

## Eliminating harmful practices against women in Zimbabwe: Implementing article 5 of the African Women's Protocol

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### Summary

*Traditionally, women's rights have always been of low priority in Africa. Women have been subordinated under the auspices of deep-rooted African customs and cultural practices, compromising their fundamental rights. Accordingly, member states of the African Union developed the African Women's Protocol, with article 5 to guide states towards the elimination of harmful practices against women. This article assesses the implementation of article 5 of the Women's Protocol in Zimbabwe, in relation to legal, constitutional and policy reforms instituted after ratification of the Protocol in 2008. Although the assessment noted a positive domestic influence of the Protocol in Zimbabwe, the country still has a long way to go in the process of eliminating harmful practices. For the effective implementation of article 5, the article recommends the rapid alignment of marriage and customary laws to the Constitution and the African Women's Protocol. The article also vouches for effective multi-sectoral approaches which include litigation and widespread awareness raising on the Constitution and other mechanisms against harmful practices.*

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## 1 Introduction

The year 2018 marked a decade after Zimbabwe became a state party to the landmark Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol). The Protocol was adopted on 11 July 2003 in Maputo, the capital of Mozambique, and entered into force on 25 November 2005, after having achieved the required 15 ratifications. Zimbabwe ratified the Protocol on 15 April 2008 and thus committed itself to be bound by its provisions.

Similarly to the African Charter on Human and Peoples' Rights (African Charter)<sup>1</sup> and other human rights instruments<sup>2</sup> that preceded the Protocol, it was developed to promote and protect human rights. Distinctively, the Protocol was designed to protect women in a more comprehensive manner than pre-existing instruments.<sup>3</sup> Paragraph 11 of the Preamble to the Women's Protocol states that the Protocol was adopted to address the concern that 'despite the ratification of the African Charter and other international human rights instruments by the majority of the states ... women in Africa still continue to be victims of discrimination and harmful practices'.<sup>4</sup> In light of the provision above, Viljoen states that '[t]he Protocol should not be viewed as correcting normative deficiencies in international human rights law dealing with women's rights, but rather as a response to the lack of implementation of these norms'.<sup>5</sup>

The Protocol is hailed as the most inventive and exciting development in women rights protection since the formation of the African Union (AU) as it lays down essential human rights standards for African women.<sup>6</sup> The Protocol directs state parties to promote, protect and enforce the rights of women, some of which were never ensured by international instruments, including the right to HIV

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1 Zimbabwe ratified the African Charter on 30 May 1986.

2 See other human rights instruments, including the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (1966) (ICCPR); the Convention on the Elimination of All Forms of Discrimination Against Women (1979) CEDAW; and the African Charter on Human and Peoples' Rights.

3 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003, OAU Doc CAB/LEG/66.6, <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf> (accessed 27 June 2017).

4 Art 11 Preamble to African Women's Protocol.

5 F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 11.

6 E Durojaye & LN Murungi 'The African Women's Protocol and sexual rights' (2014) 18 *International Journal of Human Rights* 893.

services<sup>7</sup> and to abortion.<sup>8</sup> The Protocol further guarantees women's rights to affordable, adequate, and accessible health services,<sup>9</sup> among other socio-economic rights of women. The civil and political rights of African women are also guaranteed by the Protocol.

Fundamental to this study is the ability of the Protocol to articulate the state's duty to protect women and girls from harmful practices.<sup>10</sup> Article 5 of the African Women's Protocol directs state parties to the Protocol to condemn and prohibit all forms of harmful practices affecting the enjoyment of human rights by women in society through legislative and other measures necessary.<sup>11</sup> For these reasons, the Protocol is regarded as the most progressive tool for the realisation of women's rights.<sup>12</sup> As a state party to the Protocol, Zimbabwe is directed to implement the Protocol through taking all necessary legislative measures, creating public awareness, providing support to victims, protecting women and other measures to eliminate harmful practices at all levels of society.<sup>13</sup>

Attempts by scholars to do research on the domestic effect of the African Women's Protocol have tended to focus on the entire Protocol.<sup>14</sup> These studies in passing hail the Protocol's declaration on the elimination of harmful practices in society, without an in-depth analysis of the extent of implementation at national level.<sup>15</sup> In Zimbabwe studies on harmful practices concentrate on the prevalence and effect of such practices on women and girls,<sup>16</sup> but not on the domestic effect of the Women's Protocol in relation to ending harmful practices. This study evaluates the extent to which Zimbabwe implemented the provisions of article 5 of the African Women's Protocol, focusing on legal, constitutional and policy reforms implemented to end harmful practices in Zimbabwe after the ratification of the Protocol in 2008. A study of this nature is important in revealing Zimbabwe's compliance with regional human rights mechanisms.

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7 See arts 14(1)(d)-(e) of the African Women's Protocol.

8 Art 14(2)(c) African Women's Protocol.

9 Art 14 African Women's Protocol.

10 See Article 5 of the Maputo Protocol.

11 As above.

12 'Making reproductive health rights a reality' *Pambazuka News* 20 January 2005.

13 Art 5 African Women's Protocol.

14 B Kombo, R Sow & FJ Mohamed (eds) *A journey to equality: 10 years of the Protocol on the Rights of Women in Africa: Equality now* (2013); VO Ayeni *The impact of the African Charter and the Maputo Protocol in selected African states: Zimbabwe* (2016) Pretoria 281-296; F Banda 'Blazing a trail: The African Protocol on women's rights comes into force' (2006) 50 *Journal of African Law* 72.

15 Kombo et al (n 14).

16 C Chikunda, E Marambire & R Makoni 'The impact of *khomba* – a Shangaan cultural rite of passage – on the formal schooling of girls and on women's space in the Chikombedzi area in Zimbabwe, Indilinga' (2006) 5 *African Journal of Indigenous Knowledge Systems* 2.

As good as the vision of article 5 of the Women's Protocol seems in advancing the rights of African women, its injunctions require actions beyond a mere declaration to include the domestication and effective implementation by state parties. In this article implementation is construed as synonymous to putting into practice commitments made by the Zimbabwean government under the Protocol.<sup>17</sup> To be specific, the article concerns itself with the passage of domestic policies and legislations that resemble article 5 of the Protocol, as well as with the creation and resourcing of national institutions that are mandated to end harmful practices. It is only upon implementation that article 5 of the Protocol can be seen to be effective in the lives of African women, in general, and Zimbabwean women, in particular. As Viljoen stated, the effect of an international treaty has to be 'felt at the national level if it is to meet the basic rationale for its adoption, which is the full realisation of the rights provided for under the Protocol'.<sup>18</sup>

The article starts with this introductory part, followed by a discussion of the prevalent harmful practices in Zimbabwe, and their impact on the lives of girls and women. In the parts 3 and 4 the article evaluates the implementation of the African Women's Protocol in terms of legal, policy and institutional reforms for the protection of women against harmful practices in Zimbabwe. The last part of the article contains the conclusion and recommendations. The article is based on literature review of books, articles and legal, policy and institutional reports, and newspaper articles related to issues under investigation.

