



Court Victory for Child Brides - Call for Celebration?

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List of Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
CRC	Convention on the Rights of Children
DVA	Domestic Violence Act
FAO	Food and Agriculture Organization
FGD	Focus Group Discussion
MoJLPA	Ministry of Justice Legal and Parliamentary Affairs
MoPSLSW	Ministry of Public Service Labour and Social Welfare
MoWAGCD	Ministry of Women's Affairs Gender and Community Development
NGO	Non-Governmental Organisation
RAU	Research Advocacy Unity
ZHLR	Zimbabwe Lawyers for Human Rights
UNCRC	United Nations Convention on the Rights of the Child

Abstract

The subject of child marriage has been debated for a long time in global, regional and local arenas amongst states, human rights and children's activists. Merry has argued that society views the state as the guardian of social justice and likewise that citizens assume that it is the duty of the government to solve problems associated with violence against women and girls (2009:5). The Zimbabwean government showed its commitment to promoting women and children's rights by ratifying international and regional treaties like the African Charter on the Rights and Welfare of the Child, which expressly condemns child marriage, and adopting a new Constitution in 2013 that observes children's rights which were not included in the old Constitution. However, the government's 'piecemeal' reforms which left the existing marriage laws unaligned with the Constitution led former child brides and human rights activists to challenge the constitutionality of the marriage laws in the country. This led to the subsequent landmark ruling of January 2016 ending child marriage. Using a socio-legal perspective, this paper analyses how transnational laws can be translated into the Zimbabwean native context and promote children's rights particularly ending child marriage.

Relevance to Development Studies

Child marriage is seemingly retrogressive when it comes to socio-economic development because it undermines girls' employment opportunities in future due to lack of adequate education and skills to earn a decent living (Union 2015). This paper argues that empowering girls through contextualising and promoting children's rights and transnational laws, is one necessary step towards promoting socio-economic development. In her effort to promote the participation of women and girls in development projects, Dr Nkosazana Dlamini Zuma (Chairperson of the AU Commission 2012) argued that women and girls constitute more than 50% of the African population, hence it is necessary to protect their interest to promote development of the African continent (Union 2015:5). In supporting Dlamini-Zuma's argument and other scholarly arguments supporting girls' and women's participation in development I reiterate that for Zimbabwe, a country already in economic turmoil, delayed marriage would be of great benefit. If more girls are educated and acquire the necessary socio-economic skills and jobs, they are guaranteed access to health and an improved lifestyle and that will promote a stronger and vibrant economy (Union 2105). Hence the saying attributed to the Ghanaian scholar Dr James Emman Kwegyir Aggrey emphasises the need to promote development: "[t]he surest way to keep people down is to educate the men and neglect

the women. If you educate a man you simply educate an individual, but if you educate a woman, you educate a whole nation” (Nyamidie, 1999). The aspects argued above validate the need to place the issue of child marriage on the agenda of development.

Keywords

Child Marriage, Child rights, Constitutional reform, Legal translation, Vernacularisation, Zimbabwe

Chapter 1 Background to the Study

1.0 Introduction

The Zimbabwean economy has not been performing well in the last two decades (1995 to date) leading to rampant unemployment, social upheavals and uncertain political stability (Chiripanhura 2010:156, Mugove 2016 Daily news article). Carrying out research in a country where the economy is depressed and the political environment is tense and uncertain can be both depressing and frustrating but at the same time provides a window of both self and national introspection that can be quite revealing and disturbing. On the contrary such an environment can be of great advantage to the researcher in the sense that those sections of society with great desire for change like human rights and civic organizations are prepared to give their honest opinion without fear of reprisals

Such was my experience during my field work which I carried out between July and August 2016 in my country of birth Zimbabwe. Zimbabwe is an African country located in Southern part of Africa. It lies to the north of South Africa across the Limpopo River, and shares a border with Zambia to its north, Mozambique to its east and Botswana to its west. Zimbabwe is currently in the throes of an illiquid economic crisis marked by serious foreign currency shortages, since its adoption of the multi-currency system in 2009 (Cliffe, Alexander, Cousins and Gaidzanwa 2011, FAO 2010). This comes after yet another serious hyper inflationary economic crisis of 2007-2008 which saw the disappearance of goods from shop shelves and an estimated over 1 million people facing hunger. The current economic crunch has resulted in mass civil protests that have been organised since early July 2016 through August with some still being planned despite the temporary ban on civic demonstrations in August 2016.

Nevertheless, the problematic economic and political environs did not dissuade me from carrying out investigations on my thesis that will explore, examine and analyse the implications of the historic Constitutional Court Ruling (adopted on 20 January 2016) ending child marriages in Zimbabwe. This paper will examine the strategies which the Zimbabwe Government, NGOs and civil society can do to ensure an effective end to the practice. The landmark ruling ending child marriages was made following a constitutional challenge in November 2014 by two former child brides (Ruvimbo Tsopodzi and Loveness Mudzuru) after the realisation that there are inconsistencies between the newly adopted constitution (Constitution of Zimbabwe Amendment (No. 20) Act 2013) and the existing marriage laws when it came to defining a child. The judicial gaps between the constitutional ruling and the subsisting laws have left a

space for many child brides getting married, deriving either out of girls' agency (choice), adult coercion or under the guise of tradition or religion. The resulting outcry coming from human rights and civic organizations, parents and the government, following health complications and negative development impacts due to early marriages, brought the issue of child marriages to the fore, subsequently leading to the constitutional challenge by the child brides

1.1 Background and Context

Some scholars argue that most African countries with high rates of child marriage have laws on paper that prohibit such acts and, although these acts provide minimum marriage ages, the practice still continues because of traditional and religious practices that make it difficult to enforce the laws (Sarich, Olivier and Bales 2016:451, Sibanda 2011:6). They further argue that legal pluralism is one common characteristic in many African countries where traditional legal systems co-exist with national laws (often of Roman-Dutch origin) and quite often practices like child marriages are condoned by governments as an ethnic or cultural rite. Zimbabwe is one such country that attained independence on 18 April 1980 from Britain and inherited a plural legal system which apparently is viewed as barricading change while concealing child marriages because of the lack of clear distinction between common law, religious and traditional practice (Sarich et al:452). For example, in Zimbabwe the Apostolic Church Sects that tend to mix Christian religion and African tradition are believed to contribute to high prevalence rates in child marriage because in such sects most girls are expected to marry at an early age. Indeed girls are married off soon after reaching puberty (Sibanda 2011:4-5). Sibanda gives the example of the Johanne Marange Apostolic sect in Manicaland, which is believed to have more than 1.2 million members while another survey carried out by the Sunday Mail in 2005 estimated that the population of the apostolic sect is well over 2.5 million with 64% of the population being women aged between 20 and 29 who are of child bearing age (Maguranyanga 2011:3). While I acknowledge that the figures given by Sibanda and Maguranyanga do not automatically mean there is child marriage, based on the doctrine of most Apostolic sects - which Sibanda (2011:4-5) says encourages girls to marry soon after puberty - one is bound to reach the conclusion that many women in the sects are likely to experience child marriage.

Sibanda (2011) took the argument further by stating that the membership of many apostolic sects includes prominent politicians and highly regarded members of society who purposely do not denounce child marriage and thereby collude with child marriages. She added that some traditional chiefs who are supposed to be custodians of customs and tradition at times promote child marriages. For example, Chief Chiduku who is a senator in Manicaland Province in Zimbabwe and a member of an Apostolic sect that allows polygamous marriages, was quoted in a parliamentary Portfolio meeting saying there is

nothing wrong with marrying off young girls (Sibanda 2011:2). Zimbabwe's former Prosecutor General Johannes Tomana caused great controversy when he was quoted in one of the daily papers, the Chronicle, dated 19 June 2015 saying girls can be married off at 12 if their parents fail to get money to pay for their education. There is a need to enforce the rule of law in Zimbabwe which has not been observed as there are civil laws that prohibit child marriages (Magaisa 2016). Though there has been talk about eliminating child marriage in Zimbabwe, government effort has largely been focussed on other goals like poverty reduction, education of girls and health care while disregarding child marriage.

In November 2014 two former child brides resorted to litigation to fight for the rights of the girl child. They challenged the Zimbabwean Constitutional Court over the two marriage laws that condoned child marriages. The still standing Customary Marriage Act (Chapter 5:07) does not have a minimum marriageable age for girls and the Marriages Act (Chapter 5:11) selectively sets the minimum age of marriage for girls and boys at 16 and 18 years respectively. At the same time the Constitution of Zimbabwe, being the overarching law, recognises 18 years as the legal age of majority. Faced with this dilemma, on 20 January 2016, the Constitutional Court ruled in favour of the complainants and banned child marriages. Section 22 of the Marriage Act that condoned child marriage by allowing girls to marry at 16 was repealed and under-age marriage under the customary law was banned (Magaisa 2016). The tasks that still remain are multifaceted. A major task is the harmonisation of existing marriage laws, and promotion of civil society's acceptance of the laws especially from a traditional and religious point of view. The challenges that remain with the existing laws will be discussed in more detail in the chapter on legal framework in Zimbabwe.

1.2 Problem Statement

Child marriage is of great concern to various stakeholders including human rights activists and defenders, academics and policy makers because of the negative effects it has, especially on the health of the girls and their general well-being (Hanzi 2006, Maguranyanga 2011, Sibanda 2011, Union 2015). Research has shown that, compared to boys, girls are most affected by child marriage. Available statistics show that about 14 million girls worldwide are involved in child marriages every year (Union 2015:3). Further research has shown that Africa has 30 of the 41 countries worldwide with a child marriage prevalence of 30% or above making it urgent to end child marriages on the continent (Union 2015, Maswikwa et al 2015). Investigations made revealed that various factors influence girls to marry before they reach 18. These factors range from poverty, orphan-hood, family honour, legislated minimum sexual consent and marriageable age, religious and cultural values (ZIMSTATS 2015, Nour 2009, Ahmed 2015). Significant negative impacts of child marriage such as high

school drop outs and high risk of damage to health have been noted the world over with South Asia and Sub-Saharan Africa recording the highest statistics.

Zimbabwe is located in Sub-Saharan Africa, a region which has recorded high statistics of child marriages, after South Asia. As a country Zimbabwe has recorded its fair share in child marriages. A UNFPA report has revealed that Zimbabwe has one of the highest child marriage prevalence rates in the world (UNFPA 2012:1). The report further exposed that one in three girls will be married before they are 18 (ibid). A study conducted in 2011 showed that about 31% of the women aged 20-24 were married or in union before they reach 18. It was further argued that, if 231,000 women aged 20-24 were married or were in union before the age of 18 in 2010, and if the trends continue, this implies that 246,000 of the young girls born between 2005 and 2010 will be married or in union before 18 by 2030 (ibid:1).

According to a ZIMSTATS study carried out in Zimbabwe in 2014, pregnancy related deaths are known to be the leading cause of mortality for both married and unmarried girls between the ages of 15 and 19 and there is evidence to suggest that girls who marry at young ages are more likely to marry older men which puts them at increased risk of HIV infection (2015:223). Child marriage leads to a continuous vicious cycle of poverty. This is mainly because with limited education and skills, girls are left with very few economic options to earn a decent living. The 2011 Plan International Report shows the urgency of the need to intervene and to end child marriage in Zimbabwe and Africa as a whole through its revelation that girls are being commodified especially during economic downturns (Hanzi 2006:27). Girl children are the first to feel the economic rollbacks as they are used to seal deals and given away in marriage (Sibanda 2011, Dube 2013, Union 2015). For example, the Zimbabwean Herald, dated 5 September 2011, reported that girls between 10 and 15 years were being forced into marriage at a settlement near Snake Park in Harare due to poverty. Thus one can argue that child marriage is retrogressive when it comes to socio-economic development because it undermines girls' opportunities in the future due to lack of education and skills. Hence the remark in 2009 by the then African Region World Bank Vice President Obiaegeli Ezewesil, during a conference on the impact of the global economic crisis on women in Africa that, "the face of poverty is female" (Union 2015:15). The statement supports the argument that child marriage increases the chance of poverty among girls and women because their chances of getting skilled employment are reduced as they are forced out of school early.

