

# PERSISTANCE OF CHILD MARRIAGES IN ZIMBABWE: A TIME TO TREAT THE CAUSE AND NOT THE SYMPTOMS

Independent legal consultant Nqobizwe Mvelo NGEMA<sup>1</sup>

## **Abstract**

*The problem of child marriages is prevalent in Sub-Saharan Africa and the UNICEF has estimated that more than 37 per cent of girls get married before reaching the age of 18 year, while more than 11 per cent get married before the reaching the age of 15 years. Zimbabwe has enacted progressive legislation to address the dilemma of child marriages. However the problem of child marriages still persists and this paper shows that it is easy to change the law but not easy to change the society. This paper argues that legislative change is the first step to the right direction but a multi-pronged strategy is necessary to address child marriages. It is suggested that it is crucial to deal directly with the root causes of child marriages in addition to legislative change. The causes are, inter alia, poverty, peer pressure, teenage pregnancy and lack of education. One of the major causes is rooted in culture and religion such as the practice of kuzvarira and kuripa ngozi. Kuripa ngozi is practiced in order to appease the avenging spirit of a murdered person by compensating his family with a virgin bride and there is a general belief that failure to appease it might attract bad luck and even death for the entire family of the perpetrator. Over the years custom has influenced the attitude and behaviour of people. Therefore to change the law without changing the mind-set of the people through educational campaigns would be tantamount to dealing with the symptoms instead of the real problem.*

**Keywords:** child marriage, kuripa ngozi, kuzvarira, forced marriage.

**JEL Classifications:** K36

## **1. Introduction**

The issue of children who tie their marriage knot while still below the internationally acceptable marriageable age has been put to the public attention by the efforts of the African Union Campaign to end child marriage in Africa. The United Nations International Children's Emergency Fund (UNICEF) has estimated that more than 37 per cent of girls in Sub-Saharan Africa tie their marriage knot before reaching their 18<sup>th</sup> birthday, while more than 11 per cent tie their marriage knot before reaching their 15<sup>th</sup> birthday.<sup>2</sup> The problem of child marriages is prevalent in rural areas and is more common among those who are poor and illiterate.<sup>3</sup> African countries have the highest percentage of child marriages such as Niger, Chad and Central African Republic that is on par with each other, Guinea, Mozambique, Mali, Burkina Faso and South Sudan are also on par with each other, Malawi, Madagascar, Eritrea<sup>4</sup> and many more. Many SADC countries have enacted legislation that forbids child marriages and also provided punishment for anyone who betroth or solemnise a marriage with a person that is below the age of eighteen years. However, despite the above legislative achievements, the problem of child marriages has refused to go away and continue to be prevalent.<sup>5</sup>

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<sup>1</sup> Nqobizwe Mvelo Ngema – independent legal consultant & PhD. candidate at the University of Venda, South Africa, nqobizwemvelo@gmail.com.

<sup>2</sup> UNICEF 'The State of the World's Children 2015: Reimagine the Future,' data.unicef.org/wp-content/uploads/2015/12/sowc-2015-summary-and-tables-210.pdf (accessed 20 January 2018); Plan 18+ Programme on Ending Child Marriage in Southern Africa, Ending Child Marriage in Zimbabwe: Gaps and Opportunities in Legal and Regulatory Frameworks 2 policy brief.

<sup>3</sup> UNICEF <https://data.unicef.org/wp-content/uploads/2015/11/unicef-child-marriage-brochure-hgh-single-246.pdf> (accessed 18 January 2018).

<sup>4</sup> Muswikwa B, Richter L, Kaufman J and Nandi A, "Minimum Marriage Age Laws and the Prevalence of Child Marriage and Adolescent Birth: Evidence from Sub-Saharan Africa", 41, no. 2 (2015) 59 <https://www.guttmatcher.org/sites/default/files/pdf/pubs/journals/4105815.pdf> (accessed 10 June 2016). Muswikwa B et al have exposed the prevalence of child marriages in Africa in a hierarchical manner where Niger is estimated to have 75 per cent of child brides, followed by Chad and Central African Republic that is on par with each other at the rate of 68 per cent of child brides, followed by Guinea that is at the rate of 63 per cent of child brides, followed by Mozambique that has 56 per cent of child brides, followed by Mali that has child brides at the rate of 55 per cent, followed by Burkina Faso that is on par with South Sudan at the rate of 52 per cent of child brides, followed by Malawi that has 50 per cent rate of child brides, followed by Madagascar that has the rate of 48 per cent of child brides, followed by Eritrea that has 47 per cent of child brides and many more countries that are not mentioned in this study.