## 2 Harmful practices and their impact on women in Zimbabwe

Cultural practices reflect different values and beliefs held by members of a society from generation to generation. Almost every society the world over has specific traditional cultural practices and beliefs, some of which are beneficial to society, while a majority of them are detrimental to the enjoyment of rights by girls and women.<sup>19</sup> According to the African Women's Protocol, harmful practices are defined as 'all behaviour, attitudes, and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity'.<sup>20</sup> The definition of harmful practices is unique to the Women's Protocol in that it not only includes the

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17 K Raustiala 'Compliance and effectiveness in international regulatory cooperation' (2000) 32 *Case Western Reserve Journal of International Law* 387.

18 Viljoen (n 5).

19 Fact Sheet 23 'Harmful traditional practices affecting the health of women and children'.

20 Art 1 definition section.

acts that negatively affect the fundamental rights of women and girls but also the *attitude* which would include mindsets, opinions and way of thinking, among others, which is not only ambitious, but also brings up the question of how much can actually be affected by law and legal mechanisms. *It is an uphill task to change people's minds through law.*<sup>21</sup>

A cohort of these harmful practices includes child and early marriages; virginity testing; child betrothal; the appeasement of avenging spirits; and dowry price payments. These practices often are inherited from ancestors, and continue to be perpetuated by generations.

Child marriage entails any marriage entered into with and by persons below 18 years of age.<sup>22</sup> In 2015 the prevalent rate of child marriages in Zimbabwe's provinces was at 42 per cent in Mashonaland West; 50 per cent in Mashonaland Central; 36 per cent in Mashonaland East; 39 per cent in Masvingo; 31 per cent in Midlands; 27 per cent in Matabeleland North; 18 per cent in Matabeleland South; 10 per cent in Bulawayo; 30 per cent in Manicaland; and 19 per cent in Harare.<sup>23</sup> The practice tends to affect girls more than boys. Since 2008 an estimated 8 000 girls in rural Zimbabwe have been forced into early marriages or were held as sex slaves.<sup>24</sup> The practice is believed to be increased by religious groups such as the polygamous Apostolic sects which encourage marrying off young girls.

In mainstream society parents often arrange child marriages for young girls so as to receive *roora* or *lobola*<sup>25</sup> (bride price and benefit material wealth) from better-off families. This sometimes is done through the *kuzvarira*<sup>26</sup> and *kuripa ngozi*<sup>27</sup> cultural practices. While these two practices appear to have almost disappeared from

21 R Karugonjo-Segawa *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women* (2005).

22 C Dziva & D Mazambani 'The Constitutional Court ruling against child marriages in Zimbabwe: A landmark decision for advancing the rights of the girl child' (2017) 33 *Eastern Africa Social Science Research Review* 73.

23 E Makuzva 'Real men needed to end early child marriages in Zimbabwe' (2016), <http://263chat.com/2016/11/real-men-needed-early-child-marriages-zimbabwe/> (accessed 19 May 2017).

24 'The tragedy of Johane Marange's child brides' *The Herald* 31 January 2011.

25 See CJM Zvobgo *A history of Christian missions in Zimbabwe* (1996). Zvobgo defines *lobola/roora* as a custom in which the husband (or his family on his behalf) delivers or promises to deliver to the father (or guardian) of the wife stock or other property, in consideration of which the legal custody of the children born of the marriage is vested in their father (or his family) to the exclusion of any member of the mother's family.

26 Under the *kuzvarira* practice, a girl child can be married off at a tender age or before they are even born. The custom was widely practised before the colonial era when elders were able to accumulate young wives through pledging in exchange for grain during times of food shortages.

27 The *kuripa ngozi* practice is a noble way of appeasing the spirit of the dead by marrying off a naive young girl. The avenging spirits are always offered a young girl as compensation. If a man kills a person, the spirit of the deceased is believed to return to haunt the family of the murderer and this spirit normally is appeased by payment through a little girl even as young as four years from the family of the murderer. The girl becomes a slave and wife to a member of the deceased family.

Zimbabwean society, anecdotal and empirical evidence<sup>28</sup> suggests their secretive existence among the poor, traditional and religious groups in remote areas. An empirical study by Mapuranga found these practices to be prominent among the Mabee-Rukangare villages further south of Chipinge, near Mozambique.<sup>29</sup> Zimbabwean societies practise their *kuzvarira* and *kuripa ngozi* ways in secret, without the consent of the child and the knowledge of community members.

Nowadays these practices, especially that of *kuzvarira*, come in various dimensions, with some girls being sent as helpers and later on being taken as wives. In all these arrangements the parents of the girl child get *roora* or *lobola* from the groom. In the majority of cases a young girl who is a virgin often fetches more proceeds for her family in terms of dowry paid by the husband-to-be. As a result, poor families conceive of the bride price paid for underage girls as their saviour in poverty and their pathetic situations. In its purest form, the practice of the *roora/lobola* payment to in-laws is an acceptable cultural way of formalising marriage relationships in Zimbabwe and many other African societies. Notwithstanding this, the practice often is abused by many poor parents or guardians who use young girls as their 'gateway' off their poverty situations. In a way, the need for *roora/lobola* is equivalent to viewing children as an economic resource, with an exchange value disguised as the bride price.<sup>30</sup>

In most cases child marriages are arranged by the girl's parents or guardians whose desires take precedence over the rights and interests of the girl child.<sup>31</sup> Child marriage takes away the fundamental rights of the bride, and exposes her to abuse, violence and other forms of human rights violations. The girl child is robbed of her childhood, which is necessary to develop physically, emotionally and psychologically. Child brides fall pregnant at a tender age, and are forced to perform household and adult duties before they are emotionally, mentally and physically fit for these tasks. Early pregnancies result in birth complications. On the same note, child brides often give birth to premature babies, sometimes with a low body weight. Child brides often drop out of school to get married. Without education, a child bride's life is bleak as she lacks the much-needed enlightenment and information to survive in society and even to seek formal employment. Consequently, child marriage plays a central role in increasing vulnerabilities on the married girl's human rights. The long-term effects of child marriage include misery and a

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28 N Chivasa 'Kuripa ngozi as a conflict resolution model in Shona communities of Zimbabwe: A conceptual analysis' (2009) 8 *Critical African Studies*, DOI: 10.1080/21681392.2019.1657028; TP Mapuranga 'A phenomenological investigation into the effects of traditional beliefs and practices on women and HIV and AIDS, with special reference to Chipinge District, Zimbabwe' unpublished PhD thesis, University of Zimbabwe, 2010 72.

