A Culture of Impunity? The Conceptualisation of Child Marriages by different social actors in the new Constitutional dispensation in Zimbabwe

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Contents

Abstract

This thesis examines the practice of child marriages in sub-Saharan Africa, with a specific interest in Zimbabwe. The ‘vulnerable girl child’ is at the centre stage as a subject of this practice. The literature suggests that diverse factors lead to child marriages. Still, the main driver continues to be the abuse of cultural and religious norms worsened by the inconsistency in domestic legislation and what feminists describe as ‘outright callous patriarchy.’ In addition, poverty, climate catastrophe, environmental crises and unemployment have been contributory factors as parents and guardians marry off girl children for economic benefits that consolidate social relations and enable survival. Victims are often betrayed by those meant to protect them. In 2016, the Zimbabwean Constitutional Court upheld a landmark ruling in *Mudzuru and Another v Minister of Justice and Another,* establishing 18 years as the minimum age to enter into marriage in Zimbabwe. Put differently, child marriage was explicitly abolished because of its inconsistency with international human rights obligations and Zimbabwe’s Constitution. This dissertation examines how key actors opposed to child marriages in the Zimbabwean context understand the causes and effects of child marriage on the child and her family's well-being.

Keywords: child marriage, human rights, Constitutional, girl child, Zimbabwe

1.

Contextualising child marriage: local and global realities.

"We must do away with child marriage. Girls who end up as brides at a tender age are coerced into having children while they are children themselves." [1]

Globally, there is increasing concern with the practice of 'child marriage', driven by humanitarian, health and feminist concerns. While there are all kinds of legislative practices globally against child marriage, the practice has drawn the attention of global organisations such as the World Health Organisation (WHO), the United Nations International Children's Emergency Fund (UNICEF), Save the Children Fund International and the African Union (AU) to fight against it. The notion of the term "child marriage" appears to originate from India because of the high rate of the practice in the country, which has led to massive activism against it (Efevbera & Bhabha 2). However, the argument is that there has to be a distinction between child marriage and girl child marriage because the available research and advocacy are evidence that girls are affected more by the practice compared to boys (Efevbera & Bhabha 7). The AU defines child marriage as "a formal marriage or informal union before age 18 for both boys and girls" (African Union 2). UNICEF establishes the practice as "any formal marriage or informal union between a child under the age of 18 and an adult or another child" (UNICEF "Child marriage").

[1] Dr Nkosazana Dlamini-Zuma, Chairperson, AUC at the International Conference on Family Planning, Addis Ababa, November 2013.

Child marriages are common worldwide, but are more prevalent among those with the least number of resources and low income, particularly rural area dwellers who depend on the local environment for their livelihood (United Nations Population Fund). Human Rights Watch estimates that a staggering 40% of girls in sub-Saharan Africa become wives before attaining 18 years of age (Smaak et al.). In a statistical profile conducted by UNICEF in 2019, Zimbabwe was found to have a population of about 1.6 million child brides, with a ratio of 1 in 3 young women marrying before reaching 18 years of age (UNICEF "Is an end to child marriage within reach?"). Zimbabwe is also among 41 countries in the world that have alarming rates of child marriages (Dzimiri et al.77). The African Union's 50-year action plan, Agenda 2063 for the development of African states, recognizes child marriage as a major hindrance to the continent's prosperity and poverty eradication. This is because girls are not afforded equal opportunities to contribute socially, politically and economically as boys (African Union 4-5). Contemporarily, this resonates with the emphasis made by Graca Machel, Michelle Obama, and Melinda Gates at an event aimed to amplify the end to child marriages in Cape Town, South Africa, in 2023. Graca Machel said that child marriages endure because girls are not given equal status as boys, in what she described as the "inability to see girls as full human beings" (Khan).

While this might seem straightforward, the challenge arises when defining a child because many countries and cultural systems have different age limits for what constitutes a child. Different age definitions may be used for different things. For example, in South Africa, adulthood is from 18 years, and one can vote, drive and consume liquor. One can also legally work from 16 years without being considered a child, although there may be additional protections in law. The age of sexual consent is 16 years, but a child below 16 years can consent to a termination of pregnancy despite being 'a child.' As Deborah Durham shows, childhood and

youth are shifting categories. In Western history, children were seen as small adults, more precisely, because they were defined by various statuses instead of age (Durham 8). For example, a prince might become a king before his first birthday (Durham 8). Durham also argues that in most places, adulthood is gendered when it comes to marriage, having children and running a household (Durham 19). This has led to the majority of anthropologists writing more about adulthood using the lens of gender to view adulthood instead of writing about adulthood itself (Durham 19). Women's studies have also noted how women are perceived to mature earlier compared to men and have gotten married and become mothers at a young age, but are constrained to a minority status in several realms (Durham 19).

In 2016, the Constitutional Court in Zimbabwe outlawed child marriages. Put differently, the court abolished any marriage for anyone under the age of 18 years. However, this did not completely stop the practice because, in subsequent years, several girls below the age of 16 years who were reported as being child brides died due to birth complications. These cases are publicly known mainly because of social media, but it can be argued that the numbers could be likely higher because many child marriage victims reside in remote areas with little to no internet and no access to smartphones. Therefore, their stories are not told or known**.**

In 2017, *Padare*, a Non-Governmental Organisation- The Men's Forum on Gender, based in Zimbabwe, which focuses on the effects of HIV/AIDS and men's sexual behaviour and their interrelationships with women, published a news article stating that it refused to dignify child marriage as legitimate. The argument is that the unequal union does not possess all characteristics of marriage, such as consent and voluntary commitment *(The Herald* "More effort required"). The Men's Forum argues that the practice sexually abuses children and is a menace

to society, as it has robbed many girls of their childhood, only to end in a pool of poverty (*The Herald* "More effort required").

Rationale of the Research

My great-grandmother lived a life of poverty. She was never presented with an opportunity to attend school, and therefore, she could neither read nor write. She was pledged to my father's family long before she was born. When she was about 8 years old, she was married into polygamy, becoming the 6th wife of my great-grandfather. At around 14 years, she had become a mother who bore children every year for about 10 years. By so doing, a cycle of poverty was perpetuated. In total, my great-grandfather, who was a chief, sired close to 80 children. Some of those children also became child brides. However, this raises a lot of unanswered questions for women like me, born in a democratic country, who are fortunate to access tertiary education and even to conduct this study. I have always wondered how life would have turned out for her, for me even, had she been allowed to make her life choices.

As a descendant of a child bride, I chose to explore the practice of child marriages for the following reasons: Child marriages are common in my country of origin, despite Zimbabwe being a signatory to several international human rights conventions whose objectives are to promote equality between men and women and protect the fundamental rights of children. Therefore, I believe my research can shed some light on reasons why the practice is still active, with little to no prosecution, despite the new Constitutional order that defines a child as anyone below 18 years of age, the 2016 landmark ruling that abolishes child marriages (which has been used as a common law precedent and legal instrument in South Africa and Tanzania), and the high rate of unreported and reported maternal deaths and morbidities amongst child brides.

Secondly, while there is a large literature on child marriages, looking at the causes, the experience of the child brides in the marital homes, as well as the detrimental effects of the practice, there is much less on the ways that law has been used as an instrument to challenge child marriage. This study scrutinizes the complex interplay of social, economic, environmental, cultural and legal factors that are active in driving child marriages. Drawing on a landmark case of *Mudzuru and Another v Minister of Justice, Legal and Parliamentary Affairs &2 Others*, as well as social media commentary and contemporary debates about the practice, I consider how state and non-state actors envisage child marriage to fully grasp the reasons behind the endurance of the practice and the role of the law. I use the court case as a way to think about stakeholder engagements in question. As I will show in later chapters, a lot of the debate around child marriage in the contemporary moment arises in relation to the Johane Marange Apostolic churches.[2]

Furthermore, this study exposes why the practice endures in society to the present day despite possessing several detrimental effects. My research focuses on key actors *outside the family* and seeks to understand how they understand child marriage. This is important in conceptualizing how the practice is received and what steps have been or have not been taken in ending the practice. Having looked at the causes and effects of child marriage from the literature, the focus is on how the practice is conceptualised in society. While I recognise that this study alone will not completely eradicate child marriages, I am confident that it will contribute to the research that has already been done, to expose the harm caused by the practice, as suggested by the literature.

[2] As I will discuss in Chapter 4, the religious Apostolic sects are independent Pentecostal churches in Zimbabwe.

Thus, the key questions I explore are as follows:

- How is the problem of child marriage understood and framed by different social actors and institutions in Zimbabwe?
- What is the value of the *Mudzuru* court case?
- Can a girl child be protected from child marriage through the law?
- What makes child marriage endure in a society?
- How does the state conceptualise and take accountability for the practice?

Methodology

This research design is based on a mixed-method qualitative design, combining desktop research with interviews and an analysis of virtual ethnography, which is composed of social media conversations. I extensively analyzed primary and secondary sources across disciplines, including legal documents, peer-reviewed articles, books, and grey literature. I chose this method because the study aims to analyse how the practice is understood across different knowledge domains and discourses. I will reflect on the findings of this research in five chapters. This first chapter offers a brief introduction.

Chapter 2 focuses on the causes and effects of child marriages as described in the literature. This chapter shows the global and local realities of the practice, why it endures and why it should be stopped.

Chapter 3 dwells on the legal conceptualisation of the practice. It offers a close assessment of the *Mudzuru* court case and a judicial approach to abolishing child marriages in Zimbabwe. This chapter demonstrates how the court adopted a feminist approach both in

its reasoning and its decision. Charlotte Bunch defines a feminist approach as an examination of the violations in women's lives, asking how the human rights concept can be changed to be more responsive to women (Bunch 496). Bunch further argues that a feminist approach is known to be applied to abuses such as, inter alia, forced marriage (Bunch 497). A feminist framework provides a critical lens for examining child marriage because it situates the practice within broader systems of patriarchy and gendered power relations. Given the nature of the case, the analysis presented here is not neutral in the conventional sense but rather intentionally grounded in centering the experiences of the girl child. In this chapter, I argue that feminism is concerned with women, particularly paying attention to the fact that women begin as girls. Therefore, by privileging marginalized voices of girls, a feminist approach challenges dominant narratives that reduce girls to passive victims, instead recognizing their agency, resilience, and strategies of resistance within constraining social structures. As Cook notes, feminist legal approaches focus on exposing and redressing the systemic inequalities faced by women and those positioned within gendered roles in society (132). Social explanations for child marriage tend to emphasise the gains to families, including the transfer of goods and the creation of reciprocal obligations. While important, these tend to under-emphasise the harm done to girls, in effect positioning them as sacrificial entities. A feminist approach deliberately stands in the way of this, asking about the effects on women of existing patterns of behaviour.

As I show in this chapter, international human rights protocols to which Zimbabwe is a signatory were also used extensively by the court in reaching its decision. These are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of

the Child (ACRWC) and the United Nations Universal Declaration on Human Rights (UDHR). I reflect on these in the chapter and then to augment the material already available in public archives in this case, I conducted online and telephonic interviews with progressive legal representatives and communities, most importantly, Loveness Mudzuru and Ruvimbo Tsopodzi, who are both former child brides and applicants in the famous *Mudzuru* case, as well as Tendai Biti, the legal counsel in this case. These interviews elicited detailed perspectives on how the practice of child marriage is perceived in Zimbabwe from different positions. The interviews with Loveness Mudzuru and Ruvimbo Tsopodzi were done with the explicit aim of exploring their opinions on the importance and longer-term effects of their successful constitutional court case, both in terms of their subsequent lives as well as the lives of other young women in Zimbabwe. Tendai Biti, the legal counsel of the applicants, gave a legal opinion on the importance of the *Mudzuru* case, eight years after it was upheld in 2016.

> Virtual ethnography has become a standard in qualitative research, enabling the understanding of how people collectively make meaning of contemporary issues regardless of their location. Social networks like Facebook, among others, illustrate users' tendency to structure their social networks while simultaneously engaging in public discussions about the details of their everyday lives (Murthy 844). Additionally, these social networks host extensive collections of multimedia content that document even the most marginal social groups or movements (Murthy 844). This methodology informs Chapter 4, which presents the contemporary debates on social media, such as X (formerly known as Twitter) and Facebook, around child marriages in Zimbabwe. This chapter also includes some of the data from interviews where participants and legal counsel of the *Mudzuru* case outline how they prepared for the court application. This chapter shows how their perspective on child

marriage aligns with the debates on social media. To explore this, I have focused on X and Facebook threads posted by different social media users from July 2021 to January 2023, a period marked by considerable social media discussion after child brides Annah Machaya (14), Ferby Munyafi (15), Nokutenda Hwarambwa (15) and Delight Masomeke (14) all succumbed to birth-related complications as a result of complications of early pregnancy. The conversations show that among the Zimbabwean people who have access to and use social media and who were creating online conversations about child marriage, there is a strong rejection of the practice. These social media conversations are based on old posts that people posted and commented on publicly on the named platforms. Twitter and Facebook are not anonymous social media platforms, however, some people use fake profiles or pseudonyms to protect their identity when engaging on the public platform because of the Zimbabwean state's issues with freedom of speech.

The basic selection of these conversations was engaging with posts of people with a large following on social media platforms. A large following means a wider engagement, providing different perspectives. I did not use social media to get public opinion but to understand how people talk about the practice of child marriage and how the discourse is taking shape. Social media tends to be less guarded, so people are more able to speak about issues they might not be able to speak about in their immediate intimate circles or the language of their immediate intimate circles. Social media is a powerful data source. However, that does not mean it is unbiased. Because of the way social media works, it excludes huge sectors of society - those without phones or networks, those not interested in social media, and those not willing to voice opinions they know are not popular or legal.

I was interested in trying to understand how the language around child marriage is materializing in the world. Additionally, I also need to emphasize that I did not access or use social media posts of people who are in support of child marriages because my work is focused on how objections are given form in language. The literature (see chapter 2) demonstrates the reasons for child/girl marriage, including what appears to be a recent increase in cases, but does not reflect much on ordinary objections to it. This chapter also addresses the ways that people use social media posts on child marriage to critique the state. My chapter on social media thus helps address a significant gap in the literature.

Chapter 5 focuses on positionality and the limitations of the law. The chapter also discusses the role of family, community, legal counsel and civil organizations in preventing or endorsing child marriage. This chapter moves through the subsequent lives of Tsopodzi and Mudzuru after the court case. It also shows how a lack of support structure contributes to the loss of agency. In Chapter 6, I offer a conclusion on the dissertation by summarising the arguments I have postulated.

A Note on Referencing Technique.

The MLA 8th edition referencing uses the author and page number in the in-text referencing. A source without a page number only uses the author's name. A source without an author references the source and the shortened version of the title in the parenthetical citation. The year of publication is in the bibliography.

Ethics

The research was assessed and cleared by the Faculty of Humanities research ethics committee in Anthropology at the University of Cape Town (Ethical Clearance for Application Number: EARC2024_22). This study involves a low risk of harm. No minors were interviewed. All interviewees were treated with respect and were free from coercion. Additionally, no monetary or other compensation was offered for participation; it was voluntary after a request. Interviews were conducted with integrity and transparency. I have drawn on debates in the social media archives in the public domain and have identified myself as a researcher through my social media handle when I was collecting data. I have also anonymized social media usernames even though they are in the public domain. I have also collated the material and presented it as part of a larger group without it leading back to the username. I use a trauma-informed approach, which is why I chose public representation of the practice as opposed to personal experiences of individuals. To protect people's identities, I did not engage directly with social media participants.

