST CHILD MOTHERHOOD AND THE RIGHTS OF CHILD MOTHERS

5.1 Introduction

As elaborated in Chapter 3, the international standards provide that State Parties must take legislative and policy measures in addressing child motherhood. Chapter 4 looked at the legal framework and this chapter will look at the policy framework of Zimbabwe towards the protection of girls against child motherhood and the rights of child mothers. This chapter attempts to show that if adopts and implements it policy framework from a human rights lens, there is a great possibility of substantially protecting girls against child motherhood as well as protecting the rights of child mothers in the country. This will ultimately contribute to transforming human rights from ideals on paper to implementable strategies.

Therefore, the aim of this chapter to assess whether Zimbabwe’s child and youth specific policies contain specific goals and targets that can protect girls against child motherhood. These policies include: the Basic Education Assistance Module 2016; the National Gender Policy 2013; the National Youth Policy 2013; the Girl and Young Women’s Empowerment Framework 2014; the National Adolescent Sexual and Reproductive Health Strategy II (2016-2020); and the National Cultural Policy 2015.

The chapter also reveals that despite strides made to improve the welfare of girls, a lot still needs to be done to ensure that all sectors of the government play their role towards improving the welfare of girls and child mothers in Zimbabwe. One sure way of going about this is domesticating and implementing the human rights principles relevant in combating child motherhood and realising the rights of girls who are already child mothers. Ultimately, the study emphasises, that within the human rights context, various efforts going beyond legal remedies to administrative and community level interventions are equally significant in improving the welfare of girls and child mothers in Zimbabwe.
5.2 The Policy framework

5.2.1 Basic Education Assistance Module

BEAM has nine implementation principles that guide the Module achieve its primary goal of reducing the number of children who have never been to or have dropped out of school due to economic hardships. More relevant to child motherhood is principle 8, which is about ‘girl child empowerment’. It states, ‘at least 50 percent of assisted pupils at secondary level should be girls in order to bring about’ equity and equality between boys and girls. The importance of this principle is that, despite providing school fees, levies and examination fees to orphans and other vulnerable children, BEAM specifically identifies girls as a vulnerable group that is worst affected by poverty and needs the most financial support.

As previously noted in chapters 1 and 2, several factors such as poverty disproportionately affect educational rights of young girls, which often leads to early marriage and/or child motherhood in Zimbabwe. In addition, international law has prescribed that member states must provide ‘free’ and ‘compulsory’ primary education with a view to progressively realising free secondary education. The Constitution and subsidiary legislation further

771These principles of BEAM include, comprehensive community mobilization, sensitization and awareness; harmonized and integrated approach to educational assistance for vulnerable groups; community-based targeting; hard (and known public sector based) budget constraints; complete assistance package; openness, transparency and accountability; school attendance as basis for continued assistance to a beneficiary; girl child empowerment; and effective monitoring of BEAM implementation. See, Basic Education Assistance Module (BEAM) p6-7.

772See the Basic Education Assistance Module (BEAM) 7.

773In Mudzuru case, the Constitutional Court makes it clear that girls were and remain a vulnerable group of people who need protection from child marriage. Without a doubt, providing education to vulnerable is one of the most effective ways BEAM is redressing the plight of girl rights violations through abuses, such as child marriage. See, Mudzuru case p24.

774Chapter 1 has shown that poverty contributes 11 per cent of childbirths among girls aged between 15 and 19 years in sub-Saharan Africa. This supports the statistics that seem to show that girls living in poor families marry before reaching 18 years than their richer counterparts. See, ‘The World Bank LAC: Poverty, Poor Education and Lack of Opportunities Increase Risk of Teenage Pregnancy 2013’ available at http://www.worldbank.org/en/news/press-release/2013/12/12/lac-poverty-education-teenage-pregnancy (accessed 27 May 2016); Chitando E & Chirongoma S Justice Not Silence: Churches facing sexual and gender-based violence (2013) 75. Chapter 2 observed that poor families tend to prioritise boy education while girls stay at home or are forced into marriages. The lack of education in addition to poverty and financial dependency condemns girls to all forms of abuse, such as failure to negotiate safe sex practices leading to child motherhood. Suen S ‘The education of women as a tool in development: Challenging the African maxim’ (2013) 1(2) Hydra 62; Leclerc-Madlala S ‘Age-disparate and intergenerational sex in southern Africa: the dynamics of hypervulnerability’ (2008) 22 Aids 18.

775ESCR General Comment 11 defines free education as ‘the availability of primary education without charge to the child, parents or guardians’. See, ESCR General Comment 11 para 7. International law discourse uses the terms ‘basic education’ and ‘primary education’ interchangeably. Sloth-Nielsen describes primary education as the formal basic education given to children in primary schools by primary school teachers. See, Sloth Nielsen J
guarantee the right to education to all school-going children.\textsuperscript{776} For these reasons, the Basic Education Assistance Module (BEAM) as Zimbabwe’s education specific policy plays a critical role of implementing the right to education by providing school fees, levies and examination fees to orphans and other vulnerable children.\textsuperscript{777}

The importance of reducing the number of either children who drop out of school or those children who have never been to school due to poverty is in keeping with Articles 28 and 11 of the CRC and African Children’s Charter, which enjoin states parties to provide guarantees to the right to education.\textsuperscript{778} By providing bursaries/funds to targeted groups of children, such as the disabled, poor and vulnerable school-going children aged between 4 and 19 years, BEAM also implements the Education Act and section 75 of the Constitution discussed above, which explicitly provide for every child in Zimbabwe the right to receive basic State-funded education. Although the government does not provide State-funded education to all children, it is commendable that it financially assists the most marginalised children so that they can also enjoy their educational rights with those children coming from financially stable families.\textsuperscript{779} Thus, the study submits that BEAM safeguards the international and

\textsuperscript{776}As regards the Constitution, section 75 provides:

1. Every citizen and permanent resident of Zimbabwe has a right to —
   a. a basic State-funded education, including adult basic education; and
   b. further education, which the State, through reasonable legislative and other measures, must make progressively available and accessible.
2. Every person has the right to establish and maintain, at their own expense, independent educational institutions of reasonable standards, provided they do not discriminate on any ground prohibited by this Constitution.
3. A law may provide for the registration of educational institutions referred to in subsection (2) and for the closing of any such institutions that do not meet reasonable standards prescribed for registration.
4. The State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the right set out in subsection (1)’.

The Education Act also explicitly states, in section 4(1) that ‘notwithstanding anything to the contrary contained in any other enactment, but subject to this Act, every child in Zimbabwe shall have the right to school education’.

\textsuperscript{777}See the Basic Education Assistance Module (BEAM) 5.

\textsuperscript{778}Commenting on the CRC, Verheyde submits that Article 28 should be interpreted taking cognisance of Article 41, which provides that if any standard set in national law or applicable international instruments is higher than the CRC, it is the higher standard that prevails because the obligation to provide free and compulsory education is a minimum core obligation. Verheyde MA \textit{Commentary on the United Nations Convention on the Rights of the Child: Article 28 The Right to Education} (2005) 55.

\textsuperscript{779}As noted above, Zimbabwe is committed to the principles of equality and non-discrimination. For instance, BEAM clearly espouses this notion by financially assisted vulnerable children, particularly in relation to education, so that they can also access the right to education. This brings about the realisation of the right of education to poor children as a commitment to respect, protect and fulfil children’s rights in the country.
constitutional rights of children, such as the exercise and full enjoyment of their right to education.

As noted in Chapter 2, poverty remains the key driver for girls dropping out of school. Statistics have also shown that 29 per cent of girls who were out of school came from the poor families while 12 per cent came from rich families. It is then not surprising that BEAM targets 50% of its beneficiaries be girls because data shows that 47 per cent of secondary school aged girls are out of school. The strong gender bias found in BEAM implements the Zimbabwe Gender Commission Act (ZGCA) that enjoins the removal of ‘systemic barriers prejudicial to gender equality, gender equity or gender mainstreaming’. BEAM also complies with section 56(6) of the Constitution by taking such as measure ‘to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination’ and this measure ‘redresses circumstances of genuine need’.

Without a doubt, girls who do not go to school are more likely to marry under the age of 18 than their educated counterparts are. As such, BEAM is relevant in addressing parental attitudes that perpetuate male patriarchy by sending boys to school at the expense of girls.

For example, the measure of enrolling 50% of girls in the BEAM programme redresses

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Scholars, such as Roux submit that provision of basic free education would require that the state ‘devotes all the resources at its disposal first to satisfy’ its minimum core obligations in respect of disadvantaged learners before ‘expending resources on relatively privileged groups’. Indeed, this is approach taken by BEAM as part of Zimbabwe meeting its minimum core obligations. See, CESCR General Comment No 13 (1999) para 46; Roux T ‘Understanding Grootboom - A Response to Cass R Sunstein’ (2002) Constitutional Forum 12(2) 41; 47.


Section 2(2) of the ZGCA defines ‘systemic barriers prejudicial to gender equality, gender equity or gender mainstreaming’ as:

‘any barrier, practice, custom, law or other impediment prejudicial to the achievement of gender equality, gender equity or gender mainstreaming, including equality of opportunities and outcomes in the following spheres of activity or sectors of the society or economy’. This footnote is a repeat. Already provided in previous chapter.

It is clear that redressing the unfair discrimination girls suffer through lack of education is a matter of genuine need. This is the reason why BEAM prioritises at 50 per cent of its beneficiaries be girls. See, Basic Education Assistance Module (BEAM) 7. this too is a repeat.