<sup>5</sup> Rembe S, Chabaya O, Wadesango N and Muhuro P, "Child and Forced Marriage as Violation of Women's Rights and Responses by Member States in Southern African Development Community", *Agenda*, 25 no. 1 (2011) 65-74.

Muswikwa et al also submitted that there is often a substantial age gap between men and their spouses and it is estimated that 19,9 per cent of young girls aged between fifteen years and nineteen years are usually 10 years or more younger than their husbands.<sup>6</sup>

This paper is divided into four thematic parts. The first part will discuss the customary practices that play a major role in the continuation of child marriages in Zimbabwe. The second part of this paper will discuss the legislative response of Zimbabwean authorities in regulating child marriages. It will also make a submission that changing the law is a good starting point to the right direction but definitely there is a necessity for a multi-pronged approach in an attempt to end the dilemma of child marriages. The third part of the paper will discuss the root causes of child marriages in Zimbabwe and make a submission that failure to address those causes would not make the problem of child marriages go away even if the laws may change. The fourth part of the paper would discuss the regulation of child marriages in terms of the international and regional human rights framework and discuss whether Zimbabwe has managed to comply with its international human rights obligations.

## 2. Customary practices that promotes child marriages in Zimbabwe

### 2.1. Kuripa Ngozi

If the father or a brother from family A has killed a person from family B, family A may offer a virgin girl in compensation as a bride to a man in family B and as an appeasement to the spirit of a murdered person.<sup>7</sup> The cultural practice of *kuripa ngozi* is widely practiced in rural areas and is practiced to solve inter family disputes whereby a virgin girl is given by the kindred of the wrongdoer to the wronged kindred in order to apologise for wrong doing. Nowadays the practice of *kuripa ngozi* continues to be practiced as originally intended but there is another dimension to it. In our contemporary society an aggrieved family may sometimes claim cattle, money and other material things as compensation for the murder of their family member. Religion and tradition plays a major role in influencing the behaviour of people.<sup>8</sup> This is so because among the Shona people it is believed that the failure to appease the avenging spirit of a murdered person may haunt the entire family members of the perpetrator and inflict them with contagious bad luck and even death.<sup>9</sup> The fear of bad luck and death that might be caused by the avenging spirit has influenced the attitude and behaviour of some people to continue practicing *kuripa ngozi* even though it has been abolished by legislation. The fear of the avenging spirit and the fear of imprisonment may push people to practice it under cover in order to avoid punishment from the relevant authorities.

### 2.2. Kuzvarira

*Kuzvarira* is a cultural practice that is commonly practiced by some cultural groups of Mozambique such as the Ndau cultural group and some of these people moved from Mozambique to settle in Zimbabwe.<sup>10</sup> The cultural practice of *kuzvarira* comprises the marrying off of an underage girl without her consent to a rich man who is usually a polygamist with numerous wives. In exchange, the family of the young bride benefits out of the marriage by getting cash, foodstuffs and other material things. It is highly disturbing that underage girls at times as young as below the age of ten

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<sup>6</sup> Muswikwa et al, "Minimum Marriage Age Laws", 59.

<sup>7</sup> Shoko T and Chiwara A, "Mukondombera: HIV and AIDS and Shona Traditional Religion in Zimbabwe", Journal for the Study of the Religions of Africa and Its Diaspora 1, no. 1 (2015) 5-7.

<sup>8</sup> Chivasa N and Mukona A, "An Analysis of the Contributions of Taboo System to Peace among Shona Communities in Zimbabwe", International Journal of Research in Humanities and Social Studies 4, no.1 (2017) 24-32.

<sup>9</sup> Chivasa N, "Kuripa Ngozi as a Conflict Resolution Model in Shona Communities of Zimbabwe: A Conceptual Analysis", Critical African Studies 11, no. 2 (2019) 165.

