IS MARRIAGE A HAVEN OR A RISK FOR WOMEN IN ZIMBABWE IN THE ERA OF HIV/AIDS: INTERROGATING WOMEN`S REPRODUCTIVE RIGHTS IN MARRIAGE.

BY

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Supervisor: Professor J. Stewart

A Dissertation submitted in partial fulfilment of the requirements of the Masters Degree in Women`s Law. Southern and Eastern African Regional Centre for Women`s Law, University of Zimbabwe, 2016
Abstract

The study sought to establish to what extent civil and registered customary marriages in Zimbabwe served as havens or risks against HIV and AIDS. It interrogates the susceptibility of married women to socio-cultural practices and factors that violate their sexual and reproductive rights leaving them with no sexual autonomy. A sample of 160 respondents (males and females) aged between 20 and 60 were drawn to participate in this study from Dzivarasekwa and Harare Central Business District. The individual interviews and focus groups were carried out to measure the levels and extent of the problem of predisposition of HIV/AIDS infection to married women. Key informants interviews were conducted to assess the nature of the problem confronting married women and to try to find solutions to remedy such violations.

This study uses a combination of mainly qualitative and a few quantitative methods of data collection. Using a number of gender-focused methodologies, and Women’s Law Approach, the writer collected and scrutinized an extensive range of data which disclosed that while marriage to some extent was an important factor in curbing the spread of HIV/AIDS it was also a risk factor. It revealed that power dynamics, gender roles and cultural practices have taken away the married women’s capacity to realise and utilise their sexual and reproductive rights. It was established that whereas married women did not have sexual autonomy their unmarried counterparts were in a better place to negotiate safe sex which made them comparatively safer in terms of exposure to HIV/AIDS. Therefore whereas a married woman might not sometimes be able to avoid contracting HIV/AIDS from the matrimonial bed a diligent unmarried woman can avoid the same by safeguarding the exercise of her sexual and reproductive rights.

The study recommends that since it is the implementation of the law that is problematic then the solution should be advocating for the reproductive and sexual rights of married women so as to empower them with the capacity to bargain for safe sex which they are currently lacking and in so doing enabling them to make decisions that reduces their expose to the risk of HIV/AIDS infection.

Keywords: HIV&AIDS, marriage, reproductive & sexual rights, vulnerability, risk, sexual autonomy, socio-cultural practices, prevalence, safe sex, infection, violation, capacity
Declaration

I Bridget Musandirire certify that this dissertation is my original work; it is an honest and true reflection of my personal effort in carrying out this research. I certify that the work above has not been presented anywhere else before for any thesis,

Signed..............................

Date.................................

This dissertation was submitted for examination with my approval as the University Supervisor

Signed..............................

Date.................................

Supervisor: Professor J. Stewart

Director of the Southern and Eastern African Regional Centre for Women’s Law, University of Zimbabwe

Date................................................Signed............................................
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To the class of 2015/2016 for walking this journey with me till the end. May you be fruitful as you put to work the lessons you learnt in the Women’s Law Class.

God Bless You All.
Dedication

I dedicate this work to my loving family, my mother Ms J. Musandirire who contributed to what I am today, my daughter Motrish Ruvarashe and my sister Lettie Moira for supporting me throughout this programme.

I Salute You
# Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>WASN</td>
<td>Women And Aids Support Network</td>
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<tr>
<td>NGO</td>
<td>Non Governmental Organisation</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all forms of Discrimination Against Women</td>
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<tr>
<td>NAC</td>
<td>National Aids Council</td>
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<tr>
<td>SafAIDS</td>
<td>Southern Africa HIV/AIDS Information Dissemination Service</td>
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<tr>
<td>CBD</td>
<td>Central Business District</td>
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<tr>
<td>STI</td>
<td>Sexually Transmitted Diseases</td>
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<tr>
<td>MOHCW</td>
<td>Ministry of Health and Child Welfare</td>
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<td>MOHCC</td>
<td>Ministry of Health and Child Care</td>
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<td>ZDHS</td>
<td>Zimbabwe Demographic Health Survey</td>
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<tr>
<td>ZNNP+</td>
<td>Zimbabwe National Network for People Living with HIV/AIDS</td>
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Human Rights Instruments Cited

The Beijing Declaration and Platform of Action: women and health

The Cedaw Committee General Recommendation Number 19

The Cedaw Committee General Recommendation Number 24

The Cedaw Committee General Recommendation Number 21


The Protocol To The African Charter On Human And Peoples Rights On The Rights Of Women In Africa

The SADC Protocol on Gender and Development

The United Nations Human Rights Committee General Comment No 28

The United Nations HIV and human rights International Guidelines
Zimbabwe Legislation Cited

The Constitution of Zimbabwe Amendment 20 of 2013

The Criminal Codification and Reform Act Chapter 9:23

The Customary Marriages Act Chapter 5:07

The Domestic Violence Act Chapter 5:16

The Marriages Act Chapter 5:11

The National Aids Policy 1999
List of Case Law

Mudzuru & Another v Ministry of Justice, Legal & Parliamentary Affairs (N.O.) Case No: Const Application No 79/14 Media Neutral Citation: [2015] ZWCC 12

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Executive Summary

This study sought to tackle the challenges posed by HIV/AIDS infections in marriage where violation of reproductive and sexual rights of married women takes place through discrimination and power imbalances. It aimed at establishing the extent to which marriage could protect women against HIV/AIDS infection and the extent to which it could harm them through infection and violation of their sexual autonomy. According to UNAIDS (2006) at least sixty percent of infected people in the Sub-Sahara are women and heterosexual sex is the main method of spreading the infection. The cause of such vivid rise in HIV prevalence among women is attributed to the blatant violations of rights and gender inequality.

Gender inequality is a by-product of the socialisation process that creates gender which assigns the roles and status of men and women culturally. Out of gender, power imbalances are created between men and women and these establish women’s unequal access to key resources such as information, education and employment. Yet when decision makers implement HIV programs the gender determinants are either completely omitted or de-emphasized and hardly ever incorporated into the programs. Therefore, simply put if issues of inequality and violations of rights are not addressed in marriage then by and large the attempts to halt the epidemic will remain unsuccessful.

Despite the fact that Zimbabwe is one of the countries in Southern Africa with the highest rates of HIV–infection and notwithstanding all the available information on the AIDS pandemic people still seem bent on changing the way they conduct themselves in the face of the pandemic. Socio-cultural practices such as roora, polygny, promiscuity and dry sex practices are rampant and unsafe sex practices appear to be the order of the day in Harare. In all of this situation locating a married woman’s position is tricky in that not only is she found in a rather vulnerable position but her sexual autonomy is highly disregarded in the face of these socio-cultural practices that reinforce and deepen married women’s subordination and inequality, which in turn increase married women’s risk to HIV infection. So in as much as there are many different ways of contracting HIV/AIDS, many different ways of preventing HIV/AIDS, many different groups of people exposed to HIV/AIDS and many different ways of discriminating against people living with HIV/AIDS the position of a married woman in all this is not enviable at all.
So Zimbabwe remains one of the countries that have not found a specific remedy on how to deal with women in relation to the mounting prevalence and brutal force of HIV/AIDS. Despite the acknowledged decrease in HIV/AIDS statistics over the past few years in Zimbabwe, the HIV prevalence rate among women remains unacceptably high in general. The deadly virus makes married women more susceptible due to their social, cultural and economic positioning in society and as a result they bear the brunt of the HIV/AIDS and its effects. As a result of the summarised position above the discussion revolves around these supposed threats to specific fundamental human rights which ensue from some of these deep-rooted cultural practices that persist to bolster married women’s subordinate position in society.
Chapter One: Introduction

1.1 Pondering On Marriage, Cultural Practices and HIV

“Women’s reproductive health and rights cannot be fully appraised without examining women’s status in the society they live in. Not only do laws relating to women’s legal status reveal societal attitudes that will impinge on reproductive rights, but such laws frequently have a direct impact on women’s capability to implement reproductive rights” (Centre for Reproductive Rights, 2003).