Research has shown that poor families often have a tendency of prioritising boy child education at the expense of girls’ who stay at home doing household duties or forced into early marriage. Abuya BA, Onsomu EO & Moore D ‘Determinants of educational exclusion: Poor urban girls' experiences in-and out-of-school in Kenya’ (2014) Prospects 44(3) 391.
circumstances of genuine need, and is necessary to protect girls against child motherhood because girls’ education is curtailed when they marry young and become child mothers.\textsuperscript{786} Such an implementation target removes barriers that hinder girls the enjoyment of rights, such as education, on an equal basis with boys.\textsuperscript{787} Thus, placing and keeping girls in school is instrumental in fighting against child marriage and realising the right to education for child mothers in Zimbabwe.\textsuperscript{788}

Despite its positive attributes, BEAM revokes financial assistance from a beneficiary who drops out of school due to early marriage.\textsuperscript{789} This unfairly discriminates against girls based on marital status, which is one of the grounds listed in section 56(3) of the Constitution.\textsuperscript{790} Since section 56 of the Constitution is similar to section 9 of the South African Constitution, the study refers to the South African jurisprudence in determining what constitutes unfair discrimination. The \textit{Harksen V Lane} case described unfair discrimination as treating persons differently in a manner that impairs their fundamental dignity as human beings, who are inherently equal in dignity.\textsuperscript{791}

Although BEAM assistance prevents withdrawal of girls from school resulting in early marriages, revoking such assistance from a beneficiary who has temporarily dropped out of school due to early marriage constitutes unfair discrimination because its funding is dependent on the marital status of the beneficiary.\textsuperscript{792} Refusal to enroll girls in school because they have become child mothers constitutes unfair discrimination. Instead of devising some coping mechanisms of retaining child brides in school, such as criminalising parents who force girls into early marriages, BEAM takes a negative approach that equates child brides to non-

\textsuperscript{787}Section 2(2)(a) of ZGCA
\textsuperscript{789}See the Basic Education Assistance Module (BEAM) 22.
\textsuperscript{790}Section 56(3) of the Constitution provides the right to equality and prohibits an unfairly discriminatory treatment by any person on another manner based on ‘grounds such as their nationality, sex, gender, marital status, age, pregnancy,...’
\textsuperscript{791}See \textit{Harksen v Lane NO and others} 1999(1) SA 300(CC) para 322.
\textsuperscript{792}This position conflicts with one of BEAM’s key impact evaluation questions, which seeks to determine whether (and how) BEAM affects the national education indicators such as enrolment, retention and dropouts. Even though BEAM’s mechanisms reduce and/or delay child marriages, infringing on the educational right of child brides is contrary to section 75 of the Constitution, which negatively affects their and other constitutional rights. See also, The Basic Education Assistance Module (BEAM) 41.
Although child marriage is harmful to girls, revoking assistance to child brides is not a justification that warrants a gross violation of their rights to equality and non-discrimination and education.

5.2.2 National Gender Policy 2013

The National Gender Policy (Gender Policy) addresses gender discrimination and inequalities in all spheres of life and development in Zimbabwe. It is relevant to the issue of child motherhood because most of the factors that cause girls become child mothers are due to gender discrimination. For this reason, the study analyses the extent that the Gender Policy protects the rights of girls against gender discrimination and gender-based violence.

The Gender Policy can address the issue of child motherhood in the following manner: firstly, it enjoins the government of Zimbabwe to translate the laws and policies of the country into vernacular. By simplifying laws, it ensures that they become accessible in vernacular accounts for the less literate, such as the elderly and the under-educated that predominantly live in rural areas. Simplifying existing laws and policies would enable the less literate to know and understand their rights; when their rights are under threat of violation; and not to trump upon other people’s rights. This would in turn reduce incidences of child rights violations that emanate from cultural and traditional practices and lead to child motherhood.

The study submits that BEAM seems to imply that child brides do not deserve financial assistance because they tend to choose marriage over education, even when these girls might have entered into these marriages without their own volition. This perpetuates gender inequality because child marriage predisposes girls more than girls. See also, Heymann J and McNeill K Children’s Chances: How Countries Can Move from Suffering to Thriving (2013) 37.

Some of the factors that lead to child motherhood and relate directly to gender discrimination include child marriage, chiramu, kuzvarira and lack of education. For a detailed analysis of these causes, see Chapter 2.

The duty to simplify and translate gender justice components of the new Constitution is also in keeping with section 63(a) of the Constitution, which guarantees every person ‘the right to use the language of their choice’. Section 63(a) dovetails with section 7(a) of the Constitution, which requires the State to ‘promote public awareness of this Constitution, in particular by translating it into all officially recognised languages and disseminating it as widely as possible’. National Gender Policy (2013-2017), p11.

Scholars, such as Sayi and Sibanda, attribute the lack of education as a major contributory factor to child marriages. Thus, the less educated a girl is the higher risk of entering into a child marriage. Reading the Constitution in a language of own choice ensures that both the rich and poor, young and the old are conscious of the fact that they must promote gender equality and equity in all settings of life. See, Sayi TS and Sibanda A ‘Correlates of Child Marriage in Zimbabwe’ (2018) 39(8) Journal of Family Issues, 2383. National Statistics Agency and ICF International ‘Zimbabwe Demographic and Health Survey 2015: Final Report’ (2016) 30-32.

Hence, requiring the simplification and translation of fundamental human rights and freedoms, such as equality and non-discrimination, culture, education and rights of children, the Gender Policy sends a clear message to parents other de facto caregivers that they must promote gender equality and equity. Parents
Secondly, the Gender Policy complements the Constitution by enjoining Zimbabwe to operationalise the Gender Commission. 799 Making the Gender Commission operational addresses child motherhood in the following manner: firstly, the Commission has a constitutional mandate ‘to investigate possible violations of rights relating to gender’. 800 This would help identify all harmful laws and practices that impede the gender equality in society. 801 Secondly, the Gender Commission can recommend enactment of laws, which promotes equality regardless of gender. 802 In this regard, it is recommended that Zimbabwe should enact new law, such as the Gender Equality Act. 803 Through law reform, such as the enactment of the Gender Equality Act, which would be significant in emancipating women and combating discriminatory practices, girls can assert their rights as child mothers in addition to overcoming patriarchal discrimination linked to child motherhood. 804

Thirdly, the Constitution mandates the Gender Commission ‘to do everything necessary to promote gender equality’. 805 This implies that lawmakers, for example, should amend the Children’s Act so that it domesticates the international child best interest principle to be of paramount consideration in all matters that affect children. As noted earlier, the importance of the child best interests is that it gives priority to the best interests of girls; thereby, safeguarding them from sexual dalliance, kuzvarira and other violations associated with discriminatory practices, as discussed in Chapter 2. 806 Furthermore, there must be a

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799 National Gender Policy (2013-2017), p13. 800 Section 246 of the Constitution contains a non-exhaustive list of the Gender Commission functions. Among others, is the Commission has a duty ‘to investigate possible violations of rights relating to gender’. See section 246(b) of the Constitution. 801 This would inevitably address sex discrimination, harmful practices and sexual harassment that negatively affect women and girls. National Gender Policy (2013-2017), p13. See also generally chapter 2. 802 See section 246(d) of the Constitution. See also generally chapter 2 for a discussion of factors that violate the rights of girls relating to gender and lead to child motherhood. 803 Zimbabwe does not have a stand-alone legislation that promotes and give effect to section 56 and other relevant gender equality provisions contained in the Constitution. In combating discriminatory traditions and practices, Malawi, for example, enacted the Gender Equality Act, 2013. The aim of the Act of Act is to promote ‘gender equality, equal integration, influence, empowerment, dignity and opportunities, for men and women in all functions of society’. See preamble of the Malawian Gender Equality Act, 2013. 804 This undoubtedly reduces all forms of gender-based violence in Zimbabwe, as discussed in chapter 2 by eradicating ‘all harmful social norms, religious and cultural beliefs, attitudes and practices that legitimize the acceptance of GBV at all levels’. See, National Gender Policy (2013-2017), p18. 805 See section 246(i) of the Constitution. 806 While commenting on the child best interests principle, Mwambene argued that cultural practices that may affect children should be banned by invoking this principle because ‘any cultural practice that is harmful to children cannot be in the best interests of the child’. Mwambene L ‘Child Care, Protection and Justice Act:
unanimous legal approach in addressing child marriage. In this regard, all must laws must prescribe 18 as the minimum marriageable age.\textsuperscript{807}

Similarly, the Education Act does not recognise the right to free primary education for all children.\textsuperscript{808} In the same vein, the Constitution guarantees State funded basic education, but to children who are either citizens or permanent residents only.\textsuperscript{809} This violates the article 28 of the CRC, which requires that education at the primary level should be ‘free for all’.\textsuperscript{810} As such, lawmakers should also amend the Constitution to ensure that all children, regardless of nationality, enjoy the right to free primary education.\textsuperscript{811} Without a doubt, these legal reforms are relevant in addressing various factors, discussed in chapter 2, which lead to child pregnancies and motherhood.

Fourthly, the obligation to ensure ‘equal access to education for boys and girls and their retention at all levels of education...’\textsuperscript{812} is also relevant in combating child motherhood. Equal

\textsuperscript{807}See also Chapter 4 above.

\textsuperscript{808}Unlike articles 28 and 11 of the CRC and ACRWC, which respectively require state parties to ensure free basic education, the Education Act is silent on whether basic education is free or not. The implication of this silence is that the Education Act does not provide for free basic education in Zimbabwe.

\textsuperscript{809}This is particularly disturbing if one considers the central role that education plays in fostering the enjoyment of other rights, promoting the development of children in particular, and society in general. Without educational opportunities, some children temporarily resident in Zimbabwe will not have the chance to develop to their full potential and will most likely face tremendous barriers to their full, social and economic integration in society. See, section 75 of the Constitution; Moyo A and Manyatera G ‘International and domestic perspectives on disability and education: Children with disabilities and the right to education in rural Zimbabwe: a case study of Mwenezi District, Masvingo Province’ (2014) available at http://ir.msu.ac.zw:8080/xmlui/handle/11408/909 (accessed 14 June 2018).

\textsuperscript{810}Hodgkin and Newell interpreted article 28(1) of the CRC as requiring State parties, including Zimbabwe, provide free primary education ‘to every child and not just low-income children or other categories’. The study interprets ‘other categories’ as obligating Zimbabwe to provide free primary education to every child regardless of their nationality. This then implies that the commitment by section 75 of the Constitution to provide State funded basic education is also in conflict with section 56(3) of the Constitution in that the former infringes the latter by excluding temporary resident children the right to free primary education due to their nationality. See, Hodgkin R and Newell P Implementation Handbook for the Convention on the Rights of the Child (2002) 416; Tomasˇevski K Right to Education Primer 3: Human rights obligations: making education available, accessible, acceptable and adaptable (2001) 14.