All the social media sources examined are clear that use entails putting information into the public domain, automatically granting permission to anyone who can access the material. However, I made sure that the material used in this study would not be traced back to them. For example, instead of using a direct quote that somebody could use on Google and that will take them back to a particular page, I have summarized, paraphrased or pulled out the key similarities across people's perspectives so that it cannot be linked to an individual. However, it is not the same with the key stakeholders whom I interviewed, as they are publicly known because of the court case and consented to their names being used in this research. All the interviews were done online and telephonically.

Interview with the plaintiffs in *Mudzuru and Tsopodzi vs The Minister of Justice &Others*

I recognized that interviewing Ruvimbo Tsopodzi and Loveness Mudzuru, the two women whose life was impacted by the trial, could be problematic in raising past trauma. Therefore, I decided not to interview them about their experiences as child brides. Instead, I opted to treat them as expert witnesses, focusing on the court case in which they played an agential role, asking their opinion on the impact of the court case on their subsequent lives and the lives of others. I do not foresee any harm when it comes to protecting their identities because the court case was made public and has been used as a precedent in other courts in the region, and their names are widely known.

Legal practitioner

Tendai Biti is a politician, human rights lawyer, former Zimbabwean Minister of Finance and a member of Zimbabwe Lawyers for Human Rights. I had a telephone interview with him, asking about the court case. Therefore, I do not foresee any harm or risk because his position as the legal counsel of the two women is public knowledge, and I did not discuss any politics other than factors relevant to this study.

In conclusion, this research aims to understand how the practice of child marriage is understood and framed by different social actors and institutions in Zimbabwe, focusing on the upheld landmark ruling in *Mudzuru and Another v Minister of Justice, Legal and Parliamentary Affairs &2 Others*.

2.

Literature review: Born to serve or slave?

"When you pay attention to the beginning of a story, you can change the whole story"[3]

This chapter reflects on how child marriage has been conceptualised and understood in the existing literature. In what follows, I break down the literature by theme, focusing on the causes and detrimental effects of child marriage.

Main causes of child marriage

Poverty and gender inequality

A study conducted in sub-Saharan Africa and India concludes that child marriages are mainly associated with poverty and are common in the poorest countries and among the poorest in society. This is despite economic opportunities and improvements in education in the mentioned areas (Corno et al. 880). The literature offers several different explanations for this. For example, there is a tenacious customary tradition of marriage payments in sub-Saharan Africa, North Africa, and Asia where a groom's family pays the bride's family bridewealth or the bride's family pays the groom's family a dowry (Corno et al. 880). Under Islamic law, the longer the girl stays unmarried after reaching puberty, the higher the dowry her parents have to pay to the groom's family, therefore, they are married young (Askari 126). This has led many families in poverty-stricken areas in parts of India to perceive girl children as an economic burden because of the demand to pay a dowry to the groom's family (Askari 126).

[3] Raffi Cavoukian, children's rights activist and founder of Centre for Child Honouring, Canada.

In sub-Saharan Africa, the anthropological literature suggests that when a girl gets married, her family loses her reproductive and productive capacities and confers these on the groom's family. The family also loses economic responsibilities towards her and gains bridewealth from the groom's family. The groom's family gains a new household member, which some see as a form of unpaid labour. Put differently, Askari argues that early marriages are mutually convenient for both sides of families because they all benefit. It is also argued that it is not just bridewealth that is at stake but the solidification of relations of mutuality between families.

Julia Pauli and Rijk van Dijk argue that historically, bridewealth was part of creating social relations and responsibilities, but is increasingly seen as 'payment' in commoditized economic systems, contributing to declining marriage rates in Southern Africa (259). Adam Kuper mentions that "cattle were the medium of bridewealth payments" (271) and the rights of a woman and her children were traded by this medium of bridewealth (274). Parents in Malawi, Tanzania and Zimbabwe who cannot financially provide for their children often view the bridewealth as a relief for their financial burden (Mbaku 112). What is worth noting is that bridewealth practices are not centred around the girl child as an individual but are instead a means of solidifying and entrenching social relationships between and across families.

In a global study of 180 countries, gender inequality driven by poverty was seen to be the utmost driver of child marriage (Doherty et al. 12). In Bangladesh, when families were faced with economic strain, girls were withdrawn from school before boys and rates of child marriage increased (Doherty et al. 12). Elizabeth Warner argues that while it is also possible for the girl child to enjoy her marriage, the practice could be interpreted to represent the sale of human

beings who are not mature enough to make informed decisions and choices about their lives (235*).*

There are changing moral ideas about child marriage. In a 2017 South African *Daily News* article, it was noted that many girl children are dropping out of school and are "being sold to 'lascivious' men by poverty-stricken parents who cannot afford to feed them and consider them a drain on their resources" (Mbaku 116). Parents are unlikely to save their children from such a union because they risk losing the economic gain in the form of bridewealth, which would have been one of the main objectives for the endorsement. This resonates with findings from Bangladesh, where male education is prioritized. For example, a girl child is forced to drop out of school and get married so the bridewealth could be used to fund a brother's education (Pope et al. 10). Another example is when the mother of the boy confesses that her son "had to marry" a girl to help her around the house while he travels in search of greener pastures for their livestock (12). In other cases, it could be a lack of choice, for example, where cultural norms must be valued. An argument can be made that familial debts can only be met through the exchange of people, such as that which resulted in my grandmother's marriage.

Armed Conflicts

Research from past historical situations has shown that many complex factors that may contribute to child marriages in peaceful times are intensified in emergency settings as families and community structures are broken down and displaced (Bellizzi et al. 2). For example, in 2014, the Human Security Centre reported that in times of conflict, child marriages are intensified and disproportionally affect rural girls from poor households with little to no education and resources compared to boys and those living in the city (Rocha da Silva). It could also be argued that when marrying children into more powerful families, parents try to secure

their children rather than abandon their well-being (Bhatasara et al.510). For example, in Sudan, girl child marriage has increased considerably during conflict, rising from 48% of girls under 18 years being married to the current 70% rate (Girls Not Brides). One view within developing countries is that of child marriage as a security mechanism for girl children since marriage is linked to accessing a home, food and protection from sexual violence during conflict (Rocha da Silva).

On the other hand, it is also possible for young girls to be abducted and forcefully married, without their families gaining anything from it (Rocha da Silva). An analysis compiled by Save the Children in 2022 concluded that girls living in conflict zones are 20% more likely to be married than those living in peaceful areas (Save the Children "Girls living in conflict"). Inger Ashing, CEO of Save the Children International, mentioned that as much as conflicts possess detrimental effects on families, forcing them to flee their homes and move into cramped temporary camps, girls suffer the most because of their gender (Save the Children "Girls living in conflict").

In war zone countries like South Sudan and Yemen, girls are also prone to sexual violence and trafficking, including forced prostitution, forced pregnancy and sexual slavery (Girls Not Brides "Prevalence rate"). This is because women are systematically targeted by the opponent group with the objective of ethnic cleansing or genocide in the cases of Uganda and Former Yugoslavia (Farwell 390), (Singh et al.2). The opponent uses sexual violence against women as a weapon of warfare to weaken the other party. As much as marriage does not preclude violence, child marriage is then used as an escape or a solution for the girl and her family (Bellizzi et al. 2). This is complicated because to avoid sexual violence and trafficking, girls are married off young, but feminists consider this a kind of trafficking and human rights

advocates call it abuse. This was the same means of survival used in refugee camps in Jordan and displaced communities of Lebanon in 2011 and 2018 respectively (Bellizzi et al. 2). In Syria, to ensure safety from being sexually violated or kidnapped in conflict, young girls got married to older men in the military who offered them security and protection from the opponents (Singh et al. 2). This method was also used to ensure the girls' families' protection and access to vital resources such as food and shelter. Therefore, in this context, child marriages are a response to hostile circumstances.

The Covid-19 pandemic

The pandemic is estimated to have disrupted efforts made to end child marriage, and this has resulted in about 13 million young girls being forced into early marriages between 2020 and 2030 (Affoum and Recavarren). Evidence of the increase has already emerged from Nepal, Kenya, Ethiopia and Malawi (Affoum and Recavarren). A report from World Vision noted that child marriages more than doubled between March and December 2020 compared to 2019 in many communities in Afghanistan, Bangladesh, Senegal and Uganda (Bellizzi et al. 2). The same applies to India which saw a 33% increase in child marriages between June and October 2020 compared to the same period in 2019. Bellizzi attributes this to state responses to the SARS-CoV-2 pandemic (Bellizzi et al. 2).

The UNFPA and UNICEF [4] report that the lockdown measures implemented by many governments to stop the spread of the virus had devastating effects on already poor families that depend on informal economic activities (Philipose & Aika 2). This economic shock drove many

[4] UNFPA and UNICEF December 2020 report on Child Marriage in COVID-19 contexts: Disruptions, Alternative Approaches and Building Programme Resilience.

girls into forced marriages of convenience (Philipose & Aika 2). One of the main reasons for the increased rate of child marriages is school closures, which interrupted education and resulted in a low probability of girls going back to school the longer they are kept out (Affoum and Recavarren). The implementation of lockdown measures also made it difficult for young girls to access reproductive health facilities, and they risked becoming pregnant. As a result, some parents initiated their daughters' marriages to escape the social stigma associated with out-of-wedlock pregnancy (Affoum and Recavarren). Bellizi et al. argue that the negative effects of the pandemic have put about 2.5 million girls at risk of child marriages globally in the next 5 years (2). This reverses 25 years of progress that had already been made in the decline of the practice, estimating 61 million child marriages around the world by 2025 (Bellizi et al. 2). The 2023 UNICEF report estimates an addition of 10 million child brides by 2030 because of the effects of the pandemic.

Research done in Bangladesh, Brazil, Ethiopia, India, and Nigeria, 5 countries with the highest number of child marriages globally, found that school closures led to school dropout as some learners did not return to school, thereby exposing themselves to a higher risk of child marriage for the remainder of their childhood (Yukich et al. S26). Similar events occurred in the aftermath of the 2013 Ebola outbreak in West Africa, specifically in Sierra Leone. A 2016 report by Save the Children Fund International describes the experience of having a deadly disease as being worse than being in an armed conflict, as poverty was worsened because of social distancing (Kostelny et al.7). Consequently, this positions poverty as an instigator of the practice as discussed above. This shows how highly contagious diseases do not just affect the health of individuals but also their social and economic lives, as well as their futures.

Food insecurity and climate catastrophe

Climate catastrophe has been recognized as posing a major threat to the human-centred vision of sustainable development, as outlined in the International Conference on Population and Development Programme of Action (ICPD PoA) (United Nations Population Fund 2020). Climate catastrophe multiplies existing health vulnerabilities, including insufficient access to safe water and improved sanitation, food insecurity, and impacts on access to health care and education. In addition, climate-related displacement and livelihood impacts are challenging both protection and the realisation of human rights. An unexpected effect of climate catastrophe and environmental crises is an increase in child marriages. Extreme weather events worsen poverty and child marriage may be seen as an immediate response to reducing household economic costs (Doherty et al. 11). Interviews conducted in Malawi, Mozambique and Zimbabwe, point to natural disasters such as drought and floods as drivers of child marriage because marrying a child is believed to be a coping strategy in response to economic loss (United Nations Population Fund 2020).

In research conducted amongst 1688 community members in Chiredzi, Zimbabwe, food insecurity was found to be a primary concern that influences parents of adolescent girls in deciding on child marriages or influences the girls themselves initiating early marriage (Gambir et al. 1). This has led many girls to aspire to get married to men who have migrated to South Africa for greener pastures as they are perceived to be more economically stable than men living in Chiredzi (Gambir et al.10). In Zimbabwe, the issue of food insecurity could be argued to be caused by both climate change and the politics which in turn affect the economy of the country. The dilapidated economy has led to many young and middle-aged men leaving the country to explore greener pastures in neighbouring countries such as South Africa (Gambir et al. 9). This

resonates with what Potts describes as “circular migration”, which highlights broader forces at play (65). In the Zimbabwean context, the broader forces could be argued to be political, economic as well as drought.

When these men visit their families they left in Zimbabwe, they are more financially attractive to the young girls and families living in poverty. A clear example of the effects of climate change and food insecurity on child marriage rates is evidenced in Mbire district, Majongwe village, Mushumbi in Mashonaland Central province, Zimbabwe. In a YouTube documentary, villagers mention that their livelihoods were solely based on agriculture. They used income from cotton farming to pay school fees (The FeedZW 00:01:07). However, because of a combination of low prices on the market and less rain, they have resorted to farming drought-resistant crops like millet, and sorghum which, while food crops, are not cash crops like cotton, leading to school dropouts as parents cannot afford school fees.

Villagers also raise livestock which they sell or exchange for food (The FeedZW 00:01:23). However, many of their livestock succumb to diseases and this has led to hunger, causing young girls to run away from their homes in search of greener pastures. One villager said “If you have no livestock, it means you have nothing to sell. The younger generation is suffering compared to the olden days. Young girls are opting for marriage to escape hunger from their families” (The FeedZW 00:08:11). Unfortunately, because food insecurity affects the whole province, hunger and gender-based violence often drive these young girls back to their parents with children who need to be looked after and fed (The FeedZW 00:07:26).

In Kenya, when water sources and livestock were threatened by drought, young children were sought for labour purposes, for example, walking long distances in search of water and food for their husband’s elderly parents (Doherty et al. 11). In Bangladesh, parents married

their children early to benefit from disaster aid relief from Non-Governmental Organisations (NGOs) which were distributing per family (Doherty et al. 11).

West and Central African countries that are affected by climate emergencies, which result in food shortages and poverty, experience the highest rates of child marriage in the world (Save the Children). Poor families that are affected by disasters such as droughts and earthquakes end up marrying their underage girl children as a way of lessening the household burden or as another way of pursuing a different type of income (Bellizzi et al. 2).

Environmental statuses do not only affect child marriage directly. This can be done indirectly through disruption in education and displacement from their homes. This change results in a loss of status in the community; therefore, child marriage is then used as a strategy for maintaining family status by marrying girls into powerful families. A study conducted amongst families in Zimbabwe and Kenya found that those who had enough food mentioned that there was no need to marry their daughters to lessen economic strains (Pope et al. 6). The other group of people in the same study mentioned that floods make them poor, therefore they consider marrying their daughters as a coping strategy in response to drought-related failed harvest, hunger, and financial stress (Pope et al. 6).

The June 2023 UNICEF report predicts that child marriages will increase by 1% for every 10% change in rainfall due to climate change (UNICEF “Is an end to child marriage within reach?”). The 2023 Save the Children International report predicts a 33% increase in child marriage by 2050, due to climate change, which is estimated to affect 40 million children (Save the Children). Corno et al. argue that in sub-Saharan Africa, drought increases child marriage of girls between ages 12 and 17 by 3% (881). The limited number of resources caused by climate

change could exacerbate conflict, and as discussed above, women and children will be severely affected, and child marriage becomes an immediate response.