As I ponder more on this quotation and scrutinise the society that I live in the quotation captured the sentiments of married women and the exercise of their reproductive rights. My personal experiences and perceptions are that marriage is the norm in our society and to a very large degree determinative of a woman’s status in society. By Zimbabwe’s society’s standards marriage is considered as an achievement for every woman in which she accomplishes lifetime sanctuary(Nyoni,2008).With that notion in mind the pressure exerted on a single woman to be married by family and society is sometimes difficult to withstand. I hold nothing against marriage as an institution and as a foundation for establishing a family unit because the idea is dignified and from it emanates a lot of benefits for women in society. One of the advantages being that given the right circumstances and conditions in which to exercise the sexual and reproductive health rights in marriage the institution can possibly be a haven for women and protects them from deadly diseases such as HIV/AIDS.

However, reflecting on the quotation mentioned earlier on I am of the view that sometimes marriage is painted as a glowing picture such that in promoting its advancement society blinds itself to the possible risks of HIV/AIDS infection that comes attached to it. So as much as one advocates for marriage which in itself is a commendable gesture one cannot turn a blind eye to the fact that when the same marriage institution is abused or violated the consequences becomes more detrimental for women taking away the sanctuary it is assumed to offer. As I started this research journey I inspected the HIV/AIDS statistics for women and men in Harare and as will be shown in my research background women always seem to be in a worse off position compared to men and the statistics trends for previous years point to the same conclusion.
Taking a look at the group of women who are 18 years and above, infected yet married made me realise that being married and faithful for a woman does not necessarily give them protection against being infected with HIV/AIDS. The question that continued to play on my mind is if marriage should be a haven for women as presumed by society why are married women dying from HIV/AIDS related diseases at all? Taking a step back and reflecting on the past events reminded me that I had witnessed numerous deaths of my married friends and relatives who were mostly women and their causes of death was usually linked to HIV/AIDS diseases though this is known by only close relatives. So as the question continued to be tossed in my mind I took it upon myself to investigate whether marriage is a haven or a risk for married women in Zimbabwe in the era of HIV/AIDS and if so what factors constitutes a risk or a haven element. At the end of my research journey the answer was laid right in front of me as I realised that besides infidelity in marriage there are also certain cultural practices attached to marriage like roora, polygny and dry sex practices that compromised women’s reproductive and sexual rights exposing them to the risk of infection.

1.2 Background to the Research

Zimbabwe identified its first case of HIV in 1985 and ever since then we have been plagued by the virus at an alarming rate as it wrecked havoc, death and pain to the entire nation (MOHCW, 1999).

The literature I have read is clear that the disease has a gendered aspect resulting in women suffering the most (Nyoni, 2008).

The Situational Analysis of December 2014 drafted by National Aids Council (NAC) shows that about 1.3 million Zimbabweans are living with HIV (ZNHAES, 2014).

The NAC statistics shows that the total HIV population for Harare region is currently 40% for men and 60% for women. The total number of new infections is 43.7% for men and 56.3% for women (ZNHAES, 2014).

The above statistics reflects the vulnerability of women in Harare alone in the face of the virus and to worsen the situation according to the 2010-11 Zimbabwe Demographic Health
Survey, the prevalence of HIV in Harare is 17 percent among women and 9 percent among men (ZDHS, 2010-2011).

It is against such background and harsh statistics that as a Master’s in Women’s Law student I decided to locate the further implications of all these in married women lives whose position already makes them more vulnerable because not only does a woman finds herself unequal in a marriage relationship by virtue of society dictates and the subordinate roles that she is placed within the family and public.

1.3 Problem Statement

Marriage in Zimbabwe is highly regarded and it is expected of every woman to take part in it and live up to societal expectations however with it emanates serious health implications as in the process a woman may be exposed to cultural practices such as roora, polygny, promiscuity and dry sex practice which negate their protection against infection of HIV/AIDS. The impact of HIV/AIDS epidemic is felt hardest by individuals who are especially vulnerable to HIV infection and married women are no exception as they constitute a group at risk of infection. The Shona and African society by its very character does not permit women to control their sexuality or their reproductive rights. Basically, women’s capacity to uphold their sexual autonomy is extinguished by their failure to have power to negotiate for safe sex thereby violating their reproductive and sexual rights. Culturally, women’s bodies are believed to be owned and inhibited by men hence the power difference between the sexes lies at the centre of women’s vulnerability to HIV infection as inequality surfaces. Therefore cultural expectations of female timidity and male authority merge to stop women from keenly making choices and decisions about their lives, mainly with view to restricting sexual risks and protecting them and their families’ health.

1.4 Study Objectives

To scrutinize the relationship between laws, policies and cultural practices relating to marriage that predisposes women to infection (Chirawu, 2006).
To show that marriage and its related cultural practices are playing a considerable part in exposing women to the risk of HIV/AIDS and in the process violating a number of human rights entitled to women.

To show if women in reality do not have sexual autonomy despite them being granted by national and international laws.

To show that unless the power imbalances created by the male dominated society and cultural issues are addressed we will not achieve the desirable outcome to curb HIV/AIDS infection.

To show that unless the harmful cultural practices are tackled to encourage change of individual social behaviour/ attitude and adopting relevant coping strategies of HIV/AIDS prevention or reduction will not be achieved.

To also show that the criminalisation of wilful transmission of HIV/AIDS was not the best response in the circumstances because its outcomes are usually harming rather than protective of women.

1.5 Study Assumptions

No matter what type of marriage women find themselves in they are unable to negotiate safe sex with their husbands despite international human rights instruments and national laws that capacitate them to do so.

When men pay roora they acquire procreative powers that disempower most married women from being able to demand safe sex from their husbands.

Women’s vulnerability to HIV/AIDS is increased where they fail to negotiate for safe sex with their husbands.

Economic need, lack of education, lack of formal employment merged with cultural expectations of female timidity and male authority jointly stop women from actively making choices and decisions about their lives, mainly with view to restricting sexual risks and protecting their health.
The incidences predisposing married women to HIV infection is increased by laws, cultural practices and beliefs that govern and surround marriage (Chirawu, 2006).

Safe forms of sex are sometimes limited because there is no open discussion between sexes and whilst female needs are denied male needs usually dominate.