\textsuperscript{811}In its 1996 concluding observations, the CRC Committee specifically expressed concerns that primary education was not free. The Committee took a step further and recommended Zimbabwe ‘to make education free and compulsory up to age 15’. However, 22 years later, Zimbabwe is yet to comply with CRC Committee’s recommendations of making primary education free for all. See CRC Committee, Concluding Observations: Zimbabwe (UN Doc. CRC/C/15/ 1996), paras 19 and 32.

\textsuperscript{812}This obligation dovetails with BEAM, which targets 50 percent of its financial educational beneficiaries at secondary level to be girls. See National Gender Policy (2013-2017), p17; Basic Education Assistance Module (BEAM) 7.
access to education addresses mistaken beliefs that girls should only marry and have children while boys should acquire education and be heads of households that support their family.  

Furthermore, unlike BEAM that revokes financial assistance from girls who temporarily dropped out of school due to early marriage, the Gender Policy adopts an inclusive approach that guarantees the right to education to all children, without discrimination. This ultimately creates an enabling environment for the enrolment and retention of girls and child mothers at secondary school levels particularly in rural areas, which have the highest incidences of child marriage that lead to child motherhood.

Fifthly, the Gender Policy can also address the issue of child motherhood when it enjoins the government to ‘lobby for affirmative action measures in areas where sharp gender disparities exist’. Affirmative action entrenches substantive equality, which recognises the difference between men and women, but affirms equality between them by placing laws, policies, and programs that address societal inequalities. The government must then take all necessary measures to combat and eliminate these societal inequalities because they adversely affects

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813 This ensures that girls, just as boys, can spend more of their time schooling rather than sitting at home and doing household chores.

814 The approach taken by the Gender Policy is commendable for two reasons: firstly, it complies with international human rights standards regarding the right to education. Secondly, the Gender Policy enjoins the law makers to amend section 75(1) of the Constitution so that the supreme law guarantees all children, regardless of their nationality, the right to free primary education. To this end, the study reiterates that access to education for all children has the desirable effect of reducing child marriage and other contributory factors that lead to child motherhood in Zimbabwe.

815 National Gender Policy (2013-2017), p17. Commenting on the importance of education, the concluding observations on the initial report of Bangladesh by the ECSR Committee posited that education reduces the incidences of child marriage, which disproportionately affect more girls through high school dropout rates and lower levels of education than boys. The Gender Policy is, therefore, commendable for advocating equal treatment between boys and girls, which would further obligate Zimbabwe to enact and implement mechanisms that enable girls, continue their education after marriage and/or childbirth. See para 51 of the Concluding observations on the initial report of Bangladesh by the ECSR Committee 2018 available at http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4siQ6QSmlBEDzFEovLCuWwpdl7QZ9ZlVnEnVcAytL1KqJu9GxfzRiExOku4WSPsyi0qo9y%2feT5bGQbWuN6yiMNz%2bUPYMnJv1oKGMtYvPbtbCv tNnAJT (accessed 21 June 2018)


817 See a similar discussion of affirmative action in the South African context by Albertyn. She argues that substantive equality, as opposed to formal equality, recognises the difference between men and women, but affirms equality between them by placing laws, policies, and programs, which address societal inequalities, for example, affirmative action. She further argues that affirmative action is a ‘transformatory’ approach that addresses the structural conditions that create and perpetuate systemic inequalities, and thus shift the power relations that maintain the status quo. See Albertyn C ‘Law, Gender and Inequality in South Africa’ (2011) 39(2) Oxford Development Studies 144; Albertyn C ‘Substantive equality and transformation in South Africa’ (2007) 23(2) South African Journal on Human Rights 256.
women and girls more than men and boys. Affirmative action, thus, redresses gender stereotype by promoting the respect for equal dignity and worth of all, through law reform efforts that extend existing benefits, privileges, or rights of women and girls who were previously disadvantaged. In this context, affirmative action can address child motherhood that lead to girl rights violations as it breaks the cycle of perpetual sexual violation associated with girls.

Lastly, the policy’s obligation to improve gender sensitivity in health service delivery, for instance, developing mechanisms that address high levels of maternity among girl children can also combat child motherhood. For example, the state should allow a girl, regardless of her age, to give consent to sexual health treatment, particularly contraceptive services treatment if she has the competency of truly understanding the nature of the treatment and its implications. Supporting this view, Durojaye posited that access to contraceptives enables a sexually active girl or one who experiences coerced sex the ability to seek contraceptive services that prevents, among others, pregnancy. This would address the


819 Through law reform, such as, the enactment of the Gender Equality Act, which imposes criminal liability on the perpetrators of gender-based discrimination, girls can assert their rights and overcome patriarchal discrimination that can lead to child motherhood. Cook R and Cusack S Gender stereotyping: transnational legal perspectives (2011) 154. See also, Tougas F and Velleux F ‘Who likes affirmative action: Attitudinal processes among men and women’ in Fletcher A et al (ed) Affirmative Action in Perspective (2012) 111.

820 See generally chapter 2 above.

821 Commenting on the issue of gender and African women, Durojaye observed that sexual violence against women is a form of gender-based violence rooted in patriarchal tradition and unequal power relations between men and women. Durojaye further argued that ‘while boys are permitted to experiment with multiple sexual partners to exhibit strength and virility, girls are expected to be sexually passive and “well-behaved”’. These observations clearly show that gender inequalities are responsible for most of the health issues that affect not only Zimbabwean women, but also African women in general. See, National Gender Policy (2013-2017), p16; Durojaye E and Oluduro O ‘The African Commission on Human and People’s Rights and the woman question’ (2016) 24(3) Feminist Legal Studies 319. By adopting and supporting measures that address high levels of maternity, the Gender Policy aligns with section 76(1) of the Constitution that guarantees women and girls ‘access to basic health-care services, including reproductive health-care services’ See, National Gender Policy (2013-2017), p16.

822 Similarly, Strauss argued that children must be able to give consent to medical treatment because it ‘is a matter of fact, which depends on the ability of the minor or child to exhibit sound understanding of the nature and importance of the treatment sought’. See, Strauss SA Doctor, patient and the law: A selection of practical issues (1991) 171.

823 By allowing any girl access to sexual health services, Banda and Durojaye posit that countries that are signatories to the Maputo Protocol, Zimbabwe included, would be implementing the realisation of protecting the sexual and reproductive health rights of women. See Durojaye E ‘The potential of the Expert Committee of the African Children’s Charter in advancing adolescent sexual health and rights in Africa’ (2013) 46(3) Comparative and International Law Journal of Southern Africa 392-393. See also, Durojaye E ‘Realizing access
high levels of child maternity that have a direct causal link with child motherhood, since child motherhood is a result of early teenage pregnancy.\textsuperscript{824}

Despite these positive attributes, the Gender Policy, as does most of the legislation discussed in Chapter 4, fails to recommend abortion as one of key mechanisms of addressing high levels of maternity.\textsuperscript{825} This remains the position despite statistics revealing that between 20 to 30 per cent of maternal deaths are results of unsafe abortions.\textsuperscript{826} This clearly denies women the right to self-determine whether to terminate the pregnancy.\textsuperscript{827} Zimbabwe must redouble its efforts to strengthening the provision of sexual reproductive health services, such as access to pre, during and post abortion care, to girls.\textsuperscript{828} This would enable girls to terminate their pregnancy and circumvent the risk of becoming child mothers.

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\textsuperscript{824}In 2016, the Ministry of Health and Child Care through the Zimbabwe National Adolescent Fertility Study revealed that Zimbabwe has the highest teenage fertility rate in sub-Saharan Africa. According to the study, adolescent pregnancy prevalence was highest in Masvingo and Central, followed by Manicaland, and Matabeleland North and lowest in Harare with 28, 25, 24 and 7 per cent, respectively. See, Ministry of Health and Child Care ‘Zimbabwe National Adolescent Fertility Study’ (2016) 39-40.

\textsuperscript{825}See generally, Mapingure case; National Gender Policy (2013-2017), p16.

\textsuperscript{826}See, Newsday ‘20% of maternal deaths due to abortion among young women, girls’ available at https://www.newsday.co.zw/2017/02/20/maternal-deaths-due-abortion-among-young-women-girls/ (accessed 31 May 2018).

\textsuperscript{827}The Herald ‘Illegal abortion: A major public health concern’ available at https://www.herald.co.zw/illegal-abortion-a-major-public-health-concern/ (accessed 31 May 2018). The study submits that the failure by the Gender Policy to specify abortion as an alternative health-care service for pregnant women and girls is retrogressive and discriminatory. It is also regrettable that Gender Policy followed the approach adopted by the Constitution, in section 48(3), which prohibits abortion. Denying girls the opportunity to make free decisions concerning their reproductive rights violates section 51 of the Constitution by stripping them of dignity, treating them as sub-humans unworthy of self-respect and self-integrity. See, Ngwena C ‘Inscribing Abortion as a Human Right: Significance of the Protocol on the Rights of Women in Africa’ (2010) 32(783) Human Rights Quarterly 788. See, Cook R et al ‘Legal abortion for mental health indications’ (2006) 95(2) International Journal of Gynecology & Obstetrics 185-190.