29 Mapuranga (n 28).

30 Dziva & Mazambani (n 22).

31 E Warner 'Behind the wedding veil: Child marriage as a form of trafficking in girls' (2004) 12 *Journal of Gender, Social Policy and The Law* 247.

failure by the child bride and her children to satisfy their critical human needs in life. Thus, a vicious cycle of poverty and misery is created.

Female genital mutilation is another form of harmful traditional practice valued in many African countries. However, this is not practised in Zimbabwe. Related to this is the *chinamwari* or *khomba* cultural practice in Zimbabwe. The practice is prevalent and widely respected among the Shangani people in parts of Chiredzi and the Lemba people in parts of Mberengwa. The practice requires that young girls of 13 to 16 years, and even newly-married women, be sent for initiation schooling outside the villages with old women.<sup>32</sup> There, young women are taught about married life, especially sexual expertise, so as to please their husbands during the marriage. Researchers have mixed feelings about the practice, with some supporting and others blaming it for a violation of the girl child's rights.<sup>33</sup> The bone of contention often stems from the conditions in which they live during the ceremony. The practice often is conducted in winter (when temperatures are severely low) and initiates spend the duration of the initiation process in the bush half dressed.<sup>34</sup> The trainees often are beaten, pinched, forced into icy cold water and are not allowed to warm themselves by the fire.<sup>35</sup> These are some of the human rights violations that young girls suffer during the *chinamwari* or *khomba* initiation practices.

Related to the *chinamwari* or *khomba* practice is the virginity testing practice, which largely violates the rights of the girl child in modern-day Zimbabwe.<sup>36</sup> A study by Human Rights Watch quoted Archbishop Johannes Ndanga, president of the Apostolic Churches Council of Zimbabwe, a coalition of over 1 000 indigenous apostolic churches, who confessed that 'virginity testing' – which includes the insertion of fingers into the vagina – of girls as young as 12 was widely practised in the apostolic churches.<sup>37</sup> Bishop Ndanga once banned an apostolic sect headed by Ishmael Chokurongerwa, accusing the sect leader of abusing women and girls' rights through forcing them to undergo virginity testing. As police officers went to the shrine to investigate the accused, Chokurongerwa and his congregates teamed up to the law-

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32 Chikunda et al (n 16); AK Siachitema 'Interrogating the role of initiation rites in shaping adolescents' sexual behaviour and gender relations in a changing world', [http://www.inter-disciplinary.net/probing-the-boundaries/wp-content/uploads/2013/06/Siachitema\\_child3\\_dpaper.pdf](http://www.inter-disciplinary.net/probing-the-boundaries/wp-content/uploads/2013/06/Siachitema_child3_dpaper.pdf) (accessed 20 March 2018).

33 Chikunda et al (n 16).

34 As above.

35 As above.

36 N Wadesango 'Violation of women's rights by harmful traditional practices' (2011) 13 *Anthropologist* 124; 'The traumatised virgins of Hurungwe' *Sunday Mail* 21 August 2016, <https://www.sundaymail.co.zw/the-traumatised-virgins-of-hurungwe> (accessed 21 November 2019).

37 Human Rights Watch World Report 2018, <https://www.hrw.org/world-report/2018/country-chapters/zimbabwe#e0c9cf> (accessed 20 November 2019).

enforcing agents, resulting in the sect leader and others being arrested and sentenced in the *Chokurongerwa* case.<sup>38</sup>

When virginity testing is done in the home, elderly women (the mother, aunt or the neighbour) can check the virginity of a girl child by inserting a finger into the vagina of the girl to see if the hymen still is intact.<sup>39</sup> In some communities and cultures elderly women tasked with the job organise a ceremony or session where they conduct the procedure of inserting their fingers into young girls' vaginas.<sup>40</sup> The practice is prevalent in rural Zimbabwe, in some cases with blessings from traditional and religious leaders.<sup>41</sup> Those in support of the practice are quick to provide its benefits as combating the spread of HIV, identifying children who are sexually abused by family members, preventing unwanted pregnancies amongst others.<sup>42</sup> Conversely, the practice remains detrimental to women's enjoyment of rights as they are humiliated and undermined of their dignity and bodily integrity.<sup>43</sup>

All the harmful practices presented under this part infringe on the fundamental rights of women and young girls. Despite their harmful nature, and the efforts put in place to enlighten society about the detrimental effects of such practices, the practices persist as they are not questioned and take on an aura of morality in the eyes of those practising them.<sup>44</sup> In the majority of cases the practices occur in secret, and in rural Zimbabwe without the knowledge of law-enforcement agents.<sup>45</sup> Scholars have blamed the persistence of these practices on many factors including the limited implementation and awareness of women's rights and legal instruments that protect the rights of women, and the inadequacy of laws that specifically speak against harmful practices.<sup>46</sup> Thus, the call by article 5 of the African Women's Protocol for innovative legislative and policy reforms, the widespread creation of awareness, the provision of support to victims, the protection of women and other measures to eliminate such practices at all levels of society is found judicious. While article 5 of the Protocol is a critical standard-setting clause for ending harmful

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38 *Ismael Chokurongerwa v The State* HH620-15B491/15.

39 Wadesango (n 36).

40 As above.

41 C Ndhlovu C 'Virginity testing raises many questions' 2005 *Network Family Health International*, <http://www.fhi.org> (accessed 19 November 2019).

42 Wadesango (n 36); 'The traumatised virgins of Hurungwe' (n 36).

43 L le Roux 'Harmful traditional practices, (male circumcision and virginity testing of girls) and the legal rights of children' unpublished LLM dissertation, University of Western Cape, 2006; A Maharaj 'Virginity testing: A matter of abuse or prevention' (1999) 4 *Agenda Journal* 68.

44 Fact Sheet 23 (n 19).

45 B Rwezaura 'Competing images of childhood in the social and legal systems of contemporary sub-Saharan Africa' (1998) 12 *International Journal of Law, Family and Policy* 253.

46 See Dziva & Mazambani (n 26); UNFPA 'In ending child marriage: A guide for global policy action: International Planned Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls' (2006); Research and Advocacy Unit *Let them grow first: Early marriage in Goromonzi, Zimbabwe* (2014).



practices against women, this acknowledgment by researchers and states is insufficient to ensure the progressive realisation of women's rights in society. The actual elimination of harmful practices lies in the extent to which the clause is domesticated and effectively implemented. The next part addresses this goal.

### 3 Constitutional and legal reforms to end harmful practices

#### 3.1 Constitutional reforms

From 1980 to 2013, when a democratic Constitution was signed into law, Zimbabwe was governed by the Lancaster House Constitution. The Lancaster House Constitution failed to guarantee the rights of women<sup>47</sup> and other vulnerable groups. At the time of its inception the main concern of the Lancaster House Constitution was ending the devastating war of liberation and establishing the basic political rights such as enfranchising the indigenous population hitherto discriminated against. The Zimbabwe Women Lawyers Association rightly argues:<sup>48</sup>

The Lancaster House Constitution would give a rights with one hand and take it with the other – the so-called claw-back clauses. What that means is that it allowed for gender equality but at the same time allowed for cultural and societal norms to supersede these rights of 'equality'.