The way in which cultural practices such as roora, polygamy, promiscuity and dry sex practice in marriage dominates women’s lives have the effect of exposing women to HIV/AIDS because women lack capacity to negotiate safe sex.

Subordination of women in marriage is sometimes a result of roora payment.

Where the socialisation process promotes male dominance in sexual matters married women’s ability is restricted when it comes to negotiating safe sex whether bride price has been paid or not.

The harmful cultural practices such as roora, polygamy, promiscuity and dry sex practice are inconsistent with the Constitution and human rights instruments as they violate the reproductive and sexual rights and marriage rights that women are entitled to.

The State’s failure to protect against practices such as roora, polygamy, promiscuity and dry sex practices that increase the risk of HIV violates the right to the reproductive and sexual health ,in addition to a range of other rights.

Criminalisation of HIV/AIDS as a response does not work as it serves to endanger women further.

Criminalisation of marital rape exists on paper only as in practice it is rendered useless by semi autonomous fields such as family and religion.
1.6 Research Questions

Do international human rights instruments and national laws provide for women to be able to control their own sexuality and intercourse yet in reality married women despite the form of marriage they are in are still unable to negotiate safer sex with their husbands.

Do Perceived notions about the role of roora in marriages and in particular the procreative power vested in men disempower most married women from demanding safer sex practices from their husbands.

Is subordination of women in marriage sometimes a result of roora payment?

Does Economic need, lack of education ,lack of formal employment merged with cultural expectations of female timidity and male authority jointly prevent women from actively making choices and decisions about their lives, predominantly with view to restricting sexual risks and protecting their health.

Does the incidences that predispose married women to HIV infection increased by laws, cultural practices and beliefs that govern and surround marriage (Chirawu, 2006).

Do the supremacy of male desires and the refutation of female desires hinder open dialogue between sexes and confines people’s chances of attaining mutually, respectful and safe forms of sexual behaviour?

Does the way in which cultural practices in marriage dominates women’s lives have the effect of risking women to HIV/AIDS because women lack capacity to negotiate safe sex.

Does the failure to negotiate safer sex with their husbands increases women’s vulnerability to HIV/AIDS.

Are the cultural sexual practises harmful to women inconsistent with the Constitution and human rights instruments violating rights they are entitled to?

Does the socialisation process promotes male dominance in sexual matters and restricts married women’s ability to negotiating for safe sex whether bride price has been paid or not.
Does the State’s failure to protect against practices such as roora, polygamy, promiscuity and dry sex practice that increase the risk of HIV violates the right to reproductive and sexual health, in addition to a range of other rights.

Does Criminalisation of HIV/AIDS as a response does not work as it serves to endanger women further.

Does Criminalisation of marital rape exist on paper only as in practice it is rendered useless by self-governing fields such as family and religion?

1.7 Demarcation of the Study

This research was conducted in Harare Central Business District (CBD) and Dzivarasekwa 2. The reasons for my choice of these two sites are that I live in one and work in another so accessibility was the main factor I considered and being familiar with both places gave me an added advantage. In Dzivarasekwa 2, I was in touch with the people that I live with everyday and relate to so it was quite easy to approach them and discuss all the pertinent and sensitive issues like HIV status as they confided in me not withholding information. However in the CBD I had to be more diplomatic when I approached men and women in the street I did not know and had selected randomly because some were hesitant to delve into sensitive issues spontaneously since they also initially suspected me of being a journalist. The NGOS, government departments and ministries were fairly easy to access and most of them entertained me on the very first occasion I consulted them and requested an appointment for the information that I needed except with NAC where I had difficulties accessing information but eventually got it after a while. So not only was I able to plan my research logistics with minimal cost but it was also relatively easy to interact with women and men either at their homes relaxing or whilst they were conducting their business either in the informal or the formal sects with minimal hiccups here and there.
Chapter Two: Law and Literature Review

2.1 Introduction

This chapter explores the human rights framework that informed this study and makes a comparison with the provisions of the national laws and policies to see whether they conform to the international standards. The rights explored are marriage rights and sexual and reproductive rights to understand why married women in Zimbabwe fail to exercise them despite that they are articulated in both international and national laws.

2.2 Human Rights Framework

Marriage Rights

The international law and national law specifies the fact that marriage has to be entered into with the free and full consent of both parties who are to be equal within the marriage. The equality of parties implies that all decisions are to be made with due consultation of each other since the rights and responsibilities are the same for both parties. CEDAW and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa specify some of these rights below and encompassed in these are the rights to make decisions on their sexual and reproductive rights.

These rights will linger in the abstract if not appropriated at domestic level. The State has an obligation to make sure that married women are regarded as equal partners in marriages and enjoy the same rights as men. To achieve this equality, the State has to eliminate cultural practices that discriminate against women and those that promote the superiority of one sex over another. As the discussion in this paper progresses a number of practices such as bride price payment, dry sex practices, promiscuity and polygny will show that they have granted men the view that they are entitled to dominate women.
Convention on the Elimination of All Forms of Discrimination against Women

Article 5: provides that the States Parties should take measures to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. While the article provides this, the reality on the ground in Zimbabwe is that women fail to attain this right because of their socio-cultural and economic vulnerability. The socio-cultural practices continue to play a major role in the life of married women by subjecting them to culture and customs. These socio-cultural practices militate against women by discriminating them against men and in the process making them yield power and authority over to men in marriage.

Article 16: provides that the State Parties shall eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure on the basis of equality of men and women the same right to enter into marriage and the same rights and responsibilities during marriage and at its dissolution. The international human rights instruments sets the marriage rights which eliminates discrimination and gives equality to both spouses. However, this paper will reflect that such rights exist only on paper because as one explores the marriage institution in the Shona society they are bound to realise that ironically the reality is that discrimination of women and their inequality is what characterises most marriages in Zimbabwe.

The very same provisions stated above are also echoed in the Protocol To The African Charter on Human and Peoples Rights On The Rights Of Women In Africa in articles 2, 5 and 6 though this human right instrument goes on to specifically state in article 6 (c) that monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family including in polygamous marital relationships are promoted and protected. It is this failure of the human rights instruments to prohibit polygny that has resulted in its manifestation in most countries whether African or European. However, when the realisation later hits home that polygny have undesirable harmful effects especially for women a turnaround has been made in soft laws like recommendations and guidelines which expressly prohibit polygny and uphold monogamy as will be seen in the progression of this
paper. However, some Zimbabwean men have taken the opportunity to practise polygny as allowed by the laws and the results have been mostly devastating for women.

Zimbabwe has clear obligations under both human rights instruments to achieve the desired outcomes having signed and ratified both documents. In pursuance of Zimbabwe’s obligations to CEDAW the Committee on the Elimination of All Forms of Discrimination reviewed the country in February 2012 and in its concluding observations raised issues pertaining to marriages in Zimbabwe. The Committee’s observation was the persistent discrimination against women by customary laws and practices such as roora and polygamy which was caused by the continuous existence of a variety of marriage laws which granted different rights to men and women (Cedaw Committee, 2012).