Considering the problems associated with child marriage discussed above, the Constitutional Court ruling ending child marriages was welcome as a triumphant event in the history of the struggle for women's rights in Zimbabwe (Magaisa 2016). As activists welcomed the Constitutional ruling they have expressed the need for the government to quickly put in place applicable Acts

that support the ruling to make it effective in a court of law. The ruling on its own is of limited effect (Magaisa 2016, Mavhinga 2016). Activists argue that a task still remains because the Constitutional ruling still needs supporting laws to reach its full gist. According to the process of enacting a law in Zimbabwe, a bill is put forward, and has to be debated by civil society before being endorsed by parliament. Introspectively these remarks have left me with many unanswered questions, and the million dollar question which remains is, whether the Constitutional ruling will effectively end child marriages in Zimbabwe in the presence of underlying gaps between the Constitution and other supporting laws? Research has shown that child marriage is an age old practice entrenched in many societies due to socio-economic reasons. Against this background, is the use of law alone enough to end the practice? Can the child brides claim victory in ending child marriage and really celebrate? Or will the practice continue in the face of the court ruling? This research therefore aims to find out whether (and how) the well-meaning court ruling can end child marriage. The research will explore other legal and non-legal strategies that can be implemented by concerned stakeholders in Zimbabwe to give effect to the court ruling and contribute to successfully ending child marriages in the country.

1.3 Objectives

The main objective of this research is to examine strategies that can be implemented by stakeholders to reach the full realization of the gist of the Constitutional ruling. Since the Constitutional ruling is one step of what should be done to end child marriage, the research would want to get an insight into the major causes of child marriage in Zimbabwe and explore the role of other actors involved in the matter and the measures that can be put in place to help end the practice.

1.4 Main Research Question

- What can the government, NGOs and civil society do to address the infringement of fundamental rights of girl children pertaining to early marriages in order give full effect to the constitutional ruling ending child marriages in Zimbabwe?

1.4.1 Sub- questions

- What are the major causes of child marriage in Zimbabwe?
- How do civil society and other relevant stakeholders perceive the Court ruling and what are they doing to reinforce the ruling?

1.5 Justification and Relevance of the Topic

The Constitutional ruling embraced on 20th January 2016 ending child marriages in Zimbabwe has motivated me to write this research paper as I explore its socio-legal implications considering that the practise has a long history and is deeply embedded in the religious and cultural practices of many Zimbabweans. I personally welcomed the ruling as a landmark ruling that was going to “save” all potential child brides from the “problems” associated with child marriages. The dreadful experiences of the child brides I assisted during my tenure as a counsellor and social worker at my former work place had made me conclude that most child marriages are an anathema. I worked for Musasa, a local NGO that provides relief services like counselling, legal aid and shelter to survivors of gender based violence between March 2014 and August 2015. On average I would handle at least three new cases of child marriages per week during the four days that we attended to clients (we attended to clients from Monday to Thursday and this virtually imply that every day there would be a case of child marriage). Another important trend I noted during my tenure as a counsellor was that child marriage did not mainly involve girls from rural areas but involved girls from urban areas as well on an approximate ratio of 1:1. My observation was more or less confirmed by Makoni (2016) when she cited figures from the Descriptive Youth and Child Atlas saying that child marriage is slightly higher in rural areas (27%) than urban areas (24%) but there are certain urban areas like Epworth in Harare where almost half of the teenagers are married. The abundant cases of child marriages that I handled involved brides who reported because either they were forced into marriage and were against the practice or they were experiencing violence from their partners. A review of the reactions of various stakeholders made me reflect and introspect on whether the Constitutional ruling on its own would bring an end to child marriages. For example Mutsaka (2016) quoted Tendai Biti, the lawyer who represented the former child brides Ruvimbo Tsopodzi and Loveness Mudzuru in the Constitutional Court case challenging the Marriage Acts, as having greatly welcomed the ruling though he expressed the need for parliament to pass tougher jail sentences for perpetrators. The fact that current legal instruments are seemingly insufficient to bring an end to child marriages gave me the opportunity to investigate other strategies that can be put in place to give full effect to the Constitutional ruling.

1.6 Language and Concepts

A number of terms will be used constantly and they are defined to give clarification to the reader. A **child** is defined as anyone below the age of 18 in line with the UNCRC. I am aware that this definition is restrictive according to age. In fact, definitions may vary from country to country and depend on the context in which they are being used. This paper will adopt the UNCRC definition

because it concurs with the definition given in Section 81 of the Constitution of Zimbabwe. Giddens in Hanzi (2006:29) viewed **marriage** as a “socially acknowledged and approved sexual union between two individual adults” implying that marriage is an adult activity whereas in law for example, the definition would be quite different. Bearing in mind that the definition of **child marriage** is often contextualized and problematized by practitioners and researchers, in this paper **child marriage** is defined as a union that involves anyone below the age of 18 (Union, 2015:3). Taking into cognisance that in many countries marriages are allowed under certain conditions for girls below the age of 18, in this paper the age of 18 is still going to be used because it is in line with section 78 of the Zimbabwean Constitution which recognises 18 as the age of founding a family.

1.7 Methodology

1.7.1 Data Collection Methods

In this research I used primary and secondary data. O’Leary (2014:201) explains that primary data is the current information that is owned by the researcher and is targeted to specific issues being explored by the researcher. The primary data was collected between the 4th of July and the 12th of August 2016 when I carried out my field research. The empirical evidence that I used in this research was drawn mainly from three government ministries: the Ministry of Justice and Legal and Parliamentary Affairs (MoJLPA), the Ministry of Women Affairs, Gender and Community Development (MoWAGCD) and the Ministry of Public Service, Labour and Social Welfare (MoPSLSW). From the Ministry of Justice I gained a deeper understanding on the implications of the Court ruling and got to understand other legal instruments that need to be put in place, especially by the government, to effectively end child marriage. From the other two ministries, NGOs that work with children and civil society in general I gathered information on major causes of child marriage and also on the legal and non-legal measures that the government, NGOs and the society can put in place to end child marriage.

1.7.2 Interviews

Data used in this research was collected through face to face interviews that were semi-structured. Through the help of the contact persons from my former workplace, Musasa I managed to get in touch with the people I interviewed. Interviews were used to collect data because they helped me to probe and dig deeper where clarity was needed as explained by Payne and Payne (2004). This helped me to get to the bottom of legal and non-legal issues that need to be addressed if the issue of child marriage is to be fully addressed in Zimbabwe. Interviews were the most suitable in my case because one-to-one interviews help to maintain confidentiality and I gathered information in a

short space of time in the field (six weeks). I used both semi-structured and open-ended questions so that interviewees would be free to express their views. I have involved experts from various fields who work with children to make sure I got a balanced judgement so that experiences and biases from my former work would not interfere with my research.

1.7.3 Focus Group Discussion (FGD)

Data used in this research was also collected through a FGD involving approximately 400 women from a main line church who were holding their annual women's conference. I was invited to the convention by one of the congregants, a social worker and former workmate from Connect (a counselling organisation which was going to chair one of the discussions on how to tackle the problem of child marriage in Zimbabwe). Macheke is 35 kilometres towards the eastern border of the city of Mutare. The discussion was an open discussion whereby participants gave their unhindered opinion on the causes of child marriage and their view on the constitutional reform ending child marriage.

1.7.4 Secondary Data

Secondary data on the other hand refers to data that exist already and can be found in documents, databases and on the internet (O'Leary 2014: 270). I used secondary data in my research through consulting reports of NGOs that work with children and got their suggestions on ending child marriage. To get to the bottom of my intended study I engaged various literature and did an interpretive analysis of existing literature on child marriage in Zimbabwe, Africa and the world in general. However, it is important to note that most academic research done on child marriages in the region focuses on regional comparative studies on the impact of child marriages on Southern Africa. Not much academic research has been done focusing on Zimbabwe in particular. For example, work by Maswikwa et al (2015) and Union (2015) are comparative studies on Sub-Saharan Africa and Africa in general. This gave me a base of academic literature to consult, especially on the general causes and impact of child marriages, as well as the regional and international treaties and conventions on human and children's rights that are important in protecting children against abuse. Zimbabwe Human Rights Watch, Plan International and Alex Magaisa's blogs have also produced grey literature on child marriage that is worth taking note of and has been used in this research.

1.8 Study Population

The interviewees included six key informants. Out of these four were from Harare and two from Marondera. Those from Harare included a Child-Welfare officer (social work background), an Officer from the Ministry of Public Ser-

vice, Labour and Social Welfare, an Officer from the Ministry of Women's Affairs, Gender and Community Development, the Counsel for the Attorney-General from the Ministry of Justice, Legal and Parliamentary Affairs and a Senior projects lawyer from the Zimbabwe Lawyers for Human Rights (ZLHR). From Marondera I interviewed a magistrate and a Minister's wife from the Methodist church and teacher by profession. The population also included the 400 participants from the focus group discussion (FGD). My participants, both from the key informants and the FGD, were aged between 25 and over 65 years. Key interviews were mainly conducted in their places of work, save for the Minister's wife whom I interviewed from the venue of the convention. Also, I had a key informant from Musasa who introduced me to my interviewees from all the three relevant government ministries mentioned above. I also included 2 members of the judiciary, one being a senior officer in the Prosecutor General's office and the other being the Resident Magistrate in one of the provinces in Mashonaland. These members of the judiciary were chosen because of their vast experience in handling various court cases in Zimbabwe.

1.9 Challenges Faced

As alluded to earlier in the prologue, the challenging economic and political situation I encountered during the research period led me to either reschedule interviews or change interview techniques. In the end I resorted to corresponding through emails with one of the respondents and that did not go through without challenges. Some of the problems associated with sending questions to respondents meant they responded at their own pace and I had to keep sending back and forth questions that needed clarification, thus much time was spent with one respondent than was earlier planned. For some interviewees, I ended up using skype and telephonic interviews whose quality and time was based on the availability of electricity and internet connection. The politically polarised situation in the country affected my chances of recording the interviews since the majority of the interviewees were against the idea of recording the interview, even though I had explained the purpose of the interview and after showing them my letter of introduction from ISS they still remained uncertain and suspicious of how the information will be used. Workers from government ministries were very cautious hence did not want to be recorded. Others ended up giving excuses and I had to look for new interviewees originally not on my list. The political uncertainty resulting in unwillingness to be recorded led me to resort to note-taking, which besides requiring astuteness one has to be fast enough to capture most of the important points. However, despite facing challenges, I managed to get answers to most of the questions that I had before I went for research

1.10 Reflexivity and Ethical Considerations

Most of the participants did not want their real names to be used and I respect that. Therefore, pseudo names will be used to protect the identity of the participants. As a researcher coming from a background that is still in the process of embracing the concept of human and children's rights, a society where some members still do not accept that children have rights, it is important for me to consider the view of Graham et al that, when doing research the dignity of children should be honoured through respecting their rights and well-being regardless of context (2013:1). My topic on child marriages is sensitive because it involves socio-cultural beliefs that I might not subscribe to. Hence the need to be ethical and adopt the reflexive approach that requires the researcher to establish a respectful relationship with the children, families and communities that feature in the research. Researchers working with children are encouraged to ensure that children exercise their rights by according them the opportunity to make decisions regarding their participation in the research as well as being protected through careful publication of their information and avoiding damage to them, their families as well as their community (ibid). Hence issues of privacy and confidentiality are very important during information gathering, storage and publication so that participants are not identifiable at the time of publishing and disseminating information. There is a need for careful handling and use of information like photographs of participants and use of testimonies that might lead to the identification of participants as this might have detrimental effects.