The Constitution, unlike the Lancaster House Constitution, saw men and women actively participating in the constitution-making process, raising their needs and aspirations during outreach meetings conducted to canvass people on what they expected to see in the supreme law of the land. As a result, 95 per cent (3 319 842)<sup>49</sup> of the people voted for the Constitution through a referendum held on 16 and 17 March 2013. Among those who voted for the Constitution, women comprised the majority. To some extent women had confidence in the Constitution, as a foundation upon which their rights could be promoted and protected.

The adopted Constitution enshrines the rights of all people in Zimbabwe and affirms the founding values and principles of human dignity,<sup>50</sup> gender equality,<sup>51</sup> and the nation's diverse cultural, religious and traditional values.<sup>52</sup> Section 80(3) of the Constitution also provides that '[a]ll laws, customs, traditions and cultural practices

47 C Dziva 'The 2013 constitutional reform and the protection of women's rights in Zimbabwe' (2018) 13 *Eastern Africa Social Science Research Review* 21.

48 'Rights of women enshrined in the Constitution' *The Herald* 2 November 2016.

49 Zimbabwe Election Support Network 'Zimbabwe Constitution referendum report and implications for the next elections'.

50 Sec 3(e) of the Constitution of Zimbabwe.

51 As above.

52 As above.

that infringe the rights of women conferred by this Constitution are void to the extent of the infringement’.

The Constitution further declares its supremacy by providing that any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.<sup>53</sup> This constitutional provision clearly prohibits any other laws that go against the Constitution – and if there is a law that is contrary to the Constitution, it will have no place in Zimbabwe. For the ordinary woman and girl, this implies that they should not be subjected to practices, customs and traditions that are against the Constitution.

The Constitution further provides for the promotion and preservation of cultural values and practices that enhance the dignity, well-being and equality of Zimbabweans,<sup>54</sup> protect the right to culture<sup>55</sup> and recognise traditional leadership.<sup>56</sup> As the custodians of culture, traditional leaders can be an important institution for the realisation of the right to culture and ending harmful practices in society. In addition, the provision protecting the right to culture explicitly includes a qualification stipulating that ‘no one exercising these rights may do so in a way that is inconsistent with any provision of the Declaration of Rights’.

Section 25 of the Constitution directs the state and all its institutions to protect the family and to prevent domestic violence. Therefore, the Constitution brings hope to the women who endured harmful practices in society. The section is also important as women, civil society organisations (CSOs), non-governmental organisations (NGOs) and all relevant stakeholders can use it to deal with deep-rooted family dynamics and human rights violations at all levels of society. The Constitution gives women the power to challenge any act or piece of legislation inconsistent with it. However, it is the authors’ hope that such protection as envisaged in section 25 does not perpetuate the following scenario described by Chirawu:<sup>57</sup>

In many cases, it is the family – as a semi-autonomous social field, making and enforcing its own laws and settling disputes within the family and representing the family’s interests in the community – that deters women from exercising their legal rights.

The Constitution re-defined a child in accordance with the best international practices.<sup>58</sup> Since the ratification of the Convention on the Rights of the Child (CRC) and other key human rights treaties by Zimbabwe, the law on the definition of a child has been shrouded in controversy as there was no agreed-upon age of a child. For instance,

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53 Sec 2(1) Constitution of Zimbabwe.

54 Sec 16 Constitution of Zimbabwe.

55 Sec 63 Constitution of Zimbabwe.

56 Sec 280 Constitution of Zimbabwe.

57 S Chirawu ‘Challenges to outlawing harmful cultural practices for Zimbabwean women’ in Heinrich Böll Stiftung *Women, custom and access to justice* (2013) 15.

58 Research and Advocacy Unit (n 46).

in terms of the marriage laws a child is a person below 16 years for girls and 18 years for boys.<sup>59</sup> Further, the issue of the age of consent for sexual intercourse is 16 years, while any sexual intercourse with a person under the age of 12 years is illegal.<sup>60</sup> Currently those aged between 12 and 14 years can consent to sex if capable of doing so.

However, this position was changed in 2013 when that definition was changed to 18 years in the 2013 Constitution. This inconsistency was widely blamed for the perpetuation of child marriages in Zimbabwe.<sup>61</sup> Section 78(1)<sup>62</sup> of the Constitution, which further elaborates on consent and marriage rights, protects girls less than 18 years against harmful practices, including child marriage. Indeed, consent will go a long way towards ending forced marriages that were practised under the *kuzvarira* and *chiramu* practices.

### 3.2 Legal reforms

Legislation provides a critical foundation for the protection of citizens' rights. It is an expression of states' accountability and commitment to the realisation and advancement of their rights. For women, legislation provides the state's commitment to protect them from discrimination, exclusion, deprivation and violence, including harmful practices. Notwithstanding this, available pieces of legislation<sup>63</sup> are archaic and not in sync with the Constitution, regional and international human rights standards. Most intriguing is the fact that Zimbabwe currently is conducting an aligning process for all the laws that are inconsistent with the 2013 Constitution, including the current Marriages Bill, the enactment of which will repeal the Marriage Act<sup>64</sup>

59 Under the Marriage Act of Zimbabwe, the minimum marriageable age is 16 years for girls and 18 years for boys as against the stipulated 18 years for both girls and boys in sec 81 of the Constitution of Zimbabwe.

60 See sec 61(1) of the Criminal Law (Codification and Reform) Act [Ch 9:23]: "'Young person" means a boy or girl under the age of 16 years.' Sec 64 further provides that '[a] person accused of engaging in sexual intercourse, anal sexual intercourse or other sexual conduct with a young person of or under the age of 12 years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, and not with sexual intercourse or performing an indecent act with a young person, or sodomy. (2) A person accused of engaging in sexual intercourse, anal sexual intercourse or other sexual conduct with a young person above the age of 12 years but of or under the age of 14 years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, and not with sexual intercourse or performing an indecent act with a young person or sodomy, unless there is evidence that the young person (a) was capable of giving consent to the sexual intercourse, anal sexual intercourse or other sexual conduct; and (b) gave his or her consent thereto.'

61 See Dziva & Mazambani (n 26).

62 Sec 78(1) states that '[e]very person who has attained the age of eighteen years has the right to found a family'.

63 See eg Domestic Violence Act 14 of 2006; the Criminal Law (Codification and Reform) Act 23 of 2004; the Customary Marriages Act 23 of 1950.

64 Act 81 of 1964.

and the Customary Marriages Act.<sup>65</sup> Also archaic is the Criminal Law (Codification and Reform) Act,<sup>66</sup> which stipulates in section 70(4):

For the avoidance of doubt –

- (a) the competent charge against a person who –
  - (i) has sexual intercourse with a female person below the age of twelve years, shall be rape; or
  - ...
  - (iv) without the consent of a female person of or above the age of twelve years but below the age of sixteen years, has sexual intercourse with that female person, shall be rape.