<sup>10</sup> Mawere Munyaradzi and Rambe Patient, "Violation and Abuse of Women's Human Rights in the Customary Practice of 'Kuzvarira' among the Ndau People of Mozambique", International Journal of Politics and Good Governance 3, no. 3.1 (2012) 04.

years or before they are born are given out in marriage.<sup>11</sup> The cultural practice of *kuzvarira* is partly attributed to the high level of poverty and the harsh economic conditions that are presently confronting the Republic of Zimbabwe.<sup>12</sup>

### 3. Legal developments in solving the problem of child marriages in Zimbabwe

The Constitution of the Republic of Zimbabwe forbids child and forced marriages in Zimbabwe. It mandates the state to take proper actions to make sure that no marriage would be solemnised in Zimbabwe without the free and full agreement of the parties who intend to enter into wedlock.<sup>13</sup> Mwambene argued that the latter constitutional provision that requires free and full agreement of the parties who intend to get married would address the persistence of some cultural practices such as *kuzvarira* and the provision of a substitute wife where a girl is coerced to enter into a union with her sister's husband for the purpose of raising children.<sup>14</sup> Traditionally *lobolo* cattle transfer the reproductive rights of the bride to her husband's family group. It goes without saying that the procreation of children is essential and one of the main reasons people get married to each other in the first place.<sup>15</sup>

The failure on the part of the wife to produce children or reasonable number of children is regarded as a failure on her part to perform her marital duties<sup>16</sup> and her family may address the problem of her barrenness by providing one of her younger sisters as a substitute wife and failure to do so may lead to the return of the portion of *lobolo*.

The state is also mandated to take proper actions to make sure that underage girls or teenagers are not pledged in matrimony.<sup>17</sup> One of the traditional practices where underage girls or teenagers are pledged in matrimony is commonly known as *kuzvarira*. The cultural practice of *kuzvarira* is where an underage girl is married off without her agreement to a rich man who in most cases is already a polygamist for the purpose of getting cash, foodstuffs and other material things.<sup>18</sup> According to this cultural practice a girl is married at a very young age even before attaining the age of nine years or before birth.<sup>19</sup> Section 11 of the Customary Marriages Act<sup>20</sup> also forbids the pledging of girls in marriage but is not free from weaknesses as it fails to clearly provide for the minimum age for marriage. Section 11 of the Customary Marriages Act is not likely to effectively address the persisting problem of child marriages because according to customary laws of Zimbabwe puberty is regarded as a marriageable age.

The Constitution has dealt with the above loophole by placing eighteen years of age and above as the acceptable age for persons to solemnise lawful marriages in the Republic of Zimbabwe.<sup>21</sup> Moreover, the Constitution has also addressed the problem of forced marriages by providing that no person may be forced to conclude a marriage against his or her will.<sup>22</sup>

*Kuripa Ngozi* is normally practiced to solve inter family disputes whereby a virgin girl is given

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<sup>11</sup> Roselyn Hanzi. "Sexual Abuse and Exploitation of the Girl Child through Cultural Practices in Zimbabwe: A Human Rights Perspective". LLM Dissertation, University of Pretoria, 2015, 33.

<sup>12</sup> Hanzi, "Sexual Abuse", 33.

<sup>13</sup> Section 26 (a) of the Constitution of Zimbabwe 2013.

<sup>14</sup> Mwambene L, "Recent Legal Responses to Child Marriage in Southern Africa: The Case of Zimbabwe, South Africa and Malawi", African Human Rights Law Journal 18 (2018) 540.

<sup>15</sup> May J. *Zimbabwean Women in Customary and Colonial Law*. Gweru: Mambo Press, 1983 86; Bennett TW. A Sourcebook of African Customary Law for Southern Africa. Cape Town, Juta & Co Ltd, 1991 197; Brandel M, "Urban Lobolo attitudes: A Preliminary Report", African Studies 17 (1958) 34; Mathewson E, "Impact of Urbanisation on Lobola", Journal of Racial Affairs 10 (1959) 72; Mangena T and Ndlovu S, "Implications and Complications of Bride Price Payment among the Shona and Ndebele of Zimbabwe", International Journal of Asian Social Science 3, no. 2 (2013) 477.