Cultural and customary practices

As I have shown above, child marriage, and girl marriage particularly, are linked with changing social, political, economic and climactic conditions. There are cultural factors to consider. In an Al Jazeera article, Marc Ellison writes that in the Sukuma ethnic group, *kupura* is a common practice in Northern Tanzania. Girls are snatched on their way to school, abducted, raped and forced into marriages (Ellison). In the region of Shinganya in Tanzania, *kupura* is validated by the local men's motto, which is: alcohol, meat and vagina. Ellison argues that men in this region feel entitled to their motto. When the girl's parents realize that their child is missing, they do not engage with authorities but investigate to find the potential abductor to negotiate the bride wealth (Ellison). Parents who are supposed to protect their children, negotiate the bride wealth with the perpetrator, neglecting the well-being of their child.

A similar practice is also carried out in the rural parts of KwaZulu-Natal and Eastern Cape provinces in South Africa, under a different name, *ukuthwala* (Mwambene 531). This involves the abduction and rape of young girls as a "precursor to a marriage" (Smit et al.29). *Ukuthwala* takes many forms, ranging from girls working together with the abductor but resisting him in public as expected in cultural scripts of female propriety. Girls could also orchestrate their abduction if their lover is not the parents' choice for a husband. Similarly, poor fathers could connive abductions to bypass social conventions, to avoid hosting a wedding feast (Smit et al.33). Once a girl is abducted, she gets taken care of by the womenfolk at the potential groom's homestead (Smit et al. 32). Her parents

would then be notified of her whereabouts and the abductor's family starts marriage negotiations. However, if the girl's family did not arrange her abduction with the abductor beforehand and if the abductor is from a poor family, they can demand her immediate release unharmed (Smit et al.32).

Smit et al. argue that the available literature shows that the practice has radically changed in recent years, as many young girls are forcibly married to older men, with abductions not reported to traditional authorities. One villager said the practice has now been associated with violence and lack of consent and agreement by parents (Smit et al.35). In a field study conducted, in Lusikisiki, Eastern Cape, South Africa, many participants voiced that the democratic government has now labeled the practice as statutory rape and the abductors are called rapists, although they do not view the practice as discriminatory and crime against girls, but rather as a way of making families (Smit et al. 34).

In Zimbabwe, there is a practice called *kuzvarira* (child pledging), where the girl's family pledges their daughter for marriage to a wealthy family even before they are born (Muchawaya et al. 994). *Kuzvarira* is a cultural practice that involves marrying off an underage girl as young as ten years to wealthy older polygamists in exchange for food, debt payment, cash or any material benefit (Ngema 42). This is mainly caused by poverty and harsh economic conditions. This practice was created in the event of food scarcity, and families would use their daughters as financial guarantees in exchange for food. I am familiar with this practice because, as I have mentioned, my great-grandmother was a victim of child pledging in Gutu, Masvingo, around the late 1890s. When a girl reaches puberty, her family would then send her to her husband's family. Here, the structural connection between poverty and cultural practices is

highlighted. Despite being in separate locations, perpetrators of child marriage share one of the common objectives: exerting power over vulnerable girl children and using them as a solution to their problems.

In Zimbabwe, there is also another cultural practice called *kuripa ngozi* (homicide bride) which happens when a man murders a person and the family of the perpetrator offers a virgin girl in compensation for the loss of life, as a bride to a man in the family of the deceased (Duri et al. 255). The virgin girl could be as young as 5 or 6 years of age and is supposed to live with the deceased family, despite their age (Duri 255 et al.). When the girl reaches puberty, she is forcibly married to a male member of the deceased family, specifically to bear children to resuscitate the victim (Duri et al.255). This is a reparative measure used by the perpetrator's family to 'bring back' the deceased, while remorsefully compensating the family. While considered a cultural practice or traditional remedy, Duri et al. (258) described this as a "retrogressive cultural practice characterised by patriarchal chauvinism and gender insensitivity." This raises the question of what will happen if no children are born from the union. Ngema also argues that the practice is an appeasement to the spirit of the deceased and an apology to the deceased's family for the wrongdoing (72). It is also important to note that *kuripa ngozi* is a form of conflict resolution that is administered at the family level because the law does not recognize *Ngozi* pe se (Chivasa 165).

Many Shona people in Zimbabwe believe that failure to appease the avenging spirit of the deceased results in contagious bad luck or even death to the family members of the perpetrator. This practice was abolished by post-colonial legislation however, the fear of being haunted by the avenging spirit and experiencing bad luck combined with prosecution has led to people practising it undercover (Ngema 72). Thus, while Zimbabwe has enacted progressive laws

to end child marriages, changing the laws does not necessarily shift cultural norms and practices. However, the condemnation by some traditional leaders and school teachers and the fear of prosecution has caused the practice to be less prevalent (Duri 262 et al.).

The practice of forced marriages on young girls to settle social disputes and family economic hardships in many African communities dates back to the pre-colonial period. Another type of forced marriage among the Shona people is called *bondwe or chigadzamapfihwa.* This practice, anthropologically known as the sororate, happens when a family forces a young girl to marry the husband of her deceased sister or paternal aunt (Duri et al. 253). This is done to avoid outsiders taking over the household of the deceased should the deceased's husband remarry. The use of a substitute wife also happens when a young girl is forced to marry the husband of a barren sister or female relative to bear them children (Duri et al.253). This is also done to avoid the involvement of outsiders. This shows how, in order to secure social agreements, girl children are stripped of their dignity and are viewed as profitable commodities whose main function is to be the solution to deficiencies. Girl children are presented as fundamental beings only in solving adults' problems.

Religious beliefs

While religion, tradition and culture serve as pillars or beacons of hope for many communities, some certain beliefs and practices have been evidenced to be harmful to the development of girl children and infringe their human rights. Arguably, religion is believed to ingrain moral values and human welfare, not break them. The conflict between children's rights, religion and culture is, however, facilitated by laws that protect customary and religious practices which in effect envelope the practice from prohibition (Warner 236). This conflict is quite common across many African communities. Mwambene also notes that the law reforms aimed at

ending child marriages in many African states are confronted with a potential conflict between children's rights and cultural rights (529).

One of the causes of child marriages in most African and Asian countries by religious communities is the promotion of virtue by assuring the girl's chastity (Askari 124). This is also seconded by Corno et al. who argue that a lot of parents in sub-Saharan Africa and India view the practice of child marriage as a strategy to keep their girls pure from possible sexual assault and out-of-wedlock pregnancy in order not to compromise the criteria to be marriageable (883). The practice of child marriage is particularly common among the Johane Marange Apostolic sect, which has about 1.2 million followers in Zimbabwe. The sect believes that the Holy Spirit approves marriages and should not be defied (Dzimiri et al.77). Perceived defiance attracts humiliation and punishment from adherents (Bengesai et al. 3). It endorses polygamy and permits child marriages (Muchawaya 998). School-going girls as young as ten years have been married to older men by their families who are followers of the sect (Makhubele et al. 40). The informants reported that instructions from God are communicated through a messenger who announces a girl to be married as well as her prospective husband even if they are under the legal age of consent or adulthood (Makhubele et al. 45). These informants also argued that their practice is not a form of abuse because it is an instruction that comes from God (Makhubele et al. 45).

Research conducted in Cowdray Park, a suburb in Bulawayo, the second largest city in Zimbabwe, found that 27% of the male respondents who are followers of the Johane Marange Apostolic sect agreed with the statement that "to maximise the number of children for cheap labour," they marry young wives (Foya et al.291). 48% indicated that they practice polygamy because it is inherently entrenched in the church dogma, and it gives social status and societal

recognition (Foya et al.291). 20% of the men indicated that polygamy is used as an escape from extramarital affairs in the church (Foya et al.291). Put differently, polygamy is used as a measure to avoid what the church considers to be adultery. About 13% indicated that to accommodate excess women in the church, polygamy is used as a solution (Foya et al.291). This could mean that the ratio of men to women is not equal, with fewer men, and more women. Keeping men sexually satisfied because women age faster than men, meeting the needs of men who crave different and new sexual partners and following the footsteps of their forefathers were some reasons given for polygamy by followers of the sect (Foya et al.291). Wives' submission to their husbands is very fundamental in this religious sect. Many girl children see child marriages as normal because education is not prioritized, and marriage is seen as an ordinary part of the lifecycle.

In some situations, this practice is intensified by the practice of virginity tests. If there is evidence of sexual activity, the girl is forced to marry a very much older man who is also a follower of the sect, even if he has daughters her age (Dzimiri et al. 77). This is seconded by Bhatasara et. al who argues that the president of Apostolic Churches in Zimbabwe Archbishop Johannes Ndanga publicly admitted that virginity testing was a norm in Apostolic sects and girls as young as 12 years old would receive a marker on their foreheads so that old men in the church would spot them for marriage (511). What cannot be ignored is that, as much as this sect is also found in the city, the biggest number of followers are found in rural and underdeveloped communities, whose inhabitants lack formal education.

Additionally, because of high levels of illiteracy, victims cannot seek relief because the practice is endorsed by their parents and others in the community who are meant to protect and guide them. This is also because the idea of child marriage is normalised within the sect,

therefore no one sees it differently. Foya et al. argue that children are encouraged to adapt to "polygamous expectations of the parents" from birth (291). What is important to note here is that social status and polygamy are the core causes of child marriages within the sect. Once again, girls are presented as a ladder that men use to validate their masculinity and social status.

Early marriage and gender socialisation

There is a belief that early marriages guarantee submission. The idea is that the girl can be moulded by her husband and his family before developing a personality or identity of her own (Askari 126). This is because older women are less vulnerable than younger girls and can rebel against their chosen fate. Men say it is impossible to tame an educated or mature woman with a developed personality. They are aware of the agency and the potential the girl child has. This misconception perpetuates the manifestation of toxic hegemonic masculinity, a concept theorised by Connell & Messerschmidt (832).

Askari argues that a girl child is denied independence as she goes from being under the authority of her father to being under the domination of her husband (126**).** In patriarchal Shona culture in Zimbabwe, especially in rural areas, married women who are over the legal age of majority nevertheless still live under the dominion of their husbands. This is all despite the 1982 Legal Age of Majority Act (LAMA) which recognised Zimbabweans, both male and female, as the full majority at the age of eighteen. In other words, a victim of child marriage is powerless, vulnerable and dependent. Askari argues that the situation could be amplified by marrying a significantly older man, assuring a child marriage victim a lifetime of subjugation, inequality and intimidation (Askari 127).

Elizabeth Warner supports this argument by saying that once a girl child is married, laws which insulate her are no longer applicable to her as she starts to be treated as a major under domestic law (Warner 251). This is because the word “majority” is not defined in the Convention on the Rights of the Child, and discretion is given to the domestic law to define what it means. This suggests that in countries that are signatory to the CRC, inclusive of Zimbabwe, if a minor girl is married, she is considered a woman and therefore no longer able to be protected by laws made for children. Furthermore, early marriage is associated with social status. Askari argues that the institution of marriage gives girls of 12 years or younger a form of adult status through domestic responsibilities, regarded as the best form of education (124).

The world over her shoulders: effects of child marriages

"It is only when a woman is economically empowered that she can negotiate at household level with her husband about the number of children that body of hers can have."[5]

Feminist approach

The general effects of child marriages in most African states are mostly economic because a girl child is forced to drop out of school, prioritizing marriage. Most rarely return to school (Mbaku 123). This undergirds the impossibility of eradicating poverty because of the lack of skills that are derived from formal education. Even where, as Wellington Samkange argues, there are arguments about the extent to which education is related to the development of any society, there is concurrence that in its different forms, education enables the transmission of fundamental skills to instigate development (79). In this model, girl marriage stands in the way of national development. Countries with girl children that are forced to marry, lose the potential contribution that the girls would bring towards the development of the nation (Mbaku 109). It is highly unlikely to contribute to positive change without a formal education.

Physical and mental effects

Lower access to health care combined with early pregnancy and childbirth among young girls, exposes them to a huge risk of maternal and child morbidity and mortality (Raj 931). Mbaku argues that child marriages have long-term dire effects on a girl child. Her self-esteem is severely compromised because she is being denied an opportunity for a consensual marriage, where she chooses a partner. Instead, she is driven into a family setting she might struggle to

[5] Joyce Banda Former President of Malawi, in an interview with the Center for Strategic and International Studies (CSIS), December 2012.

assimilate into because of discrimination and forced servitude (Mbaku 126). She might also find herself alienated from other wives or forced to be subservient to them if she joins a polygamous marriage. This puts the victim in a more marginalized position when faced with physical or emotional abuse because she is unable to go back to her parents, who would have accepted and maybe used the bride wealth, which they would be unable to return because of poverty. Adaptation and survival become her alternative, just like her foremothers.

Child brides suffer high health risks, including increased risks of premature death, hymenal, vaginal, or cervical lacerations (Mbaku 130) and difficult pregnancies (e.g. pregnancy-induced hypertension, spontaneous abortion) and delivery concerns such as obstructed labour, and fistula (Raj 931). Additionally, sexually transmitted infections, such as herpes virus type 2, gonorrhoea, and chlamydia, human papillomavirus (HPV) and cervical cancer are also more frequently transmitted and enhance the girls' vulnerability to HIV transmission (Mbaku 130; Askari 30). This is because child marriage victims are not in a position to demand safe sex from their partners or decide the number of children they would like to have (Dzimiri et al. 79). Raj (931) also argues that young brides are less likely to have access to or use any contraception, resulting in unplanned pregnancies and limited spacing between children. Reproductive choices are thus curtailed (Pope et al. 2). Raj also argues that research conducted in parts of Asia and Africa has shown that child brides are at higher risk of suffering from depression and suicide or suicidal thoughts generated by gender-based violence (931).

Askari argues that early marriages are compatible with grave physical dangers that are associated with early multiple pregnancies (Askari 129). This is because girls’ bodies have not fully developed for childbirth. Girls from ages 10 to 14 years of age are 5 to 7 times more likely to die during pregnancy (Askari 129). Calcium, vitamins, or iron deficits also start at these ages

and continue throughout the girl's life, leading to a diversity of health and malnutrition complications such as stunted growth, contracted pelvis and iron deficiency anaemia, which all make pregnancy even more life-threatening for the girl child (Askari 129). There are examples in Zimbabwe discussed that form the basis of the social media conversations on child marriage as discussed in chapter four. Ferby Munyafi (15) was reported to have died in 2023 due to excessive bleeding post giving birth, and this story comes after another death of 14-year-old Annah Machaya, who also died in 2021 during childbirth in remote areas of Zimbabwe (Bande &Dube).

Additionally, pregnant girls are more likely to die during childbirth. A recent example from Zimbabwe demonstrates this. Delight Masomeke (14), from Zimbabwe, died from labour-related complications in January 2023, three days after giving birth. This was after she married an older man (Marimbiza and Makufa n.p). Masomeke had been forced to abandon school because her parents had promised her to an older man. Child brides also suffer psychological trauma and a diverse host of challenges that come with being pregnant at a young age (Dzimiri et al. 79). I argue that the overwhelming demands of infant care would better suit a mature individual instead of a girl who is not mentally equipped to deal with the burden of care.

Despite the location, the literature suggests that the causes of child marriages are not all because of humanitarian or environmental issues. Put differently, if the mindset of society could change, some of the causes could be easily avoided. What I find disturbing about the causes of the practice is the continuous need to feed patriarchy at the expense of a little girl, especially within the religious sects. This continuous desire to use the girl child as a solution to poverty and food insecurity and as an active agent in polygamy is discriminatory on the grounds

of sex because of childbearing capacity. As impossible as it sounds, if the causes are dealt with, there would be no need to discuss the detrimental effects of the practice.