The CEDAW Committee recommended immediate amendment by state of all laws and regulations discriminating against women in matters relating to the family, marriage and divorce (Cedaw Committee, 2012). The Committee’s General Recommendation 21 was also used in encouraging the state to prohibit polygamy as the document noted its negative impact on women and children. In concurrence with Cedaw Committees stance to abolish practices associated with customary and religious marriages like polygny the UN Human Rights Committee stated that:

“Equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle. Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently it should be abolished wherever it continues to exist”. (United Nations Human Rights Committee General Comment No 28).

The Cedaw Committee also expressed its concern in the concluding observations at the high prevalence of violence against women in the country and in particular domestic and sexual violence which in many cases went unreported despite the existence of the Domestic Violence Act 2006 (Cedaw Committee, 2012). As a result they recommended that Zimbabwe take adequate and full practical steps to prevent and address violence against women and girls including prosecution considering that it is a form of discrimination against women and a violation of their human rights under Cedaw (Committee’s General Recommendation No 19).

However five years down the line as a nation we are still tormented by the very issues that the Cedaw Committee raised as pertinent and in need of quick amending. The Cedaw Committee
rightly pointed out that polygny and roora are being upheld by the State’s preservation of a combination of civil and customary marital regimes and by the adoption of legislation such as Customary Marriages Act. The continued existence of these practices has continued to pose problems as will be further discussed in this research.

**Reproductive and Sexual Rights**

In 1998 in response to the country`s report Cedaw Committee observed that the HIV/AIDS pandemic and the fact that the very high rate of infection was found among young women who added up to 84% of those infected in the age group of 15-19 years and 55% of the 20-29 year age group (Cedaw Committee, 1998). The Committee was also not pleased with the situation given the risks of transmission to infants through childbirth and breastfeeding (Cedaw Committee, 1998). The Committee therefore urged the government to increase its efforts to combat the HIV/AIDS pandemic and to ensure that appropriate sexual and reproductive health information, education and services are provided to all women and, in particular, to adolescents (Cedaw Committee, 1998). Despite this recommendation being made over ten years ago the problem has persisted up to today and one begins to wonder whether it is the State that has failed to increase its effort to combat the HIV/AIDS pandemic or simply the fact that something else has hindered such efforts and as such people`s attitudes and behaviours should also be partly blamed.

Since the 1998 problem was far from being over the Cedaw Committee in the 2012 report once again referred to it when they expressed their concern over the fact that HIV/AIDS continued to be a health challenge in Zimbabwe despite reports of major reduction in the infection rates and then also pointed (Cedaw Committee, 2012). The Committee recommended that all measures necessary be taken to improve women`s access to health care and health–related services within the framework of the Committee`s general Recommendation No 24 and to promote widely education on sexual and reproductive health and the control of STIs, including HIV/AIDS Cedaw Committee, 2012).

**Article 14(1)** state that State Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes (a) the right to control their fertility(b) the right to decide whether to have children, the number of children and the spacing of children,(c) the right to choose any method of contraception,(d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS,(e) the right to be informed on one`s health status and on the health status of one`s partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices.

This article realises the particular vulnerability of women to infection by their sexual partners and rightly so because in Zimbabwe married women lack the capacity to bargain for condom usage in attainment of safe sex. As a result their right to self protection is violated, their right to use contraception of choice such as condoms is violated and so are the rest of the rights in this article pertaining to fertility and deciding whether to have children or not. In Zimbabwe one cannot know of one`s partner`s status unless they divulge voluntarily because it is a private and confidential medical report and there is no compulsion of the law to have access to such records probably most of the time partners have sexual relations with each other without knowledge of their health status.

**SADC Protocol on Gender and Development**

**ARTICLE 27:** The State Parties shall ensure that the policies and programmes referred to in sub-Article 1 take account of the unequal status of women as well as harmful cultural practices and those biological factors that result in women constituting the majority of those infected and affected by HIV and AIDS and by 2015 to have developed gender sensitive strategies to prevent new infections. This article acknowledges the unequal status of women which is the reality on the ground for married women in Zimbabwe and goes on to show the same harmful cultural practices that fuel the spread of HIV/AIDS infection which are widespread in the Shona society.
The Beijing Declaration and Platform of Action: Women and Health

Section 96 provides the rights of women include their right to have control and decide freely and responsibly on matters relating to their sexuality including sexual and reproductive health. Section 98 states how HIV/AIDS transmission through sex has a devastating effect on women’s health as they normally have no power to insist on safe and responsible practices as a result of the social vulnerability caused by unequal power relationships between men and women in society. The Beijing document brings to the fore reality in Zimbabwe and manages to show a true reflection of the disastrous effects of HIV to women in Zimbabwe who has no bargaining power especially the married ones.

The United Nations HIV and Human Rights International Guidelines

Guideline 8 provides that States should in collaboration with and through the community promote a supportive and enabling environment for women and children by addressing underlying prejudices and inequalities through community dialogue. States should support the establishment of national and local forums to examine the impact of HIV and Aids Epidemic on women and examine issues such as (a) The sexual and reproductive rights of women and men including inability to negotiate for safe sex. (b) Strategies for increasing educational and economic opportunities for women. (c) The impact of religious and cultural traditions on women. Religion is not exempted as a factor that puts women at the risk of HIV/AIDS infection as almost all church doctrines preach submissiveness of women to men and others like Johanne Marange have made polygny as a lifestyle for themselves. (Machingura, 2011)

2.3 National Framework

Elimination of discrimination is not accomplished by enactment of laws alone. This is witnessed by the fact that Zimbabwe has a dual legal system which means that both general law and customary law are recognised as valid systems of law. Yet the existence of both laws in parallel causes a lot of tension and conflict because the choice of law is sometimes to the detriment of women especially where customary law is chosen which is already biased towards men. Therefore whilst a customary marriage is subjected to customs and cultures
which gives women a less favourable position a civil marriage on the other hand leaves her in a more privileged position.

The Constitution of Zimbabwe Amendment (No 20) Act 2013

Section 26 of the Constitution on the issue of marriage provides that the State must take all appropriate measures to ensure that (a) that no marriage shall take place without the free and full consent of the intending spouses (c) there is equality of rights and obligations of spouses during marriage and at its dissolution. Section 78 also goes hand in hand with section 26 as it establishes the founding of a family for anyone who is 18 years and above. The equality on paper is undoubtedly but the implementation show cracks as the manifestation of inequality in marriage becomes too glaring to brush off easily.

In section 52 the right to personal security is granted where every person has the right to bodily and psychological integrity, which includes the right to-(a) freedom from all forms of violence from public and private sources and (b) subject to any other provisions of this Constitution, to make decisions concerning reproduction. Again the law is captured on paper but there is no policing in the bedroom where the power for a married woman to make decisions about her reproductive and sexual rights is taken away from her by her husband.

In section 56 all persons are regarded as equal before the law and have the right to equal protection and benefit of the law without being unfairly discriminated on the grounds of custom, culture, sex, gender and marital status. But the question still stands that in reality are all persons treated equally more so men vis a vis women?

In section 63 every person has the right to participate in the cultural life of their choice but no person exercising these rights may do so in a way that is inconsistent with this chapter. It is with this in mind that the legislation continue to uphold roora and polygny cultural practices in marriage but to a larger extent these practices are a downright violation of women`s rights.