<sup>16</sup> Gwarinda TA. "The Impact of the Common Law and Legislation on African Indigenous Laws of Marriage in Zimbabwe and South Africa". LLD Thesis, University of Fort Hare, 2013 85.

<sup>17</sup> Section 26 (b) of the Constitution of Zimbabwe 2013.

<sup>18</sup> Mawere et al, "Violation and Abuse", 02.

<sup>19</sup> Hanzi, "Sexual Abuse", 33.

<sup>20</sup> Customary Marriages Act (Cap 5:07).

<sup>21</sup> Section 78 (1) of the Constitution of Zimbabwe 2013.

<sup>22</sup> Section 78 (2) of the Constitution of Zimbabwe 2013.

by the kindred of the wrongdoer to the wronged kindred in order to apologise for the wrong doing.<sup>23</sup> *Kuripa Ngozi* is now characterised as an unlawful cultural practice that discriminates against and degrade women and is prohibited by the provision of section 3 (1) (l) (iii) of the Domestic Violence Act<sup>24</sup> which provides that: “3 (1) for the purposes of this Act, domestic violence means any unlawful act, omission or behaviour which results in death or the direct infliction of physical, sexual or mental injury to any complainant by a respondent and includes the following - ... (l) Abuse derived from the following cultural or customary rites or practices that discriminate against or degrade women - ... (iii) Pledging of women or girls for purposes of appeasing spirits.”<sup>25</sup>

It is noticeable that the Domestic Violence Act not only forbids *kuripa ngozi* cultural practice but also forbids forced marriage<sup>26</sup> and child marriage.<sup>27</sup> In the same vein, the Sexual Offences Act<sup>28</sup> also indirectly plays a part in the fight against child and forced marriages. The Sexual Offences Act deems a person under the age of sixteen years as incapable of consenting for sexual intercourse<sup>29</sup> and this means that even if such a person agrees to sex it would amount to a statutory rape. In view of the above progressive legislative developments one can have an assumption that child marriages and forced marriages are no more in Zimbabwe. On the contrary, news reports in early August 2021 shows that child marriages still persists in Zimbabwe and a 14 year old young girl died recently while giving birth at a church shrine.<sup>30</sup>

The church shrine may be associated with that of Johanne Marange Apostolic sect that continues to permit the solemnisation of child marriages. This shows beyond any doubt that multi-pronged strategies are necessary in the fight against child marriages. The legislative change is a good start to the right direction but definitely there is still more that needs to be done such as addressing the root causes of child marriages in the first place.

The Report of the Portfolio Committee on Women Affairs, Gender and Community Development on the Higher Prevalence of Child Marriages in Mashonaland Central Province has identifies factors that contribute to the continuation of child marriages in Zimbabwe as poverty, compassionate punishments given to culprits of statutory rape or agreed sexual intercourse with a teenager, tolerance of underage girls to enter into wedlock by some churches such as Johanne Marange Apostolic Sect, absence of education and lack awareness about children’s rights in communities and harmful cultural practices.<sup>31</sup> The following section will make a detailed discussion of the origins or reasons behind child marriages in Zimbabwe.

## 4. Causes of child marriages

### 4.1. Culture and religion

The traditional religion and the religion in general play a major role in the influence of human behaviour. The likelihood of spirit of the departed family members interacting with the living family members is deepened by the belief among the Shona speaking people of Zimbabwe that death is not extinction but just a transition in which the spirit of a dead person reaches a greater and cleaner form of way of life.<sup>32</sup>

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<sup>23</sup> Jokani MC. “*The Customary Law Practice of Ukuthwala - An Antithesis in the South African Constitutional Order*”. LLD Thesis, Nelson Mandela Metropolitan University, 2017.

<sup>24</sup> Domestic Violence Act 14 of 2006.

<sup>25</sup> Ibid.

<sup>26</sup> Section 3 (1) (l) (iv) of the Domestic Violence Act 14 of 2006.

<sup>27</sup> Section 3 (1) (l) (v) of the Domestic Violence Act 14 of 2006.

<sup>28</sup> Sexual Offences Act 8 of 2001.

<sup>29</sup> Section 2 for the definition of a young person and section 3 of the Sexual Offences Act 8 of 2001 for the prohibition of sexual intercourse with a young person.