This provision sets the age limit for sexual intercourse with a minor at 16 years. What this effectively means is that the age of consent is 16 years for the girl child. Regarding the Marriage Act [Chapter 05:11], its inconsistency with the African Women's Protocol and the Constitution stems from the fact that the Act stipulates the minimum marriageable age as 16 for girls and 18 for boys,<sup>67</sup> something that is discriminatory against the girl child. The Customary Marriages Act [Chapter 5:07] is worse off in that it does not provide a minimum age for marriage for either boys or girls. This *lacuna* in the current marriage laws as well as the Criminal Law (Codification and Reform) Act will be remedied by the Marriages Bill which provides for the minimum age of marriage as 18 years,<sup>68</sup> in line with section 78 of the Constitution. This process to promulgate laws that directly prohibit and sanction harmful traditional practices by Zimbabwe is in line with article 5 of the African Women's Protocol which provides:

States parties shall take all necessary legislative and other measures to eliminate such practices, including ... prohibition ... through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.

Although such efforts to align laws are commendable, the snail-pace approach in complying with the dictates of the Protocol and the Constitution is disturbing as women and girls continue to suffer harmful practices without the protection of the law. For instance, the Marriages Bill currently is at committee stage, where a compilation of

65 Act 23 of 1950.

66 Act 23 of 2004.

67 See sec 22 of the Marriage Act which provides: 'Prohibition of marriage of persons under certain ages. (1) No boy under the age of eighteen years and no girl under the age of sixteen years shall be capable of contracting a valid marriage except with the written permission of the Minister, which he may grant in any particular case in which he considers such marriage desirable.'

68 Sec 3 of the Marriages Bill provides that the minimum age of marriage is 18 years. In order to ensure the protection of minors, the minimum age requirement has been extended to unregistered customary law marriages and to civil partnerships. This guards against attempts to side-step the law by avoiding formal marriages but still entailing children being forced into relationships that, for all intents and purposes, are marriages.

the views from public hearings as well as written submissions from stakeholders is being made in preparation for presentation to the Lower House.<sup>69</sup> However, Parliament is currently pushing the Finance Bill, the War Veterans Bill and other Bills in a fast track manner, with the result that Zimbabwe may even get to 2020 before the Marriages Bill is passed into law. This is evidence of limited political will for the alignment of marriage laws to the Constitution and international best practices. Therefore, there is a need for Zimbabwe to fully comply<sup>70</sup> with article 5 of the African Women's Protocol by hastening the legislative reform process and taking legislative measures, backed by sanctions and other necessary measures, to ensure that harmful practices against women are eliminated.

The Domestic Violence Act remains one domestic law that speaks against harmful practices in Zimbabwe in line with the Women's Protocol. This Act was promulgated in 2007, a year before Zimbabwe ratified the African Women's Protocol. Prior to the promulgation of the Domestic Violence Act 'there had not been any law in Zimbabwe that dealt explicitly and specifically with domestic violence in general and violence against women in particular'.<sup>71</sup> The Domestic Violence Act outlaws harmful cultural or even customary practices and norms that violate the rights of women, such as forced or child marriages and the system of child betrothal or the pledging of young women for avenging spirits.<sup>72</sup> Other singled-out harmful practices include virginity testing, female genital mutilation, forced marriage, child marriage and forced wife inheritance.<sup>73</sup> The Act has been hailed as a landmark piece of legislation that would be the panacea for women's domestic violence woes.

The Act further allows for the victims of domestic violence to apply for an interim protection order as well as a final protection order on safety. The protection measures system, however, has some

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69 Telephone communication with B Dube, Member of Parliament for Gweru Urban and Acting Chairperson for the Portfolio Committee on Justice, Legal and Parliamentary Affairs during Marriages Bill public hearings and consultations for Masvingo and Midlands provinces on 28 November 2019.

70 Zimbabwe's current compliance with art 5 of the African Women's Protocol is mainly through the constitutional provisions protecting women's rights. There is no piece of legislation that is backed by sanctions, that is specifically dedicated to the prohibition of harmful traditional practices. The situation is exacerbated by the fact that the Constitution does not bind Zimbabwe to ratified international and regional human rights treaties until they have been domesticated. In this regard sec 327(2) states that '[a]n international treaty which has been concluded or executed by the President or under the President's authority (a) does not bind Zimbabwe until it has been approved by Parliament; and (b) does not form part of the law of Zimbabwe unless it has been incorporated into the law through an Act of Parliament'. However, it is important to note that despite the non-existence of laws promulgated after 2008, Zimbabwe is in the process of aligning the current pieces of legislation as well as drafting new laws for the protection of women's rights.

71 P Osirin *Women's rights as human rights* (2003).

72 Sec 3(1)(l) Domestic Violence Act.

73 Secs 3(1)(l)(i)-(vii) Domestic Violence Act.

weaknesses. Oguli<sup>74</sup> notes that most women withdraw their cases from the courts as they are financially dependent on men. Other reasons why women withdraw cases of domestic violence include pressure from the mediation and influence of family members and the delay by the courts in dealing with cases. Due to the high incidence of withdrawal of cases, the National Prosecuting Authority (NPA), through section 258 of the Constitution of Zimbabwe, no longer withdraws cases of domestic violence.<sup>75</sup> The section provides that the NPA is responsible for instituting and undertaking criminal prosecutions on behalf of the state. What this effectively means is that when a complainant lodges a complaint of domestic violence, the case becomes a state case and cannot be withdrawn by the complainant. It now becomes the prerogative of the NPA, on behalf of the state, to either prosecute or withdraw, depending on its assessment of available evidence in the matter.

In a similar case, most victims of domestic violence had nowhere to stay while the court case was in progress, except to return to the abuser's hands. This is due to the lack of adequate safe shelters to assist the survivors of domestic violence around the country. Indeed, the lack of safe shelters to accommodate survivors while perpetrators await trial will see victims go back to stay with the perpetrators. Consequently, there continues to be a high rate of withdrawal of cases and a vicious cycle of violence against women in society.

A study conducted by Chuma and Chazovachii on the Domestic Violence Act revealed that '[a]lthough the state has enacted a progressive legislation to combat domestic violence in the name of the Domestic Violence Act, cases of abuse perpetrated against women continue to increase unabated particularly in the rural communities'.<sup>76</sup> Chuma and Chazovachii further attributed the incessant violence against women largely 'to the failure to adequately implement and enforce the Act due to several constraining factors'.<sup>77</sup> The Domestic Violence Act is also affected by limited publicity at all levels of society.

### 3.3 The judiciary and litigation of harmful practices

The domestication of article 5 of the African Women's Protocol in the local Constitution<sup>78</sup> is proving important in litigation of harmful

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74 OM Oguli et al 'Promoting an integrated approach to combat gender-based violence: A training manual' New Gender Mainstreaming Series Commonwealth Secretariat' (2002).