3.

Abolition of child marriage in Zimbabwe: A Judicial response as a mechanism to combat the practice.

In this chapter, I examine a 2016 Constitutional Court case, *Mudzuru and Another v Minister of Justice and Another.*[6] The Zimbabwean Constitutional Court upheld a landmark ruling in abolishing child marriages because of its inconsistency with international human rights obligations, as well as the country's constitution. The Zimbabwean Constitution was amended in 2013, making 18 years the majority age, but because it was not enforced, the legislation challenged by the applicants was still valid. There was considerable debate about child marriage on social media in 2016 after the Constitutional Court heard the *Mudzuru* case. The comments piqued my interest and led to this research.

Applicants' argument

The applicants who brought the matter to court were two women, Loveness Mudzuru and Ruvimbo Tsopodzi, former child brides who got married at 16 years old and were forced to drop out of school. Mudzuru was raised by a single mother because her father had another family. Both her parents died in 2012. She met her then-husband while she was still in high school and subsequently became pregnant and went to live with the husband's family. Similar to Mudzuru, Tsopodzi also met her then-husband while she was in high school and later became pregnant. At the time of the court application, they were 19 and 18 years old, respectively. The respondents, opposing the application, were the Minister of Justice, Legal and Parliamentary

[6] *Mudzuru and Another v Minister of Justice and Another* 2016 (1) ZLR 101 (C).

Affairs, the Minister of Women's Affairs, Gender and Community Development and the Attorney General of Zimbabwe. Both ministers, appointed by the president, were constitutionally responsible for the administration of legislation and overseeing gender issues and community development, respectively. The Attorney General is a legal advisor and representative of the government in constitutional and civil proceedings in court. Mudzuru and Tsopodzi, with the legal counsel, a human rights lawyer, Tendai Biti, approached the Constitutional Court in Zimbabwe in terms of section 85(1) of the Constitution, categorised under the *"Enforcement of fundamental human rights and freedoms"*, challenging the validity of child marriages in the country. Section 85(1) allows anyone to approach the court to enforce fundamental human and freedom rights when there is an infringement. This can be done by a person who is directly affected by the infringement, acting in their interests or a person acting in the public interest, on behalf of a group of people who are unable to act for themselves. At the time of the court application, Mudzuru and Tsopodzi resided in Glenview, a high-density suburb in Harare, Zimbabwe. They were confident of a positive outcome, using the amended 2013 Zimbabwean Constitution as the backdrop of their application.

The case brought sections 78(1) and 81(1) of the Constitution into conversation with each other. Section 78 (1), categorised under *"Marriage Rights"*, states that every person aged 18 years has the right to start a family. Section 81(1), categorised under *"Rights of Children"*, states that every child (defined as a boy or girl under the age of 18 years) has the right to equal treatment under the law, including the right to be heard. Based on these two sections, the applicants requested a court order to declare 18 years as the minimum age to enter a marriage in Zimbabwe, an unregistered customary law union or any other union inclusive of one arising out

of religion or a religious rite.[7] This is because children below that age were (are) still getting married.

As former child brides, Mudzuru and Tsopodzi, through their legal counsel, expressed dissatisfaction that girl children below the age of 18 years were subjected to early marriages, thereby infringing their fundamental human rights. The protection of these fundamental rights is listed and guaranteed in s44 of the Constitution, which states that ("the State and every person, including juristic persons, every institution and agency of the government at every level must respect, protect, promote and fulfil the rights and freedoms set out in this Chapter."). Therefore, to correct the infringement, Mudzuru and Tsopodzi argued that s78(1) read with s81(1) of the Constitution must be interpreted generously, purposively and broadly. This method allows the wide and liberal interpretation of legislation which denotes that a person can approach the courts challenging unconstitutional legislation regardless of whether the person is a victim of the infringement. The main objective would be the realisation of those fundamental rights.

Mudzuru and Tsopodzi maintained that since s78(1) is inspired by international human rights instruments, it is befitting that the provision is not put through a narrow, literal and strict interpretation to ascertain its meaning.[8] The applicants were against this type of interpretation because it restricts access to courts to persons directly affected or those who suffered direct harm as a consequence of the particular legislation that is being challenged. [9]This would deny justice to people whose fundamental rights are infringed upon but are unable to approach the court for

[7] *Mudzuru* para 111.

[8] *Mudzuru para 111.*

[9] *Mudzuru at 116*

various reasons. It is also important to note that the court has the discretion to choose any approach when interpreting the legislature.

The main objective of their application was to declare that s 22(1) of the Marriage Act [10]and the Customary Marriages Act[11] unconstitutional because these provisions did not set 18 years as the minimum age to enter a marriage for girls. Section 22(1) of the Marriage Act set 16 years as the minimum age for girls and 18 years for boys to enter a marriage (expressly and impliedly). The applicants contended that they have a right to use s85(1) of the Constitution, mentioned above, to approach the courts, acting in the public interest, specifically protecting the interests of the children of Zimbabwe. Their point of departure and the basis of their argument was that s 81(1) of the Constitution defined a child as a boy or girl below the age of 18 years. Inherent to their argument was that s 22(1) of the Marriage Act exposes girl children to the dreadful consequences of early marriage, which is a violation of their fundamental rights. Mudzuru and Tsopodzi established that early marriages, which were once lawful under the challenged legislation, had become incompatible with the amended constitution.

Respondents' arguments

The respondents argued that the court application did not meet the criteria of *locus standi*[12] to seek relief in court. In other words, the respondents argued that the applicants did not qualify to bring the matter to court because they were not directly affected by the legislation they were challenging. Put differently, the two Ministers and the Attorney General argued that Mudzuru and Tsopodzi were not direct victims of the impugned legislation, so there was no need

[10]The Marriage Act of Zimbabwe (Act No. 81 of 1964 as amended through Act No. 18 of 1989) [Chapter 5:11].

[11] The Customary Marriages Act 1951 [Chapter 5:07].

[12] The capacity or right to appear in court.

for them to approach the court seeking relief.

According to the respondents, Mudzuru and Tsopodzi did not enter into a marriage with a man who made them pregnant. Instead, there were allegations that Mudzuru and Tsopodzi became pregnant, dropped out of school and went to live with the men who had impregnated them.[13] Additionally, the two Ministers and the Attorney General argued that Mudzuru and Tsopodzi did not enter into an unregistered customary law union.[14] In other words, marriage was not the issue at stake. They also argued that the applicants were no longer minors who needed to use s 81(1) of the Constitution for their protection. One could argue that respondents had this verdict because, in their founding affidavits, applicants do not mention any marriage between them and their children's fathers, but live-in arrangements with the men and their families. However**,** as I show in Chapter 4, Ruvimbo Tsopodzi, the second applicant, later admits that her father had negotiated and received bride-wealth whilst underage. Therefore, she was in an unregistered customary marriage.

The two Ministers and the Attorney General requested the applicants to furnish the court with the names of victims whose fundamental rights were infringed by the challenged provisions, since they were acting on behalf of the victims.[15] Moreover, the two Ministers and the Attorney General maintained that s78(1) of the Constitution does not position 18 years as the minimum age to enter a marriage, but it allows a person who has reached 18 years to "found a family."[16] They argued that the wording of the impugned provision is not ambiguous; therefore,

[13] *Mudzuru at 112-113.*
[14] Customary unions, which make use of customary law, must still be registered with the state through either a chief or a magistrate.
[15] *Mudzuru para 113.*
[16] *Mudzuru para 113*

to determine its meaning, a broad, generous and purposive interpretation is not necessary.

The rationale used by the respondents was that girls mature physiologically and psychologically earlier than boys.[17] Therefore, s (22)(1) of the Marriage Act or any other law which permits girls who have reached 16 years to marry does not violate s78(1) of the Constitution which sets 18 years as the majority age. In other words, the respondents were saying that the legislation challenged by the applicants was not unconstitutional. This is problematic as it is sexist, not only because nothing was mentioned about the boys, but more importantly, women's reproductive capacity was used to undermine their fundamental rights. In conclusion to their argument, the respondents claimed that Mudzuru and Tsopodzi were "the cause of the problem" and were irresponsible for getting pregnant.[18] Their advice to the applicants was that, as an alternative to approaching the court challenging legislation, which was irrelevant to them, Mudzuru and Tsopodzi should have undertaken an advocacy journey to teach girls how to practice safe sex.[19] Again, the sexism of holding women solely responsible for pregnancy is clear in the respondents' responses.

The court had to make a decision based on the following legal issues

Whether the applicants could bring the matter and be heard in court under s85[20](1a) or s 85 (1d)

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[17] *Mudzuri at 114.*
[18] *Mudzuru* para 114
[19] Ibid.
85 ***" Enforcement of fundamental human rights and freedoms."***
(1) *Any of the following persons, namely –*
(a) any person acting in their own interests;
(b) any person acting on behalf of another person who cannot act for themselves;
(c) any person acting as a member, or in the interests, of a group or class of persons;
(d) any person acting in the public interest;
(e) any association acting in the interests of its members;
is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter has been, is being or is likely to be infringed
and the court may grant appropriate relief, including a declaration of rights and an award of compensation."

of the Constitution.

(a) If (a) is in the affirmative (yes), is 18 years set as the minimum age for marriage in Zimbabwe under s78 (1) of the Constitution?

(b) If (b) is in the affirmative (yes), does it invalidate s 22(1) of the Marriage Act [Chapter 5:05] and any law that allows girls of 16 years of age to enter a marriage?

(c) What is the appropriate relief to be granted by the court if (c) is in the affirmative?

The court's reasoning and decision

The court held that s85(1)(a) of the Zimbabwean Constitution, which allows anyone to approach the court to enforce fundamental human rights and freedom rights when there is an infringement as discussed above, is based on two aspects, the traditional and narrow approach and the wide and liberal interpretation. Deputy Chief Justice Malaba, who had the discretion to choose any interpretation, argued that the claim made by the respondents that Mudzuru and Tsopodzi cannot approach the court challenging legislation is erroneous. This is because he believed that applicants acted on behalf of a group of people, children, which makes the court application a matter of public interest. The Deputy Chief Justice emphasised that "children are a vulnerable group in society whose interests constitute a category of public interest."[21]Therefore the state must safeguard fundamental rights laid down in the Constitution. The court explained and ruled that the main objective of s85(1) is to overcome any shortcomings in the legal system to deliver substantial justice to the marginalized.

[21] Mudzuru at 117.

Additionally, s85(1d) emphasizes the principle that courts play a crucial role in the protection of children and the provision of access to justice. To come to a decision, Deputy Chief Justice Malaba applied the same principles as those followed in the South African case of *Ferreira v Levin N.O. & Others* and other similar international cases where the capacity to approach the courts was questionable, to justify why he believed the applicants could approach the court challenging legislation. Malaba mentioned that there must be a distinction between what is in the public interest and what is of interest to the public. The court found that Mudzuru and Tsopodzi acted in good faith as they approached the court without any intention to benefit personally or financially. Therefore, they acted in the public interest because children are unable to approach the courts to challenge any legislation.

The court examined the contents of Section 78 (1), which states that every person aged 18 years has the right to start a family; and Section 81(1) which states that every child (defined as a boy or girl under the age of 18 years) has the right to equal treatment under the law, including the right to be heard to rule on the constitutional validity of the provisions challenged by Mudzuru and Tsopodzi. Deputy Chief Justice Malaba argued that the purpose of reading s78(1) and s81(1) of the Constitution read conjunctively with s22(1) of the Marriage Act (which set 16 years as the minimum age for girls and 18 years for boys to enter a marriage) should be to warrant a positive interpretation. It is important to note that a positive interpretation is not narrow and strict because it does not gather a conclusion from the literal meaning of the text. It looks at all possible meanings that could allow the realisation of the infringed fundamental right. It speaks to the "founding values and principles of a democratic society based on openness, justice, human dignity, equality and freedom" set out in Chapter 4 of the Zimbabwean Constitution. These values and principles are also found in regional and international human

rights law.

Intrinsic to the rationality of its argument, the Court relied on s46(1)(c),[22] which obliges courts to contemplate international law and treaties relevant to children's rights to which Zimbabwe is a party. The Court ruled that the legislation in question, s78(1) and s 81(1) stemmed from international human rights law - in particular, the UN Convention on the Rights of the Child (CRC), and the African Charter on the Rights and Welfare of the Child, which existed when the provisions were enacted, and to which Zimbabwe is a signatory. Therefore, Malaba argued that these provisions must be interpreted progressively to ensure, protect and enforce the fundamental rights of children.

The Court had to define "child marriage" to reach its decision. It was found to be "a formal marriage or informal union before age 18 years."[23] It is also important to note that this definition offered by the court invalidates the claim made by the respondents, that Mudzuru and Tsopodzi were not married before reaching 18 years. Additionally, the court declared that the minimum age to enter marriage as prescribed by CEDAW[24] is 18 years old. To strengthen its reasoning, the Court had to additionally define a child using Article 1 of CRC (which states that a child is a human being under the age of 18 years). The court held that s 22(1) of the Marriage Act was passed as a response to the flaws that existed in Article 16[25] of the United Nations Universal Declaration on Human Rights (UDHR), which does not stipulate a minimum age to

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[22] ***46 Interpretation of Chapter 4***
(1)*When interpreting this Chapter,a court, tribunal, forum or body-*
(c) must take into account international law and all treaties and conventions to which Zimbabwe is a party;
[23] *Mudzuri at 128.*
[24] Convention on the Elimination of All Forms of Discrimination Against Women, 1979.
[25] **Article 16"**
1. *Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
2. Marriage shall be entered into only with the free and full consent of the intending spouses

enter a marriage and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Marriage Convention).[26]

In deciding the constitutional legitimacy of s 22(1) of the Marriage Act, the Court held that it is important to consider the emerging consensus of values of the international community to which Zimbabwe subscribes. A liberal approach, a generous interpretation of legislation which does not dwell on the literal meaning of the text, was used by the court to emphasise the importance of keeping up with the contemporary norms and aspirations of the people of Zimbabwe. The Court explained that old conventions did not have a minimum age to enter a marriage leaving the discretion of domestic law of state parties to use puberty as a marker. As a result, State parties generally set 16 years as the minimum age for marriage for girls and 18 years for boys. The Court noted that what is clear from the interpretations of the Marriage Act was that once a girl gets married, with the written permission of the Minister, she automatically loses the rights of the child and would be treated like a major.[27]

Additionally, the Court referred to Article 1 of CEDAW, which binds state parties to promote equality between men and women and to eliminate all forms of discrimination against women. The Court held that Article 16(2) of CEDAW prohibits child marriages, but it does not define a child. This makes the provision insufficient to use independently. Therefore, the solution is found in using the definition of the child found in Article 1 of the CRC which became effective in 1990. Deputy Chief Justice Malaba dwelled on Article 2 (which speaks against inter alia discrimination on the grounds of sex and race), Article 3 (protection and best interests of the child) and Article 24(3) (abolition of practices that are harmful to children) of the

[26] *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages,1962.*
[27] *Mudzuru at 130.*

CRC to emphasize international legislation that protects the fundamental rights of children. The Court also engaged with the literature that critically examines the CRC, showing how child marriages infringe on the fundamental rights of girl children, especially the effects of child marriages as discussed in Chapter 2.