<sup>30</sup> “UN Slams Child Marriages in Zimbabwe after Teen Died in Labour” 09 August 2021, <https://www.arabnews.com/node/190800/world>, accessed on 10 August 2021.

<sup>31</sup> Report of the Portfolio Committee on Women Affairs, Gender and Community Development on the Higher Prevalence of Child Marriages in Mashonaland Central Province 2016 July 3<sup>rd</sup> Session: Eight Parliament.

<sup>32</sup> Benyera E, “*Presenting Ngozi as an Important Consideration in Pursuing Transitional Justice for Victims: The Case of Moses Chokuda*”, Gender and Behaviour 13, no. 2 (2015) 6761.

There is a general belief among the Shona that when a person pass away his or her soul continue to intermingle with the living members of his kindred and that coordinated relations with the spirits of the departed family members contribute to the delight and success of the surviving members of the kindred.<sup>33</sup> *Kuripa ngozi* seem to be an indomitable cultural practice that keeps on surviving in post-colonial Zimbabwe<sup>34</sup> and even after it has been abolished by legislation.

The persistence of the cultural practice of *kuripa ngozi* shows the deep influence of religion in people's mind set and their general behaviour and that it may be easy to change legislation but not an easy exercise to change the society. Religion also plays a crucial role in the continuation of the practice of marrying off underage girls in Zimbabwe because of the African Apostolic church that solemnises marriages between underage girls and the majority of these child marriages are not reported to the relevant authorities.<sup>35</sup> In communities where *lobolo* is paid by the husband, it becomes more expensive for young girls because of their child bearing potential. These above cultural aspects prevail in many SADC member states with minor variances subject to the circumstances of each state.<sup>36</sup>

#### 4.2. Poverty

Poverty plays a major role in the perpetuation of child marriages globally. There are few opportunities and assets are scarce amongst the poor segments of some communities and this makes girls to be perceived as economic burdens by their families.<sup>37</sup> Girls are normally raised with the hope that they would get married one day and start a new life in their husband's family and investing on them is viewed as a waste of resources, thereby being considered less valuable than their male counterparts. Girls from poor households are more prone to be married off before attaining eighteen years than those from richer households.<sup>38</sup> After all there is a financial incentive for a family that is living in abject poverty to arrange an early marriage for their underage in order to reduce harsh economic conditions in which they find themselves.<sup>39</sup>

Common sense dictates that when one of the girls in the family is married off, her family would benefit on the *lobolo* that would be paid on her head and also benefit from other gifts that might be given by their in laws. Moreover, the family of the girl that is married off early would no longer worry about many persons to feed, to educate, to clothe<sup>40</sup> and to pay medical bills.

#### 4.3. Teenage pregnancy

In some African communities parents subscribe to a belief system that it is better to marry off a daughter while she is between the age of twelve years and sixteen years in order to avoid a situation where she would end up partaking in sexual intercourse out of wedlock. Pre-marital sexual intercourse is highly disapproved in many African societies and having a child out of wedlock is a taboo and also reduces the chances of a maiden to attract suitors that would view her as worthy for marriage.<sup>41</sup> By tradition marriage defines the status of a female person in numerous African societies and is viewed as part and parcel of being a matured woman.<sup>42</sup>

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<sup>33</sup> Igreja V. "The Monkey's Sworn Oath Cultures of Engagement for Reconciliation and Healing in the Aftermath of the Civil War in Mozambique". PhD Thesis, de Universiteit Leiden, 2007, 357.

<sup>34</sup> Chivasa, "Kuripa ngozi", 159-175.

<sup>35</sup> Mutangi T, "Religion, Law and Human Rights in Zimbabwe", African Human Rights Law Journal 2 (2008) 538-539.

<sup>36</sup> Msuya NH, "Harmful Cultural and Traditional Practices: A Roadblock in the Implementation of the Convention on the Elimination of Discrimination against Women and the Maputo Protocol on Women's Rights in Tanzania". PhD Thesis, University of Kwazulu Natal, 2017 113.