\textsuperscript{828}According to World Health Organisation, girls trying to resolve the problem of unwanted pregnancies need special treatment due to their vulnerability to stigma and discrimination. As such, health providers must treat girls who wish to terminate pregnancy with respect and understanding so that they can receive all the necessary abortion care, without being judged or victimised. See, World Health Organisation Safe Abortion: Technical and Policy Guidance for Health Systems (2003) 65-67. The study therefore, recommends Zimbabwe to enact a special law that deals with abortion, such as the South Africa’s Choice on Termination of Pregnancy Act, which guarantees accessibility and availability of abortion services to all women, including girls. See also Dickson-Tetteh K and Billings DL ‘Abortion care services provided by registered midwives in South Africa’ (2002) 28(3) International Family Planning Perspectives 144.
5.2.3 **National Youth Policy, 2013**

The revised National Youth Policy (Youth Policy) of 2013, which is the principal policy on matter concerning youths, is also relevant in the issue of child motherhood in Zimbabwe. It is a critical planning tool guiding the country’s approach to ‘address the major needs, challenges and opportunities of young men and women, accommodating provincial variations and specific sectoral issues’.\(^8\)

The Youth Policy has objectives,\(^9\) which are reinforced by various policy strategies\(^10\) and guidelines\(^11\) ‘to ensure that all young women and men are given meaningful opportunities to reach their full potential, both as individuals and as active participants in society’.\(^12\)

The Youth Policy is premised on the principle of equality as envisaged by section 20, read together with sections 56 and 81 of the Constitution.\(^13\) It fosters equality by guaranteeing equal treatment of all youths, regardless of sex or gender.\(^14\) For example, it obliges Zimbabwe to ‘eliminate all forms of discrimination against girls and young women…and protect girls and young women from rape, sexual abuse and prostitution’.\(^15\) By doing so, the

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\(^8\) National Youth Policy (2013), p5.

\(^9\) The Youth Policy objectives include those relating to ‘empower youth to participate and contribute to the socio-economic development of the nation, develop a coordinated response and participation by all stakeholders in the development and empowerment of the youth, instil in youth a clear sense of national identity and respect for national principles and values, and promote the health of young people and develop youth oriented healthcare’. See, National Youth Policy (2013), p2.

\(^10\) The strategies are grouped under twelve key strategic areas, namely: Education and Skills Development, Youth Employment and Sustainable Livelihoods, Youth Empowerment and Participation, Youth Migration, Gender Equality and Equity, Information, Communication and Technology, Data and Research, Youth Coordination and Mainstreaming, Culture, Sport and Recreation, National Youth Service, Youth Health and Youth and Environment’. See, National Youth Policy (2013), p2.

\(^11\) The Youth Policy principles include those relating to the ‘enhancement of peace and national unity, equity and diversity, cultural and spiritual diversity, gender equity and equality, youth empowerment for sustainable livelihoods, youth participation, youth-driven, youth service, mainstreaming youth issues, prioritizing youth issues, sustainable development, and transparency and accessibility. See National Youth Policy (2013), p6-7.

\(^12\) See, preface of the National Youth Policy.

\(^13\) This also complies with Articles 2 and 4 of the CRC and the CEDAW, which respectively requires Zimbabwe to prohibit any forms of discrimination and adopt all necessary positive measures to effectively combat discrimination and improve the welfare of young women and girls. See CEDAW Committee, *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, 2004 paras 21-26.

\(^14\) In addition, the Youth Policy recognises that young women, especially those residing in rural areas, orphaned, single parents and living on the streets, constitute one of the specific categories that require special targeting and attention in order to redress past and existing inequalities. For the reason, addressing gender inequalities enables girls and young women to participate on an equal basis with their male counterparts. See National Youth Policy (2013) p12 and 21. See also Articles 2 and 3 of the CRC and the African Children Charter, respectively.

\(^15\) This is in keeping with Articles 5 and 5(a) of the Maputo Protocol and the CEDAW, which obliges Zimbabwe to modify the social and cultural practices that perpetuate gender inequality. See Strategy 5.5.3(a) of the
policy complies with Articles 2(2) and 20 of the African Youth Charter that prohibit sex discrimination.\textsuperscript{837} It also reduces the risk of child motherhood that comes with rape, sexual abuse and prostitution.\textsuperscript{838}

There are direct linkages between child motherhood and sex discrimination. For this reason, the definition of a youth becomes relevant. The policy defines a youth as person aged between 15 and 35 years.\textsuperscript{839} This definition addresses discriminatory attitudes that, for example force girls aged 15 to 18 into prostitution or marriage, which then predisposes them into becoming child mothers.\textsuperscript{840} In this context, reducing the risk of girls from early and unwanted pregnancy safeguards them from becoming child mothers.\textsuperscript{841}

To ensure equality, the Youth Policy calls upon lawmakers to enact amend or ‘repeal laws, policies and customary practices that hinder progress in gender equality and equity among the youth’.\textsuperscript{842} This obligation directs Zimbabwe to amend its Children’s Act, for example, which defines a child as a person below 16, and not 18 years.\textsuperscript{843} Defining a child as a person below 18 years will align the Children’s Act with the Constitution and human rights standards.\textsuperscript{844} This will also require the Marriages Act to increase the minimum marriageable age.
age for female persons from 16 to 18 years. By defining a child as anyone below 18, the Children’s Act would be sending a strong message against customary practices, such as kuzvarira that lead to child motherhood. It also sends a strong message that parents must not send their unmarried child mothers into marriage as it is in violation of the law.

In Chapter 4, the study observed that the Children’s Act does not expressly recognise the best interest of the child, which is a cardinal principle in child rights protection. The Children’s Act must then domesticate the international child best interest principle to be of paramount consideration in all matters that affect children. As noted earlier, the importance of the child best interests is that it gives priority to the best interests of girls; thereby, safeguarding them from chiramu, kuzvarira and child marriages that perpetuate child motherhood. Thus, setting the age of marriage 18 protects the best interests of girls; thereby, reinforcing the prohibition of discriminatory practices that lead to child motherhood (emphasis added).

The duty to realise equality further requires Zimbabwe to guarantee equal access to primary, secondary, tertiary and vocational education and skills development among the youth. This buttresses BEAM, the Gender Policy and section 75 of the Constitution, which also guarantees

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845 In this regard, the observation made by 2017 Joint General Comment on the African Commission on Human and People’s Rights and CERWC on ending child marriage becomes relevant. The Committees opined that: ‘having regard to the overall purpose of the African Children’s Charter and to the primacy of the principle of the best interests of the child, a child’s right to participate in decisions and matters affecting them shall not be used to justify any exception to the minimum marriageable age of 18 years’.

Therefore, enacting, amending, repealing or supplementing legislation to prohibit children below 18 years to marry protects girls against child marriage, which has direct linkages with child motherhood. See Joint General Comment on the African Commission on Human and People’s Rights and CERWC on ending child marriage (2017) paras 14 and 18.


847 See Chapter 4 section 4.2.2 above.

848 See Articles 3 and 4 of the CRC and the African Children’s Charter, respectively; paras 12-18 and 32 of the CRC Committee, General comments No. 15 (2015) and No. 14 (2013), respectively.


the right to education. As argued by Magwa and Ngara, education enables girls to fight practices, such as chiramu and kuzvarira, that keep them away from school because of early pregnancy and marriage. The Youth Policy is, therefore, relevant in that it prohibits parents from practicing traditions and/or tolerating attitudes that interfere with the girls’ education rights. Thus, the ACERWC and CESCR Committees rightly observed that the right to education gives priority to the best interests of girls, including child mothers. Thus, education safeguards against abuse that may subject them to child motherhood.

In addition, Zimbabwe must ‘support disadvantaged youth at all levels of education and skills development through social protection, loans, grants, cadetship, scholarships and other appropriate measures’. This obligation emanates from the fact that ‘out-of-school youths’ is among the categories that need special attention to prevent poor youth from dropping out of school’. This is true since poor families force girls to swap school for marriage so that

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851 See a discussion of BEAM and the Gender in Chapter 5.2.1 and 5.2.2 above. For a discussion of section 75 of the Constitution, see Chapter 4 section 4.2 above. See also Majoko T ‘Inclusion in early childhood education: A Zimbabwean perspective’ (2017) 21(12) International Journal of Inclusive Education 1219.


853 See National Youth Policy (2013) p15-16; Articles 11 and 12(c) of the ACRWC and Maputo Protocol, respectively. See also the Girl and Young Women’s Empowerment Framework of 2014, discussed below. See also Grant MJ ‘Girls’ schooling and the perceived threat of adolescent sexual activity in rural Malawi’ (2012) 14(1) Culture, health & sexuality 74.


855 The provision of equitable access to education for all children, particularly the marginalised, has the resultant effect of increasing the retention rates of young girls in school. However, the Youth Policy does not contain a special or stand-alone clause that requires the retention of girls in secondary school as part of its strategically targeted interventions to redress the problem of girls who drop out of school. This is true despite the policy recognising that girls belong to vulnerable categories of ‘young women’ and ‘out of school youth’ who are at susceptible to risky sexual behaviours that can lead to pregnancy and child motherhood. Hence, there is a misalignment between the two identified target groups (young women and out of school youth) and the educational and skills development strategies adopted by the Youth Policy. See Strategy 5.1.1(m) of the National Youth Policy (2013) p16.

they can pay school fees for male siblings to continue schooling.\textsuperscript{857} This amounts to sex
discrimination due to differential treatment between boys and girls, which the Youth Policy
prohibits.\textsuperscript{858} As such, assisting young girls in poor families to access education opportunities
is pivotal to reduce their risk to sexual exploitation and, ultimately, child motherhood.\textsuperscript{859}

Apart from equality and education, the Youth Policy also provides for the right to youth
participation. It guarantees ‘the youth to have the freedom to choose, to participate in and
take decisions in matters affecting them’.\textsuperscript{860} The right to participation of youth aged between
15 and 18 is consistent with Articles 12 and 7 of the CRC and the African Children’s Charter,
which provide for the right to child participation. Mezmur and Sloth-Nielsen argued that the
principle of child participation is relevant in safeguarding girls from practices, such as child
marriage discussed in Chapter 2.\textsuperscript{861} Similarly, the youth participation allows young girls to
voice their concerns, needs, and views; thereby, enabling them to challenge attitudes
associated with child motherhood and/or practices that discriminate against child mothers.\textsuperscript{862}

Furthermore, Lansdown observed that ‘the right to child participation can enable children to
achieve their best interests’.\textsuperscript{863} The CRC Committee also requires State parties to give due
regard of the views of girls and young women when making decisions that affect them.\textsuperscript{864} This
conforms to the general norms of gender equality, which facilitates the full participation of

\textsuperscript{857}As identified in Chapter 2, child marriage, poverty and child relinquishment through HIV/AIDS are amongst
the contributory factors to child motherhood. Hence, giving incentives to parents who send their girls to
school can act as a key driver in reducing the prevalence in Zimbabwe. See a similar discussion by Rembe S et
al ‘Child and forced marriage as violation of women’s rights, and responses by member states in Southern
African Development Community’ (2011) 25(1) Agenda 68.