The Court also considered Article 21 of the African Charter on the Rights and Welfare of the Child (which obliges State parties to protect children against discriminatory and harmful cultural and social practices, and prohibits child marriages) as a reminder of the obligation Zimbabwe has to effectively eliminate harmful cultural and social practices that are detrimental to a girl child. This entails enacting legislation that outlaws child marriage by setting 18 years as the minimum age to enter a marriage. The same legislation was endorsed by Elizabeth Warner who argues that its language is unambiguous and leaves no room for any discretion when interpreting. Therefore, it is by far the most efficient legislation that protects children (257).

The Court highlighted that the primary role of General Recommendation 21(38) of CEDAW was to eliminate the notion that women have a different rate of intellectual development from men or that their stage of physical and intellectual development at marriage is irrelevant. The Court also discussed the causes and dire consequences of child marriages, similar to what is discussed in Chapter 2. The Court counterargued the claim made by the respondents regarding the language of s78(1). Deputy Chief Justice Malaba held that the two Ministers and the Attorney General did not intend to find meaning in the language because if they wanted, they would have found that it is not sound to claim that a family is not found in marriage. The Court concurred with the argument made by Mudzuru and Tsopodzi on the interpretation of s78(1), that only a generous, broad and purposive interpretation gives effect to

"found a family" because marriage is a traditional way of founding a family. The Court also argued that the claim made by the respondents that girls mature earlier than boys is flawed because it is not scientifically proven. Additionally, s78(1) grants girls and boys equal treatment and protection before the law. As a result, the application made by Mudzuru and Tsopodzi to the Constitutional Court of Zimbabwe succeeded because the Court emphasized that the applicants were successful in displaying the unconstitutionality of the impugned provisions. Therefore, they were nullified, and the Court unanimously declared 18 years as the minimum age to enter a marriage in Zimbabwe, abolishing child marriages.

Examination of the court case

In claiming that girls mature faster than boys, the two Ministers and the Attorney General were not gender blind, thereby imposing an enormous responsibility on the girl child alone and none on the boy child. Blaming Mudzuru and Tsopodzi for falling pregnant while ignoring that mature men [28]were also involved and getting them pregnant, even if they were calling them boys when opposing the court application, was misogynistic. It was discriminatory on the grounds of gender and sex. Additionally, wanting the applicants to have been directly affected by the impugned provisions to have standing to approach the court was a dismissive approach. This entails interpreting legislation strictly, leaving no room for other meanings that could be generous. It is an approach that restricts access to justice.

It is very important to note that, before the 2013 Zimbabwean Constitution, the strict, narrow traditional manner was used to interpret the standing of any court applicant. Therefore, it

[28] In their founding affidavits, the partners of the applicants were 27 years and 24 years respectively.

was impractical to ordinarily seek judicial redress on behalf of someone unless they were detained (Hove et al. 557). The narrow approach was an obstacle between the citizens and the access to justice and courts, especially for the vulnerable and marginalized individuals whose fundamental rights were infringed. As a result, it fed the cycle of discrimination and injustice. Therefore, the generous and liberal interpretation of standing taken by the Court is inarguably fundamental to protecting and realizing access to justice for vulnerable and marginalized individuals. This reasoning was based on fairness and inherent dignity in promoting access to justice. Justice would have been aborted had the Court adopted the narrow approach argued for by the respondents, and the application would have been dismissed.

The Court showed its commitment to doing away with harmful practices disguised as tradition or culture to ensure the protection and enforcement of the rights of the child. Aspirations and norms do not remain the same over time. This is because cultures change and are not homogenous internally, therefore, it is not sound to hide behind tradition when universal rights are infringed. The absence of a minimum age requirement for marriage exposed loopholes in international human rights legislation that were incompatible with the objectives of the CRC and the ACRWC. Before arriving at a decision, the Court practised due diligence by critically examining the provisions of the CRC to ensure that children's rights were realised. Using puberty as a marker to enter a marriage was irrational. This was not a gender-neutral approach because children reach puberty at different ages, mostly before attaining 18 years of age. In extension, the claim made by the respondents that girls mature earlier is immaterial and irrational because it promotes inequality and discrimination against the girl child on the grounds of sex and age. Put differently, the younger a woman is, the more discrimination she faces. The argument that girls mature earlier is stereotypical of patriarchal systems that position women

with the burden of care to serve men who still need to "mature" even if they are older than women.

Referring to various international conventions before arriving at a decision shows the commitment by the Court to abolish child marriages by prioritizing the best interests of the child. However, this judgment raises important questions about the efficiency of human rights standards, or law if not enforced. In her book Chapter titled "Panel Beating the Law," Morreira discusses public consultations that were undertaken in drafting the amended 2013 Constitution (30). The main argument made by the participants of her field research was that the Constitution was irrelevant to them because they did not believe that it would be enforced (Morreira 43). However, looking at this case, the finding is that the Constitution is enforceable, but, that does not mean the end to child marriage. In a blog published on child marriages in Zimbabwe, the argument is that "the laws add little or no value to changing the status quo" (Mudimba). This shows that context plays a crucial role when it comes to child marriages. Despite the presence of law, the poverty exacerbated by the COVID-19 pandemic context meant an increase in child marriages (Mudimba).

Askari argues that the abolition of child marriage is not explicit because perpetrators of child marriage can counter-argue Article 2 (2) of the CRC with Article 2 (1) of the CRC, which can be used to support the religious and cultural beliefs that endorse child marriages (Askari 128). Therefore, these two articles conflict with each other in terms of protecting girls from forced marriage. Similarly, Article 16 (2) of CEDAW also has a linguistic flaw as it does not set the minimum age of marriage, and this enables signatories to get away with child marriage despite CEDAW being viewed as the "Bill of Rights" for women (Askari 133). This provision

would need an efficient court to read it with Article 1[29] of the CRC to give effect; however, this is not always guaranteed.

I argue that the ARCWC discussed above is the only international legal framework that explicitly abolishes child marriages. As mentioned in Chapter 1, I view the court case as a progressive jurisprudence for girl children's rights because it applied a feminist approach in its reasoning. This approach is supported by Rebecca Cook, who argues that, with the history of patriarchy as the natural order, feminist approaches have ignited remedial responses (131). However, it is also important to note that feminism and anthropology have not always worked in tandem, but this has shifted. In her 1987 article, Marilyn Strathern explores what she refers to as the "awkward" relationship between feminism and anthropology. In many respects, the two approaches mirror one another, each striving toward an ideal engagement with the world that the other also seeks (Strathern 287). Anthropology's long-standing tradition of breaking with the past has produced rapidly shifting theoretical frameworks, some of which emphasize the interpretation of experience (Strathern 287). Radical feminist theory begins with consciousness-raising, and, in a parallel move, many feminist anthropologists foreground the significance of lived experience-a concern central to feminist inquiry.This convergence underscores both the productive potential and the inherent awkwardness of the relationship, as feminist insights reshape anthropological understanding while remaining, in some respects, external to its disciplinary conventions (Strathern 287). In the context of child marriage, this feminist attention to lived experience and systemic gendered power relations enables legal analysis to centre the perspectives, agency, and rights of the girl child, highlighting structural inequalities that might

[29] "Article 1" For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

otherwise be obscured in traditional legal reasoning.

This landmark ruling has been used as a precedent in South Africa in *Mbhamali v S*[30] and *Rebeca Z Gyumi vs Attorney General* [31]in Tanzania. I argue that *Mudzuru* case would not have the same outcome had the Court applied a gender-neutral as well as the strict and narrow approach in interpreting legislation. The priority was considering the vulnerable position of a girl child. The court reached its decision not only because it subscribes to several human rights conventions but also because of the detrimental effects of child marriages that victims experience, as discussed in Chapter 2.

Furthermore, I also argue that this court case was a game- changer in the protection of vulnerable girl children because the state was more than happy to leave the impugned legislation as it was. Had it not been for Mudzuru and Tsopodzi and their legal counsel, Mr Tendai Biti, non-governmental entities, child marriages might not have been abolished in Zimbabwe because the abolishment came as a result of litigation and the court ruling. What stands out in this case is the compliance of the judiciary with the Constitution and international human rights law in engaging with the application and coming to a decision. This was done even when the other arms of the state,[32] the respondents, were against the application and indirectly endorsed child marriages by defending the status quo. This court case shows that the state, through the respondents who belong to the executive, was unbothered by the practice until a non-governmental entity brought it to court. This is

[30] Mbhamali v S (AR579/2019) [2021] ZAKZDHC 35; 2021 (2) SACR 627 (KZD); [2022] 1 All SA 488 (KZD) (12 October 2021.

[31] Rebeca Z Gyumi vs Attorney General (Misc Civil Cause 5 of 2016) 2016 TZHC

[32] Zimbabwe has three arms of government, the executive whose power rests in the president, the legislature which vests its power in the Parliament and the judiciary which governs the courts .

where it was meaningfully engaged by the judiciary, another arm of the state, to the extent of using international law and protocols in the realization of human rights embedded in the country's Constitution.

In ending this Chapter, it is important to note that 'the state', Zimbabwe, is not one unity. In this case, the Constitutional court proved to be considerably more progressive than other arms of the state and the organs they are responsible for, which ought to protect girls. The Minister of Justice, Legal and Parliamentary Affairs, the Minister of Women's Affairs, Gender and Community Development, who belong to the executive arm of the state, in opposing the application, did not perceive child marriage as an infringement. The immateriality of their arguments shows ignorance of the effects of child marriages. One could argue that their claims could have come from a point of privilege. A situation where none of the actors had first-hand experience with the causes and effects of child marriage. Instead of viewing child marriage as a problem, they attacked the applicants.

The judiciary, represented by the Constitutional Court, frames child marriages as unconstitutional and a huge obstacle to the development of the girl child and the country at large. An obstacle that needs to be removed to allow children, who are a vulnerable group of individuals, to fully reach their potential. The judiciary was clear in its opposition to the practice. The *Mudzuru* case exposed a mound of lack of accountability in the respondents' opposing argument. This court case shows the importance of separation of powers in that different arms of the state are not always working in tandem with each other should there be an infringement.

4.

The culture of impunity

"Selling souls in exchange for the votes"

At face value, because of its constitutional supremacy inherited from the British colonial system, Zimbabwe seems to uphold the rule of law to protect its citizens' rights (Morreira 60). However, in reality, the continuous amendments of the constitution since 1980 have resulted in the erosion of the rule of law as the state powers have now rested in the hands of the president (Morreira 61). The literature that focuses on the political ramifications in Zimbabwe highlights the decline of the rule of law, which has been overtaken by the "rule *by* law" under ZANU-PF, the ruling party (Morreira 62). In her book *Rights After Wrongs*, written before the 2013 Zimbabwean Constitution, Morreira describes this as "the culture of impunity" where human rights perpetrators are not held accountable on many occasions (61).

This culture of impunity is a recurring theme in child marriage conversations on social media as well as the conversation with Biti, Mudzuru and Tsopodzi. In this opening section of the chapter, I trace the moments in which child marriage has surfaced within public discourse between 2021 and the present, doing so to examine each moment for what it reveals about contemporary framings of child marriage as they occur on social media, with a particular focus on the conflation of wider political issues with child marriage. I then move on to an analysis of the interview data with the three key players in the *Mudzuru* case, again focusing on the idea of a culture of impunity. As a Zimbabwean citizen, I have always known that people living in Zimbabwe are not free to engage

publicly on social media platforms because of the political instability in the country and the fear that the state is monitoring interactions. However, collating this mound of data and research, my conclusion is that, to a larger extent, the fear is slowly fading or perhaps completely gone because of how people are calling ZANU PF to order on social media platforms such as X (formerly known as Twitter and Facebook). These social media conversations also expose an ongoing relationship between ZANU PF and a specific religious sect, Johane WekwaMarange Apostolic Church, a sect that actively supports and enables girl marriage.

History of the religious sect

Before I discuss my social media findings, I believe it is paramount that I give a brief history of the Apostolic church. The famous Pentecostal church, known for wearing white garments and bald hairstyles, was founded in 1912 at the peak of British colonial rule in Zimbabwe (*The Sunday Mail* n.p). The founder's father worked for Chief Marange as a boy. He fell in love with the chief's daughter, and they begot the church's founder, Johane Marange, born Muchabaya Momberume. The father was so poor that he could not afford to pay bridewealth, so Johane's grandfather adopted Johane in lieu of lobola payment and he became Muchabaya Marange, taking his grandfather's surname. When he was about 5 years old, while herding cattle, he had an encounter with the Holy Spirit which instructed him to register a church and change his name to "John the Baptist." Chief Marange, his grandfather was taken by surprise because, at that time, only missionaries were allowed to discuss the gospel. The Holy Spirit visited Muchabaya again and he convinced the missionaries in the English language to register his church. That strengthened the relationship between Chief Marange and the missionaries. Muchabaya Marange was called Johane Marange, the name originating from an instruction from

the Holy Spirit to name himself John and his grandfather's surname, who had adopted him. As a result, the church was established under his name, John (Johane) Marange.

Political Expediency and the Shielding of the Johane Marange Religious Sect

When collating social media data and the conversations with Biti, Mudzuru and Tsopodzi, the Marange religious sect kept being linked to ZANU PF. The sect is presented as deeply involved in the practice of child marriages in Zimbabwe, and the state is turning a blind eye. This is not surprising considering the relationship history between the origin of the church and its association with politics. Bengesai et. al argue that religious sects have about 34% of the country's population, and the ruling party does not prosecute in fear of losing a large part of the electorate (3). In his own words, Biti said, "The ruling party derives massive support from the religious sect, which is why there has been a reluctance to tackle child marriages. There are a lot of *N'angas* [33]and *Vapostori*[34] who tell people that you can cure your HIV/AIDS if you sleep with a virgin under the age of 18 years. Young children are abused." The reluctance of the government to dismantle such myths shows that in Zimbabwe, political expediency overrules the protection of children, considering that the majority of virgins are children below the age of 18 years.

Biti also mentioned that the problem is that the government and political leadership do not believe in the protection of children. He expanded, saying, "The government is not interested in matters of children's rights. It doesn't see the problem. Then you have political leaders who have been accused of the very same thing." Mr Biti's claim is evident in the respondents' opposing arguments in the *Mudzuru* court case. In a conversation with Tsopodzi, she recalled

[33] Shona name for traditional healers
[34] Members of the religious sects

speaking at an event at a high school in Bocha,[35] and her video was uploaded on the Diamond FM[36] site on Facebook, and a lot of women came out talking about their experiences as child brides in the church and the area. According to Tsopodzi, perpetrators of child marriages do get arrested, but because of the association of the church with the ruling party, they get released. She gave an example of Anna Machaya, a fourteen-year-old girl who died at a shrine while giving birth after being impregnated by a member of the sect, an incident which was not followed up by the police. Tsopodzi reiterated that recently, there has been a man of the sect who took underage girls as wives, and he was not arrested because the police said they had no evidence. As an activist, it pains her, but she said, "After all, there is nothing I can do because there are powerful forces involved." Her frustration highlights systematic power dynamics that hinder the protection of children, making child marriages flourish uninterrupted.