75 The section establishes and mandates the NPA to institute and undertake criminal prosecutions on behalf of the state and to discharge any functions necessary or incidental to such prosecutions.

76 M Chuma & B Chazovachii 'Domestic Violence Act: Opportunities and challenges for women in rural areas: The case of ward 3, Mwenzei District, Zimbabwe' (2012) 3 *International Journal of Politics and Good Governance* 1.

77 Chuma & Chazovachii (n 74).

78 Sec 80(3) Constitution.

practices such as domestic violence and child marriage. In relation to child marriage, a landmark court ruling was delivered by the Constitutional Court in the *Mudzuru* case.<sup>79</sup> In this case section 78(1) of the Constitution paved the way for the protection of women and girls' rights to marriage by clearly providing 18 years as the marriageable age. In the case the complainants (child marriage survivors) successfully challenged the constitutionality of the Marriage Act and the Customary Marriage Act and sought a declaratory order in the following terms:

- 1 The effect of s 78(1)<sup>80</sup> of the Constitution of the Republic of Zimbabwe Amendment (No 20) 2013 is to set 18 years as the minimum age of marriage in Zimbabwe.
- 2 No person, male or female in Zimbabwe may enter into any marriage including an unregistered customary law union or any other union including one arising out of religion or a religious rite before attaining the age of eighteen (18).
- 3 Section 22(1)<sup>81</sup> of the Marriage Act [Chapter 5:11] is unconstitutional.
- 4 The Customary Marriages Act [Chapter 5:07] is unconstitutional in that it does not provide for a minimum age limit of eighteen (18) years in respect of any marriage contracted under the same.

The applicants in this case were requesting the Constitutional Court to declare the Marriages Act unconstitutional as a result of its inconsistency with section 78<sup>82</sup> of the Constitution of Zimbabwe and global human rights frameworks on the marriageable age. The Constitutional Court declared:

Section 22(1) of the Marriage Act [Chapter 5:11] or any law, practice or custom authorising a person under eighteen years of age to marry or to be married is inconsistent with the provisions of s 78(1) of the Constitution and therefore invalid to the extent of the inconsistency. The law is hereby struck down; and (3) With effect from 20 January 2016, no person, male or female, may enter into any marriage, including an unregistered customary law union or any other union including one arising out of religion or religious rite, before attaining the age of eighteen (18) years.

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79 *Mudzuru and Tsopodzi v Minister of Justice and Legal Parliamentary Affairs NO & 2 Others* CCZ 12/2015.

80 Sec 78 of the Constitution provides as follows: '(1) Every person who has attained the age of eighteen years has the right to found a family. (2) No person may be compelled to enter into marriage against their will. (3) Persons of the same sex are prohibited from marrying each other.'

81 Sec 22 of the Marriages Act provides: '(1) No boy under the age of eighteen years and no girl under the age of sixteen years shall be capable of contracting a valid marriage except with the written permission of the Minister, which he may grant in any particular case in which he considers such marriage desirable: Provided that (i) such permission shall not relieve the parties to the proposed marriage from the obligation to comply with all other requirements of this Act; (ii) such permission shall not be necessary if by reason of any such other requirement the consent of a judge is necessary and has been granted.'

82 Sec 78 of the Constitution of Zimbabwe stipulates that '[e]very person who has attained the age of eighteen years has the right to found a family. (2) No person may be compelled to enter into marriage against their will.'

The judiciary is commended for protecting the human rights and lives of many potential victims of child and forced marriages in accordance with article 5 of the African Women's Protocol, by declaring that only adults above 18 years can enter into relationships of their choice. The judgment proved how the judiciary can be an indispensable actor in the protection and enforcement of women's rights.

In arriving at the judgment the Constitutional Court made reference to article 5 of the African Women's Protocol. It further struck off all marriage laws inconsistent with the Constitution and international best practices. These laws include the Marriage Act (1964) and the Customary Marriages Act (2004). In light of this judgment the Zimbabwean government is in the process of aligning the marriage laws with the Constitution and with international and regional treaties to which Zimbabwe is a party. Indeed, the Marriages Bill is an effective mechanism to ensure that the judgment is effectively implemented for the benefit of young Zimbabwean women. Further, the judgment should be widely disseminated, together with other pieces of legislation that address women's rights *vis-à-vis* harmful traditional practices. These efforts will result in the litigation of many harmful practices against women, even in lower courts.

The *Mudzuru* case had to be discussed in detail as so far it is the only case that has been dealt with by the Zimbabwean judiciary that directly addresses the harmful cultural practice of child marriage. Other cases that have been brought before the courts are cases of sexual abuse and domestic violence due to physical or emotional abuse. However, the study noted a blatant absence of cases of domestic violence related to harmful cultural practices that have been litigated in the Zimbabwean courts of law. This may be because, as Chirawu<sup>83</sup> stated, 'such cases are hard to bring before the courts as they touch on customary law and cultural practices'.

This study further noted a dearth of jurisprudence on other harmful practices such as child and early marriages, *chinamwari* or *khomba*, virginity testing and child betrothal in Zimbabwe's legal system. This might be a result of limited awareness on the part of society about harmful practices and the available avenues for redress in cases of abuse. This is especially the case in most rural communities in Zimbabwe, where the majority of people are not aware of their rights and available mechanisms for redress. A study by the Zimbabwe Human Rights Commission (ZHRC) noted how rural societies are not aware of their rights and available mechanisms for redress.<sup>84</sup> In such

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83 S Chirawu-Mugomba 'A reflection on the Domestic Violence Act [Chapter 5:16] and harmful cultural practices in Zimbabwe' (2016) 1 *Zimbabwe Electronic Law Journal* 10.

84 Zimbabwe Human Rights Commission *A baseline survey on perception, attitudes and understanding on human rights in Zimbabwe* (2015).



communities victims of harmful practices often rely on local traditional leaders' courts that in most cases tolerate the practices. This makes it difficult to find cases regarding other harmful practices that go through the courts to act as jurisprudence in relation to other harmful practices prevalent in Zimbabwean societies. Zimbabwe, therefore, has a long way to go to effectively litigate all harmful practices against women in accordance with regional and national human rights standards.

#### 4 Policy frameworks

The Zimbabwean government implements article 5 of the African Women's Protocol through various national policies. Even without clearly mentioning the Women's Protocol in these policies, the contents of such instruments reflect ideals of the Protocol in relation to harmful practices. Zimbabwe commendably launched the National Action Plan on ending Child Marriages in 2018, with five line ministries and their departments pledging to implement policies and programmes to eradicate child marriage.<sup>85</sup> Similarly, the National Health Strategy for Zimbabwe 2016-2020<sup>86</sup> has three main objectives, the first objective being the strengthening of priority health programmes. Under this goal reproductive health is priority number three. This is commendable as reproductive health mainly is affected by harmful traditional practices such as early child marriage. The Strategy acknowledges:<sup>87</sup>

Adolescents and young people contribute significantly to maternal deaths. Zimbabwe has a youthful population, with two-thirds of the population below the age of 25 years. The youth is one of the key affected population groups as most of the sexual reproductive health indicators for youth are either deteriorating or remaining high.