In section 76 every citizen and permanent resident of Zimbabwe has the right to have access to basic health –care services, including reproductive health-care services. However the state must take reasonable legislative and other measures, within the limits of its resources available to it, to achieve the progressive realisation of this right.
In section 80 on the rights of women it is stated that all laws, customs, traditions and cultural practices that infringe rights of women conferred by this Constitution are void to the extent of that infringement. Yes the Constitution is in conformity with the international standards as prescribed but the practises of polygny, roora and dry sex must be put under close scrutiny for the State to eliminate all these three practices unequivocally.

**Marriage Legislation**

Two types of marriages are recognised by the law as will be discussed below and the rights and duties granted by each relationship differ with each type of marriage. Customary marriages are governed by customary law and civil marriages are governed by general law. Due to the gender neutrality of our marriage laws there is no spousal power over each other. Nevertheless, the prerogative to choose the type of marriage one wants to enter into mainly lies with the husband. As a result the reward of being in one type of marriage as compared to another is enjoyed by husband, whereas the negative consequences mainly affect the wife (Dube, 2013). Furthermore, it should be pointed out that ironically the unregistered customary union which is not recognised as marriage by law but by society is the most prevalent in Zimbabwe and ZWLA estimates it at 70% (ZWLA, 2000). In this one as soon as payment of roora is done the marriage is validated by the concerned families and a family is founded.

**Marriages Act Chapter 5:11**

Roora is legally a requirement for this marriage under section 12 of Customary Marriages Act but however this section has fallen into disuse to a large extent. The monogamous nature of this marriage means that one is only entitled to one spouse as long as the marriage subsists. The crime of bigamy is captured as follows in the Criminal Codification Act in section 104

(1) Any person who, being a party to

(a) a monogamous marriage and, knowing that the marriage still subsists, intentionally purports to enter into another marriage, whether monogamous or polygamous, with a person other than his or her spouse by the first-mentioned marriage; or shall be guilty of bigamy and liable, if convicted in terms of
(i) paragraph (a), to a fine not exceeding level six or imprisonment for a period not exceeding one year or both;

(ii) Paragraph (b) or (c), to a fine not exceeding level five.

**Customary Marriages Act Chapter 5:07**

Under the Act only the registered customary marriage is recognised legally and it is potentially polygamous. In the registered customary marriage known as “muchato wekwamudzviti” in vernacular, a man is authorized to marry more than one wife with no requirement to notify his wife or request her consent to marry (Dube, 2013). Section 12 requires proof of roora payment for registering the marriage. The polygynous nature of this marriage is in contrast with human rights principles of equality and non-discrimination. The roora issue also poses the same challenges as polygny.

**HIV and AIDS Legislation and Policies**

**Criminal Law (Codification and Reform) Act (Chapter 9:23)**

Before section 79 was enacted into the Criminal Code it was section 15 of the now repealed Sexual Offences Act Chapter 9:21 which had been enacted to deal with HIV/AIDS. The section came as a result of the realisation that women were vulnerable to HIV/AIDS and so it was prohibiting wilful transmission of HIV/AIDS and marital rape in trying to protect women. However, the law makers did not see foresee that in trying to protect women by section 79 of the Criminal Code they will in fact be endangering them further because women discover their HIV/AIDS first when they go to seek medical attention and when they do whether they disclose or fail to disclose they are likely to be prosecuted as the liable transmitters by virtue of their discovery. In the same manner section 68 of the Criminal Code is meant to protect women yet women rarely use this section because of factors they live within.
Zimbabwe enacted section 79 of the Criminal Code which states that

(1) Any person who

(a) Knowing that he or she is infected with HIV; or

(b) realising that there is a real risk or possibility that he or she is infected with HIV; intentionally does anything or permits the doing of anything which he or she knows will infect, or does anything which he or she realises involves a real risk or possibility of infecting another person with HIV, shall be guilty of deliberate transmission of HIV, whether or not he or she is married to that other person, and shall be liable to imprisonment for a period not exceeding twenty years.

(2) It shall be a defence to a charge under subsection (1) for the accused to prove that the other person concerned—

(a) Knew that the accused was infected with HIV; and

(b) Consented to the act in question, appreciating the nature of HIV and the possibility of becoming infected with it.

Section 68 of the Criminal Codification and Reform Act provides for marital rape and it states that.

It shall not be a defence to a charge of rape, aggravated indecent assault or indecent assault

(a) that the female person was the spouse of the accused person at the time of any sexual intercourse or other acts that forms the subject of the charge:

Provided that no prosecution shall be instituted against any husband for raping or indecently assaulting his wife in contravention of section sixty-six or sixty-seven unless the Attorney-General has authorised such a prosecution;
National AIDS Policy 1999

This policy was brought into place as a response and guide to the past, present and future after the hard hitting HIV/AIDS epidemic had ravaged Zimbabwe. In its attempt to provide a guideline on how to deal with HIV/AIDS the policy fails to adequately provide practical solutions to married women that they can put into effect in trying to protect themselves against HIV/AIDS.

Guiding Principle 4: In the preamble to guiding Principle 4 the policy acknowledges gender inequality, some negative cultural norms and practices as amongst other factors that appear to fuel the spread of HIV/AIDS and upsetting the marital regime and suggest the strategy of advocating for the promotion and sustainability of marital integrity. Yet the policy does not offer concrete solutions on how to maintain that marital integrity.

Guiding Principle 9: This principle recognises the need for all sexually active persons to have access to condoms but the cultural constraints on women’s access to the use of condoms are not acknowledged. The proposed strategies do not include the strategic need for women to be liberated from the cultural constraints or the need to educate the communities so that they adopt new social norms like the use of female condoms and women’s initiation of safe sex.

Guiding Principle 23: Encourages the partners to share information about their HIV status but whilst this is noble this provision is of no legal effect because the legislative provisions in the form of the Health Act do not provide for the issue of partner notification. This guiding principle can only be effective if the necessary legislative framework for mandatory disclosure is enacted.

Guiding Principle 38: The principle since 1999 realised the increase of the widespread gender based violence in marriage in Zimbabwe so they condemned it and prohibited it by use of laws such as the Domestic Violence Act or the Criminal Code. Nonetheless such gender based violence in marriage is still on the rise as seen in this dissertation and the proposed strategies are unsuitable for a married woman who cannot find a permanent solution in staying in a shelter home that protects her from her husband for a temporary time period.
nor does she have the capital to start income generating activities if she is dependent on her husband.

**Guiding Principle 36:** The guideline provides that men and women need to understand and respect their own and each others’ sexuality as this gives both men and women an opportunity to discuss openly and share personal experiences on sexual issues and advantages of adopting and negotiating risk-reduction options. It again advocated for education of women and men about the risks related to certain practices that may facilitate transmission of HIV, e.g., the adverse physical effects of herbs and chemicals which some women insert in the genital area. While the section is quite progressive in its nature the reality on the ground is that the sexual rights of women are not being realised because women use the dry sex methods to protect their marriages and in the event of lack of a better option they will not cease to use such methods even where their health is threatened. Further, the society regards women’s ignorance of sexual matters and reproductive system as a sign of their purity yet the regarding of ignorance as innocence may hold back women from seeking information that is vital to their well-being.