Reclaiming agency

On 23 January 2021, there was a Twitter post that a 17-year-old girl was using Taekwondo sessions to teach and empower young girls in her community to prevent early child marriages. Resorting to self-defence mechanisms shows that children have lost faith in the authorities when it comes to their protection. Therefore, in defiance, Taekwondo could be viewed as a means to gain physical strength and mental resilience, breaking a cycle of vulnerability. The same post referenced the World Vision report on child marriages in Zimbabwe, which states that about 34% of girls get married before they turn 18 years while 5% get married before they turn 15 years old. One user commented that a day will come when people reflect on how child marriages flourished in Zimbabwe because the ruling party focused

[35] Bocha is a remote area in Marange, Mutare, the home ground of the Marange religious sect
[36] Local radio station in Zimbabwe.

on what was considered to be a practice of canvassing votes from paedophiles over protecting minors. “Mapositori must be stopped.” The language from this comment shows a shift from the normalisation of the practice for various reasons, as seen in Chapter 2. This shows that child marriages are no longer normalised, and this choice of language is of deviation from the practice. The people on social media do not want to normalise the practice and explicitly refuse to be associated with it.

In the same post, another user tagged a member of Parliament, saying, “What pains me the most is that our province (Mashonaland Central alone) has about 50% of the total child marriages in Zimbabwe. And our MP is silent about it. We have tried to approach him several times about the issue, and he didn’t even respond. We even got harassed whilst carrying out our campaigns against child marriages, and he still didn’t respond. Girls as young as 9 years have always been victims of child marriages in the Marange sect. This has always been the norm for as long as I remember. Clearly, something needs to be done. This is a real developmental issue.” My finding from this comment is that this person is holding the Member of Parliament accountable on a public platform for child marriages in his constituency. The harassment of activists who are against the practice indicates a clear message of suppression. Additionally, child marriage is being associated with harmful traditional and religious practices, which should translate to an end to the practice.

Surprisingly, the Member of Parliament responded by saying he was not aware and was never approached regarding the issue, and he surely cannot know about every pregnancy in his constituency. He recommended that the public report cases of that nature to the police. His response was counter-argued by different users who mentioned that the crisis of child marriages is beyond the Members of Parliament, as it is a national disaster that needs a holistic approach.

The MP's response is a deflection of constitutional responsibility, exposing a disconnect between political leaders and service delivery while failing to acknowledge the severity of the practice. This post showed me that the Zimbabwean public that has access to social media is no longer afraid to call politicians to order when they neglect their constitutional obligations.

"Girls should be given pens and not penises."

On 5 August 2021, a social media comedian posted a petition on Facebook asking the public for signatures to close down the Johane Marange Apostolic church after the death of Annah Machaya (aged 14). A plethora of users were adamant in their comments, voicing that the church will not be closed down as long as its followers still vote for ZANU PF. One user whose comment was liked many times by other users expressed her sadness, saying that many young girls in Zimbabwe rely on foreign aid to bring safety to the country that has laws to protect them.[37] Another user shared the same sentiments, expanding this train of thought and mentioning that the outrage was because she had lost her life, whereas, had she been alive, it was going to be "business as usual," and people would not even know that she was a child bride. Some users were vouching for the death sentence of paedophiles, saying "Girls should be given pens and not penises."

What cannot be ignored from the post in the above paragraph is the confidence people have against child marriages and speaking out about a church that is being enabled to operate outside the law. Additional public anger is shown to have been precipitated by the death of the child, not necessarily the practice, because it has been 'normalised.' People want girls to be empowered through education instead of being disempowered because of harmful practices. The

[37] Foreign aid comes in the form of scholarships, sexual and reproductive health education and funding awareness campaigns against gender-based violence as well as HIV/AIDS.

mentioning of foreign aid exposes the failure of the government to enforce its Constitution and lack of domestic solutions while acknowledging the efforts of international organisations in the protection of children's rights. People are mobilising a particular language of rights and obligations that is direct and confrontational, that also lies outside of the traditional language of patriarchal familial power, previously unspoken.

On 4 August 2021, on Twitter, there was a post titled "The Johanne Marange cult is above the law because it is protected by the highest office on the land. In a new Zimbabwe, this will end. We say no to child marriages!" On the same post, the handle posted pictures of the current Zimbabwean president, Emmerson Mnangagwa and his deputy, Constantino Chiwenga, attending the church event/ceremony/service of the Apostolic sect in the congregation uniform. In the same post, the picture of the late heavily pregnant 14-year-old Annah Machaya, who died during childbirth, at the sect gathering was included. This post had more than 50 comments. One realisation is that because the head of state was seen eating from the same plate as the alleged perpetrators of child marriages, many people reserved their comments and reacted with several emotional emojis.

One user mentioned that the cult uses "holy sticks" (knobkerries) to beat anyone opposing their beliefs. Hence, the ruling party, the police and the chief justice are scared of them. Another user mentioned that the perpetrator who "raped" and caused the death of the little girl should be brought to book. Another user called the religious sects "perverts" and asked why radio stations are quiet about the matter instead of concentrating on programs that are irrelevant to current affairs. The language and terms deployed in this post highlight the significance of how ideas change and get normalized over time because of a recurring situation. It could be argued that people use specific language to highlight how serious the situation is and to find some sort

of recourse since nothing is being done by the authorities. The language of deviance and normativity shows how child marriage is framed on social media. Making demands from particular entities (the state, not the chiefs), and asking radio stations for intervention in raising awareness shows that the practice is framed to be beyond control and in need of a bigger audience that might bring holistic innovations. Hypothetically, if the actors that are named in this post act in the affirmative, there could be a decrease, if not a decline, in child marriages.

In many comments, some people questioned the mental state of the perpetrators saying, “How sick can a person be to develop sexual feelings for a child?” A lot of people were vouching for the man who impregnated the little girl to be arrested, saying the “time of hiding behind tradition and religion is up!” While there were a lot of insults targeting the religious sect and the perpetrator, one user commented that the perpetrator who violated the minor was indeed arrested but later granted bail. That sparked a lot of outrage as many users criticized the justice system and its indirect contribution towards the practice of child marriage. Some people were saying that President Mnangagwa must be brought to book because this is happening under his leadership. This argument was countered by another user who mentioned that the late Robert Mugabe used to attend the same church services/events /ceremonies as a campaign strategy. The association of the church and presidents exposes a deeper ongoing political struggle to survive within ZANU PF, which ends up relying on its affiliation with the religious sect as a strategy to remain in power. This shows that child marriage conversations are used to demonstrate that the ruling party is aware that it has lost popularity by showing that reinforcing political survival takes precedence over constitutional obligations. Again, this post shows the mobilisation of the language of sexual perversion, whereas the framing of child marriage might have been in

paternalistic terms. The language shows that child marriage is framed not just as a result of patriarchy but as a result of men who are attracted to prepubescent girls.

"A hen that feeds on its eggs"

A different point was raised, saying the death of the young girl exposes a lot of socio-economic issues Zimbabwe is facing, likening it to the biblical Egypt of Pharaoh, namely, the violation of underage girls and vindication of the denial of maternal healthcare.[38] This statement offers a radical critique of the oppression that young girls continue to face under a ZANU PF-led government. This paints the party as a willing endorser of child marriage. On the same topic in a different post, a lot of users believe that followers of the Marange religious sect do not worship and believe in the same God as the rest of the world because true believers do not violate the same children they are raising. A lot of people expressed confusion as to how that is praying when believers violate young girls in the name of procreation. This reminds me of one of my late mother's wise sayings, in the Shona language, which describes this predicament as *huku inodya mazai ayo* (a hen that feeds on its eggs). This means the next generation is destroyed by its predecessor. The violation of children positions the religious sect in disrepute because it contradicts the fundamental principles of Christianity.

Some people were saying rapists in Zimbabwe receive soft glove treatment as opposed to facing the wrath of the law. Then, other people playing the devil's advocate slightly, said it is not the law if it has not been enacted. This was counterargued by one user who said that the ruling party had "captured" the judiciary; therefore, even if the law is there, there is no access to justice, and that ZANU PF does not value girl children because the party has traded girl children

[38] The religious sect prohibits it followers to access to any form of healthcare from hospitals/clinics.

for votes. Some people also said that supporting ZANU PF does not automatically mean that one is a pervert, as one could support the political party and not what other individuals in the party associate with. This comment takes the reader back to the *Mudzuru* case, where the same judiciary that is highlighted in disrepute did the opposite.

One common narrative on social media conversations is that people are not singling out the organs of the state and their responsibilities when talking about child marriages. It is important to note that the judiciary only participates if a matter is brought to court. The principle of separation of powers does not allow the judiciary, which is allegedly captured, to make arrests of perpetrators of the practice. The fact that child marriages are still happening, and girls are dying as a result, with no court case in the picture, shows that, from the grassroots level, there is an arm of the state that is neglecting their constitutional obligations, as evidenced in the *Mudzuru* case. In this case, it is the executive, which comprises Ministers of different portfolios that are relevant to the protection of children's rights. This also raises critical questions about the limitations of the law discussed in Chapter 5.

A few people mentioned that the founder of the church, the late Johane Marange, did not ascribe to child marriages; however, the next leader of the church, Noah Taguta, endorsed child marriages. In other words, marrying children is an individual choice and is a result of leadership influence as opposed to the allegations of following the doctrine of the church. This shows that some members of the church are distancing themselves from the practice while positioning and framing the practice as a brainchild of Noah Taguta, not the sect's doctrine. In this context, it is possible to shield a girl child from child marriage only when reform through church leadership is implemented or when the ruling party ceases to protect the religious sect and starts holding it accountable.

Moreover, it was also mentioned that the ruling party has "destroyed every moral fabric of humanity and has driven the country to the Stone Age." This user said it is heart-wrenching that he has to continue reading about underage girls who get married and die while giving birth or due to birth complications, while the perpetrators are untouched by the law when the legal age of marriage and sexual consent is known. Some users called the whole practice Satanism. This user said she spoke against the practice to the congregants, and they later came to her house with their church sticks, threatening her to stay away. This shows that the congregants are not comfortable with those who oppose child marriages and that they are willing to go to great lengths to protect what the majority of the community is against. This reaction could be caused by being aware of their harmful acts and knowing that they are immune to prosecution.

Moreover, what is crucial in these multiple comments is that child marriage is associated with what people describe as "harmful primitive archaic norms" that are enabled by the role of legal structures (or lack thereof) and the inactivity of law enforcement in the country. Interestingly, throughout, the idea of government responsibility or impunity is also regularly invoked. Surprisingly, no one in the comments said anything about the child co-wife of the deceased and the role of customary law. This shows that, until a child dies, either the majority of the people are willing to turn a blind eye, or they understand their helplessness because the practice has long been normalised. Another finding is that though this practice has been ongoing for years, in public or behind closed doors, social media has become a platform to expose it all. It is of the utmost importance to note that the names of girls on public platforms that have become 'the faces' of child marriages in Zimbabwe are not all the victims, but the only ones exposed. An argument can be made about those in the very remote areas who die silently, physically and psychologically.

Who are the real manipulative opportunists? Politicians or the Religious sect?

One user said the public needs to be careful with politicians as they are masters of betrayal when they are campaigning for votes; it would not be surprising to see Nelson Chamisa,[39] wearing the same uniform, attending the same church campaigning for votes. Some people suspect that the religious sect is a cult where adults have sex with children as a ritual to get wealth and status in the church. One follower said the ZANU PF is comprised of sexual predators, so this is normal to them. Some people were asking about the involvement and whereabouts of local organisations that protect children. The other user said people must bear in mind that "the majority of the followers are illiterate; therefore, if you have not interacted with an illiterate individual, it is impossible to understand their train of thought."

This post makes it clear that people are using the conversations on child marriages to talk about politics, especially how unhappy they are with the current government and the illiteracy of the members of the religious sect, acknowledging education as a tool that helps fight oppression. More importantly, the language of deviance (sexual predators) is repeatedly associated with politicians, positioning them as manipulative opportunists who feed on vulnerability. The practice is also framed as a project that has become a 'model' used (or to use) to gain or remain in 'power' both by the ruling party and the religious sect. In these cases, the death during pregnancy or giving birth of child brides have become a way of talking about politics more broadly in an authoritarian state.

[39] Then leader of the main opposition party in Zimbabwe.

Negotiating bridewealth of the deceased: a transaction, culture or justice?

On 4 January 2023, a local newspaper posted a story on Facebook titled "14-YEAR-OLD GIRL DIES GIVING BIRTH." The girl, Delight Masomeke, a follower of the Johane Marange sect and formerly a grade 7 pupil, was allegedly married as a second wife to a man in his mid-20s who was, according to reports, already married to a girl the same age as Delight. Delight died as a result of birth complications after delivering a daughter in December 2022. Her death sparked tensions between her family and her husband's family. Some of her relatives reportedly blocked her burial to allow bridewealth negotiations with the man who impregnated her. The matter was reported to the police, but no arrests were made. What was striking to me was that, even in her death, her family still wanted to negotiate bridewealth from the alleged husband.

In the Shona culture, bridewealth is linked to spiritual legitimacy. If a woman dies before her marital union is formalised in terms of bridewealth, her spirit will not rest in peace, and she would 'come back' as a bad omen to demand spiritual legitimacy from her family. Therefore, to avoid this, the bridewealth would need to be paid before burial. In a Zulu context, which is similar to the Shona culture, if bridewealth is not paid, the ancestors would cease to provide protection and strength to the living (White 303). Therefore, it can be argued that the Masomeke family were trying to legitimize her union before she 'met the ancestors.' The reasoning behind the negotiation of bridewealth, could be counter-argued by feminists or child marriage activists because it shows a continuation of pursuing patriarchal traditions that still want to be served (protecting surviving family members from bad omens) instead of seeking justice for the deceased.

Just like other underaged girls who die of childbirth complications, her death caused a great deal of outcry on social media, with a mound of responses on Facebook. People were questioning if the church was above the law because the same unfortunate incident had occurred to another girl in the previous year, and the police "pretended' to be involved, and no one was arrested. This raises a critical question about the different powers and their relationship to one another and the problem of using a girl child as 'a sacrifice'. People questioned why the government remained quiet on such urgent matters. Some were calling for the church to be banned as in the previous posts, and arrests of the deceased's parents and the husband. Someone said they suspect that followers of that church suffer from mental problems because no father would let her young daughter marry an indigent man. The comments associate child marriage with abnormalcy, and the language of 'sacrificing' a girl that shows frustration and disbelief could be interpreted metaphorically and literally. Metaphorically, it could mean the death of her childhood and the loss of education when she takes up enormous domestic responsibilities as a wife and mother. Literally, it could mean that she is being used as a bridge for economic survival, in terms of poverty and the elevation of the family status or being exploited in several cultural traditions as discussed in Chapter 2.

Many people said the economic crisis in the country has exposed young girls to being the prey of sexual predators and the ruling party. The deaths of these young girls have become just statistics to the religious sect and the ruling party, as nothing is being done to change the narrative, apart from the *Mudzuru* case. This notion is seconded by Biti, who emphasized that "there has to be deterrence." He also mentioned that "Parents who also marry off their young children should be convicted. There have to be at least three or four cases across the country of parents who are locked up to set an example. I don't know any parent who has ever been

convicted. *Vapostori* has never been convicted. The law must show its ugly teeth. We also need champions in Parliament and communities. Unfortunately, we don't have champions for children's rights." This comment offers a practical approach to ending the practice while highlighting the lack of political will and children's rights advocates.