\textsuperscript{858}By compelling parents to send boys and girls to school on an equal basis, the Youth Policy is, firstly, in
keeping with section 56(3) of the Constitution that prohibits any derogation from the constitutional protection
of equality with respect to ‘unfair discrimination solely on the grounds of sex, gender or
religious beliefs’ without justifiable causes. See also Research and Advocacy Unit ‘Gender Equality and Equity Analysis of

Hwami M ‘Legal Frameworks on Educational Provisions for Pregnant and Parenting Teenagers’ in Shizha E (eds)
Remapping Africa in the Global Space (2014) 182.

\textsuperscript{860}See strategy 5.2 of the National Youth Policy (2013) p16.

18. See also Swart M and Hassen S ‘A comparison between the position of child marriage “victims” and child

\textsuperscript{862}This echoes Morag who observed that the right to participation entails the right to express views; the right
to do so freely; and to have those views given due weight. See Morag T ‘The principles of the UNCRC influence
on Israeli law’ (2014) 22 Michigan State International Law Review 539. See also Cattrijsse L ‘Reflections on the

\textsuperscript{863}Lansdown G The Evolving Capacities of the Child (2005) 2. See also a similar discussion in the Malawian

\textsuperscript{864}CRC Committee, General comment No. 12 (2009): The right of the child to be heard (2009) para 132.
adolescent girls; thereby, making decisions that serve their best interests.\textsuperscript{865} In order to participate meaningfully in society, General Comment 4 of the CRC Committee observed that adolescents must be able to access adequate information essential for their health and development.\textsuperscript{866} Thus, the right to access health care services also becomes relevant in addressing the issue of child motherhood as well as realising the child mothers’ right to enjoy highest attainable standard of health.

For example, the Youth Policy requires the health sector to ‘promote norms for family planning, responsible sexual behaviour and equal involvement of both males and females in sexual and reproductive health’.\textsuperscript{867} Furthermore, adolescents and all stakeholders that interact with them must receive ‘necessary information and skills regarding youth, sexuality and sexual education...’\textsuperscript{868} This is consistent with CRC and ESCR Committees that obligate States parties to provide adolescents, both in and out of school, with appropriate information on how to protect their health and development and practice healthy behaviours.\textsuperscript{869}

In the context of child motherhood, the Youth Policy enjoins Zimbabwe to establish and/or strengthen sexual health services that promote ‘abstinence, deferment of sexual debut and provision of family planning’ among the youth.\textsuperscript{870} According to Kirby and Kohler, sex

\textsuperscript{865} Notwithstanding its importance, Willow has argued that child participation does not specify whether the child has the final say in matters affecting them. Willow C Children’s right to be Heard and effective Child Protection (2010) 39. In an attempt to clarify on this issue, Sloth-Nielsen argued that child participation does not give a child the right that outweighs that of their parents. Sloth-Nielsen ‘Ratification of the United Nations Convention on the Rights of the Child: Some implications for South African law’ (1995) SALJ 406. Thus, adults make final decisions, forcing girls to child marriage, which fails to give the decision of girls due weight; thereby, going against their best interests. Parkinson P and Cashmore J The Voice of a Child in Family Law Disputes (2008) 3.

\textsuperscript{866} See CRC Committee, General comment No. 4 (2003) para 6.

\textsuperscript{867} See strategy 5.4.1(m) of the National Youth Policy (2013) p20. According to the CRC Committee: ‘the right of adolescents to access appropriate information is crucial if States parties are to promote cost-effective measures, including through laws, policies and programmes, with regard to numerous health-related situations, including those covered in articles 24 and 33 such as family planning, prevention of accidents, protection from harmful traditional practices, including early marriages...’ See CRC Committee, General comment No. 4 (2003) para 6.


\textsuperscript{870} See strategy 5.4.1(b) and (c) of the National Youth Policy (2013), p19; Article 16(2)(c) and (i) of the African Youth Charter.
education programs delay or reduce sexual intercourse among teens. The European Expert Group on Sexuality Education also observed that delaying sexual debuts reduces risks of early and unwanted pregnancies. In addition, providing contraceptives to all adolescents enables girls and young women, as well as their male counterparts, to practice safe sex behaviours. More importantly, providing sexual health services, such as abortion, allow girls to solve problems of unwanted pregnancies. As such, mechanisms that prevent or reduce the risk of pregnancy among girls and young women are relevant in addressing the problem of child motherhood.

Although the Youth Policy denounces illegal abortion, it however, fails to specify medically authorised abortion as a means to respond to early and unwanted pregnancy. This restrictive approach on abortion emanates from the Constitution, which set a bad precedent for other laws and policies. The Constitution, in section 48(3), protects the right to life of an unborn child. It provides that: ‘an Act of Parliament must protect the lives of unborn children and that Act must provide that pregnancy may be terminated only in accordance with that law’. One would then view section 48(3) as firstly, according the foetus the right to life and, secondly, enjoining the organs of the state to protect the foetus against termination.

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875See strategy 5.4.1(j) of the National Youth Policy (2013) p20.
876Section 48(1) of the Constitution is similar to Article 26(3) and (4) of the Kenyan Constitution, which state that the life of a person begins at conception and prohibit abortion, unless certain conditions are met. For a detailed discussion on Article 26 of the Kenyan Constitution, see Center for Reproductive Rights ‘In Harm’s Way: Impact of Kenya’s Restrictive Abortion Law’ (2010) 16–17.
877See also Dworkin R ‘Unenumerated rights: whether and how Roe should be overruled’ (1992) 59(1) The University of Chicago law review 429.
According to Ngwena, ‘explicitly pitting the right to life of a foetus against the abortion rights of the woman in constitutional provisions is tantamount to contradictory reform’. 878 What the Constitution does is that it criminalises abortion, which is evidenced by the Termination of Pregnancy Act that permits abortion, subject to narrow express or implied exceptions. 879 This perpetuates the discrimination against women and girls since abortion is a procedure that only women and girls undergo. 880 Thus, the Youth Policy also infringes on the female youth’s right to abortion, which further burdens pregnant girls into child motherhood.

More importantly, Zimbabwe remains under economic sanctions by the global donor community, which has caused the government to face huge challenges in promoting children’s rights. The implications and impact of economic sanctions on the capacity to address aspects of reproductive health care, family planning education/information and services have negatively affected the welfare of children. In view of the economic constraints Zimbabwe continue to face, it be fair or accurate to conclude that the State has contravened child rights to health.

5.2.4 Girl and Young Women’s Empowerment Framework, 2014

The Girl and Young Women’s Empowerment Framework (the Framework), is the principal piece of policy concerning the empowerment of girls and young women. 881 This policy is a direct response to Zimbabwe’s obligation to address gender-based discrimination, which often expose girls to child motherhood. 882 For instance, the Framework obligates the

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881 See the Girl and Young Women’s Empowerment Framework (the Framework) promotes the rights of girls and young women in Zimbabwe and enable them play a full and participatory role in society. The Framework equally endeavours to ‘promote and protect the rights of the girls and increase awareness of her needs and potential’. The Framework recognises that achieving equal participation of girls and young women would only be possible if Zimbabwe adequately addresses all forms of discrimination, violence as well as negative cultural attitudes and practices, such as child marriage, chinamwari, kuzvarira, chiramu, child rape, poverty and lack of education that affect girls and increase the risks of them becoming child mothers. See Chapter 2; the Framework (2014) p 5 and 9.
882 The Framework complies with Articles 2, 3, 4 and 5 of CRC, African Children’s Charter, CEDAW, and Maputo Protocol, which require Zimbabwe to adopt policy measures that combat discrimination and improve the
Ministries of Primary & Secondary Education (MoPSE) and Higher & Tertiary Education (MoHTE) to support street girl children ‘to continue with education and engage in gainful economic activities’. This dovetails with the Framework’s aim to ‘review and adopt long distance education programmes to make these affordable and accessible to under privileged rural girls and young women’.

Supporting girl children to enrol and continue with education reduces the prevalence of child motherhood. For example, girls would invest much of their time at school learning than at home, which can propel girls to fall pregnant prematurely and/or become child brides. In 2016, the Zimbabwe Demographic Health Survey revealed that an alarming 45 per cent of girls aged 15 and 18 had born a child; 18 per cent were pregnant with their first child; and 64 per cent had begun childbearing. In this context, ensuring that every girl acquires education safeguards her best interests by unlocking the enjoyment of other human rights.


As noted earlier, education is an indispensable tool for achieving gender equality in Zimbabwe. In view of this, one can observe that there are strong linkages between child motherhood, culture, and poverty. Therefore, the Framework becomes relevant as it protects girl children from any form of vulnerability that is, or is likely to interfere with their education. It is for this reason that the ESCR Committee reiterates the importance of education as an empowerment tool for girls, which safeguards them from abuse that can cause child motherhood. According to the CRC Committee, ‘education will help to overcome barriers to participation so their voices can be heard’. See generally ICESCR General Comment No. 13: The Right to Education; CRC Committee General comment No. 21 (2017) on children in street situations para 42.