1.11 Conclusion and Chapter Overview

This thesis is arranged in five chapters. Chapter 1 provides the background and methodology to the study. In chapter 2 I analyse are the legal framework and the marriage laws in Zimbabwe, paying particular attention to the gaps that exist between the Constitution and the laws. In Chapter 3 I present the theoretical framework guiding the study. In particular I focus on Sally Merry and the concept of legal translation. Chapter 4 contains the findings of the research, starting with the causes of child marriage in Zimbabwe. A brief account of how NGOs in Zimbabwe have worked to curb child marriage in the country will be given. Various strategies that government, NGOs and civil society can employ to give effect to the Constitutional Court ruling ending child marriage will be explored. Chapter 5 winds up the study by synthesizing all arguments made in the study. It also highlights areas of possible future study in the area of child marriage and presents some recommendations.

Chapter 2 The Legal Framework and Marriage Laws in Zimbabwe

2.0 Introduction

This section will analyse the legal framework enshrining the marriage laws in Zimbabwe. Initially I will give a brief history of the process undertaken by the two former child brides who challenged the constitutionality of child marriages under the “new” Constitution adopted in Zimbabwe in 2013 (Constitution of Zimbabwe Amendment (No. 20) Act 2013). The two marriage laws inherited at independence in 1980 (The Marriages Act [Chapter 5:11] and the Customary Marriages [Chapter 5:07]) will be looked at as well as the laws supporting the marriage laws under the Criminal Codification Act [Chapter 9: 23] and the Domestic Violence Act [Chapter 5:16]. Finally the gaps existing between the supporting laws and the Constitution that led the child brides to challenge the marriage of children will be looked at.

2.1 The Constitutional Court Challenge by Former Child Brides: A Brief History

On the basis of power invested upon them through the provision of section 85 (1) of the 2013 Constitution that accords any citizen the right to approach the Constitutional Court alleging the breach of fundamental rights, two former child brides (Loveness Mudzuru and Ruvimbo Tsopodzi) approached the court in November 2014 (Const. Application No. 79/14/ Judgement No. CCZ. 12/05) seeking relief from the infringement of the rights of girls subjected to early marriages (Makoni, 2016). With the help of three NGOs (ROOTS, Veritas and Zimbabwe Lawyers for Human Rights (ZLHR)) the former child brides cited the Minister of Justice, Legal and Parliamentary Affairs, the Minister of Gender, Women’s Affairs and Community Development and the Attorney-General in their official capacities as the respondents (ROOTS Press Release, 20/01/2016). The young women were asking the Constitutional Court to declare the practice of subjecting girls to early marriages illegal under the new Constitution. They disputed as prejudice against girls the clauses in the marriage laws that permit girls that are under-age to marry. They sought the nullification of section 22 of the Marriages Act [Chapter 5:11] and that the customary Marriages Act [Chapter 5:07] be declared unlawful for failing to recommend a minimum age for marriages to be contracted under the Act. In their arguments they outlined that the effect of section 78(1) of the Constitution of Zimbabwe is to set the minimum age of marriage in the country at 18 years. Thus, by allowing girls below the age of 18 to marry, the marriage law was disregarding section 81(1) of the Constitution which defines a child as a

boy or girl below the age of 18 (Chidavaenzi 2016, Makoni 2016). Furthermore, any provision of the law that legalises the marriage of anyone below 18 was inconsistent with clauses affecting the Rights of Children (s 81), especially the right to equal treatment because by making a clear distinction on the marriage ages of boys and girls (boys marry at 18 and girls 16) the Marriage Act denies girls equal treatment before the law. It is against the background of the challenges made by the two young women that the deputy chief Justice, Judge Luke Malaba handed down a landmark ruling on 20 January 2016 declaring the long enduring practice of child marriages to be unconstitutional (Con-court ruling 2016:55).

2.2 Defining a Child in Zimbabwe

“My understanding of a child is anyone no matter their age who is expected to listen, respect and accept guidance from their parents or guardian” (Participant D, 05/08/2016).

This definition of a child came from an elderly retired nurse during a focus group discussion held during the time I was gathering data in the field. The definition reveals the challenges presented by such definitions regulated by societal norms hence the need for a definition that is well-defined by age and maturity. The Constitution of Zimbabwe, as already alluded to earlier, defines a child as “every boy or girl under the age of 18 years” (Constitution of Zimbabwe s81 (1):38). While The Children’s Act [Chapter 5:06] defines a child as a “person under the age of sixteen years and it includes an infant” (2002:4). On the other hand a young person is defined as a “person who has attained the age of sixteen years but has not attained the age of eighteen years” (Sibanda, 2011:6). Thus there exists a gap in the definition of childhood between the Zimbabwean Constitution and the Children’s Act, and the definition given by society. Hence, such gaps concretise the argument by Sarich et al (2016: 456) that the gaps that exist in law in societies with plural legal systems compromise the enforcement of law and the judiciary system as a whole. Such has been my experience during my tenure as a counsellor at Musasa, when some cases involving child marriage or cases of rape were dismissed on technicalities relating to gaps existing in law.

2.3 Marriage Laws in Zimbabwe: Gaps Calling for Harmonization

Zimbabwe attained independence on 18 April 1980 from Britain and inherited a plural legal system which has been defined by Sarich et al (2016:471) as a “... dual systems approach where European and western law runs parallel to traditional forms of law... and are both officially recognised by the state”. Under the plural legal system in Zimbabwe three marriage laws were inherited which

all seemed to condone child marriage as will be shown during the discussion below. The laws include;

2.3.1 The Civil Law under the Marriages Act [Chapter 5:11]

This law provides for a monogamous marriage as applied to people of Caucasian origin during colonial rule. This marriage is contracted in a civil ceremony either in church or at the Magistrates Courts (Makoni 2016). Section 22(1) of the mentioned act provides that a boy below the age of 18 and a girl under 16 years has no capacity to marry. However, a girl aged 16 has the capacity to marry and to contract a valid marriage with the consent of her parents or legal guardian. Also a boy below 18 and a girl under 16 could marry after obtaining a written consent from the Minister of Justice Legal and Parliamentary Affairs if s/he considered it desirable for the marriage to be contracted. Contrary to boys, girls could marry at 16 with the consent of the parents or high court (Sibanda 2011, UNFPA 2012). In my view Section 22 of the Marriages Act was largely problematic in that it deceptively promoted discrimination of girls through child marriage in that it allowed girls and boys to marry at the ages of 16 and at 18 respectively though there were exceptions where boys could be allowed to marry thus promoting the marriage of minors. As such section 22 of the Marriages Act was contradicting section 56 of the Zimbabwean Constitution which promotes equal treatment and non-discrimination of all Zimbabwean citizens. Also, an interpretation reached upon examination of the argument made by the respondents (the state) in defending the provisions of the Marriage Act through their argument that girls mature earlier and faster than boys (Con-court ruling 2016:6) one would wonder why the state even opposed the challenge from the former brides as the challenge was in contradiction to the new Constitution especially section 81 on the Rights of Children and international treaties to which Zimbabwe is bound to outlaw such marriages (Makoni 2016).

2.3.2 The Customary Law under the Customary Marriages Act (Chapter 5:07)

This law is one of the most ancient (originally published in 1951) and allows polygamous marriage as applied to indigenous 'black' people during colonial rule (Makoni 2016). The Customary Marriages Act was seemingly problematic for a number of reasons. The part applying directly to child marriage was silent on the minimum age of marriage. Hence both boys and girls could marry at any age. Likewise, the fact that the Act required the guardian or parent of the woman to consent to the marriage meant that if they saw it fit for a girl below 18 to marry, their consent that legalised the marriage of minors. Thus, the consent of parents to the marriage of minors was in breach of constitutional provisions protecting children from abuse. It is the long-standing gap between the

two Marriages Acts, the existing Constitution and other supporting laws (discussed below) that created opportunities for continued child marriages.

2.3.3 Unregistered Customary Marriages

These are marriages that are contracted under customary law but are not registered under the Customary Marriages Act or solemnised (Kuthan 2015). This type of union arises in a situation where a man pays dowry for his wife. These traditional marriages are recognised legally in that they are acknowledged by the courts for other purposes like divorce, estate distribution or maintenance. The main deficiency of the law lies in its lack of minimum marriageable age. Hence, like the previously discussed laws, it goes against Constitutional provisions to protect children from abuse.

2.4 Auxiliary Laws Governing Marriage Acts in Zimbabwe

Zimbabwe has a host of laws that govern the marriage acts that exist in the country. For the purpose of this thesis I am going to look at international/regional law, more specifically the ACRWC's standing on child marriage, the Criminal Codification (Codification and reform Chapter 9:23) Act, specifically section 70, and The Domestic Violence Act [Chapter 5:16], especially concentrating on Section 3 (l)(v) that deals with child marriages. The purpose of looking at these statutes is to identify the gaps that have been existing between the statutes and the marriage laws discussed above.

2.4.1 The Role of International/Regional Law - The ACRWC

Some human rights activists in Zimbabwe appear to be in agreement with the assessment that the young Constitution of Zimbabwe Amendment (NO. 20) Act 2013 contains many sections that aim to promote and improve human rights of Zimbabweans, if the citizens are willing to claim and exercise the rights as they are laid out in the Constitution (Kuthan 2015, Makoni 2016). Human rights activists view section 46 (1) (c) of the Zimbabwean Constitution as favouring people because it now obligates the courts to take into account international law and treaties that Zimbabwe is a party to when they interpret any provisions under the Constitution. As such, Zimbabwe ratified many international and regional treaties that seek to protect children from "harmful" practices like child marriage. In the context of child marriage, one such important regional treaty that the country is a state party to (and which was referenced by the judge in the constitutional ruling) Article 21(1) of the African Charter on the Rights and Welfare of the Child (ACRWC) provides:

“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” (Kuthan 2015)

Thus, Zimbabwe is obliged through this international obligation to ensure that children are saved from entering marriage until they are 18 or older. Before the judgement ending child marriages was passed, the country’s marriage laws contradicted Article 21(2) of the ARCWC. As it stands (and as was pointed out by one of the respondents during my field work), until parliament passes a new Bill aligning the marriage laws and these supporting laws there is a gap which may promote continued occurrence of child marriages because the judgement on its own is not enough to end the practice

2.4.2 The Criminal Codification (Codification and reform Chapter 9:23) Act

The Criminal Code, according to an article by Zimbabwe Women’s Law Association (ZWLA) in the Zimbabwean Herald dated 02/10/2015, is an edict that codifies criminal law in Zimbabwe. The code defines misconducts while laying out important components of each offence and sets out the penalties when offences are committed (ZWLA 2015, Feltoe 2012). Sections of the Act that apply to children and child marriages include the following.

a) Section 70 – Sexual intercourse or performing indecent acts with young persons

Under s70, if a male person engages in extra-marital sexual intercourse or an indecent act with a female young person while they are aware that the young person is below 16 they will be guilty of an offence regardless whether the young person consented or not. Muchenje (2015) has argued that it is not a defence that a young child consented to sexual intercourse because in law, children cannot consent to sexual acts. Feltoe (2012:85) elucidated that:

“Consensual” sexual intercourse with a girl of or above the age of 12 but below the age of 14 (where the presumption of lack of capacity to consent has been rebutted) or of or above the age of 14 but below the age of 16, is punishable under the separate offense of sexual intercourse or performing indecent acts with a young person in s 70.”

Feltoe further explained that a person found guilty of the offence may be liable to a fine, community service or imprisonment for a period not exceeding 10 years or both.