### 2.4 Literature Review

The literature review helped me to get a deeper understanding on the topic of marriage and HIV/AIDS from various angles and different countries. It enabled me to understand how women in general worldwide are facing challenges in exercising their reproductive rights in marriage because of the less significance attached to them by the States generally in realising these rights.

Johns in her article which I strongly subscribe to acknowledged the little concern that is given to the realisation of women’s reproductive rights by virtue of the societal view of their roles as wives and mothers (Johns, 1998). The author indicated that even though acquiring full and free exercise of reproductive rights is lowly placed politically its social importance could not be ignored as the current status of reproductive health among women and the results of its failure is having serious consequences all over the world (Johns, 1998). She had observed a stark contrast between the construction and the realisation of rights of women in the juxtaposition of reproductive rights in United States and those in the international Instruments (Johns, 1998).
Whilst International law ordered that reproductive rights are to be shared equally between men and women however the reality of the power imbalance between men and women did not allow women the ability to exercise the articulated rights (Johns, 1998). The author went on to state that while reproductive rights are constructed and articulated quite differently under international and United States law, the reality is the same under either law- women are still unable to enjoy or exercise their reproductive rights (Johns, 1998). Capturing the above writer’s sentiments was a way of summarising the dilemma of a married woman to exercise her sexual autonomy in Zimbabwe.

Chireshe’s article Monogamous marriage in Zimbabwe: An insurance against HIV/AIDS serves further by helping me to contextualise the challenges of a married woman in Zimbabwe in the fight against HIV/AIDS (Chireshe, 2011). The author’s choice to focus monogamous marriage was due to the already existing assumption that those in polygamous unions were already at a greater risk of contracting HIV/AIDS than their counterparts in monogamous marriages (Kelly, 2006). Chireshe considered marriage since heterosexual sex is the most common way of HIV transmission accounting for 88-98% of all infections (Moyo, 2005). In his paper Chireshe concluded that monogamous marriages were perceived as having the possibility to protect the couples against HIV and AIDS (Chireshe, 2011). He however qualified that conclusion by revealing that whereas it was men who regarded the monogamous marriage as a protective institution in relation to HIV and AIDS because they are physically and socially prevailing in marriage women doubted that protection at all because of the domination of men and their lack of capacity to bargain for safe sexual conditions (Chireshe, 2011, Chitando, 2004).

The author’s view that monogamy had the possibility of being a haven emanated from his arguments that monogamy made sure that couples were sexually gratified which deters them from having extramarital affairs and that the fear of HIV/AIDS infection deters couples from infidelity (Chireshe, 2011). The author however quickly pointed to that kind of security being given by marriage only if both partners are HIV negative upon marriage and that both continue to be faithful to each other till death (Chireshe, 2011). The author went on to show that indeed monogamous marriage were considered a risk factor as the unions were dangerous because generally there was not faithfulness in this marriage or the fact that some people enter into marriage infected and infect the other spouse (Chireshe, 2011).
The author acknowledged women’s vulnerability to the virus as emanating partly from unequal power relations between men and women and the domination of men which sometimes is expressed through violence (De Lange, 2006, Kelly, 2006). Therefore, an infected man can use his social and muscular powers to force sex on his wife yet a wife whose husband was promiscuous and fears infection is not able to negotiate for condom usage besides the reprimands and accusations she is likely to be heaped with (Chireshe, 2011). The author in his article points to the fact that marriage is considered by most women as a risky business and the women believed that single women had a better capacity to employ use of safe sex practices with their sexual partners to protect themselves against infections (Chireshe, 2011). Chireshe acknowledged that this finding was similar to that of Muzvidziwa’s (2001:151) who had conducted a study in Masvingo in informal marital unions (Kuchaya Mapoto) which indicated that they were in a better situation than women in formal marriages who were “sitting ducks in the face of HIV/AIDS “because of lack of sexual autonomy which was rather found to be high in their counterparts who were co-habiting (Muzvidziwa, 2001).

Chirawu’s article Till Death Do Us Part: Marriage, HIV/AIDS and the Law in Zimbabwe reinforced Chireshe’s main finding that married women in were facing a double edged sword Zimbabwe their rights and obligations as married women made it difficult for them to insist on safe sex practices and in that regard formal marriages potentially expose wives to HIV/AIDS infection (Chirawu, 2006). The author pointed out that this disempowerment of women originates from roora payment coupled with marriage vows which denote sex as the essence of marriage (Chirawu, 2006). Chirawu’s conclusion that cultural practices increase the incidence of and predispose married women to infection (Chirawu, 2006) subscribes to Chitando’s (2004) finding that women in society are expected to condone men’s infidelity as part of culture and bear with it because men always do it.

Whilst Chireshe’s and Chirawu articles concluded that marriage was indeed a risky business to a large extent , Gumbo’s article mainly concluded that indeed marriage was the haven that offered sanctuary to married women because his findings had shown that they had lowest prevalence rates thereby implying that marriage strongly protects Zimbabwean women against HIV/AIDS infection (Gumbo, 2011). Whereas Chireshe and Chirawu’s articles were qualitative his had an empirical evidence component mainly. Gumbo had based his premises on Hattori’s proposal that married people should have a lower risk of HIV/AIDS due to the
long term sexual exclusivity offered by marriage so he investigated the viability of marriage in reducing HIV/AIDS infection (Hattori et al., 2006). The author’s research interests had been further advanced by Shishana and Reither’s articles that suggested a link between HIV/AIDS and marital status but had failed to establish which marital status is associated with the highest prevalence rate of HIV/AIDS (Shisana et al., 2004; Reither, 2009).

Gumbo’s correctness of his findings are in serious doubt due to the following factors. First his study could not establish in the case of formerly married women like separated/divorced or widowed who are HIV positive whether they were infected whilst single, in marriage or after leaving marriage (Gumbo, 2011). Further in the case of the marital status being categorised as never married, currently married and formerly married his findings that the lowest prevalence was among currently married could be challenged on the ground that it is highly likely that formerly married women especially widows could have been infected in marriage as they were married and only became categorised as formerly after their husbands passed away (Gumbo, 2011). And the author himself suggests that it is only sensible to connect their risk of HIV/AIDS infection with marriage. The low HIV/AIDS prevalence among currently married is because women who have the highest risk of HIV/AIDS infection were excluded from the category, yet in fact it is where they likely got the risk (Gumbo, 2011).

The researcher concluded by prescribing marriage as a possibly behavioural practice that can be recommended in reducing infections among women in Zimbabwe because of his findings (Gumbo, 2011). He however hastily rushes to conclude that marriage on its own can hardly be effective in successfully fighting HIV/AIDS infection without promotion of other behavioural practices such as being faithful to one sexual partner, consistent condom use and regular HIV testing are all complementary to marriage (Gumbo, 2011). The main finding in this research is the same finding concluded in the Zimbabwe Demographic and Health Survey 2010-2011 that married women have the lowest risk of association which raises the same critique used here by the author as it equally applies to their finding.