This gives girls living in street situations an equal chance with other girls to acquire education; thereby, empowering them to overcome challenges, such as pregnancy that lead to child motherhood. By doing so, the Framework is in keeping with section 56(3) of the Constitution that prohibits discrimination based on economic or social status. See also CRC Committee General Comment No. 21 (2017) on children in street situations para 14.


society, which ultimately reduces the rate of child motherhood triggered by poverty, early pregnancies and child marriages.\(^{889}\)

In addition, the Framework addresses the issue of child motherhood through establishing ‘friendly “second chance” educational and vocational skills development centres for out of schoolgirls & youths/ school drop outs/ never been in school’.\(^{890}\) These educational and vocational skills development centres are pivotal in empowering girls with skills, which stimulates their self-worth and making decisions that enable them to contribute meaningfully in society.\(^{891}\) As observed by the Zimbabwe Demographic Health Survey in 2016, these centres have led to the reduction of the proportion of uneducated females in the country.\(^{892}\) It is, therefore, evident that the Framework advances women empowerment, which eventually addresses child motherhood caused by lack of education (emphasis added).

Furthermore, the MoWAGCD, MoPSE and MoHTE must educate ‘parents, guardians, community leaders and school authorities on the rights, needs and responsibilities of girls/young women and details on how to report child abuse’.\(^{893}\) This fortifies the Gender Policy, which requires legislators to simplify laws so that they become to the less literate and those who only speak vernacular.\(^{894}\) As noted earlier, parents and/or guardians who perpetuate customary practices, such as *kuzvarira* that may lead to child motherhood are less educated.\(^{895}\)

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891In addition, scholars such as Luseno observed that the greater exposure to education the greater girls and young women will be more motivated, able, and likely to use maternal and child health services such as family planning. See Luseno WK *et al* ‘Influence of school support on early marriage experiences and health services utilization among young orphaned women in Zimbabwe’ (20117) 38(3) *Health care for women international* 285.

892In 2016, the Zimbabwe Demographic Health Survey reported that 91 percent of females and 94 percent of males had ever attended school. See Zimbabwe National Statistics Agency and ICF International ‘Zimbabwe Demographic and Health Survey 2015: Final Report’ (2016) 7.

893See the Girls and Young Women’s Empowerment Framework (2014) p27.

894See National Gender Policy (2013-2017), p13. See also sections 7(a) and 63(a) of the Constitution.

895For example, *kuzvarira* is a customary practice in which parents pledge their girl child into marriage as a form of debt repayment; hence, they prefer their own interests to the girl’s. One would view the parental interests that surround cultural practices linked to child motherhood as inconsistent with the protection of the best interests of the child. See also, Ekundayo O ‘Does the African Charter on the Rights and Welfare of the Child (ACRWC) only underlines and repeates the Convention on the Rights of the Child (CRC)’s provisions?
Educating all relevant stakeholders that deal with children also changes societal attitudes towards girl children, which enhances their survival and development.\textsuperscript{896} By respecting all children, regardless of sex or gender, society would be practically eradicating discriminatory practices that particularly hinder girls to enjoy life on an equal basis with boys.\textsuperscript{897} Therefore, educating parents and community leaders on the need to respect children as rights holders would change parental attitudes in that they would now consult and prioritise the interests of children when making decisions that concern them.

Moreover, the Framework obligates the Ministries of Women Affairs Gender and Community Development (MoWAGCD), and Justice Legal, and Parliamentary Affairs (MoJLPA) to ensure that the police and judiciary strictly enforce laws, which protect girls against all forms of abuse.\textsuperscript{898} This aims to create ‘an enabling environment where all girls and young women live without fear and exposure abuse, violence, exploitation and discrimination’.\textsuperscript{899} Echoing these sentiments, the case of \textit{S v Banda} and \textit{S v Chakamoga}, which dealt with child sexual offenders, reiterated the role of judicial officers as legal custodians of child protection.\textsuperscript{900} As such, High
Court held that law enforcement officers must protect the best interests of children at all times, and more importantly.  

‘The courts must be seen to apply the law in a manner that achieves the intended aim of the legislature in these cases: that is, to effectively protect children from predatory older persons and ensure the eradication, or seriously attempt to eradicate the problem.’

This implies that the police and judiciary must work hand-in-glove to bring predatory sex offenders to justice and hand down severe sentences that are intolerant of such offences. As noted earlier, practices, such as sexual dalliance, kuzvarira and child marriage directly or indirectly predispose girls to vulnerability of sexual abuse. Therefore, outlawing these practices, since they are harmful and violate the Constitution, protects girls against sexual exploitation, which may lead to child motherhood.

Nonetheless, the main drawback of the Framework is that it fails to guarantee girls and young women in Zimbabwe the right to abortion. This is true despite the Framework acknowledging that unequal power relations to negotiate safe sex are deeply rooted in cultural patrilineal practices. Abortion does not only make girls realise their sexual and reproductive health rights, but address the problem of girls with unwanted pregnancy as well.

must be eliminated. Please cross-refer to your earlier discussion where the case is substantively discussed.


902 See sections 81, 164, 165 and 219 of the Constitution.


904 Instead, the Framework seems to take a conservative approach to access abortion because of its sensitive nature in the cultural, religious, social and political context of the country. See Girls and Young Women’s Empowerment Framework (2014) p29.

905 These practices make it a taboo for young women to demand use of preferred methods of contraception including abortion. See Girls and Young Women’s Empowerment Framework (2014) p15.

5.2.5 National Adolescent Sexual and Reproductive Health Strategy II (2016-2020).

Zimbabwe launched the National Adolescent Sexual and Reproductive Health Strategy II (Health Strategy II) on 10 March 2017.\(^907\) The Health Strategy II aims to address a myriad of sexual and reproductive health challenges facing adolescents and young people.\(^908\) The need to improve access to sexual and reproductive health services for adolescents emanates from, amongst others, the 2015 Zimbabwe Demographic Health Survey. For example, the survey identified early and unplanned teenage pregnancies; maternal mortality; gender-based violence; and child marriages as challenges affecting young people in the country.\(^909\)

The Health Strategy II contains eight guiding principles and four main solution pathways that it deems useful in improving the sexual and reproductive health of adolescents and young people in Zimbabwe.\(^910\) The guiding principles include support to the human rights approach to sexual and reproductive health, imparting young people with life skills vital for sustainable sexual and reproductive health behaviour change, and adequately caring for the varying sexual and reproductive health needs of young people through the provision of sexual and reproductive health services.\(^911\) The four main solution pathways include the reduction of household and youth poverty to keep more adolescents in school, and strengthened legislative and policy measures that support sexual and reproductive health to safeguard young people their sexual and reproductive health rights.\(^912\)


\(^911\) See the Health Strategy II (2016-2020) p21.

In the context of child motherhood, the Health Strategy II recognises that adolescent pregnancy rates remain high among young girls. Adolescent pregnancy has direct linkages with child motherhood because it forces pregnant girls become child mothers. Indeed, statistics have shown that 10 and 27 per cent of urban and rural young women, respectively, have begun child bearing. Furthermore, uneducated girls have a higher risk of falling pregnant than their educated counterparts. The Health Strategy II further recognises that poverty exposes girls in rural areas to increased pregnancy risks largely than those in urban areas.

To address the problem of early pregnancy, the Health Strategy II enjoins Zimbabwe to increase ‘safe sexual health practices among adolescents and young people’. This includes making sexual health information and services that influence behaviour change concerning sexual practices easily and readily accessible. More importantly, educating young men and women on the use of family planning services, such as contraceptives, will also ensure that adolescents engage in safe sex practices. This reduces the number of unintended

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914 The UNFPA has revealed that sub-Saharan Africa countries, such as Zimbabwe contribute over 50 per cent of the global adolescent birth rate, as well as over 23 per cent of the burden of diseases associated with pregnancy and child and maternal ill health. UNFPA ‘Adolescent pregnancy: A review of the evidence’ (2013) 14-15 available at https://www.unfpa.org/sites/default/files/pub-pdf/ADOLESCENT%20PREGNANCY_UNFPA.pdf (accessed 17 June 2018).
916 See the Health Strategy II (2016-2020) p4 and Chapter 2.5 above. Indeed, attention to the sexual and reproductive health of adolescent girls is closely associated with the need to eradicate poverty and inequality, which affect many girls. Thus, a lack of access to sexual and reproductive health care education, including contraceptives cause female adolescents to give birth to unplanned and unwanted children. UNICEF ‘The state of the world’s children 2011: Adolescence an age of opportunity’ (2011) 3 available at https://www.unicef.org/publications/index_57468.html (accessed 30 May 2018).
917 The Health Strategy II (2016-2020) p 21. The policy complements the Youth Policy, which also requires the government to ’promote norms for family planning, responsible sexual behaviour and equal involvement of both males and females in sexual and reproductive health’. Strategy 5.4.1(m) of the National Youth Policy (2013) p20.
pregnancies, which ultimately reduces of the percentage of girls who become mothers prematurely.\textsuperscript{921}

In addition, providing both sexual health information and services to young women allows girls in marriages to engage in safe sex practice that can delay child bearing and rearing.\textsuperscript{922} This also empowers child brides to challenge unsafe sex practices, since research has shown that child brides are often in a subservient position to their male partners.\textsuperscript{923} Customary practices, such as \textit{lobolo} (bride price) further discourage a married girl who comes from a poor family to negotiate safe sex due to fear that the husband would demand his \textit{lobolo} back.\textsuperscript{924} In this regard, ensuring that girls make use of family planning services reduces the risk of them falling pregnant and become child mothers.\textsuperscript{925} This also reduces the risk of pregnant girls whom parents force into marriage, since non-marital pregnancies jeopardise family honour.\textsuperscript{926}

Furthermore, the Health Strategy II is also consistent with human rights treaties, insofar as it guarantees adolescents' right to access sexual health information and services. For example, the policy complies with Article 14 of both the ACRWC and Maputo Protocol that accords girls the autonomy with regard to their sexual health needs.\textsuperscript{927} The CRC Committee, in General

\textsuperscript{921}Yarrow E \textit{et al} ‘Can a restrictive law serve a protective purpose? The impact of age restrictive laws on young people’s access to sexual and reproductive health services’ (2014) 22(44) \textit{Reproductive Health Matters} 148; Bankole A \textit{et al} ‘Sexual behaviour, knowledge and information sources of very young adolescents in four sub-Saharan African countries’ (2007) 11(3) \textit{African Journal of Reproductive Health} 29-30.