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85 'National Action Plan on ending child marriages launched' Zimbabwe Broadcasting Corporation *News Online* 19 December 2018, <https://www.zbc.co.zw/national-action-plan-on-ending-child-marriages-launched/> (accessed 20 November 2019).

86 Ministry of Health and Child Care *The national health strategy for Zimbabwe 2016-2020*.

87 See also the Zimbabwe Multiple Indicator Cluster Survey 2014 which stated that the adolescent fertility rate in 2014 was estimated at 120 births per 1 000 women aged 15-19 years. According to 2010/11 Zimbabwe Demographic Health Survey 20,5% of women aged 20-24 years have had at least one live birth before the age of 18 years. The rural-urban differential in teenage fertility is striking, as rural girls were twice as likely as their urban counterparts to become mothers. The decline in the maternal mortality ratio among women of 15-19 years at 21% is much slower than the average decline of 43% for women of 15-49 (MICS 2014).

This Strategy also is in line with the African Women's Decade<sup>88</sup> theme number three which focuses on 'women's health, maternal mortality and HIV and AIDS'. The establishment of such a policy therefore is significant for the protection of women's rights against harmful practices as it complies with article 5 of the African Women's Protocol, precisely the obligation to take all necessary legislative and other measures to eliminate such practices.

The National Gender-Based Violence Policy<sup>89</sup> was designed for the reduction of violence against women. The Policy acknowledges the importance of international instruments ratified by Zimbabwe, including the African Women's Protocol. In its key result area number one on prevention, the Policy includes the prevention of harmful traditional practices such as child marriage and wife inheritance. Furthermore, the Policy clearly states as its output number one the

increased capacity of leaders at all levels to address Gender-Based Violence (GBV) including negative cultural and religious practices that fuel violence against women and girls as the major challenge in combating GBV is to change prevailing beliefs, attitudes and norms that contribute to the acceptability and perpetuation of GBV.<sup>90</sup>

This is language similar to that of the African Women's Protocol which laments prevalent cultural norms and values that affect women's enjoyment of rights in society.

The National Adolescent and Youth Sexual and Reproductive Health Strategy<sup>91</sup> addresses sexual reproductive health challenges among adolescents and young persons between the ages of 10 and 24 years in Zimbabwe. The strategy identifies the key challenges facing adolescents and young people as the high rates of unplanned pregnancies, early child bearing, adolescent marriages, gender-based violence and maternal mortality. In the same way as the African Women's Protocol, this policy managed to identify child marriage and early child bearing as the major challenges facing adolescents in Zimbabwe. Suffice to say that the Strategy is a good working document in as far as the elimination of harmful practices is concerned.

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88 African Union *The African Women's Decade: Grassroots Approach to Gender Equality and Women's Empowerment (GEWE) 2010-2020*. The aim of the African Women's Decade is to advance gender equality by accelerating the implementation of Dakar, Beijing and AU Assembly Decisions on Gender Equality and Women's Empowerment (GEWE), through dual top-down and bottom-up approach which is inclusive of grassroots participation.

89 Ministry of Women Affairs, Gender and Community Development *The national gender-based violence strategy 2012-2015*.

90 As above.

91 Ministry of Health and Child Care 'National adolescent and youth sexual and reproductive health strategy (ASRH) II: 2016-2020'. The 2016-2020 ASRH Strategy II represents the second generation results-based strategy the aim of which is to address sexual and reproductive health challenges among adolescents and young people between the ages of 10 and 24 years in Zimbabwe. Zimbabwe's first ASRH strategy covered the period 2010 to 2015.

The National Gender Policy<sup>92</sup> seeks to achieve a gender-just society where men and women enjoy equality and equity and participate as equal partners in national development processes. The goal of the Policy is 'to eradicate gender discrimination and inequalities in all spheres of life and development'.<sup>93</sup> The Policy can be applauded for making reference to the African Women's Protocol as its guiding document. Therefore, the Policy seeks to give effect to the obligations contained in the Women's Protocol.<sup>94</sup> Such reference to the Protocol as the basis of the Gender Policy brings hope that the obligations contained therein will be complied with.

## 5 Efforts by national institutions and civil society and non-governmental organisations

Government ministries are also important actors in implementing the provisions of article 5 of the Women's Protocol in Zimbabwe. This has been done through research and the submission of state party reports, advocacy, awareness raising through commemorations and the celebration of key African and national calendar events such as the 16 Days of Activism against GBV. In July 2015 Zimbabwe launched the African Union Campaign to end child marriages. This platform allowed for various government ministries and departments to raise awareness through road marches and speeches against child marriages. Platforms such as this re-energise stakeholders and have become routine fora through which stakeholders explore avenues for cooperation, and share notes on efforts to end harmful practices.

However, the positive impact of these efforts by government ministries is limited by resource constraints. Due to limited funding most of these commemorations are planned and executed in urban centres with the exclusion of women in rural areas, where cultural norms and values weigh too heavily against women's enjoyment of rights. In addition, most activities exclude men who comprise an important constituent in fighting harmful practices. Men comprise the majority of economic, political and religious leaders, who wield power over many aspects of women's lives. For this reason men's attitudes and behaviour should not be ignored in efforts meant to end harmful practices.

National independent institutions including the Zimbabwe Gender Commission (ZGC) and the ZHRC are proving to be indispensable institutions in implementing article 5 of the African Women's Protocol. Established in 2009 and becoming operational in 2014, the ZHRC has a mandate to promote research on, awareness of and respect for

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92 Ministry of Women Affairs (n 89).

93 As above.

94 T Mutangi 'The impact of the African Charter and the Maputo Protocol in Zimbabwe' in VE Ayeni (ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 284.

human rights and freedoms, including those of women. In 2015 the ZHRC commissioned a Baseline Survey on the human rights situation in Zimbabwe.<sup>95</sup> The Baseline Survey exposed the challenges, perceptions and attitudes that society has towards cultural practices. Importantly, the ZHRC established a Thematic Working Group on Gender and Women's Rights which is proving to be key in research and awareness raising on harmful practices against women and girls. In 2015 the Commission's Working Group conducted a televised public dialogue with government institutions, NGOs and CSOs and faith-based organisations on the strategies to end child marriage.<sup>96</sup> The dialogue produced a documentary and position paper that were publicised through various media platforms including the press, the electronic media and social media platforms, thus creating awareness on the impact and strategies to end child marriages in accordance with its constitutional mandate and article 5(a) of the African Women's Protocol.