With Gumbo’s article which offered hope I sought to explore further empirical studies on the link between HIV/AIDS and marital status. Kposowas article indeed sought such answers in relation to HIV/AIDS death and marital status. Kposowas data analysis revealed that indeed marital status is associated with HIV/AIDS deaths. The author found out that single/never
married, divorced and separated had the strongest associations with such deaths thereby elevating marriage as a buffer which provides a stable sexual network and a social control (Kposowa, 2013). The author’s further finding was startling that marital status is a significant factor for mortality from HIV/AIDS but this association is only valid for men as it had no significant association with death for women (Kposowa, 2013). My conclusion here was that since this article is Western based it only indicated that HIV/AIDS patterns and its effect on women may differ depending on whether one is situated in Africa or Western countries because whereas married women die here in large numbers because of HIV/AIDS related diseases the trend in western countries is totally different.

So in my next article I returned back home to Africa and inspected how the Ugandan community had fared in the face of HIV/AIDS. Mukiza-Gapere and Ntozi in their article showed that AIDS have negatively affected the marriage institute in the community (Mukiza-Gapere and Ntozi, 1995). The marriage business have become a fearsome one such that each person is regarded as a moving corpse, a victim or a carrier of HIV/AIDS (Mukiza-Gapere and Ntozi, 1995). Though others were being faithful in their marriages most of the marriages are wrecked by divorce and separation because of the virus (Mukiza-Gapere and Ntozi, 1995). Married women have become sacrificial lambs because they could not divorce their husbands on the ground of infidelity and if they were infected by their husbands with HIV then it was regarded as their fate (Mukiza-Gapere and Ntozi, 1995).

Polygny ironically had become a protective institute in that community as co-wives cooperate in making sure the husband did not get out of the existing sexual network to look for another woman (Mukiza-Gapere and Ntozi, 1995). The authors said that AIDS has dampened the institution of marriage still others ignored it and continued to live reckless lifestyles (Mukiza-Gapere and Ntozi, 1995). This situation aptly describes our Zimbabwean situation as the reality that people are living every day.

In rounding off my literature review I chose to inspect Madrama’s article which focus on the vulnerability to HIV/AIDS within the Baganda people through customary marriage and norms. It explores how through high risky behaviour the social and cultural factors predispose married people to HIV infection (Madrama, 2003). The author stated that since the discovery of HIV in Uganda in 1982 demonstration has shown the vulnerability of women as higher than that of men where the virus is transmitted heterosexually (Oleke, 1996). The
degree of this vulnerability to women is credited to their subordinate status in relation to men and their lack of capacity to control their sexual and reproductive rights hence the unavoidable conclusion that they are powerless as a result of socio-cultural and economic factors to avoid infection in marriage. (Reid and Hamblin, 1993). Basically women have no power to control their husband’s activities in and out of the matrimonial homes so they have no choice but to accept exposure through their husbands. Madrama insists that use of condoms as a mitigation strategy is unrealistic in addressing the married women’s situation and men who function under norms, rules and values generated by socialisation and the dynamic social fields which control their lives and behaviours and in certain circumstances invoking risky behaviour (Madrama, 2003).

The author states that customary marriage creates situations where couples are at the risk of infection but advises that playing the blame game of treating the problem of HIV/AIDS as caused by husbands is not viable since a husband only infects his wife after having been infected by another woman (Madrama, 2003). Sayagues concurred with Madrama by stating that treating the problem as male-driven isolates men in policy and responses to the problem (Sayagues, 2003). Hence this comes as a lesson to us as Zimbabweans that even as we look at HIV and marriage isolation of men as the main perpetrators in solving the problem may not be the best response considering that it takes two to make a marriage work and where they are involved they are likely to come up with better strategies for prevention and reduction of the HIV virus.
Chapter Three: Research Methods and Methodologies

3.1 Introduction

I used a variety of methods and methodologies during my research and they all worked differently in shaping the research and in data collection and as a result I was able to get cogent findings.

3.2 My Research Journey: Methodological Approaches

The approach takes women’s real lived experiences and life based situations such as sexuality as the starting point for the investigation of the position of women in law and in society. In my quest to find answers I investigated the reality of married to see whether they considered marriage as a haven or a risk in the face of HIV/AIDS and harmful cultural practices such as polygny, dry sex practices ,promiscuity and roora. Due to the sensitivity of the topic on sexuality issues I chose my starting point as Dzivarasekwa 2 ,ward 1 where I live and since I am quite familiar with the residents they were be able to open up to me and in the process say exactly what was on their minds without feeling like they were being judged. In the same manner, I decided to concentrate in Harare Central Business District where I have the advantage of working and thereby making it easy for me to access the relevant key informants and the women as they went about in their activities.

As I sought the views of the ordinary women in homes and streets I approached them wearing multiple faces so as to gain their confidence and therefore was a fellow woman, a lawyer, a friend and a confidante. These multiple faces enabled me to witness the lived reality of women as I witnessed their daily lives and routines through interacting with them differently depending on what suited the situation most. As a fellow women, friend and confidante the women were able to tell me whether they were enjoying their marriages or not. They elaborated their roles in marriage as wives and mothers. The women were able to confide their fears related to marriage and HIV/AIDS. For example most married women stated that they feared the risk of infection because they indulged in unprotected sex as their husbands refused any suggestions of condom use. Some of the women were also concerned about the infidelity of their husbands as posing the risk of infection. The women who are HIV positive and were infected in marriage managed to narrate their story in their own way and as a result
capturing their voices was an easy task. I discovered that although these women had come from different classes and social statuses but to a larger extent their marriage experiences were almost similar in several aspects. I also realised that most of these women were unaware of the full extents of their reproductive and sexual rights but again I ask myself a simple question even if they are aware to what extent would they be able to practically enforce these rights in light of several impediments. As a lawyer these women consulted me on very intimate issues as they tried to explore different legal avenues available to their legal problems connected with their marriages.

I embarked my research with a human rights approach in mind because my research entailed a lot of the human rights aspects but of more importance to me were the reproductive and sexual rights and the marriage rights. As is witnessed by their articulation and formulation in international law these rights are asserted and protected because everyone is entitled to enjoy them irrespective of their sex, nationality, religion, culture or status. Throughout my research I consistently questioned the findings I was gathering from a human rights perspective in order to examine whether reality on the ground tallied with conformity to human rights. So as I interviewed and related with each married woman I would also indirectly look at whether she was enjoying her marriage and reproductive health and sexual rights. Whether the state was playing its part of the obligation by protecting, respecting and fulfilling these rights and upholding them.

The Human Rights approach is an excellent way of helping the government to take action against problems that HIV/AIDS create by providing a framework on which laws and policies are also formulated in line with the human rights standards. The State has invoked the principle of progressive realisation of human rights in terms of health rights as an acknowledgement of financial constraints due to limited available resources.

Zimbabwe as a pluralistic country recognises the existence of customary law at the same with general law. This customary law system recognises established customs and practices of the community. Legal Pluralism helped me to identify the fact that different women were married under different marital regimes and the obligations and their rights granted by these marital regimes favours others as they discriminate against others. For example whereas couples in a civil marriage could get away without paying roora the couples in registered customary marriage finds it difficult to do the same.
Gender thus entails on the one hand, men’s and women’s active roles in society and on the other hand ingrained social ideas about femininity and masculinity (Bentzon A.et al 1998). What men and women should do and how they ought to behave and interact spliced together with culture, social and legal interpretations of perceived gender differences constitute a gender system (Bentzon A.et al 1998).