Mavhinga (2015) shed more light on the provisions of the Criminal Code when he argued that the Code criminalises a promise to marry a girl under 18 years

or force her into marriage. Cultural or customary rites or practices that force a woman into marriage are a criminal offence. Likewise, having consensual sexual relations with a girl between the age of 12 and below 16 is an offence because that is considered as having sexual intercourse with a minor. Here it is important to note the gap between the definition of a child according to the Constitution, which views a child as anyone below 18, and the Children's Act (which sees a child as anyone below 16). The definition according to the Children's Act is the one that was adopted by the Criminal Code. Thus, children above 16 are allowed by law to engage in sexual activity and if they fall pregnant their parents expect them to marry. Or, if the parents become aware that they are sexually active they are forced to get married to preserve family honour (Dube 2013 Hanzi 2006 Sibanda 2011 Union 2015). However, the same Code provides that if the person is married to a child under 16, having sexual relations with the spouse is not considered rape or abuse. On the other hand it sets the age of consent to sex at 16. Hence there exists an alarming gap between the Constitution, which is the highest law of the country, other supporting laws and traditional custom which expects that when a 16 year old girl falls pregnant she will get married (Ndlovhu-Bhebe 2012).

2.4.3 The Domestic Violence Act (DVA) [Chapter 5:16]: Act 14 2006

Dube (2013) has explicated that under the DVA, forced marriages are prohibited. Dube identified forced marriage as one of the harmful cultural practices that degrade and discriminate against women and girls. Under Section 3(l)(v), Child marriage is regarded as a form of abuse that can come as a result of cultural or customary rites or practices that discriminate against or degrade women. The gap which arises with this law which came into existence in 2007 is that it does not stipulate who is considered as the perpetrator. This follows an argument put forward by some scholars that customary marriage involves the man who marries as well as both families of the bride and the groom who participate in contracting the marriage through giving consent and on the payment of dowry (Mvududu et al 2002:15-17). Consequently, the DVA, a well-meaning edict which was put in place as far back as 2007, is not being applied as there are no specific charges laid on the "perpetrators" of child marriage. In my view the Constitutional ruling passed in January 2016 ending child marriage in Zimbabwe might end up as a "ghost law" like the DVA, especially if no strategies will be put in place to "activate" it.

2.5 Conclusion

The above section on the legal framework in Zimbabwe examined the laws governing marriage in Zimbabwe. These included the three marriage laws, the Civil Law under the Marriage Act [Chapter 5:11], the Registered Customary

Marriage Law [chapter5:07] and the Unregistered Marriages Act. The supporting laws were also examined and the gaps existing between various laws and the Constitution that needs to be harmonised were looked at. The next section will look at the theoretical approach guiding the thesis that is the concept of legal translation by Sally Merry (2006a).

Chapter 3 Translating Human Rights Law into a Local Context

3.0 Introduction

The theoretical framework for this research is mainly based on the socio-legal approach. This stream of discourse is drawn mostly from Merry (2006a), a socio-legal scholar, and her concept of legal translation. In this research paper and within the circumstances of the Zimbabwe Constitutional ruling ending child marriages, the socio-legal approach will be used to explore the strategies that can be undertaken by the state, NGOs and civil society in Zimbabwe as translators of law to give full effect to the constitutional ruling. My theoretical analysis is based on the assumption that law and legal instruments are by themselves not sufficient to effect change in the realm of children's rights. I argue that the Court ruling will have limited impact if it does not involve non-legal actions to bring about desired change. Consequently, I will use the legal translation theoretical lens to examine both legal and non-legal strategies that can be used to give full effect to the Constitutional Court ruling.

3.1 Socio-Legal Perspectives

Socio-legal approaches look at how human rights law is embraced and domesticated into the local context (Banakar 2015:48, Halliday and Schmidt 2004:6). Halliday and Schmidt further explain that contemporary scholars in socio-legal research postulate that there is a foreseeable gap that exists between what is expected (laid down) theoretically in the books of law and how the law is practised (2015:8). Socio-legal scholars are more interested in examining how the law is designed after it is interpreted and contextualised and how it affects the behaviour of intended beneficiaries. Thus, they are interested in observing the social actions that emerge from the beneficiaries when they become conscious of human rights law (Banakar 2015:43, Halliday and Schmidt 2004:8).

3.2 Legal Translation: Tracing the Origins

In her discourse on socio-legal perspectives, Merry has explored the difference that can be brought about by human rights views on the ambits of legal translation. In her study on the practice of human rights, she has paid a lot of attention to the origins of human rights theories, the institutions that produce them, how human rights are spread and how people's lives and actions are fashioned by these rights (Merry2006a:39). However, it is notable that her approach skirts the debates that were brought forward by Universalists and Relativists during the 1990s about how human rights ideas evolve across different cultures. She

focused on social processes of human rights, their execution and how they are resisted by the targeted locals. Universalists argue that the power of human rights is vested in their ubiquity making them ideal for adoption by all cultures regardless of the differences between local normative contexts (2006a:40). Relativists are against the idea of enforcing human rights concepts on people who have different beliefs and values. Activists (where Merry belongs) believe that human rights appear legitimate and become acceptable only if they are modified to suit local cultural contexts and institutions. Subsequently, social movements have used the idea of framing to understand the adoption of rights. Social movements believe that if new ideas (i.e. human rights) are to be adopted they must be framed or assigned local meaning leading to their indigenization or vernacularization (2006a:41).

Merry brings in an important aspect of looking at issues affecting society in a holistic manner or broad context. In my chapter on findings and analysis I am going to use Merry's socio-legal analytical lens of using a holistic approach through exploring how socio-economic and political strategies can be embraced together with legal actions to give full effect to the Zimbabwe Constitutional ruling ending child marriages.

3.3 Social Processes of Human Rights: Implementation Versus Resistance

In her socio-legal perspectives approach Merry has argued that, although the origins of human rights are attributed to western ideology they are presently imperative for social justice movements across the globe (2006a:38). A number of authors contend that human rights law is non-discriminatory, universal and seeks to protect the dignity of all human beings regardless of their background or geographical location (2006a:38 Merry, Levitt, Rosen, and Young 2010:102). Merry further postulates that state and activist movements are responsible for transporting legal and policy documents developed in transnational sites such as UN conferences to local societies as well as information from the locals back to global arenas (Merry 2006a:38; Merry 2009:2). Although human rights law promises to protect the weak and vulnerable, she has noted however that the human rights legal system is not easy to use because it requires both legal and political skills to lodge complaints. A good example is that, although the Zimbabwe former child brides used litigation, not everyone has access and knowledge to approach the courts. In her further argument, Merry stated that human rights strategies might be inadequate since they are mainly based on monitoring and preventing future violations rather than on litigations of past violations. She further exposed that during the implementation process human rights activists from different countries readily accept the human rights language from global sites and tend to adapt it through translation to their own situations. Thus vulnerable people embrace these "localised" human rights ideas because they view them as emancipating from their particular subservience

(Merry 2009:2). In the same manner, the former brides who challenged the Constitutional Court in Zimbabwe to end child marriage might have felt they were being excluded from school for instance and took the international human rights system as a gateway through which to access tools and consciousness to fight back. Merry strongly subscribes to the opinion that human rights need to become part of the perception of the subordinated people (through translation to local laws and cultural contexts) if they are to have a lasting impression. She made an important revelation through research (also made by various scholars) when she says that:

“Considerable research on law and everyday social life shows that the law’s power to shape society depends not on punishment alone but on becoming embedded in everyday social practices, shaping the rules people carry in their heads”. (Merry 1990, Sarat and Kearns 1993, Ewick and Silbey 1998 cited in Merry 2009:3)

3.3.1 Vernacularization/Translating: Adapting Global Rules into Local Rules

In her context Merry has argued that, as laws and ideas based on human rights approaches (especially pertaining to violence against women) travel from transnational sites to local situations, there is a need to adapt them to local meaning or to be vernacularized and this might mean shifts in meaning (2006a:39 2009:1). Indigenisation refers to transformation that takes place when transnational ideas are reframed to suit the local cultural norms and practices. Indigenisation may also include adjusting transnational ideas to suit the local framework of power. The process of vernacularization is divided into two main forms guided by how much local context is integrated into the transnational context (Merry 2006a:44). Replication is one form of vernacularization whereby the imported ideas remain unchanged from the original global body hence the source of ideas is more dominant than the target. The other form of vernacularization is hybridization whereby transnational ideas are fused with local ones resulting in the target dominating the global idea. It is worth noting that during the process of indigenisation, intermediaries (that is NGO leaders, human rights lawyers, and feminists) might have the difficult task of bringing together practices and discourses of the local people to come up with “hybrid” ideas that are acceptable to the local people they are working with. This is because on the one hand they have to speak the language of international human rights that donors are conversant with and to gain attention from the media. On the other hand they have to frame their programmes in local contexts to make them acceptable to locals (Merry 2006a:42). Merry has further stressed that indigenization is not always an easy process because locals might have a different perception of social justice from that of human rights activists. The

difference in perception might be because the locals do not have relevant knowledge, documents and provisions of the human rights involved (2009:1).

Another important point coming from Merry's socio-legal framework of legal translation is that during the upward and downward translation, intermediaries have a tendency to reframe local complaints and make them appear as human rights violations thus making the grievances appear more powerful (2006a:42). Merry has noted the power possessed by the intermediaries or translators because they are strategically placed to understand both international and local worlds. She has shown how translators act as double agents in their bid to please both locals and donors, hence their interest might be in pleasing the funders rather than the target of translation. Merry has further argued that this process of "cultural translation" that is translating issues from a language perceived as "weaker" to another deemed "stronger" (Global South to Global North) shows the power possessed by human rights translators. The reframing of victims' stories to make them vivid, according to Merry, may make the targeted actors like states and funders more responsive to proposals made by intermediaries (ibid: 42). On the other hand she has revealed that funders have economic and political muscle that surrounds human rights activism implying that translation is mostly a top-down process whereby concepts flow from the global to the local and from those with influence to the less influential (ibid:48-49). Since NGOs are largely dependent on donor funds they may be forced to adopt transnational human rights language where they could have taken a different methodology (2006a:49).

It is important to note that, during implementation, human rights do not completely take on a local context despite the fact that they may be readily accepted. Accordingly, the adoption of human rights ideas leads to a change bias. Merry provided an example of such a situation when a married woman is forced to have sex by her husband and the woman begins to view this as violation of her body and rights rather than as performing her wifely duties (2006a:43-44). Merry (2003, cited in Merry 2006a:41), in her research on abused women found out that it is sometimes difficult to replace existing laws. She noted that the institutional response that claimants receive after adoption of a law is critical in determining the success in adopting a legal or rights approach. For example, if institutions like the police, courts and prosecutors trivialised their problems, claimants tended to drop their cases. Consequently she concluded that "new interpretations [of rights] rarely replace old ones" (Merry 2006:44).

3.3.2 Resistance of Rights by Locals

Merry expresses concern that human rights claims often face resistance from elites and men (2006a:38). Quite often human rights ideas are viewed as alien and not suited for local use. This is because those in authority fear loss of power while some men would want to retain patriarchal authority in the socie-

ty. States sometimes resist human rights claims because they are unwilling to have their activities exposed. She further argued that states have a tendency to accept human rights superficially whereas in reality they subvert human rights laws and commitments and seemingly undermine ideas that challenge patriarchy (2006a:48). Thus one can argue that Merry's argument exposes the issue of dominance and importance of power relations especially in patriarchal societies where women's rights are sometimes not easily accepted because those in power fear losing their authority. Ideas perceived as synonymous to western ideas are usually dismissed as not being suited to local norms and culture.

3.4 Human Rights as a Tool for Political Reform

In her socio-legal perspectives approach Merry also explained how human rights offer a political arena for change through a language legalised by international agreement on standards (2009:4). She warned however that the political field for change offered by human rights ideas might have a negative effect in that it promotes ideas like individual autonomy, equality, choice and secularism that might be contrary to local cultural norms and values (Merry 2009:4). In the process of implementation these human rights ideas might dislodge social justice ideas that are community-based and acceptable to local people. Merry has asserted that, after attending many CEDAW hearings, she has noted how experts hastily conclude that customs are problematic. They believe they are harmful practises embedded in traditional culture without investigating how the same customs can protect society (women in particular).