In ending this chapter, it is important to reiterate that the conversations on social media about child marriages do not represent the majority of the people in Zimbabwe who could comment on the practice. The victims and the perpetrators of the practice are mostly poor and remote area dwellers (Buhera, Bocha, Chipinge and Rusape). Therefore, this framing of child marriages comes from a fraction of those who have access to social media. It is clear that in this chapter, child marriage is framed as an infringement of the fundamental rights of girl children endorsed by the ruling party in exchange for the electorate. The language of deviance associates inhumanity not only with the practice but the religious sect and the ruling party. The mobilisation of the language is of a modernist discourse about rights and the state's duties. The one that associates modernity with Christianity and the realisation of children's rights. It is also associating ZANU PF with the discourse of paedophilia and the infringement of children's rights. Respondents on social media, therefore, simultaneously wrote and spoke about what they perceived as a real relationship between ZANU-PF and the religious sect, alongside using child marriage as a means of symbolically commenting on the immorality of ZANU party politics. On one hand, an argument can be made that if the religious sect was not 'in bed' with ZANU PF, with its reputation of human rights violations, the party would not only have prosecuted but also persecuted perpetrators of the practice who are followers of the religious sect. On the other hand, if the religious sect was not receiving the alleged impunity from the ruling party, they would not form part of the ruling party's electorate, and child marriages would no longer be legitimised

through state-sanctioned impunity. The finding from this relationship is that these two groups make use of each other. The drawback is that the girl child is used as a subject in these power-related transactions and that citizens in Zimbabwe associate ZANU-PF with immoral acts, whatever shape that immorality takes. In social media, the girl child becomes symbolic of this understanding of the impact of politics on society, rather than recognised for the violation of child marriage per se.

5.

Limitations of the law: Conversations with the key players in the *Mudzuru* case

The majority of the data in this Chapter stems from conversations with Tendai Biti, Ruvimbo Tsopodzi, and Loveness Mudzuru to ascertain the effects of the *Mudzuru* case on their subsequent lives, and to ascertain their opinions of the effects of the case on child marriage practices nationally. As a result, this chapter illuminates the limitations that accompany legal reforms, because, as can be seen from the many cases surfaced via social media in the previous chapter, child marriages did not stop despite the landmark ruling that formally abolished the practice. I will also demonstrate the roles families and civil organisations play in the *Mudzuru* court application.

Legal representation and the role of civil organisations in fighting child marriage

Before the *Mudzuru* case, Biti had been long researching how he could help young girls who are trapped in the practice of child marriage. When he eventually found a potential litigant, the woman, a former child bride, developed "cold feet" for unknown reasons. Looking at how child marriages have been framed, the backing down of the woman could indicate avoiding confronting personal trauma or fear of stigma from her family or society, or indeed, direct pressure from her family and others. This could be argued to demonstrate concealed factors that encourage the endurance of child marriage. As a former Minister, Biti had been concerned about how pregnant girls get expelled from university, so when he left the government, he sent out a communication to universities and colleges looking for girls who were expelled so he could

represent them *pro bono*.[40]He represented Rukudzo Miriam Wazara[41] where a teaching training college expelled a married student for falling pregnant and having a child while still enrolled. The student was barred from writing final examinations that would qualify her as a teacher. The Supreme Court found that the college was discriminatory against women on the grounds of sex and childbearing ability. He mentioned that "these are reported judgments we won, and the court said it was discriminatory." This example highlights a long-standing history of his commitment to standing against gender discrimination, using public litigation as a tool. It also demonstrates gender-neutral legal provisions that are discriminatory and oppressive.

Biti mentioned that what drove him to his involvement with the *Mudzuru* case was that many families were bequeathing young girls as compensation for *kuripa ngozi*.[42] He knew that there was a gap in the law that needed to be addressed. However, the challenge he faced was that he could not get the litigants even after approaching women's and human rights groups. He was then left with research that had no participants. Eventually, he met Mudzuru and Tsopodzi through a non-governmental organization he could not remember. The important factor to note here is that the unavailability of litigants could suggest the fear of disrupting culture, social stigma and backlash. It also suggests that the law is not as powerful as its practitioners hold it to be. This emphasizes that without social awareness that empowers victims, confronting harmful cultural practices is faced with complexities that challenge the anticipated change.

Biti also mentioned that access to legal representation and courts remains a challenge in Zimbabwe, particularly for the marginalized, who are mainly children and women. He highlighted how geographic and economic barriers hinder access to legal recourse. He mentioned

[40] Legal work undertaken for no or low-income individuals without a charge
[41] *Wazara v Principal, Belvedere Technical Teachers' College & Anor, 1997 (2) ZLR 508.*
[42] Discussed Chapter 2 above.

that “it is extremely difficult. It is impossible; that's why we do public interest litigation- to help the voiceless and disempowered in Dotito, Chiendambuya, Nkayi, Tsholotsho, and Mudzi.[43]” Biti’s participation in the *Mudzuru* case highlights the important role of legal counsel in situations where legislative recourse is slow or absent in improving human rights. While in the early stages, he viewed the *Mudzuru* case as “just another” constitutional matter, the court application surpassed the conventional legal advocacy in that it addressed deeply- rooted social issues, particularly protecting young girls from child marriage. “Once the court application started hitting headlines, non-governmental organisations such as Veritas[44] proposed to collaborate, offering to pay for the services.” The intervention of Veritas highlights the important role played by the media in legal advocacy and in publicizing the court application. This shows how advocacy is strengthened by collaboration and public attention, and by offering to collaborate financially, Veritas acknowledged the important nature of the application. An ethical aspect not to be ignored in legal practice is prioritizing social justice over monetary benefit. He commented, “Cases of this nature are usually pro bono. If I wanted to make money, I would have been a commercial lawyer.” It also suggests a conscious refusal of personal benefit by choosing to use his legal expertise to advance the rights of vulnerable groups who need his intervention. His involvement in the *Mudzuru* case emphasizes his role not just as a legal expert but as an agent of social change.

[43] These are rural areas in Zimbabwe

[44] A non-governmental organization that provides free legal information to the public in Zimbabwe.

Legal Reforms versus Reality

Remarkable law reform measures, such as the *Mudzuru* case on their own, are inadequate to completely eradicate the practice. Child marriages continue to exist mainly in rural areas where poverty is the order of the day. For Biti, poverty is a huge contributory factor to child marriages in Zimbabwe, especially in the rural areas. Referencing the Demographic Health Surveys of 2011 and 2015, which he used in the *Mudzuru* case, Biti highlighted that places such as Gokwe, Mashonaland Central, and the Midlands, which experience extreme poverty and school dropouts, are also confronted by the highest numbers of teenage pregnancies and child marriages. "In Gokwe, it is very common for a girl to have given birth to 2 children before reaching 18 years." This emphasizes the detrimental realities of poverty and little to no access to education. For many indigent families, marrying off their daughters becomes a bridge between economic hardship and whatever relief is sought, as discussed in Chapter 2.

In a comparison between Borrowdale[45] where, he claimed, child marriage does not exist because of access to resources, education and economic stability and in the mentioned rural areas, Biti emphasized that, "Firstly, the lives of people should be improved. Deal with poverty, particularly in rural areas, so that parents can afford to send their children to school because if they can't afford school fees, it is easy to marry off their daughters." This not only shows the urban and rural divide but also shows that without confronting underlying socioeconomic issues, any law against child marriage will remain dormant.

[45] Borrowdale is an affluent and prestigious low-density residential area north of Harare, the capital city of Zimbabwe.

Unlike in other court cases where Biti faced physical threats from the state, in the *Mudzuru* court application, he was confronted with subtle resistance from the Minister of Justice and the Minister of Women's Affairs, who also blatantly defended the status quo in the court case, as seen in Chapter 3. The two Ministers both said to Biti that child marriage was a polycentric issue that needed Parliamentary intervention because it was not in their jurisdiction. This suggests a reluctance to tackle structural issues leading to the infringement of the rights of young girls. According to Biti, despite the need for meaningful legislative engagement, Parliament was highly unlikely to act. He stated, "Parliament will never do anything." His doubtful remark could be argued to reflect on his experience with the Parliament, where there was once constitutional neglect.

Ironically, when the court ruled in favour of the applicants the same Minister of Women's Affairs who previously defended the status quo in the court case joined the celebrations. This may show that the Minister was in support of the legal reform, however, her position in a male-dominated executive, as the respondents of the case may have been outnumbered and overpowered during the decision-making process. This further highlights the marginalization of women in governance especially when it comes to issues that affect them, despite occupying a high-profile position. In situations where legal reforms are possible to be achieved, gender and power dynamics can downplay the discharge of real change.

Biti mentioned that the main challenge with preparing the court application was that there was no precedence to follow as it was the first of its nature. Looking at the resistance he received from the Ministers, an argument can be made that pioneering cases or solutions are always confronted with institutional resistance as the other parties involved could interpret the anticipated change as disruptive culturally and politically. As the first one of its nature, the

Mudzuru case demonstrates the limitations of legal structures in post-colonial sub-Saharan Africa. This shows that the region still has a long way to go when it comes to human rights litigation and realisation. One can only argue that a case without a precedent would need an innovative legal understanding, as shown in the *Mudzuru* court case. However, on a lighter note, Biti mentioned that despite the resistance he faced**,** "My advantage was that very few people can express openly and say we support child marriage." This shows that publicly, child marriages are stigmatized and framed as immoral, highlighting public discourse and private behaviour because there is a disconnect between reality and the rhetoric.

Age of Marriage vs Age of Sexual Consent

The age of sexual consent was also raised by Biti as a contributory factor to child marriages. While the *Mudzuru* case set 18 years as the minimum age to enter a marriage, the age of sexual consent in Zimbabwe remained at 16 years. The inconsistency led Biti to view the *Mudzuru* case as a "pyrrhic victory." This loophole not only undermined the *Mudzuru* court judgment but was also problematic because young girls remained victims of sexual exploitation because it was legally permissible by law. After all, men would disturbingly rationalize their sexual relations with minors by saying, "I could sleep with you, but I cannot marry you." In the quest to correct this legal discrepancy, two years later, Biti drafted a subsequent application to the Constitutional Court under Diana Eunice Kawenda[46] which was a success, after being dismissed by the High Court, making 18 years the age of sexual consent, balancing it with the minimum age to enter a marriage. Analysing this, one can conclude that the age of sexual consent demonstrates a shattered nature of law reform, where one victory is undermined by a

[46] *Kawenda v Minister of Justice, Legal and Parliamentary Affairs & Others.*

discrepancy and a contradiction from another, which then defeats the purpose of initial legal recourse. This exposes the systematic gendered effects of inconsistent laws that perpetuate the infringement of girl children's rights.

Moreover, the fact that the *Kawenda* case was previously dismissed in the High Court and later upheld in the Constitutional Court not only shows the incompetence of lower courts but also the inconsistency that encompasses the judicial decision-making in Zimbabwe. The inconsistency in the legal framework shows the importance of ongoing public interest litigation aiming to close any available gaps, demonstrating that legal reforms are not a 'once-off' event but an advocacy journey that reaches its destination when fundamental rights are realised.

Although the issue of sexual consent was addressed by a Constitutional Court, no legislation supports the judicial victory. To rectify this, there was a Presidential decree[47] that was used as 'law', but it lapsed in January 2024. When I had a conversation with him in October 2024, Mr Biti asserted that "paedophiles right now can go scot-free because the government is reluctant to act on its supporters." This gap again shows the fragile state of the legal framework in Zimbabwe when it comes to the protection of children's rights. This shows that without legislation to enforce it, judicial victories have proven to be dormant and do not automatically translate into enforceable laws.

A conversation with Biti exposed legal discrepancies that continue to intensify the vulnerability of minor girls. Abortion is illegal in Zimbabwe, and a lot of underage girls are sexually abused and impregnated. At the time of the conversation, he mentioned that he was challenging the prohibition of abortion for underage rape victims while waiting for a judgment

[47] A legal proclamation passed by the President

on an application in which he challenged the definition of rape in the definition section 2(1) of the Termination of Pregnancy Act. The inconsistency lies in having marriage and sexual consent laws that recognise minors as incapable of consent while denying them abortion when impregnated. Mr Biti stated, "If the law refers to them as children that should not marry or have sexual consent before reaching 18, then surely their pregnancy should be treated as rape, the same way raped women are allowed to have abortions should they need it." One could argue that this inconsistency undermines the *Mudzuru* case as many girls are forced to end up marrying their perpetrators and assuming maternal roles they are not physically and mentally prepared for, while men remain immune to prosecution.

Family vs community in aiding or preventing child marriage

While it was a relief to find litigants, a challenge developed when Tsopodzi refused to sign the answering affidavit for the court application because of intimidation by her husband's family. Biti noted, "She didn't ask us to withdraw formally. A lot of pressure was put on her, she refused to sign the answering affidavit. Even when the court ruled in favour of the court application, Ruvimbo refused to be part of the "jamboree, publicly." Ruvimbo's reluctance due to family pressure could be interpreted as a fear of ostracization from both sides of the family since the practice was deeply normalized, considering that her father forced her into marriage and approached the man's family for bridewealth. This reveals that legal success does not automatically translate to social change.

The day the court decided in the *Mudzuru* case, Tsopodzi was hesitant to attend, not only because of her discreet involvement, but a lack of self-awareness in understanding the importance of the court application. However, after several discussions with a lot of people, she gained a better understanding of the impact of the court application and its decision. Her father

was happy about the ruling, showing a shift in societal norms. She felt accepted and then embraced herself as the face of change. This shows the role of families in driving or ending child marriage practices.

In a recent engagement with a Member of Parliament of her constituency, the MP was surprised to learn that Tsopodzi resided in their constituency. The reaction from the MP shows a disconnect between political leadership and social empowerment and activism. Tsopodzi also mentioned something interesting: “Extended family members could not stop raving about me after listening to my interviews on different radio stations. That changed the perception they had about me, since I did not have a tertiary qualification.” This shows that the community values formal education. Her lack of qualification shaped their perception about her, one that is undermining. Having somebody without a tertiary qualification being the face and voice of change made them realise that change is inevitable when people are willing to embrace it or that social change does not need to be driven by someone with tertiary education. She challenged the assumption that associates activism with formal education.

When describing her experience with the court application, Mudzuru mentioned that it was 20% difficult and 80% easy, mainly because of the support from her sister-in-law and her liberal parents-in-law, who were in their sixties. They were opposed to any form of violence against women and children, and they believed in the success stories of young women. Therefore, this made it easy for her to navigate the court application from a family setting without any disruption. While Mudzuru’s case could be considered smooth, this was not the same with Tsopodzi because she mentioned that she was not wholly involved after the initial submission. Her father was against the court application after being warned by his young brother, about the seriousness of the court application. Her participation in the legal process became

covert, as she had to sneak out of the house with her mother's secret support while avoiding her father's interference. Tsopodzi was forced into marriage when she was 16 years old, and her father charged, negotiated and accepted bridewealth. Tsopodzi's father's position shows how child marriage is facilitated by family members for social or economic gain; however, when challenged, there may be resistance to accountability by threatening the change. Although households may be patriarchally ruled, this does not necessarily preclude actors taking independent (albeit covert) action.