\textsuperscript{927}Article 14(1) of ACRWC generally provides for the child’s ‘right to enjoy the best attainable state of physical, mental and spiritual health’. See Arts 1 and 14 of the Maputo Protocol. The Protocol also defines women to include girls; thereby, commanding that girls and women have equitable access to sexual health information and services. See also Durojaye E ‘Realizing access to sexual health information and services for adolescents

http://etd.uwc.ac.za/
Comment 4, has also urged states to develop and implement programs that realise the sexual and reproductive health services, including access to contraception for adolescents.928 In this regard, the Health Strategy II affirms the sexual and reproductive rights of girls guaranteed by human rights treaties, which allows them to express their sexual autonomy.

The provision of sexual health information and services also decreases scourge morbidity and mortality rates associated with adolescent sexual and reproductive activity.929 For example, ensuring that young men and women in rural areas have equitable access to contraceptives reduces premature pregnancies.930 The study, therefore, submits that if the provision and use of contraceptives among the youth increases, then by implication, the risk of early pregnancy also decreases. It is then clear that sexual health education empowers adolescents and young people with special attention being paid to sexual autonomy.931 This enables them to avoid risky behaviours and/or succumb to influences of spousal pressure, such as engaging in unsafe sex practices.

Apart from providing sexual health information and services, the government must ensure that adolescents live in a friendly and protective environment.932 This obligation addresses through the Protocol to the African Charter on the Rights of Women’ (2009) 16(1) Washington and Lee Journal of Civil Rights and Social Justice 159.


929See the background of the Health Strategy II (2016-2020) discussed in the preface xiii.


931See the Health Strategy II (2016-2020) p22; Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, E/C.12/GC/22, paras 10 and 25. The ESCR Committee further urged state parties to amend or repeal:

‘laws, policies and practices that undermine autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws’.


child motherhood in the following manner: firstly, it prohibits customary practices, such as *chiramu* that subject girls to sexual violence. Secondly, traditional leaders must spearhead the elimination of sex discrimination and other obstacles that infringe on the rights of girls and young women. Lastly, the policy encourages open communication between caregivers and children in order to ‘dispel societal practices and attitudes that fuel negative SRH problems’.

Moreover, the Health Strategy II obligates organs of the state to address child marriage by harmonising laws and policies so that they specify a uniform legal age of marriage. The policy expressly prohibits child marriage by defining a child as ‘anyone less than 18 years’. For this reason, the policy defines child marriage as ‘a situation where marriage, cohabitation or any arrangement is made for such marriage or cohabitation with someone below 18 years’. As observed by scholars such as Singh, Clark and Ndugwa, preventing children from marrying reduces a girl’s risk to child motherhood emanating from child marriage.

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935 The Health Strategy II (2016-2020) p25. As observed by the Filippa, Cronjé and Ferns’ survey in Chapter 2, the children of parents in diaspora complained of communication barriers between them and their caregivers. This can force adolescents end up confiding in their peers, who may negatively influence their decision-making. Filippa OM, Cronjé EM and Ferns I ‘Left behind: A qualitative study of Zimbabwean adolescents affected by parental migration’ (2013) 45 *Psychology in Society* 44. They can cause early sexual debuts, which may lead to unintended pregnancy and child motherhood. See generally Peltzer K ‘Early sexual debut and associated factors among in-school adolescents in eight African countries’ (2010) 99(8) *Acta Paediatrica* 1242-1247.


937 This complies with sections 78 and 81 of the Constitution; *Mudzuru* case, p37; Article 21(2) of the ACRWC, which prohibit child marriage and the betrothal of children. See also Committee on the Elimination of Discrimination against Women Committee on the Rights of the Child *Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, 2014 CEDAW/C/GC/31-CRC/C/GC/18 para 19.


The definition of child marriage also protects girls against cohabitation and other unions akin to marriage because they negatively affect the survival and development of girl children.940 Indeed, a study by UNICEF observed that girls and young women who cohabitate are as equally vulnerable as are child brides.941 The study also argued that ‘cohabitation creates similar human rights concerns as marriage and young women under 18 years in such unions live with partners and take on similar roles as care givers, wives and mothers’.942 Thus, the Health Strategy II also addresses the problem of cohabitation, which Chapter 2 identified as a contributory factor to child motherhood.943

Despite its positive attributes, the study submits that the Health Strategy II does not recognise a female adolescent’s right to abortion. For instance, the policy enjoins the government to provide contraceptives, condoms, STD treatment drugs and Anti-Retroviral Therapy, but not to terminate pregnancy.944 This is also evidenced by the fact that the policy requires health service providers to teach adolescents how to use contraceptives and condoms in order to avert unintended pregnancies.945 This explains why the Health Strategy II prioritises access to maternal care such as antenatal, natal and post-natal care for adolescents.946 It also explains why the Youth Policy guarantees the youth the right to ‘freedom to choose, to participate in and take decisions in matters affecting them and be ready to accept the consequences of

943 See generally Chapter 2 above.
946 The Health Strategy II (2016-2020) p23. Indeed, the emphasis on the need to provide antenatal and post-natal care points to the fact that the government of Zimbabwe would rather have girls keep their pregnancy than provide alternatives, such as abortion. For this reason, the study submits that the goal to increase safe sexual and reproductive health practices among girls would only be realised if all the available options would be set on the table and let the girls choose for themselves which options would be most viable for their differential circumstances.
their decisions’. This implies that girls who fall pregnant have to bear the consequences and carry their pregnancy to full term. By restricting the right of girls to terminate pregnancy, the Health Strategy II is invariably contributing to the problem of child motherhood.

5.2.6 National Cultural Policy, 2015

The National Cultural Policy (Cultural Policy) of 2015 is Zimbabwe’s specific policy document concerning culture. The policy gives effect to section 63 of the Constitution, which guarantees the right to culture. The policy has five main objectives, which include creating a culture that celebrates the country’s diverse heritage, creating an environment that fosters equal participation, and reinforcing the ideologies of unhu/ubuntu. Six principles guide the Cultural Policy. These include sovereignty, equal respect for all indigenous cultures, African renaissance and unhu/ubuntu. The Cultural Policy has also domesticated some regional and international human rights treaties so that it conforms to the standards set by these instruments.

In addition, the Cultural Policy has eight priority areas. The priority area on safeguarding Zimbabwe cultural identity could be relevant to the issue of child motherhood. For example, it aspires ‘to promote and preserve beliefs, values, customs and traditions that enhance human dignity, and ensure action against customs and traditions that undermine human dignity’. As discussed earlier, customs and/or traditional practices such as child marriage, kuzvarira, and chiramu both undermine the respect of the rights of girl children (including their human dignity) and increase the prevalence of child motherhood. Therefore, by denouncing such negative customs, the government of Zimbabwe is not only reinforcing the promotion and preservation of human rights but also protecting girls from becoming child mothers.

948 Thus, the Health Strategy II (2016-2020) follows the bad precedent set by the Constitution and other laws and policies that fail to affirm the positive rights of girls to express their sexual autonomy.
950 See section 63 of the Constitution.
956 See generally Chapter 2 above.
Another priority area that could be relevant to the issue of child motherhood is that of education and training. Through this priority area, the Cultural Policy seeks to impart ‘culture education and training through formal education in schools, colleges and universities in the country’. The study argues that if this objective is achieved, the goal of eliminating negative customs that undermine human dignity could also be fostered by implication. For example, if the impartation of culture education would include enlightening people on how practices such as child marriage, kuzvarira, and chiramu violate the rights of girls, then, this would address some of the causes that force girls to become child mothers.

However, the priority area on the ‘appreciation and respect for indigenous Zimbabwean identities and cultural diversity’ is problematic. Firstly, it promotes traditional rites and/or ceremonies, such as chinamwari that encourage children to engage in premature sexual activities. This exposes girls to risky behaviours that may cause early pregnancy resulting in early motherhood. Secondly, the call to promote and respect cultural diversity arguably requires tolerance of all customs, even those that undermine human dignity, because people observe different traditional beliefs. Therefore, tolerating cultural diversity by allowing practices like child marriage, chinamwari, kuzvarira, and chiramu to undermine the rights of girl children, is both a constitutional and international human rights law violation.

Overall, the Cultural Policy has significant interventions that could be useful for Zimbabwe to curb the prevalence of child motherhood. However, the failure to identify/state some of the customs and traditions that undermine human dignity as well as its tolerance to such negative practices in the name of cultural diversity remain as the policy’s major drawbacks.

5.3 Conclusion

The chapter has provided a critical analysis of the policy framework that can protect girls against child motherhood in Zimbabwe. It has assessed the compliance of Zimbabwe’s policy framework with international and national laws on the protection of girls against child motherhood. The chapter has highlighted that Zimbabwe has progressive policies that could facilitate the protection of girls against child motherhood, including providing express protection of the rights of children in general and the right to gender equality in particular.

The policies have also proscribed child marriage and any other form of discrimination that perpetuates child motherhood.

The chapter has also identified gaps in these policies that do not send a strong message in safeguarding girls against factors that cause child motherhood. For instance, most of the policies and policies prohibit gender discrimination with others going as far as denouncing child marriage and cohabitation. However, the common gap identified across the policies was the lack of expressly guaranteeing girls and young women the right to abortion. The study submits that the right to abortion enables girls and young women with the choice to terminate unwanted pregnancy. This has the double effect of reducing the number of girls and young women who fall pregnant and become child mothers.

Therefore, Chapter 5 concludes that Zimbabwe needs to take extra measures that ensure that girls fully enjoy their sexual and reproductive rights, for example. This will put Zimbabwe in a position where it conforms to international human rights standards that protect girls and child mothers in particular. In view of this, the next chapter explores the measures Zimbabwe could take to address the gaps which have been identified. For example, the study recommends Zimbabwe to, among others, ensure equal access to and uptake of health services, ensure equal access to education and provide adequate support to child mothers.
CHAPTER 6
CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

The thesis has sought to review the legal and policy framework of Zimbabwe in the protection of girls against child motherhood and the rights of child mothers. It further has revealed that child motherhood has direct linkages with human rights law, socio-economic and cultural factors. In addition, the legal and policy frameworks of Zimbabwe do not adequately respond to protecting girls against becoming child mothers and the rights of mothers. For instance, a number of laws need to either be amended or enacted in addition to sufficiently implemented and enforced. It is therefore crucial to ensure adequate budgeting in order to realise children’s rights. For these reasons, the next section proposes some recommendations that may be useful to protect girls against child motherhood and the rights of child mothers in Zimbabwe.