3.5 Conclusion

The theory of legal translation is the overarching analytical lens from Merry's socio-legal perspective framework that will be used in this paper to explore the various legal and non-legal strategies that can be employed in Zimbabwe to the Constitutional ruling ending child marriage. As stated by Merry, the state, NGOs and civil society are the intermediaries responsible for transporting legal documents and policy documents from transnational sites to local societies. The role of these translators in ending child marriages in Zimbabwe will be examined through analysing the various strategies they can employ to effectively end the practice of child marriage (2006a: 38 2009:2).

Chapter 4 Research Findings and Analysis

4.0 Introduction

In this chapter I discuss the main findings of this paper, that the Constitutional Court ruling ending child marriage by setting 18 as the minimum marriageable age is an inadequate strategy without accompanying non-legal strategies involving relevant stakeholders. As highlighted in my earlier argument in Chapter 3, and also based on the data collected through my research, I take the position that law and legal instruments alone tend to be inadequate in achieving change in the domain of children's rights. Particular focus will be placed on what government, NGOs and civil society can do to ensure an end to the practice of early child marriages in Zimbabwe. Work done by various NGOs in ending child marriages will be examined while challenges faced by various stakeholders in implementing the constitutional reform will be assessed. Findings of the study will be analysed using the conceptual framework on legal translation which was discussed in Chapter 3. Empirical evidence gathered from field research and correspondence collected from interviewees will be used to show that no single strategy is adequate to give full effect to ending child marriages but rather a holistic approach that encompasses social-legal and other socio-economic changes is required.

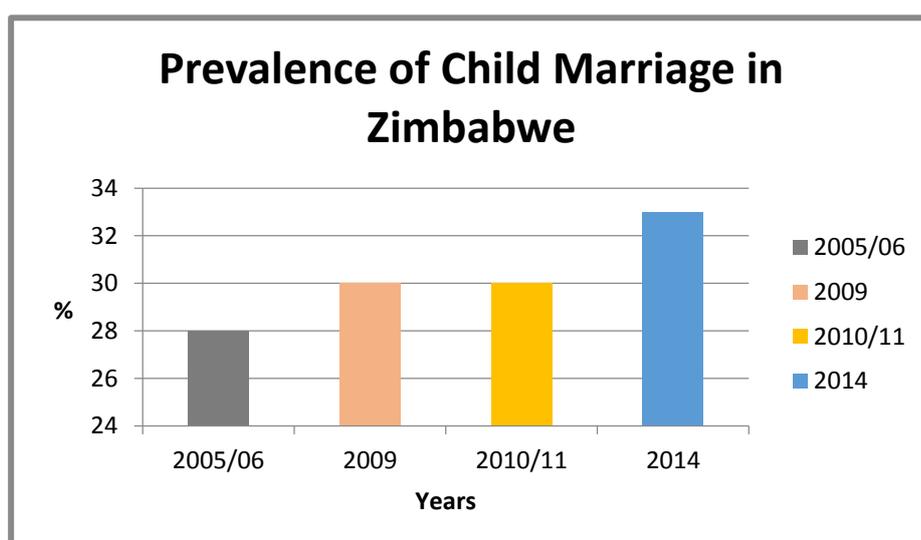
4.1 Causes of Child Marriages in Zimbabwe: Socio-economic and Political Challenges as Driving Factors

In this section, causes of child marriages will be looked at with the aim of placing the problems leading to child marriages in Zimbabwe into the local context. In-depth knowledge of the root causes of child marriages will help the intermediaries of transnational human rights law (the state, NGOs and civil society) to come up with hybrid measures suitable and acceptable to local communities, that will help to make the constitutional reform ending child marriage more effective.

In Zimbabwe the Ministry of Public Service, Labour and Social Welfare (MoPSLSW) has as one of its functions the provision of social protection services to vulnerable and disadvantaged groups in society. As such the Ministry represents the face of the Government when it comes to providing a social net for vulnerable groups of which girl brides are such a group. During an interview held on 12/07/2016 with an officer from the MoPSLSW, Department of Child Protection Services, **Respondent 1** (referred to in appendix 1) highlighted a number of causes for girl-child marriages ranging from poverty, religious and cultural as well as economic challenges. She indicated that most cases of

child marriages handled between 2010 and 2015 received direct assistance from her office or from partner organisations (NGOs and civic organisations) and that they point to lack of parental care and guidance as main causes. The officer explained that lack of parental care easily manifests in troubled economies such as the one Zimbabwe is currently facing. Zimbabwe’s economy has of late been underperforming. As a result, parents who are mostly involved in informal trading, such as cross-border trading, often not being present at the family home (Africa Economic Development Institute 2009: I-9, Nyawo 2016:A18-A25). A glimpse from the statistics on child marriage from some of the MoPSLSW documents provided to me by the officer, as presented in the graph below, shows an increasing trend in child marriages from 2005 to 2014 (Zimbabwe 2016 Social Protection Budget Brief :2). Interestingly enough this is the same period in which Zimbabwe’s economy was severely contracting. The statistics are from the surveys carried out by UNICEF, SOWC and MICS during the indicated period and they show that there has been an increase in child marriages from 28% to 33% since 2005. However, the document which was focusing on budget allocations to the Ministry, did not give the reasons leading to the rise in child marriages. The officer reiterated that from the cases handled from 2010 to 2015, an estimated 75% percent involved girls whose parents were living out of the country or who spent most of their time away working as cross border traders. Unfortunately the officer was not in a position to give the exact figures on the numbers of child marriage cases handled either by her office or by partner organizations during the period for which she suggested absentee parenting as the main factor leading to early marriage of girls.

Figure 1: Prevalence of Child Marriage in Zimbabwe (2005-2014)



Source: MoPSLSW document [Zimbabwe 2016 Social Protection Budget Brief by UNICEF]

The issue of absentee parenting also topped the list as one of the major contributing factors to child marriages during the focus group discussion (05/08/2016). This was epitomised by **Participant A**, a social worker and counsellor in one of the local NGOs, who emotionally expressed her views saying,

“I don’t know whether or if we parents are to blame or there are other forces behind our problems. However, the issues of land resettlement where parents are staying at the farm and children are left to take care of themselves in towns, parents going to the diaspora leaving their children under the care of guardians or worse still housemaids, and the harsh economic conditions which have turned almost everyone into a cross-border trader in an effort to make ends meet have put the girl child at risk of early marriage as they are looking for an attachment figure (05/08/2016)”.

The sentiments I gathered from **Respondent 1** and **Participant A** point to the fact that there is a possibility that absentee parenting results in parent-child bonding being largely eroded, with children falling prey to peer pressure and consequently getting involved in love affairs that may lead to early pregnancies and ultimately early marriages. These sentiments are in line with the positions of some scholars who argue that transnational parenting is among the reasons that contribute to adolescents and girl children seeking attachment figures in male friends and in some instances leading to early marriage (Kufakurinani, Pasura and McGregor 2014:129-132, Mashavira, Mashavira and Mudhovizi 2015:1-5). I do agree that these economic “push-pull” factors resulting in parents being away from their children and thereby giving an impression that they are “abandoning “ their families may consequently lead to the process of “forcing” or “pushing” girl children into marriage. However, the heated debate that arose during the focus group discussion on parental absenteeism as a factor to blame for child marriages maybe taken as a pointer that there are other reasons behind child marriages in Zimbabwe worth considering. Another participant actually commented that,

“... Ladies let’s not forget that with this issue of rights, children nowadays have got rights and if you try to talk them out of it [child marriage] they tell you right into your face that they have the right to choose whom to marry and when... let’s not forget ladies that it is our duty as parents to feed the family no matter the difficult economic situation” (**Participant B**, (teacher by profession) 05/08/2016).

Thus, from the sentiments of Participant B the discourse of girls’ **agency** comes into play challenging the impression that has been painted by some NGOs and scholars that put forth poverty and harmful traditional practices as

the leading causes of child marriages (UNICEF Report 2012, Sarich et al 2016). Agency can be defined as “the capacity of humans to ultimately decide what action to take” in social institutions like families which might have power to influence the decisions of individuals (Berner 1998:4). In child marriage discourse children are often portrayed as being denied the right to exercise their agency on issues affecting them because the family makes important decisions on their behalf (for example when to marry). In fact **Participant C** (a former child bride now above 25 years and a receptionist), who shared her life experience during the discussion, said that she got married at 15 when she was in year 3 of her high school. She explained that though peer pressure and the socio-economic challenges she faced in the hands of her step mother may have contributed to her early marriage but ultimately it was exercising her agency that she chose to get married even though her father was paying her school fees and had the option to continue with her schooling and be empowered to get a good job (which she later did). She took marriage as a safety net and as a ladder to aid her upward social mobility. This revelation by **Participant C** and the debate on children’s rights agency show that girls may also exercise their agency when it comes to marriage. The argument on girls’ agency as a contributing factor to early marriage is supported by some researchers who were able to show that in a study made in the Goromonzi District of Zimbabwe teenage sex and immature decisions to get married by young girls have been contributory factors to child marriage in the country (Research Advocacy Unity 2015:15, Sibanda 2011:16).

In an interview with a Projects Lawyer at one NGO in Harare (Zimbabwe’s capital city) **Respondent 6** (12/08/2016) revealed that NGOs and civil society have a tendency to place the blame of child marriages on the ravages of pandemics such as HIV-Aids which have left many child headed families in Zimbabwe. Without a guardian, girl children often fall prey to unscrupulous men who can entice them into underage sexual activity and thereby leading them into early or “forced” marriages. She further stated that traditional beliefs have also played a major role in child marriages because in Zimbabwe’s social set-up it is generally accepted that when a girl gets pregnant it follows that she must get married. In most cases a pregnant girl child is chased away from home and forced into marriage in order to maintain the family dignity/respect (or cover-up a lack of dignity, whichever way one likes to look at it). The views expressed by **Respondent 6** concur with various publications by different scholars who argue that in the Zimbabwean African context, the girl child has been socialised to believe that pregnancy translates into marriage and there are cultural beliefs that have seen many young girls settling down to start families (Hanzi 2006:28, Feltoe and Maguranyanga 2015:7 Mvududu et al 2002:17-26.)