<sup>37</sup> Msuya NH, "Child Marriage: An Obstacle to Socio-Economic Development in Sub-Saharan Africa", Journal of Juridical Science 45 (2020) 51.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Human Rights Watch, "Ending Child Marriage in Africa: Opening the Door for Girls' Education, Health and Freedom from Violence", 2015 <https://www.hrw.org/news/2015/12/09/ending-child-marriage-africa> (accessed on 10 June 2016).

<sup>42</sup> Ibid.

As a result of this, parents get worried that their failure to marry off their daughter according to social expectations might result to a situation where their daughter remains a victim of spinsterhood for her entire lifetime and the traditional society do not provide any social security for spinsterhood.

As a result of this, parents are pressurised to marry off their daughters as early as possible in order to meet up with the societal expectations and to save their kindred from shame that is associated with giving birth to extra-marital child.<sup>43</sup>

Girls are normally married off early in order to save the reputation of their kindred and to evade shame that is associated with extra-marital pregnancy. Many African societies perceive girls who become pregnant out of wedlock as not worthy for marriage.<sup>44</sup> Some parents utilise the opportunity of preserving their daughter's virginity by arranging a marriage for her in order to maximise her child bearing capacity.<sup>45</sup>

#### 4.4. Lack of education

Absence of education leads to unawareness and poor understanding of children's rights and the available avenues for claiming their rights.<sup>46</sup> If both parents and their children are illiterate it makes it difficult for them to enjoy their legally protected rights. Broad awareness campaigns are essential in order to enlighten the public about children's rights. Awareness campaigns can be conducted via radio, television, print media or internet and through stage plays to inform the public about the rights of children. It is also essential to ensure that such awareness campaigns effectively includes and influence the less privileged and illiterate segments of the population. It is undeniable that education is closely related to culture because it is a way through which culture is transferred from one generation to the other.<sup>47</sup> Likewise, education is significant because it improves the human mind to think critically about issues. "Even a mind that has been indoctrinated with a particular ideology is capable of eventually discovering the falsity of that ideology and rejecting it."<sup>48</sup>

#### 5. International and regional human rights instruments

The Universal Declaration of Human Rights (UDHR) does not forbid child marriage in an explicit manner. However it can be deduced from the general reading of the provisions of the UDHR that child marriage is forbidden by the Declaration. Article 16, for example, provides some requirements that ought to be complied with before the parties can solemnise a valid marriage. One of those requirements is that the parties who intend to solemnise a marriage must be of full age at the time of the conclusion of a marriage<sup>49</sup> and another requirement is that a marriage must be concluded freely with full consent.<sup>50</sup>

By the inclusion of full age, it can rightfully be argued that the drafters of the UDHR intended to talk about an age where a person reaches sexual maturity or legal age of majority. The International Covenant on Civil and Political Rights (ICCPR) provides that the men and women of marriageable age should not be denied their right to get married and form a family. The ICCPR does not openly forbid child marriage but it can be deduced from the reading of the general provisions of the ICCPR that child marriages are forbidden.

The ICCPR provides that every child shall have a right to some measures of protection provided by his family, society and the state and such protection ought to be commensurate with his

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<sup>43</sup> Msuya, "Child Marriage", 50.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Report of the Portfolio Committee on Women Affairs, Gender and Community Development on the Higher Prevalence of Child Marriages in Mashonaland Central Province 2016 July 3<sup>rd</sup> Session: Eight Parliament.

<sup>47</sup> Dlamini CRM. "Culture, Education, and Religion," in Van Wyk D et al (ed) Rights and Constitutionalism: The New South African Legal Order. Juta & Co Ltd, 1994, 581.

<sup>48</sup> Ibid.

<sup>49</sup> Article 16 (1) of the Universal Declaration of Human Rights 1948.

<sup>50</sup> Article 16 (2) of the Universal Declaration of Human Rights 1948.

status as a minor.<sup>51</sup> Common sense dictates that marriage comes with a lot of burden and responsibilities associated with taking care of other family members and such burden and responsibility are not commensurate with the minor child's level of maturity as he is still depending on the parents for protection. So it can be argued that the drafters of the ICCPR had no intention of promoting child marriages because minor children needs to be protected by their families, society and the state.