6.2 Recommendations

(i) Prohibit the betrothal and marriage of girls, without exception

The critical analysis of the legislative framework that can address child motherhood in this study revealed that the Marriages Act and the Customary Marriages Act are not compatible with the human rights standard of 18 as the minimum age of marriage. For instance, the Marriages Act prescribes 16 and 18 as the minimum ages of marriage for girls and boys, respectively. This differential treatment predisposes girls to child marriages so as the Customary Marriages Act that allow girls to marry when they reach puberty stage. In addition, the Children’s Act conflicts with the international and regional standards on the definition of the child. It defines a child as a person below 16 years, whereas international law regards a child as a person below 18 years. Further, these pieces of legislation also violate the Constitution of Zimbabwe that defines a child as a person below 18 years and sets the marriage age at 18, without exceptions.
To ensure implementation of laws, which prohibit child marriage, Zimbabwe must align its laws to stipulate 18 as the age of majority. The provision of free and accessible birth and marriage registration mechanisms is also relevant in deterring child marriages, which are key drivers of child motherhood. The Government of Zimbabwe must also raise awareness amongst schoolteachers, children and parents about the illegality of child marriage, as expounded by the Mudzuru case. Schoolteachers must also assist girls with re-entry to schools following pregnancy.

**(ii) Ensure full enforcement of laws, penalties and sanctions**

To enforce the protection of girls against child motherhood, Zimbabwe must impose penalties and sanctions on any person who facilitate a child marriage, *kuzvarira, chiramu* and other forms of abuse that expose girls to early pregnancy. In addition, lawmakers must also impose penalties and sanctions on any person who violates or threatens to violate the rights of a child mother by exposing the child mother to emotional, sexual, and physical exploitation and/or neglect. Zimbabwe must also protect whistle blowers; teachers, health providers, marriage officers and other government employees who report or disclose child marriage or the suspicion or possibility of a child marriage, the violation or the suspicion or possibility of the right(s) of child mothers and child brides.

**(iii) Ensure equal access to education**

The thesis revealed that section 75 of the Constitution in addition to section 4(5)(b)(1) of the Education Act discriminate against the right to education of some children based on their nationality or physiobiological maturity. The study recommends Zimbabwe to amend its educational provisions to ensure that every child, regardless of the nationality, physiobiological or gender, enjoy the right and access to education, without discrimination. The retention of children in school is essential to prevent child marriage and mitigating its effects, such as early pregnancy as well as realise the right of girls and child mothers to education. To ensure equal access to education, Zimbabwe should include measures to encourage pregnant girls to keep attending or to return to school. It is compulsory for the government to facilitate the retention and re-entry of pregnant or married girls in schools and to develop alternative education programmes such as skills acquisition and vocational training in circumstances where women are unable or unwilling to return to school following pregnancy or marriage.
Zimbabwe should also pursue policies and plans designed to achieve equal access by girls and boys to education. These may include giving incentives to parents to send their girls to school, ensuring that sanitary facilities are available to girls at school or reducing the exposure of girls to violence at or whilst making their way to school, as well as having bursary programmes that target teenage girls living in areas infested by early pregnancies and child marriages.

(iv) Ensure equal access to and uptake of health services

In line with international and regional human rights law, girls have the right to enjoy their highest attainable state of physical and mental health. This includes the right to access to a comprehensive range of sexual and reproductive health care and services. Child motherhood deprives girls of the full complement of their right to health and increases their risk of exposure to sexually transmitted infections, including HIV and AIDS. To encourage the uptake of sexual and reproductive health services, Zimbabwe must implement comprehensive sexuality education and information programmes, contained in the Health Strategy II, National Gender Policy and other policies.

The thesis also showed that section 48(3) of the Constitution denies women and girls the right to abortion, as it protects the right to life of an unborn child. In addition, the Termination of Pregnancy Act must permits abortion under strict conditions, namely if the pregnancy was due to unlawful intercourse such as incest or rape, or threatens the life of the pregnant women or girls. The Code also criminalises termination of pregnancy outside the scope of the Termination of Pregnancy Act.

To address this problem, Zimbabwe must draw lessons from the South African Choice on Termination of Pregnancy Act, which makes provision for abortion on request in the first twelve weeks of pregnancy.\textsuperscript{960} There is no requirement, at all, to furnish supporting reasons. From the 13th to the 20th week of pregnancy, the Act recognises, inter alia, socio-economic circumstances as a ground for abortion.\textsuperscript{961} More importantly, the Act does not require the consent of a parent or guardian where a minor requests abortion.\textsuperscript{962} Thus, Zimbabwe must

\textsuperscript{960}See section 2(1)(a) of the Choice on Termination of Pregnancy Act of 1996.
\textsuperscript{961}See section 2(b)(iv) of the Choice on Termination of Pregnancy Act of 1996.
\textsuperscript{962}See section 5(3) of the Choice on Termination of Pregnancy Act of 1996. However, this applies only where the minor has otherwise the intelligence and maturity to understand the nature, purpose and inherent risks of a proposed abortion procedure so as to give informed consent.
avail medical abortion to all pregnant girls since child motherhood exposes girls to high risk of pregnancy-related health complications.

Furthermore, Zimbabwe must avail age appropriate information about sex, sexuality, sexual and reproductive health rights and sexually transmitted infections, including HIV and AIDS to schools and public population. Comprehensive sexuality education should also include age appropriate information about what constitutes consent to sex, as distinct from consent to marriage, and information about gender, sexuality and social norms and stereotypes that perpetuate gender inequality and its manifestations, which predispose girls to child motherhood and negatively affect the rights of child mothers.

Zimbabwe must then ensure that contraceptive methods such as condoms, hormonal methods and emergency contraception should be easily and readily available to sexually active adolescents. The CRC Committee in General Comment 4 has additionally called upon Zimbabwe, among other member states to ensure access to safe abortion and post-abortion care services to any girl or woman in need. While it is common knowledge that Africa has one of the highest mortality rates in the world, adolescent girls are the worst affected. Accordingly, the use of contraceptives is beneficial in preventing unwanted or early pregnancy.

963 Despite its positive attributes, some scholars have contested the right for adolescents to access family planning. For example, Saunders has argued that access to contraceptives would require member states to distribute contraceptives or give pornographic sex education in schools. In a similar fashion, Blanchfield also argued that this right would trump other rights, more specifically the rights and duties of parents and legal guardians as child custodians. See Saunders WL The Convention on the Rights of the Child and the UN Special Session on Children (2001); Blanchfield L United Nations Convention on the Rights of the Child: Background and Policy Issues (2010) 15.

964 In General Comment No. 4, the CRC Committee also reiterated that ‘State parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)’. See Committee on the Rights of the Child, General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4, paras 26 and 28.


(v) **Ensure the promotion of access to justice**
Throughout this study, it was revealed that many girls and child mothers do not enjoy their fundamental rights, including the right to education, dignity, highest attainable standard of health and right to be free from sexual exploitation. As such, Zimbabwe must address the systematic inadequacies in the administration of justice, such as lack of infrastructure, resources, adequate laws, well-trained personnel and corruption that are hindering effective protection of the rights of girls and child mothers. Additionally, the study recommends Zimbabwe to provide for appropriate remedies when there is a violation of children’s rights. The judiciary, Zimbabwe Human Rights Commission, Gender Commission and other institutions and statutory bodies must enforce the Constitution to ensure access to effective assistance in justice processes.

(vi) **Provision of adequate support child mothers**
The study recommends Zimbabwe to provide support to child mothers by, for example, assisting them to continue with their education. The government must also provide child mothers with comprehensive social protection and health services, such as access to contraceptives that control fertility. Zimbabwe should also put in place mechanisms that support child mothers fulfil their parenting roles in respect of their own children. The government should also target and support teachers, health providers, judicial officers, the police, religious, community and traditional leaders, national human rights institutions, bodies with a human rights mandate and Civil Society Organisations to provide legal, health, psychosocial or other services to girls and child mothers. Recognising the links between child motherhood and gender inequality, the study encourages Zimbabwe to promote the participation of men and boys in protecting the rights of girls and child mothers.

(vii) **Ensure resource allocation and budgeting**
To meet her obligations as outlined in national, regional and international human rights law, the thesis recommends Zimbabwe to address corruption and allocate sufficient budgetary and other resources towards protecting girls against child motherhood and rights of child mothers. To be effective in achieving this, ZIMSTAT and other bodies must collect annual data on school enrolment, school attendance, school completion and drop out, the uptake of health and other social services, birth and marriage registration. This gives Zimbabwe a clear
picture on areas that need more resources to combat children’s rights violations that specifically affect girls and child mothers.

Finally, this thesis argues that girls, even those who are not necessarily in a marriage, need special care and protection. Research has shown that girls are generally more prone to sexual abuse than boys in Zimbabwe. The risk of sexual abuse on girls living in poor families increases due to poverty as it may force them resort to selling sex for survival. This is why section 29 of the SADC Child Marriages Model Law categorises girls as vulnerable children, whom State Parties must provide protection against sexual exploitation. Thus, governments must strive to provide necessary care and protection for the girl child. These interventions are significant in protecting girls against child motherhood and the rights of child mothers.

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968 Chirizva I Child prostitution in Shamva in Zimbabwe (unpublished Bachelor of Arts Honours Degree in History, Midlands State University, 2016) 32-34.

969 See, section 29 of the SADC Child Marriages Model Law. Cross reference to where it is substantively discussed is required.

970 See, section 29 of the SADC Child Marriages Model Law.
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