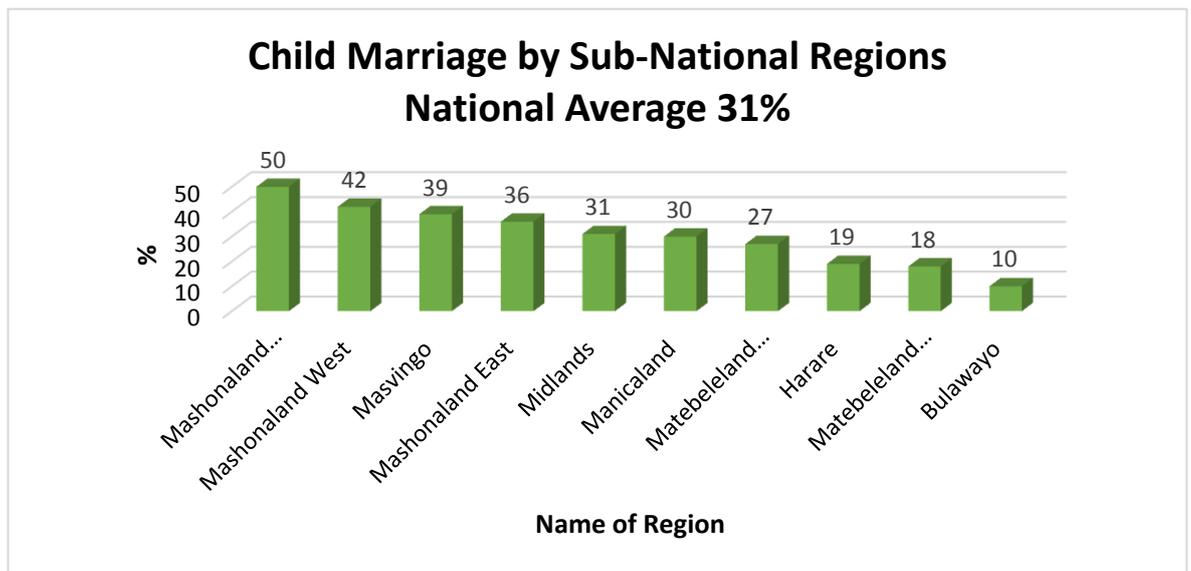
Some of the findings shared by **Respondent 6** that she has unearthed through her vast research on child marriage in Zimbabwe under the Research Advocacy

Unit (RAU) indicate that another driver of girl child marriages recorded in Zimbabwe is due to the beliefs of some local religious groups (RAU 2015:16). These findings concur with those shared by **Respondent 2** (Officer, MoWAGCD) who said that;

“[the religious practices of the] Vapositioni [apostolic] sect of polygamous marriage of girl-children as young as thirteen has been recorded in Zimbabwe and we have dealt with a number of such cases. In fact more recent cases of young girls being forced into marriage through religion have been recorded through research conducted by the Parliamentary Portfolio Committee on Women’s Affairs Gender and Community Development in Mashonaland Central” [29 May to 1 June 2016] (Interview 04/07/2016).

The various reasons discussed above as the drivers of child marriage have been summarised in the report presented to the Parliament of Zimbabwe (see annex 3 for summary) on the 16th of August 2016 by the Portfolio Committee on Women’s Affairs Gender and Community Development (MoWAGCD), referred to by **Respondent 2**. The Committee was tasked to look into the high prevalence of child marriage in Mashonaland Central Province of Zimbabwe. The Committee, led by Chairperson Honourable Florence Nyamupinga, between 29 May and 3 June 2016 investigated the prevalence of child marriage in the province following a revelation by a 2012 UNFPA research showing that of the 10 administration provinces in Zimbabwe, Mashonaland Central had the highest prevalent rates in the country at 50%. The UNFPA results that prompted the parliamentary investigations are summarised in the graph below.

Figure 2: 2012 Regional Statistics on Child Marriage in Zimbabwe



Source: UNFPA (2012) Country Profile Document

The Portfolio Committee in question had three tasks to investigate in the concerned region, that is, the prevalence of child marriages as of 2016, factors contributing to child marriages and the views of the locals on measures that can be put in place to curb child marriages. The Report, disappointingly, did not produce any statistics on the prevalence of child marriages in the region, let alone statistics about the demographic population of the region. A figure closely related to prevalence of child marriage was an estimate given by some teacher to the effect that about 30 students drop out of school annually due to early marriage (Parliamentary report 16 August 2016:16). Sadly again, the Report does not explain whether that figure is representative of all schools from the region. In my opinion, the Report failed to give vivid and tangible information necessary to convince the legislative body of the urgent need to take the necessary legal and non-legal measures that would give full effect to the Constitutional Court ruling to end child marriage. My views concur with those given by the Honourable Gabuzza who argued that giving statistics on people who attended the Portfolio research finding meeting, though necessary, does not clearly show the magnitude of the problem the committee wants to be addressed (ibid:39). Mavhinga (2016) shared the same sentiments when he argued that there is no comprehensive and centralised study on girls who drop out of school because of child marriage that has been made by the government or independent actors raising concerns that the problem may be greater than it appears to be. Also, failure by the state body to produce the necessary statistics means that as a country we have to rely on transnational actors like UNFPA and UNICEF and local NGOs to produce statistics for the nation. Reliance on transnational bodies might mean that when it comes to implementing solutions to the problems we are forced to replicate transnational laws and programmes without contextualising them to suit local needs to make them more acceptable to the locals

(Merry 2009:48-49). Hence, I argue that failure by the Committee to show the gravity of child marriage through statistics, let alone the time they took to react to the UNFPA report published in 2012, may have contributed to the high prevalence of child marriage. The state, through parliament, is failing to act speedily to pass and enforce laws that protect children from the practice.

The performance of the state in carrying out its functions has been compromised by the squeezed economic space. The African Economic Development Institute has pointed out that the current economic meltdown being experienced in Zimbabwe negatively affects the functioning of the arms of the state (2009:1). Being functionaries of the state, both **Respondents 1** and **2** have expressed how the difficult economic situation in the country has almost made it impossible to operate their mandated programmes due to the stringent budgetary allocations in recent years. **Respondent 1** gave the following sentiments during the interview concerning problems they are facing in implementing children’s programmes as the Department of Social Protection and Child Services:

“Currently as one of the key departments in providing a safety net for children we have failed the children because in as much as we have programmes lined up to help enforce the ruling ending child marriages, our hands are tied up in terms of resources. We simply do not have adequate financial capacity.” (12/07/2016)

A perusal of documents provided by both Respondent 1 and 2 vividly shows that their ministries are operating under stringent budgets. The table below shows the reducing annual sub-vote budgets given to the Department of Child Services in the past six years (2011-2016).

Table 1: Budget Support towards Child Right Support Programme-Child Welfare and Protection Services Department (2011-2016)

	2011	2012	2013	2014	2015	2016
	US\$	US\$	US\$	US\$	US\$	US\$
Basic Education Assistance Module	13,000,000	16,000,000	15,000,000	15,000,000	7,000,000	10,000,000
Children in Difficult Circumstances	1,087,000	930,000	200,000	500,000	200,000	200,000

Children in the Street Fund	50,000	40,000	20,000	20,000	14,000	5,000
Children in the Street Fund	800,000	900,000	1,000,000	1,000,000	708,000	800,000

Sources: CRC (2015) Seventy-first Session Document, UNICEF (2016) Document on Social Protection Budget Brief

Analysing the vote given to the Department of Child Welfare and protection Services in **Table 1** above it can be seen that the amount given to ‘children under difficult circumstances’, which covers child marriage, sharply decreased from over US\$1 million in 2011 to US\$200 000 in 2016. Considering that a lot of other issues fall under ‘children with difficult circumstances’ it makes one to conclude that the amount allocated to run the programme is far below the capacity required to be effective, even to support the recently undertaken assessment by the Parliamentary Portfolio discussed above. My deduction resonates with the one made in the UNICEF document on Zimbabwe (2016 Social Protection Budget Brief) in which it is argued that poor economic performance has constrained investment in the social sector leading to underperformance (2016:5). The Zimbabwe Women’s Resources Centre and Network (ZWRCN) also expressed the same sentiments when they argued that the MoWAGCD has been receiving a budget less than 1% of their overall budgetary needs, a serious handicap to work effectively in promoting the welfare of girl children. Thus, I argue that lack of resources due to the ailing economy has partly contributed to continued child marriages by restricting the capacity of relevant government ministries to implement programmes (for example law awareness campaigns) necessary to curb child marriage. This has led me to the realisation that besides the social problems acting as factors that drive young girls into marriage there may be other economic structural deficiencies that can inherently contribute to child marriages.

4.2 Government Actions

4.2.1 Embracing legal, socio-economic and traditional/cultural reforms

In this section I will analyse the various legal and non-legal actions that could be embraced by the government in order to give effect to the constitutional reform ending child marriages.

“As it stands it [the Constitutional Ruling] is only a judicial decision but there is no section in the Zimbabwean law that criminalises offenders [of child marriage]...” (**Respondent 4** 25/07/16).

The above remarks by a magistrate, **Respondent 4**, clearly emphasizes the need for legal reforms in order to effectively address cases. As discussed earlier in the section on the legal framework in Zimbabwe, the gaps existing between the Constitutional Court ruling, the Constitution, the marriage and other auxiliary laws present a challenge to the judiciary to effectively handle cases of child marriages brought before the courts. The magistrate explained that one of the limitations of the ruling is that it does not specify the offence that the “perpetrator” is charged with if they marry a child who is below 18 years. Consequently, the courts are using Section 70 of the Criminal Law Codification and Reform Act (Chapter 9:23) that forbids having sexual intercourse with a minor (below 16 years). Using section 70 in trying cases on child marriages is problematic in that the section was sanctioned to deal with sexual offenses and not child marriages specifically. Ironically under the same section if the man is able to prove the girl’s agency to consent, then the offender can escape with a light or suspended sentence or community sentence. The discrepancy that is caused by using section 70 to try child marriage cases is exemplified in the Banda/Chakamoga cases that were cited by the High Court of Zimbabwe during criminal review (Charewa 2016:1-7). Both cases involved male offenders above 30 who were tried by the same magistrate in 2015 and found guilty of having sexual intercourse with minors aged 15 and were both sentenced to an effective 12 months in prison. The only difference between the cases was that one man had taken the girl for a wife and the other had impregnated and abandoned the girl. In reviewing the case in January 2016 the High Court judge Charewa pointed out that, though the convictions were proper because they were based on current practices, she bemoaned the failure by the magistrate to protect the young persons based on national and international laws. Hence Charewa argued that the sentence passed on the offenders trivialised laws protecting children (Charewa, J. in a Criminal review document dated 20 January 2016.) It stands to fact that Government needs to urgently realign Section 70 of the Criminal Law Codification and Reform Act(Chapter 9:23) to reflect the ruling of the Constitution Court to give full effect to ending child marriages in Zimbabwe.

The interview with the Attorney-General’s Counsel, **Respondent 3**, also made it clear that legal reform was one necessary element among the many indispensable actions to be taken by government to ensure child marriage is stopped (19/07/2016). She argued that practically in law there still exists a gap between the age of 16 years and 18 years (sixteen being the accepted age of consent to sex) which is not criminalised because if a girl gets pregnant at that age she is

usually “forced” into marriage by her parents or has the **agency** to elope and settle in union. Various scholars and activists agree with Respondents 4 and 5 and they express the need for the government through the MoJLPA to speedily table a bill before parliament amending the two Marriage Acts while providing for a minimum marriage age for both sexes (Chitsike 2016, Makoni 2016, Nemukuyu 2016). Interestingly, the magistrate raised a pertinent issue pointing to contextualisation and hybridisation of international law that should be considered under the new bill to avoid a clash between law and culture when she said that, while it is a good move to amend laws and criminalise child marriage, the issue of discretion to allow underage girls should not be done away with completely. She further explained that, under the current situation, where there is no harmony on marriage and constitutional laws, a clash already exists between culture and law when the law allows girl above 16 years to be sexually intimate but denies them to marry if they become pregnant. The same views were shared by Chitsike (2016) and Kuthan (2015) in their argument that discretion under very restrictive situations should be allowed for example for those above 16 with approval of the High Court. In further argument they stated that, besides being an excessive use of law, this also denies a baby born out of an ‘outlawed’ union the right to family.