The ICCPR goes further to prohibit forced marriages by providing that no marriage shall be solemnised without the free and full agreement of the parties who intend to get married.<sup>52</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR) forbids forced marriages by providing that marriage must be solemnised with the free consent of the parties who intend to get married.<sup>53</sup> The monitoring body of the ICESCR forbids child marriages by emphasizing an increase of marriageable age to 18 years in its concluding observations.<sup>54</sup>

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices forbids a forced marriage by stipulating that a marriage will be equivalent to slavery if it is forced upon a girl child or a woman by her family or guardian.<sup>55</sup> The Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage emphasises the importance of agreement as a requirement of a valid marriage by stipulating that no valid marriage would be solemnised without the full and free agreement of the parties who intend to get married.<sup>56</sup>

The latter Convention places a duty on the state parties to take appropriate legislative action to specify a minimum age for marriage.<sup>57</sup> State parties have an obligation to ensure that appropriate measures are taken which intend to abrogate customary practices that have the potential of restraining freedom of choosing a spouse.<sup>58</sup> Moreover, the Marriage Convention also introduced the obligation for state parties to ensure that all marriages are registered.

The registration of marriages is essential and serves as one of the operational ways to provide evidence of age in order to implement laws against child marriages.<sup>59</sup> The Convention on the Rights of the Child (CRC) does not openly prohibit child marriages. However, the reading of the general provisions of the CRC suggests that its drafters never intended to authorise child marriages. This is so because the CRC provides for the best interests of the child and the best interest principle can be interpreted in a manner that curb human rights violations that occur as a result of child marriage.<sup>60</sup> State parties to the CRC have an obligation to have necessary measures in place in order to take into account the best interests of the child.<sup>61</sup>

The Convention on Elimination of all Forms of Discrimination against Women (CEDAW) forbids child marriages by providing that the betrothal and the wedlock of a minor child are *void ab initio*.<sup>62</sup> In view of the persistence of harmful traditional practices that nourishes the continuation of child marriages; the CEDAW monitoring body has observed that in order to protect children from child and forced marriages, it is essential for the state parties to enact legislation aimed at abrogating harmful traditional practices.<sup>63</sup>

The African Charter on the Rights and Welfare of the Child (ACRWC)<sup>64</sup> forbids child

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<sup>51</sup> Article 24 (1) of the International Covenant on Civil and Political Rights (ICCPR) 1966.

<sup>52</sup> Article 23 (3) of the International Covenant on Civil and Political Rights (ICCPR) 1966.

<sup>53</sup> Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

<sup>54</sup> Committee on Economic, Social and Cultural Rights, 'Concluding Observations of the Committee on Economic, Social and Cultural Rights' (27<sup>th</sup> session 12-30 November 2001).

<sup>55</sup> Article 1 (c) (i) The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices of 1956.

<sup>56</sup> Article 1 of the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of 1962.

<sup>57</sup> Article 2 of the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of 1962.

<sup>58</sup> UNICEF, "Early Marriage: Child Spouses", (March 2001, Innocenti Digest No, Innocenti Research Centre Florence, Italy 12).

<sup>59</sup> UNICEF, "Child Marriage", 12.

<sup>60</sup> Article 3 of the Convention on the Rights of the Child.

<sup>61</sup> Nadeche Adrianasolo. "The Girl Child Marriage Practice in Madagascar: A Critical Analysis". LLM Dissertation, University of Pretoria, 2013, 19.

<sup>62</sup> Article 16 (2) of the Convention on Elimination of all forms of Discrimination against Women 1979.

<sup>63</sup> Mutyaba R, "Early Marriage a Violation of Girls Fundamental Human Rights in Africa", International Journal of Children's Rights 19 (2011) 341.

<sup>64</sup> African Charter on the Rights and Welfare of the Child (ACRWC), adopted in Addis Ababa, Ethiopia on the 11<sup>th</sup> of July 1990 and entered into force on 29 November 1999.

marriages by explicitly providing that both the betrothal and marriage of girls and boys are forbidden and mandates the state parties to take appropriate actions including legislative measures in order to ensure that the acceptable minimum age for marriage is laid down as eighteen years and also make the registration of marriages to be compulsory.<sup>65</sup>