What is mutual between Tsopodzi's and Biti's version of events is that Tsopodzi was a passive applicant. This highlights an aspect of positionality where both Ruvimbo and Biti have different versions of the same matter. This shows how different actors understand child marriage - and why they did what they did (and almost did not). Tsopodzi's case demonstrates a power imbalance within patriarchal families where the mother silently resisted during the court application because she did not have the authority to stop her daughter's marriage from happening even though she disagreed with it. This demonstrates that no action does not automatically translate to consent. Discreetly supporting her daughter shows that even in patriarchal systems, women still have agency to drive for change, even if it is limited.

Mudzuru's candidness contributed positively to her ability to challenge child marriage. Different from Tsopodzi, whose involvement was confronted with limited family support encompassed by patriarchal control. Mudzuru benefited from a supportive network, not only family but also Non-Governmental Oganizations (NGOs) such as Veritas and Real Opportunities for Transformation Support (ROOTS). This demonstrates that access to legal counsel and justice is often influenced by social connections and external support that are bound to bring change.

Some community members had a different perspective towards the court case and Loveness's activism against child marriages. They questioned her husband's family as to why they were allowing their daughter-in-law to "air dirty laundry" in public. Because child marriage was normalised, and the *Mudzuru* case was the first of its kind, the community perceived the challenge as a humiliation to the family that should be stopped. This shows why harmful cultural practices like child marriage endure because family 'honor' and reputation take priority over the protection of fundamental rights.

Advocacy in the aftermath of the court ruling

Subsequent to the court application, Mudzuru and Tsopodzi have actively and passionately undertaken advocacy roles against child marriage. Their advocacy demonstrates the importance of activism that is led by survivors. Using their experience as the backdrop of their activism, their awareness is not detached from reality because they are telling their stories to women who look like them instead of a theory-based awareness which is not a 'one size fits all.' Both Mudzuru and Tsopodzi emphasized that the *Mudzuru* case was not meant to benefit them personally, but it was a matter of public interest, aimed to protect subsequent generations of girls who would find themselves in their former predicament. They both acknowledged that living in the city played an important role as it made it easy for them to be 'discovered', access to justice and advocacy networks.

However, one can only imagine how difficult it is for a girl living in the rural areas confronted with economic and social barriers in seeking legal recourse. Mudzuru believes that effective change will only happen if people are prosecuted and convicted. For example, Mudzuru raised a recent engagement she had with a mother from the Johane Marange religious sect, who condemned child marriage despite being raised and married within the church. As an uneducated

former child bride with many children, the woman told *Mudzuru* that she would do anything in her power to ensure that her children would not be confronted with the same fate. The defiance of this woman demonstrates that not all members of the religious sect are in support of child marriages. Additionally, her determination to shield her children from the practice shows a change of perspective that comes with being confronted by the harsh realities of being a child bride.

Mudzuru asserts that child marriages have since stopped in her community since the court ruling. Her significant claim raises questions about the prevalence of the practice in other parts of the country. While legal reforms and advocacy are visible and may have changed people's perceptions, the literature and social media demonstrate that the practice is still rampant in impoverished rural areas. Mudzuru mentioned her involvement with the Zimbabwe Chamber of Informal Economy Associations (ZCIEA) working in the entrepreneurial spaces in terms of economic empowerment for women. Through her foundation, Tsopodzi works with the House of Arts, which focuses on mental health. Incorporating economic empowerment and mental health awareness can be viewed as a holistic approach to tackling child marriages because the factors that contribute to child marriages are not confined to economic and legal aspects but also socially and psychologically. Mudzuru's activism, which started as a personal struggle against child marriage, has evolved into an extensive movement for children and women's empowerment, thereby engaging with support from civil organizations such as Rozaria Memorial Trust, Plan International, and Girls Not Brides. An argument can be made that a collaboration with these organisations not only amplifies the cause but also helps with access to resources.

Unlike Mudzuru, who was awarded funding to enrol and complete a social work diploma, Tsopodzi argues that her quality of life remains the same after the court ruling.

Tsopodzi highlighted the exploitative nature that encompasses some NGOs that capitalize on lived experiences and personal narratives for donor-driven agendas instead of the empowerment of people that need help. This was seconded by Mudzuru, who said, “Some organizations exploit activists for financial gain.” While Mudzuru agree with Tsopodzi on the criticism of the humanitarian sector that feeds on vulnerability for funding purposes, a claim also made by the state, partnering with big organisations contributed to her growth in advocacy and activism. Despite being voices and faces for change, their experience in the aftermath indicates the ongoing and existing social and economic inequality. It also shows that activism without sustainable support is bound to fail.

In ending this Chapter, the support provided by the women from the Mudzuru and Tsopodzi families challenges the assumption that women from patriarchal backgrounds have no agency and are not ready to embrace change. Their support frames child marriage as a practice that is supported by mostly men and the community who are not ready for change before it has been normalised. This Chapter has also shown that for real change to occur collaborations are paramount. This is shown by the intervention of civil organisations, in the court application as well as advocacy. However, this is undermined by the exploitative nature of some of the civil organisations that use activists for financial gain from donors. To sum up, it is also crucial to note the magnificent work done by Mr Biti in the court application, considering the resistance he faced with the court application.

6.

Conclusion

The literature has shown that among many factors that contribute to child marriages, poverty plays a crucial role in the flourishing of child marriages. When faced with a crisis that is beyond their control, parents use their girl children, mostly underage, as a means to an end, especially in the context of poverty and food insecurity, which are mostly exacerbated by climate change catastrophes or conflict. In other circumstances, especially during conflict, marriage is used as a security measure against inter alia, sexual violence and human trafficking, which target girls because of their gender. However, this has been debated by feminists and human rights advocates who argue that this security measure is also another form of human trafficking and abuse because of a lack of consent and free will.

Additionally, the causes of child marriages expose gender inequality as well as discrimination against girls on the grounds of sex. Their childbearing and nurturing abilities are used as a weapon against their independence and a tool to elevate the lives of the people they serve. Girls exposed to the practice of child marriage exist solely to serve the needs of others. Should they wish to get married, these young girls are denied an element of individuality, the right to freedom of expression and an opportunity to choose a partner. These causes show that for the girls to be protected from child marriages and prioritized, society would have to change and do away with cultural and religious practices that are harmful to children.

The literature presents girl children as sacrificial lambs for certain cultural practices, in Zimbabwe, such as *kuzvarira (*child pledging), *kuripa ngozi* (homicide bride), and *chigadzamapfihwa* (substitute bride). In the case of the religious sect, the literature has shown that the church runs on patriarchy and polygamy while feeding on the vulnerability of followers. However, among everything else, there is a gap in the literature where endorsers of child marriages are quiet about the detrimental effects of the practice. The girl child is left to bear these effects that range from succumbing to incurable sexually transmitted infections and diseases like HIV/AIDS and genital herpes to physical and mental abuse, early pregnancy and its related complications, and even death. These detrimental effects show that child marriage is a menace to society that should be stopped because it deprives girls of their childhood, dignity and right to well-being and to life in case of death.

This thesis has shown how child marriage is understood and represented by different actors in Zimbabwe. I have focused on the interaction between the law and wider social systems. The court deciding that the application was of public interest because it involved girl children, who are the most vulnerable in society, shows that, from a legal perspective, girl children can be protected from child marriages only if the law is enforced. Additionally, it is also possible when the laws are consistent, without contradicting each other. This shows that having the law does not equate to justice. Practice versus the legal architecture is not completely aligned, and never is. This case shows that to enforce the law and fundamental rights, all organs of the state would need to work together with non-governmental actors.

The discrepancies in the legislature become ammunition that is used to perpetuate the violation of girls. An example is the age of sexual consent, which does not have legislation that aligns with the majority age in Zimbabwe. Despite having progressive legal reforms, the law

alone cannot completely protect the girl child from the practice. I have shown that despite the law being in place, there are other factors at play- poverty, religious practices, climatic catastrophes, and political power struggles. Therefore, for full protection from child marriage, all these factors would need to be addressed. I imagine that it is complicated, maybe sometimes impossible, to hold a parent accountable for marrying their daughter in the context of armed conflicts where that marriage could be for her survival or protection. These causes show that for the girl child to be protected from child marriages and prioritized, society needs to do away with harmful cultural and religious practices that harm children.

In reaching its decision, the court in the *Mudzuru* case examined the detrimental effects of the practice and used the 2013 Zimbabwean Constitution and international human rights conventions as the backdrop of its ruling. The judiciary, represented by the court in the *Mudzuru* case, shows the importance of the principle of separation of powers amongst organs of the state. In this case, the judiciary's independence created a precedent that has now been used across Southern Africa. However, what must not be ignored is that the other organ of the state, the executive, represented by the respondents in the court case, turned a blind eye to the practice of child marriages to the extent of opposing the court application.

Setting a landmark precedent shows that the judiciary conceptualises child marriage as an infringement of the fundamental rights of a vulnerable group of people (children) in society. By unanimously ruling in favour of the applicants, the court (after being forced by a non-governmental entity) restored the agency and autonomy of underage girls. One that is taken when freedom of expression and choice is denied when they are ‘forced’ to enter marriages of convenience. This shows that the *Mudzuru* case, without any precedent, opened doors in the realization of the rights of girl children, most importantly, in abolishing child marriages.

However, the legislature is inactive in combating child marriages in Zimbabwe. It has a track record of being inactive and slow. This snail pace is seen on two occasions: it took 4 years for the Marriage Act to be amended, making 18 years the minimum age to enter marriage. The Marriage Act Amendment Bill only came into effect in 2020, 4 years after the court outlawed child marriages. Additionally, despite the court aligning the age of sexual consent with the majority age and the minimum age to enter a marriage in 2022, no legislation enforces the court ruling. In this context, it can be argued that the Parliament, as emphasized by Biti, is reluctant, and its passivity has no urgency to end child marriages. The fact that there was a Presidential decree for the age of sexual consent, for a short period, shows that the executive (via the President) is also not prioritizing the matter. The President has the discretion to extend the decree until such a time when there is legislation in place. Therefore, a conclusion can be made that the only organ of the state that has a track record of taking accountability for child marriage is the judiciary. These are some of the contributory factors that make child marriage endure in Zimbabwe.

Moreover, the respondents emphasizing that there was no direct link between the applicants and the impugned legislation shows that the respondents were indirectly admitting that child marriage is a problem. However, respondents refused to take accountability because the matter was brought to court by people not directly affected by the challenged legislation. What remains unknown is that had the court application been made by victims of child marriage, would the respondents have taken accountability? However, what is also interesting to note is that when the court decision was upheld, one of the respondents, the Minister of Women's Affairs, Gender and Community Development, celebrated the victory with the applicants. How does one celebrate the positive outcome of the application they were opposing?

A further key issue raised by this study is the contemporary debates on social media that expose the relationship between the ruling party and the religious sect. This is confirmed by social media conversations and the interview with Biti, Mudzuru and Tsopodzi. In online spaces, child marriage is presented as deeply immoral; even some members of the religious sect are distancing themselves from the practice. This immorality is linked to ZANU PF, the ruling party. As shown in Chapter 4, the involvement of the ruling party with human rights discourses is a contentious one, as it does not support children's and women's rights. A plethora of users online call out the ruling party for not acting against child marriages. This makes curbing child marriage a challenge because the ruling party is perceived to 'eat from the same plate' with the alleged perpetrators of child marriages, who are also devoted followers of the religious sects.

It is also important to note that online users paint the relationship between the religious sect and ZANU PF as problematic because of the violation of children. The role played by the religious sect in child marriages is bringing Christianity into disrepute and under scrutiny because it contradicts the values of the religion that speaks about nurturing and safeguarding children. It is also crucial to examine the relationship between ZANU PF and Johane Marange religious sect because both parties depend on each other for power at the expense of vulnerable children. Therefore, on social media, child marriage is conceptualised as a menace to society that needs to be stopped. This is currently impossible because the culture of impunity shields the perpetrators of child marriages from prosecution. In the online spaces, child marriage is widely received as a political issue, where Members of Parliament are not ashamed to deflect responsibilities on other stakeholders, ignoring to imperatively uphold human rights as per the Constitution.

Social media users have lost hope in the government when it comes to the prosecution of child marriage perpetrators. Many users believe that the practice needs a holistic approach instead of waiting for the government to act. In online spaces, the discourse of child marriage is used to air out frustrations that people have with the inefficiency of the current government and its contribution to the practice. The work in this thesis has thus shown the complex interplay between culture, religion, and politics in the perpetuation of, and the resistance against, practices of child marriage in Zimbabwe.

Having examined how child marriages are conceptualised on social media and legally, another important aspect discussed in this thesis is how the practice is framed at the community and family level. The discussion in Chapter 5 shows that the conversation around child marriages in the community and family is still complex. This is seen from how the community reacted to Mudzuru's involvement in the court case, as well as the reaction from Tsopodzi's family. An example is how Tsopodzi and her mother employed covert resistance during the court case, in a way that avoids conflict or confrontation with Tsopodzi's father, who negotiated, charged and accepted bridewealth for a 16-year-old Tsopodzi. Therefore, a conclusion can be made that within the family unit and the community, women may desire to free themselves from the practice or to participate in ending it, but they fear direct backlash or disrupting what has been deemed normal.

Despite having a long-standing history and a successful track record of commitment as a human rights lawyer, it was difficult for Biti to find litigants without the intervention of a civil society organisation. To the potential litigants, Biti was still a man- the same identity that represented the same structures they lost their agency to. This could be argued to have formed a

barrier, one that is deeply embedded in gender dynamics and cultural norms. The idea of having a man playing a crucial role in reclaiming their autonomy, lost at the hands of men, could have been difficult to accept. Therefore, the intervention of civil organisations bridged that gap by fostering trust, demonstrating that Biti was not acting alone, but a part of a collective effort with the same aim. This shows that it is difficult for the survivor or victim working alone to succeed in reclaiming agency or bringing change. The same applies to the legal counsel and the civil organisations. The *Mudzuru* case is evidence that success needs collaboration. Therefore, this essay has demonstrated that reducing or eliminating child marriage is a collective endeavour that relies on the coordinated efforts of diverse social actors.

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APPENDIX

Interview questions for Mudzuru and Tsopodzi

- How did they prepare for the trial?
- Did they face any challenges or resistance from their families or community?
- Who approached them to be litigants in the Mudzuru case?
- Was the trial worth it, for them or other women in Zimbabwe or regionally who might find themselves in the same position?
- Do they see themselves as the voice of the voiceless?
- How difficult/easy is it to access legal counsel /justice?
- What does the upheld court case mean in their communities, especially their families?
- How has their life been in the aftermath of the landmark ruling?
- How did they feel after the court made a decision?
- What is the role of civil organisations in their advocacy journey?
- Do they face resistance as child marriage activists?

Interview questions for Tendai Biti

- Why did he choose to represent the two women?
- What does the court case mean for his already established legal career?
- Will he ever take a similar case in future and why?
- Was it a pro-bono case or it was paid services?
- How did he prepare for the trial?
- Did he face any challenges or resistance from the state?
- Who approached him to represent the applicants?
- How does he view the practice of child marriage?
- What are the main causes of child marriages in Zimbabwe?
- What can be done to end child marriages?
- How difficult /easy is it for rural area dwellers to access legal counsel or courts?