One thought-provoking argument contradicting the ruling and suggestions of the judiciary came from the group discussion. **Participant D** (a retired nurse) distanced herself from the ruling as shown in her words of disagreement that,

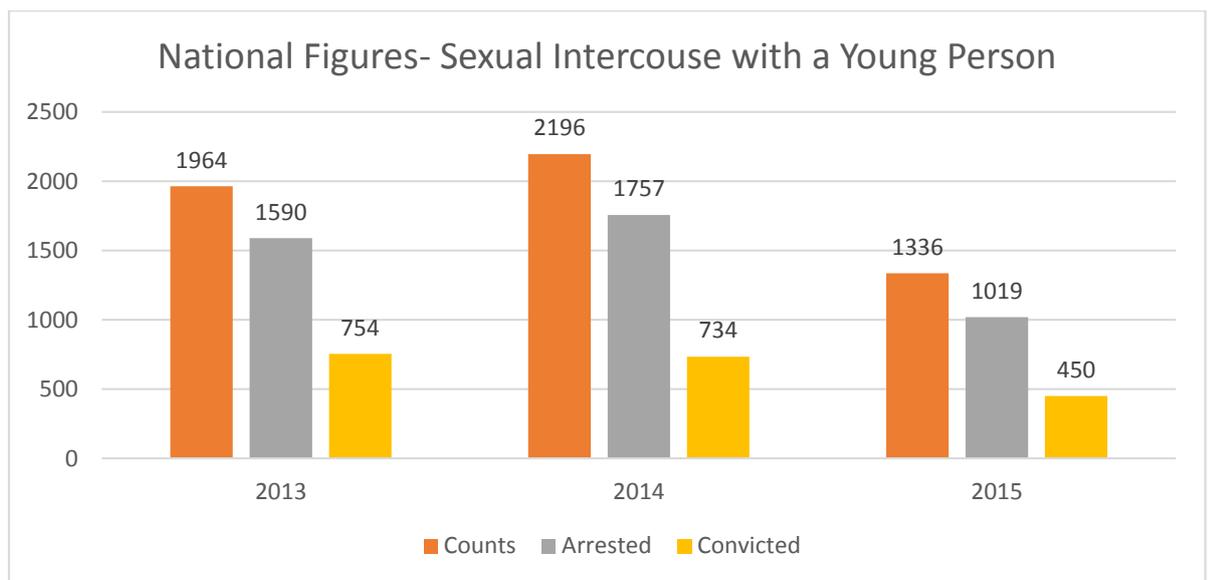
“Who is responsible for drawing up such absurd laws? I am against your laws... I looked after my own daughter. That law has no place in my house... if my child gets pregnant and the law denies her the right to marry then they [government] must take care of her and the child... I cannot look after the child of my son-in-law as if he were dead...”
(05/08/2016)

In her comments this participant clearly showed she is not supportive of the ruling and interesting enough she was supported by a sizeable number of participants. The issue of responsibility was thus brought to the fore and there was a general consensus among the participants that it is the responsibility of fathers to look after the child.

The Attorney General’s Counsel (**Respondent 3**) pointed out that, based on the figures published in the CRC seventy-first session state report on cases of violence against children, the government has a lot to do if it is to effectively support the ruling ending child marriages. This involves teaching the general populace about the law and child marriage to cultivate a culture of appreciating law and especially laws protecting rights. Based on the recorded cases (shown in figure 3 below) of offenders charged with having had sexual intercourse with

young persons (an offence that people marrying children are currently charged with), she said it is necessary for the government to embark on a nationwide campaign against child marriages involving both parents and children. Even though having sexual intercourse with a young person does not always necessarily translate into marriage, the figure is worryingly high. 2014 recorded the highest figures of 2196 counts and 1757 arrested while 734 perpetrators were convicted. It would have been interesting if the statistics showed how many such counts evolved into child marriages. A perusal of the same document shows that between the same period there were 10 272 recorded cases of child and teenage pregnancies (CRC seventy-first document 2015:34). This is a worrying revelation because (as earlier own alluded to by Chitsike (2016) culturally pregnancy seemingly translates automatically into marriage though practically not all who get pregnant get married.

Figure 3: Recorded Cases of Sexual Abuse of Young Persons



Source: CRC Seventy-First Session Report (2015)

Scholars agree with Respondent 3 and argue that there is a need to educate society because quite often conservative, traditional or religious members mystify transnational laws whilst claiming to be upholding tradition especially when they are found wanting (Chitsike 2016, RAU 2015). Taking the argument further, Merry (2009:3) and Sibanda (2011:6) pointed out that if law is to be effective in shaping society it should not hinge on punishment alone but it has to be practiced. Hence they emphasized the need to teach people about law through innovative dialogues and campaigns. I agree with Feltoe and Maguranyanga (2015) that, when effecting laws, there is a need to strike a balance between use of legal and non-legal interventions.

Another aspect of what the government needs to do through the Ministry of Public Service, Labour and Social Welfare is that it has to ensure that there is a provision for a social net for girl children who have been unfortunate enough to fall pregnant (**Respondent 2**, 04/07/2016). During the interview **Respondent 2** indicated that, as the surrogate parent it is the responsibility of Government to make sure that the girl child and the child un/born are supported financially. Provision of such a social net would go a long way in reducing the incidence of early girl marriage since, once freed from the burden of tending for the child the affected girl child may be free to go back to school instead of resorting to an early marriage. **Respondent 2** emphasised the need for the Government as the protector of the child to de-role itself from the current function of just documenting incidences of child marriages and to more actively seek to empower the girl child through concerted education, and providing recreational activity. This would go a long way in diverting the attention of the girl child from engaging in early sexual activities which may lead to early marriages. From the research findings and review of related literature it became visibly clear to me that the government needs to embrace a holistic approach encompassing legal, socio-economic and cultural reforms in order to give full effect to the constitutional ruling ending child marriages.

4.3 Role Played by NGOs in Curbing Child Marriage in Zimbabwe

“NGOs have played a critical role and continue to play a critical role in curbing child marriages in the country. The landmark ruling being celebrated came as a result of concerted efforts of ROOTS, Veritas and Zimbabwe Lawyers for Human Rights (ZLHR) of course with the backing of many other activist groups.” (**Respondent 6** 12/08/2016)

A lawyer with ZLHR, **Respondent 6**, explained that NGOs have played a critical role in fighting for children’s rights and in particular reference in the fight against child marriage. Her organization is one testimony that together with two other organizations helped the two former child brides to challenge the Constitutional Court through empowering them with human rights knowledge and helping them with the litigation process. Many authors agree with **Respondent 6** that NGOs in Zimbabwe as transnational intermediaries have placed Zimbabwe on the international child rights map through facilitating litigation that has paved the way for ending child marriage (Magaisa 2016, Mavhinga 2016). Sibanda added that local traditions and customs can be reviewed in line with international norms through litigation and transforming laws. For example she wrote that, “using Article 2(f) and 5(a) of CEDAW which are based on the idea that where cultural constraints on gender hinder

the achievement of women's equality it is the cultural way that must give way" (2011:17). Hence, through litigation NGOs through the child brides challenged customary marriages and other practices that allowed the girl child to be disadvantaged through early marriage. Local NGOs like Musasa have hybridised the concept of shelters by setting up urban and rural shelters that accommodate girls facing difficulties including child brides (Mavhinga 2016). Various campaigns have been launched to raise awareness and campaign against child marriages, for example the +18 campaign by Plan Zimbabwe, and "Give us books, not husbands" by Katswe Sisterhood among several others (UNICEF 2016 article posted by Constitutional Watch). The grand campaign was the July 2015 launch of the AU campaign on ending child marriages in Zimbabwe, organised by the MoWAGCD. Thus I can safely argue that NGOs have to date played a critical role in curbing child marriages and have still a pivotal role to play through employing various strategies to be discussed in the next section to give full effect to the constitutional reform.

4.4 NGOs as legal translators

"NGOs have a critical role to play in curbing girl child marriages and in buttressing the constitutional ruling ending child marriages through litigation advocacy, education and training society on human right issues..." (**Respondent 6** Human right lawyer 12/08/2016).

Respondent 6 pointed out the need for continued and active participation of NGOs through assisting affected girl brides who would have been forced into marriage, to seek redress as the precedent has been set in the case under review. She postulated that, due to their unique ability to engage various stakeholders, NGOs can be able to lobby and advocate for the ending of girl child marriages. Because of their ability to link Government to the grass roots NGOs are placed at an advantage to interpret the law within the setting of traditional beliefs, norms and values. For instance whereas the Government recognises the legal age of consent for sex as 16 years for girls, the same Government is now seeking to outlaw the same girl child from marriage. To add to the paradox, culturally the girl's family would want to marry off the girl to avoid losing dignity in the eyes of the society. Often under Zimbabwe's (African) culture it is demeaning in society to end up with a girl child having a baby "without a father" (**Respondent 6 12/08/2016**). Confronting challenges of child brides can be a problem within societies that tend to hide what they would interpret as a family scourge (Respondent 6).

NGOs can approach the paradox in two ways, i.e. seeking to change the attitude of communities towards the unfortunate girl who would have become pregnant and at the same time pushing for the Government to enact laws that are consistent and non-contradictory to community values. Sibanda (2011:17-

18) concurred with the ideas shared by the human rights lawyer through her argument that NGOs, though they are sometimes viewed as alien and face resistance, can still influence culture by engaging society in their own local discourse thereby enabling the adoption of substitute perceptions on the issue of child marriages. She further argues that there is a need for NGOs to advocate for further campaigns aimed at ending child marriage. The aim of the campaigns would primarily be to show that child marriages are detrimental to health and general well-being of the girl child. Lemmon and Eltarake (2014) have called for NGOs to engage men and boys during advocacy campaigns so that they feel part of the programme. More NGOs should create safety nets for girls who escape forced or early marriage. NGOs should engage government to adopt clear and unambiguous position on child marriages.

NGOs can also assist communities to seek ways and means of resolving the bane of child marriage using solutions that are guided by both the law and communities values. Working with Government Ministries, NGOs are well positioned to educate the girl children about the dangers of early marriages, educating the same about the laws and in the process empowering them about their rights and responsibilities. In communities which often take the subject of sexual health as taboo, NGOs can help by teaching young girls on their sexual Reproductive Health. RAU in The Zimbabwean Newspaper article dated 04/08/2015 stated that NGOs acting as intermediaries and translators need to foremost advocate to government to ensure alignment of national law with the constitution.

4.5 Civil Society Actions

“As church organization we feel it is part of our corporate responsibility to engage our congregation and discuss day to day issues affecting our members. The majority of cases that we deal with during family counselling sessions involve gender based violence and of late we have noted that cases involving child marriages have been on the increase... we asked the women to suggest some of the issues affecting them that they would want to be discussed during the convention, the topic on child marriage was suggested by almost all our participants from both from rural and urban setting ...” (**Respondent 5** Reverend’s wife and head of the women’s organisation 06/08/2016)

The above remarks were made by the reverend’s wife (**Respondent 5**) whom I interviewed during an annual Christian church convention (about 400 rural and urban women attended) from the 4th to the 7th of August 2016 at Macheke Primary School in Mashonaland East Province of Zimbabwe. Her sentiments show how the issue of child marriage has become pertinent to family life and society in general. Although she was not in a position to give the cumulative figures of families that had come to her for counselling sessions in relation to

child marriage, nonetheless she revealed that during 2014 and 2015 there were 13 confirmed reports of girls (below the age of 18) under her jurisdiction (she leads the women's organisation with over 1000 members from 7 rural and urban churches) who were put under "discipline" after falling pregnant and eloping to their boyfriends. **Respondent 5** explained that, as a way of promoting favourable cultural norms, congregants in her church are expected to follow "set procedure" which requires that they solemnise their marriage through the customary procedure and afterwards have it blessed in church. Failure to follow procedure will result in disciplinary action being taken. A worrying trend she noted (that has already been discussed under the causes of child marriage) is that 8 of the 13 girls who got married have their parents either living in the diaspora or working as cross-border traders. **Respondent 5** suggested that civic organisations can engage the society in dialogue at local level and discuss issues affecting them and ask them to come up with recommendations on how problems affecting them can be solved. Most importantly she talked about the need to be pragmatic and involve the girls and the youths in general in practical activities that will distract them from engaging in detrimental activities. For example, in their church they have started music and sport competitions at local, district, regional and national level for the youths to keep them focused and entertained besides the annual youth conventions they always hold. Her ideas resonates with Jena (2014) in an article entitled "AU Goodwill ambassador calls for end to child marriage" where she called on civil society, government and other stakeholders to take practical actions towards ending child marriage in order to come up with a lasting solution to the socio-economic problems tearing the social fabric. According to Jena, the practical lessons included resolving of constitutional contradictions condoning child marriage, channelling adequate resources towards the issue, campaigning against child marriage through various media and empowering the girls by exposing them to human rights knowledge.