The above prohibition of child marriages is commendable and is commensurate with the definition that classifies any person below the age of 18 years as a child.<sup>66</sup> In a similar vein, the African Union Campaign to end Child Marriage in Africa noted with concern that about thirty-two African states have set the minimum age of marriage at 18 years for both boys and girls and some above 18 years while eighteen African countries continue to have a discriminatory minimum ages and permits girls and boys to marry at different age even below eighteen years.<sup>67</sup> Moreover, child marriages continue to affect many girls every year in Africa despite the existence of the progressive legislation that abolish child marriages,<sup>68</sup> and this leads to numerous problems such as high maternal and child mortality rate and contagious diseases.<sup>69</sup> The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) urged member states to fight against child marriage through setting a minimum age for marriage at the age of 18 years for both boys and girls without any exception, as well as the launching of effective apparatus for the registration of marriage and termination of marriage.<sup>70</sup> The African Youth Charter<sup>71</sup> defines a minor as a person that is below the age of 18 years and that is between the ages of 15 to 17 years subject to each country's laws.<sup>72</sup> The African Youth Charter goes further to prohibit child and forced marriages by providing that: "Young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities."<sup>73</sup>

The reading of the definition of a minor in terms of the preamble and article 8 of the African Youth Charter suggest that a young men and woman of full age means a person who is 18 years or above. It is arguable that a person who qualifies to solemnise a valid marriage in terms of the Youth Charter is 18 years and above and must do so out of his or her own free will and volition.

Zimbabwe is a signatory of the numerous international and regional human rights instruments mentioned above and has done a lot so far in an attempt to align its domestic laws with the international human rights standards. It is so unfortunate that despite the above improvements, little progress has been achieved in the quest of stopping child marriages in Africa.<sup>74</sup>

## 6. Conclusion

As already mentioned earlier, the countries that are reported to have the highest percentage of child marriages are in the Africa. Many of these countries have enacted legislation that prohibits child marriages and also provided for the penalties for anyone who betroth or marry a child before attaining eighteenth birthday. Notwithstanding all these gains, child marriages are still widespread in Africa. They are common in rural areas amongst the underprivileged and those people who cannot read and write. Many poor communities have scarce resources; few opportunities and are reluctant to give opportunities to girls who are generally viewed as a financial burden on their families. There is a strong likelihood for Children from poor families to be married off before attaining their eighteenth birthday than their rich counterparts. If a girl is married off that renders her parents to have few children to educate, feed and to clothe.

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<sup>65</sup> Article 21 (2) of the African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

<sup>66</sup> Article 2 of the African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

<sup>67</sup> African Union Campaign to End Child Marriage in Africa: Call to Action 2013 Addis Ababa, Ethiopia 6.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> "The Addis Ababa Declaration on Ending Child Marriage in Africa," (23<sup>rd</sup> Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Addis Ababa, Ethiopia 11 April 2014).

<sup>71</sup> African Youth Charter, adopted in Banjul, The Gambia on the 2<sup>nd</sup> of July 2006.

<sup>72</sup> Preamble to the African Youth Charter 2006.

<sup>73</sup> Article 8 (2) African Youth Charter 2006.

<sup>74</sup> United Nations Population Fund (UNFPA) 2012 "Marrying Too Young: Ending Child Marriage in Tanzania," <https://www.unfpa.org/sites/default/files/pub-pdf/marryingTooYoung.pdf> (accessed on 10 January 2016).



One of the major causes of child marriages is rooted in religion and cultural practices such as *kuzvarira* and *kuripa ngozi* in Zimbabwe. *Kuripa ngozi* is practiced in order to appease the avenging spirit of a murdered person by compensating his family with a virgin bride. There is a general belief that the failure to appease it might attract bad luck and even death of the entire family members of the perpetrator. Over the years customs and traditions has influenced the attitude and behaviour of people. Therefore to merely change the law without changing the mind-set of the people through extensive educational campaigns would be tantamount to dealing with the symptoms instead of the real problem. Education is a powerful instrument and closely related to culture because it is the medium through which culture is transmitted from one generation to another.<sup>75</sup> Education can be used as, inter alia, an instrument of controlling the minds of people, and developing human mind to think critically about issues. “Even a mind that has been indoctrinated with a particular ideology is capable of eventually discovering the falsity of that ideology and rejecting it.”<sup>76</sup>

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<sup>75</sup> Dlamini, “Culture, Education, and Religion”, 581.

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