The ZHRC also works together with other Chapter 12 institutions<sup>97</sup> including the ZGC as conduits for implementing article 5 of the Women's Protocol in Zimbabwe. However, the potential of grant-aided institutions such as the ZHRC and the ZGC, as in the case of government ministries, is limited by financial constraints in Zimbabwe. Even with the budget vote from Treasury and supplementary donor funding, the resources remain inadequate for most grant-aided institutions. Few donors are able to partner with grant-aided institutions considering the involvement and need for permission of the responsible Minister when commissions engage a certain donor for funding.<sup>98</sup> As such the ZHRC and the ZGC have had their fair share of financial constraints in advancing human rights. The government has often been criticised for deliberately starving grant-aided institutions of resources and interfering excessively in their work, thus compromising their independence and effectiveness.<sup>99</sup> For the year 2019 the ZGC was given a budget of only US \$2 million for employment costs, operational costs and maintenance as well as capital expenditure.<sup>100</sup> This amount is inadequate to ensure that the ZGC effectively carries out its constitutional mandate, including the protection and enforcement of women's rights against harmful

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95 Zimbabwe Human Rights Commission (n 82).

96 Zimbabwe Human Rights Commission *Annual Report* (2015) 30.

97 Ch 12 of the Constitution of Zimbabwe which establishes five independent commissions of which the objectives include the support and entrenchment of human rights and democracy as well as the promotion of constitutionalism.

98 See sec 17(c) of the Zimbabwe Human Rights Commission Act.

99 M Makanatsa 'Women's rights and gender equality in the new Zimbabwean Constitution: The role of civil society in implementation and compliance' in CM Fombad (ed) *The implementation of Modern African constitutions: Challenges and prospects* (2017) 156.

100 Zimbabwe 2019 Budget Highlights, <http://www.zimtreasury.gov.zw/index.php/resources/2019budget?download=21:2019-national-budget-highlights> (accessed 24 April 2019).

practices. Without adequate resources, national institutions have largely confined their activities to low-cost activities such as human rights promotion through the issuing of press statements denouncing harmful practices against women.

NGOs and CSOs play crucial roles in efforts meant to implement article 5 of the African Women's Protocol through research, education, advocacy and lobbying the government to end harmful practices. In 2008 non-state actors were instrumental in lobbying the government to ratify the Protocol. Thereafter, CSOs continued to call upon the government to implement the provisions of African human rights systems, including recommendations by the African Commission on Human and Peoples' Rights (African Commission). In some instances CSOs with African Union (AU) observer status<sup>101</sup> contribute to the protection and promotion of human rights by taking part in AU processes, including doing research and submitting shadow reports to the African Commission to complement state reports. These shadow reports are crucial as they often provide an independent assessment of the human rights situation which might be lacking in government reports.

Some notable examples of CSOs that implement the African Women's Protocol include the Women's Coalition of Zimbabwe, which works tirelessly to end child marriage. In 2017 members of the Women's Coalition of Zimbabwe<sup>102</sup> launched a two-year project titled 'Amplifying community voices against child marriages' in Norton, Chiweshe and Mbare.<sup>103</sup> The aim of the project is to encourage community action against child marriages by transforming societal attitudes and perceptions to form a strong and coherent voice against harmful traditional, cultural and religious practices that support child marriage in Zimbabwe. Projects of this nature raise awareness at grassroots level, from where the problem of harmful practices, and child marriages in particular, emanates. Therefore, raising awareness and involving citizens at grassroots level can go a long way towards eradicating harmful traditional practices against women.

In most cases NGOs and CSOs forge partnerships with government ministries to sensitise and raise society's level of awareness about harmful practices. Plan Zimbabwe, together with the Ministry of Women's Affairs, Gender and Community Development is implementing the 18+ Ending Child Marriages project in three

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101 Catholic Commission for Justice and Peace in Zimbabwe, Southern African Research and Documentation Centre (SARDC); Zimbabwean Human Rights Association (ZimRights); Legal Resources Foundation (LRF); Human Rights Trust of Southern Africa; Zimbabwe Human Rights NGO Forum; Zimbabwe Lawyers for Human Rights (ZLHR); Zimbabwe Association of Doctors for Human Rights (ZADHR); and Zimbabwe Women Lawyers Association.

102 The members include the Zimbabwe Women Lawyers Association; Women and Law in Southern Africa; and Shamwari Yemwanasikana.

103 The project location has been limited to these three areas due to the recorded high prevalence of child marriages as indicated in the UNFPA Paper on Child Marriages.

programme unit areas. The objectives are to increase support from community members and leaders to discourage child marriage; to empower girls to be better equipped to resist socio-economic pressures that lead to child marriage; and to ensure that community members have increased knowledge of the realities of child marriage.<sup>104</sup> This project has also roped in the Zimbabwe National Chiefs' Council, which is playing a pivotal role in protecting the rights of the girl child by preventing child marriages.

Similarly, Development Aid from People to People (DAPP), a Zimbabwean NGO, launched a four-month campaign to end early and forced child marriages in Mashonaland Province. Conducted between November 2015 and February 2016, the programme mobilised traditional leaders and activists to take action to prevent early and forced child marriages, and raising community awareness on the rights of girls in line with human rights and women's rights statutes. As the custodians of culture, the inclusion of traditional leaders is crucial for ending child marriages and other harmful practices in their societies.

## 6 Conclusion

Despite the constitutional, policy and judicial attempts discussed above, some harmful cultural practices remain prevalent in Zimbabwe. This is partly due to the slow pace of legislative reform that specifically deals with the elimination of harmful practices against women. Such delayed legislative reform is in clear violation of article 5 of the African Women's Protocol. It requires more than legislation and litigation to address this current state of blatant violation of women's rights. There is a need for a more holistic approach that includes the speedy alignment of laws, advocacy, human rights education, awareness raising on legislation, a change in patriarchal mind-sets and political will. In all these efforts, both men and women have an important role to play. Most harmful cultural practices are perpetuated by and for men and the affected parties almost always are women. Nevertheless, not all men are culprits.

For any mechanism to effectively achieve the goal of article 5 of the African Women's Protocol, all stakeholder approaches that involve perceived perpetrators and victims should be implemented. It is key to also address the need for political will from the powers that be to eliminate harmful traditional practices. Put differently, the only durable solution is for everyone to be responsible for the elimination of harmful traditional practices: women, men, civil society, the

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104 B Pazvakavambwa 'Preliminary research into the extent, factors and effects of child marriage research in Zambia, Zimbabwe and Malawi' 2015, <https://static1.squarespace.com/static/5519047ce4b0d9aaa8c82e69/t/57457d5f4d088efc9e56969b/1464171875757/Child+Marriage+Report+-+FINAL+2015.pdf> (accessed 13 June 2017).

judiciary and, of course, the state. It is a shared responsibility and until and unless it is seen in that light, women will continue to suffer the prejudices caused by harmful traditional practices.