Despite what may seem to be the good intentions of the Constitutional Court ruling ending child marriage, during the FGD held in the women's convention there rose a sentiment that the Constitutional ruling may actually have an unintended (and undesirable) effect in that it left a gap on who would take care of the needs of a child borne out of a girl child's sexual union whose father would be incarcerated. There was a general agreement among the group that if child marriage is out-lawed, it follows therefore that the offender would be sent to jail). Apparently this would be adding a burden to the aggrieved parents to then take care of the child whose rightful biological father cannot be allowed to marry and cannot work since he would be serving a jail sentence. Here it is necessary to reiterate that **Respondent 4** (the magistrate) during the interview had also encouraged deterrent sentences for offenders of child marriages. Another unintended effect of the ruling is that it may end up denying children borne out of a girl child's sexual union their right to family. Zimbabwe's Constitution (section 19) recognises the rights of children to family. The right to

family means having a father and mother or guardians, which is precisely what civil society expects. When viewed in this light, denying a girl child the right to marry but according her the right to consent to sex (as per the existing laws) will invariably end up denying the baby his/her right to family (Chitsike 2016 Mavhinga 2016). The situation would become perplexing if the same child were to approach the same Constitutional Court demanding his/her right denied by the same court. Another unintentional effect of the ruling is that the society is worried that, when applied as it is, the Constitutional ruling may have the tendency to abrogate the role of the parents from having a say in the future of their child yet at the same time these parents are expected to take care of the child whose biological father would be incarcerated.

The above views, though they may appear to diverge from my current discussion on what can be done to give effect to the constitutional reform are necessary to bring strongly into perspective that when laws are seen as being forced on communities, there is a tendency by the same communities to resist passively. According to Merry and Sibanda, it is difficult for new interpretations to replace old ones (2006a:44 2011:6). Merry and Sibanda's argument resonates with that given by the minister's wife (**Respondent 5**) who argued that success in adopting new laws depends on the institutional support locals receive after a law is put into effect. In this regard she argued that as a church they took advantage of the vast knowledge possessed by their congregants coming from different intellectual background to teach and learn from each other with regard to law and child marriage. She has a strong conviction that people are empowered through knowledge to accept new ideas. I concur with **Respondent 5** and I also subscribe to the view by Sibanda that customs are not static in society, hence the need to engage locals through dialogues and awareness and influence them to adopt progressive human rights norms that help them to reinforce positive aspects of tradition while doing away with those that seem to infringe on rights (2011:6)

4.6 Conclusion

Chapter four examined the data collected from the MoPSLSW and the MoW-AGCD and the different respondents. My findings showed that in the Zimbabwean context the major drivers of early child marriages can be summarised as; (i) absentee parents leading to lack of parental care and guidance (ii) girls exercising their own agency when it comes to marriage (iii) pandemics such as HIV-Aids which have left many child headed families in Zimbabwe without guardians (iv) traditional beliefs (v) religious beliefs (vi) lack of government resources due to the ailing economy which restrict the capacity of relevant government ministries to implement programmes (for example law awareness campaigns) necessary to curb child marriage.

I then analysed the strategies that various stake holders can implement to give full effect to the constitutional ruling aiming to stop child marriages. From my

findings it emerged that a holistic approach which involves addressing economic structural issues, aligning existing laws, and packaging the aligned laws in view of the socio-cultural norms (and values) and exhaustive engagement of all concerned stakeholders in child marriages is necessary to give full impact and weight to the Constitutional ruling ending child marriages. Chapter 5 will conclude through a synthesis of the findings as well as making recommendations relating to addressing the phenomenon of child marriage in Zimbabwe.

Chapter 5 Conclusions and Recommendations

5.0 Introduction

This chapter concludes by synthesizing the important findings of the thesis. The chapter reflects on the key objectives, questions and methodological approach and concepts of the study. As alluded to in chapter 1, the main aim of this research is to investigate strategies that can be implemented to reach the full realization of the gist of the Constitutional ruling ending child marriages in Zimbabwe. Since the Constitutional ruling is but one step, (of several steps), of what should be done to end child marriages, the research endeavoured to get an in-sight into the roles of other actors involved in the matter and what they can do to assist in ending the practice. Basing on the socio-legal framework concept of legal translation, I contend that the constitutional reform on its own is not sufficient to end child marriage in Zimbabwe. Rather, a holistic approach addressing socio-economic problems as well as society cultural transformation is necessary. In the last section of the chapter recommendations on ending child marriages will be proposed.

5.1 Reflections on Main Findings

The study explored the strategies that can be employed by various stake holders to give effect to the constitutional reform ending child marriage in Zimbabwe. The study noted that in as much as socio-economic factors interact to promote child marriage, legal measures alone are not enough to bring the practice to an end. Non-legal strategies including engaging all stakeholders, promoting cultural and religious transformation are pivotal in ending child marriage. Throughout the research two key questions lingered on my mind. Can the Zimbabwean girls, human rights activists and society at large celebrate after the constitutional reform ending child marriage was passed? What else can the relevant stakeholders do to give full effect to the constitutional reform? A scrutiny of documents provided by the MoPSLSW and MoWAGCD showed an alarming corresponding increase in child marriages and the failing Zimbabwean economy between 2005 and 2014. This localised context of the causes of child marriage in Zimbabwe showing an interplay of socio-cultural and economic factors led me to propose that besides the social problems acting as factors that drive young girls into marriage there maybe be other economic structural deficiencies that can inherently contribute to child marriages. This viewpoint assisted me in suggesting some necessary strategies that can be employed by various stakeholders in the country to effectively end child marriages. Examination of how NGOs play a critical role in curbing child marriages exposed how, as intermediaries of transnational laws, they can successfully use litigation to fight child marriage in the country. Field-research interviews with

the judiciary, NGOs and civil society on strategies necessary to effectively end child marriage in Zimbabwe revealed an underlying uneasiness due to what may be perceived as the unintended negative impacts of the ruling especially concerning the children's right to family. The revelation that the ruling may actually end up denying children their constitutional right to family posed the possibility of society's passive resistance to the implementation of the ruling. The general trend observed indicating reservation as to what constitutes an offense, especially in a case which involves a girl aged 16 years who has exercised her agency and consented to the sexual act, clearly brings into focus the contradicting perceptions of societal norms and the law. Clearly sexual maturity differs amongst individuals and denying a person the right to own family because of chronological age seems to go against societal norms. The situation becomes even more paradoxical when taken in an instance when the party in case (the girl) is just a few weeks shy of reaching 18 and she is denied right to family because of the Act (Chitsike 2016). The revelations showing stakeholders uneasiness with some provisions of the constitutional reform ending child marriages abetted my thesis in showing the relevance of the concept of legal translation. The disclosures helped to show that vernacularisation of international law into local contexts necessitates the need for native involvement if laws are to be easily accepted (Merry 2009 Sibanda 2010). Arguments engaged in the thesis showed that legal solutions alone are not enough and that use of force (law) and soft approaches (dialogue) is indispensable (Feltoe and Maguranyanga 2015). The research argues that strategies to address child marriage should not only be law based but must engage other underlying problems such as socio-economic challenges, and cross cutting issues of traditional/religious beliefs in order to successfully fight the consequence (child marriage). In my own opinion fighting the consequence requires a multidimensional approach that includes addressing underlying structural problems like gaps existing between, the constitution and the marriage laws, deficiencies in the socio-economic setup and paying particular attention to the issues of children's rights and agency. However the Constitutional Court ruling is a commendable starting point and a momentous step towards realising an end to child marriage which has an impact on girls and children's rights.

5.2 General Recommendations

This section outlines the possible suggestions and a recommendation for future research and policy making. This thesis explored the strategies that can be implemented by various stakeholders in Zimbabwe to give effect to the Constitutional Court ruling ending child marriage in Zimbabwe. Considering the uneasiness expressed by respondents during the study to accept the ruling based on universalising maturity that is, placing the marriageable age at 18, I recommend further research to be done to question the feasibility of the Constitutional ruling especially in a globalized world. It is a known fact that maturity in

young people (besides being a biological process) is much influenced by the environment that they are exposed to. With rapid globalization and exposure to digital information young people tend to mature earlier than had been the case when they were secluded from the world. Would the ruling of 18 years being the rightful marriageable age stand the test of time? Further research can also challenge the marriageable age on the basis of responsibility, given the fact that some participants showed concern about the upkeep of the child if the state decides to use criminal law and the father is incarcerated. Even if the girl is married at 18, will she be able to fend for the child when she is not independent economically?

There is a need for the state to make timely interventions after research is done in order to curb further violation of children and human's rights. During my research I learnt that it took four years for the government to follow up results of the research made by UNFPA which showed that Mashonaland Central province had the highest prevalence in child marriage. It would be beneficial if the government promoted consultation measures that accommodate all stakeholders when amending laws to make them acceptable to the general populace. For example, in the Zimbabwean Herald dated 1 September 2016 it was reported that a website was launched on 31 August 2016 for citizens to participate in the on-going harmonization of the laws through e-governance. In my opinion e-governance will actually promote exclusion of citizens who are not computer literate and those who have no access to internet services. I support Mavinga's idea for the state to initiate local and national programmes that educate all stakeholders on harmful effects of child marriage while adapting transnational ideas (2016).

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Appendix 1- List of Key informant Interviewed

Number of respondent	Post	Age	Date of Interview
Respondent 1 Female	Child-Welfare Officer Ministry of Public Service, Labour and Social Welfare	29	12/07/2016
Respondent 2 Female	Officer Department of Gender-Ministry of Women Affairs, Gender and Community Development	34	04/07/2016
Respondent 3 Female	Attorney General's Counsel Harare Ministry of Justice, Legal and Parliamentary Affairs	46	19/07/2016
Respondent 4 Female	Regional Magistrate Ministry of Justice, Legal and Parliamentary affairs	35	25/07/2016
Respondent 5 Female	Minister's Wife Methodist Church in Zimbabwe	36	06/08/2016
Respondent 6 Female	Senior Projects Lawyer/ Zimbabwe Lawyers for Human Rights (ZLHR)	32	12/08//2016

Appendix 2 - List of Focus Group Discussion Participants

Number of Participant	Occupation	Age group	Date
Participant A Female	Social worker	40-45 years	05/08/2016
Participant B Female	Teacher	45-50 years	05/08/2016
Participant C Female	Receptionist (Former Child Bride)	25-30 years	05/08/2016
Participant D Female	Retired Nurse	Above 65 years	05/08/2016
Participant E Female	Housewife	35-40 years	05/08/2016

Appendix 3: Summary of Factors Promoting Child Marriage In Mashonaland Central, Zimbabwe

5.2 FACTORS AND CONDITIONS PROMOTING CHILD MARRIAGES

Mr. Speaker, at all the seven (7) evidence gathering sessions conducted by the Committee, as outlined above, numerous critical factors and/or conditions were mentioned repeatedly as the main drivers of child marriages in Mashonaland Central, namely:

- (i) poverty;
- (ii) lack of alignment of marriages laws with the new Constitution;
- (iii) lenient sentences given to cases regarded as statutory rape or consensual sex with a minor;
- (iv) practices of child marriages by some churches, in particular, the Johanne Marange Apostolic sect;
- (v) lack of education in communities;
- (vi) low level of awareness and poor understanding of child rights; (vi) harmful cultural practices;
- (vii) provision of temporary dormitories at schools for students coming from faraway places from school;
- (viii) striptease in beer halls;
- (ix) general lack of recreational facilities and entertainment in the province;
- (x) drug abuse by children in communities;
- (xi) high levels of unemployment.