The gender issue was explored to see whether women and men are socialised into roles by society and what is the impact of that socialisation on women in marriage and how it negates their rights coupled with the cultural practices that put them at the risk of infection. This analysis helped me to understand how the reproductive roles of being a mother and a wife implicate on the marriage and reproductive rights of a woman. I was also able to investigate the notion of being a father, the husband and the head of the house through the voices of both women and men. I was also able to discover that the ranking of society between men and women was not the same and it is this same ranking that is carried into marriage. Incorporating voices of males also helped me to understand that women equally could also bring the virus into the matrimonial home and infect the husband who is faithful.

During my research I sought to interact with the key players whose role is crucial in HIV/AIDS combating programmes and these included government ministries and departments, NGOs dealing specifically with HIV/AIDS issues and women and churches. The actors in these structures included government and NGO officials whose task is mainly implementation of the various programmes on HIV/AIDS and the beneficiaries cascaded basically to women and men based though on various categories. The private doctors in surgeries and pharmacists in pharmacies who are always in constant touch with women and men for treatment of HIV/AIDS related diseases and dispensing of drugs among other sicknesses. The key informants were able to discuss the position of women and men in society, in marriage in relation to HIV/AIDS.

The identified structures included the Ministry of Health and National AIDS Council whose responsibility is at the core of co-ordinating and facilitating of the national multi-sectoral response to HIV and AIDS. The National Prosecuting Authority responsible for implementing the law by prosecution of cases such as marital rape and wilful transmission of HIV/AIDS. The NGOS I interviewed were the Zimbabwe Human Rights Lawyers an organisation that fights for the rights of indigent women in court including in cases of wilful
transmission of HIV/AIDS cases and. I also approached Women and AIDS Support Network (WASN) and Zimbabwe National Network for People Living with HIV (ZNNP+) and both organisations advocates for the rights of women though ZNNP+ also advocates for men as well who are already infected and laws and policies that protect women from infection. Initially I was not aware of the existence of WASN and was only referred to it after I had called ZWRCN an NGO which I had found on the internet and thought that they could help me with my research. I also interviewed SafAIDS whose interests are similar to those of other NGOs and whose mandate is to protect the rights of HIV positive people, to interact with people at large in the fieldwork and promotion of policies and laws that seek to curb the HIV infection.

I included the apostolic churches of Johanne Marange and Johanne Masowe as actors yet I chose not to approach the leaders of the sects but the ordinary members of the churches that I knew from my workplace and by so doing I was able to obtain the lived realities of women and men in the Johanne Marange sect as the church members related to me first hand and uncensored information of what transpired behind closed curtains in their church when it comes to issues of marriage, polygny, child marriage, roora and dry sex practices.

Catherine Mackinnon identified gender as a question of power with the male sex dominating the female sex which in turn has to submit to supremacy (Tong, R, M, 1994). In essence this theory attest to the view of every woman and man I interviewed who recognised that men and women in this society occupy imbalanced positions of power hence the reason why women continuously find themselves unable to make important decisions concerning themselves despite that they have the ability. The dominance theory is reinforced by factors such as culture, economy and religion. If the husband is the breadwinner of the family and his wife is at his mercy as she entirely depends on him for survival so even if the husband cheats on her she has no option but to stay and condone his behaviour because she has no other source of income to empower her to leave so she is bound to remain with her husband. The religious atmosphere only reinforces this dominance of men as they preach the deference of a woman to her husband even in the face of promiscuity as they encourage a woman to stay in her matrimonial home and forgive her husband and pray as she tries to work out her marriage using the biblical scriptures.
Simone De Beauvoir explained how woman is defined as the other with no autonomy as humanity is measured in maleness and man as a woman is only defined relative to man not in herself (Tong, R, M, 1994). As I looked at this theory in reality during my research the same theory seem to surface frequently as men’s interests were dominating over women’s interest. For example it was men who chose the type marriage he felt comfortable in and most advantageous to him. Married women most of the time have no choice in whether they wanted to have children or not and neither can they control any sexual condition pertaining to their bodies on how, when and where to have sex with their husbands. Basically their sexual pleasure is insubordinate to their husbands.

3.3 Data Collection Methods

I employed a number of data collection methods in helping me to collect evidence from various sources.

Table 1: Group Discussions

<table>
<thead>
<tr>
<th>Place</th>
<th>No Of Group Discussions</th>
<th>Males</th>
<th>Females</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salons</td>
<td>1</td>
<td>5</td>
<td>15</td>
<td>25</td>
</tr>
<tr>
<td>Flea Market C/C</td>
<td>1</td>
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<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Flea Market 4th St</td>
<td>1</td>
<td>5</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Premier Clinic 4th St</td>
<td>1</td>
<td>5</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>4</td>
<td>21</td>
<td>41</td>
<td>67</td>
</tr>
</tbody>
</table>

The Table Shows Focus Group Respondents
3.4 Focus Group Discussion

I used this method almost four times in my research whenever I came across large groups of women and men who were eager to participate by listening and sharing their own views on the research. It was very easy to have these focus groups because the topic itself drew women and men together in places like salons and flea markets and clinics where people are already clustered in groups and when anything of interest is discussed they automatically join in with or without invitation. This topic by its very nature went to the core of their lives as it touched on their everyday life and so they were more than willing to express their views without holding back. This made the discussion more interesting as the members of the group tried to outdo each other. The biggest problem I faced was the fact that sometimes it was difficult to control the activity of the group with others leaving and others joining at any point. Again, there was a bit of competition between men and women who were trying to blame each other or justify their actions. But this kind of method is time saving as you gather the opinions of so many people in a short space of time instead of going around trying to interview each one of them separately. So at the end of the day you do a lot of work in a relatively short time.
### Table 2: Individual Interviews

<table>
<thead>
<tr>
<th>Interviewees</th>
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<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street</td>
<td>6</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>Markets</td>
<td>0</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Offices</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Homes</td>
<td>10</td>
<td>30</td>
<td>40</td>
</tr>
<tr>
<td>Church</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>35</strong></td>
<td><strong>53</strong></td>
<td><strong>76</strong></td>
</tr>
</tbody>
</table>

#### 3.5 Collective /Individual Interviews

These interviews were conducted with ordinary men and women that I chose randomly in their homes, workplaces or in the streets obtain their views on my research. Sometimes I would collectively engage two or three people at the same time. These interviews were a lot desirable to me and more intimate as an individual felt more comfortable speaking about their marriage woes in the comfort of their home without fearing that someone would overhear the sensitive stories narrated or issues brought to the table. These interviews however tends to be time consuming as the person normally ends up wanting to tell you all their life story including the unnecessary bits and I had to practise patience over and over again. A few individuals actually walked away especially in town and I was left to wonder whether their reluctance to talk was out of mere unwillingness or that I had touched on raw nerves the moment I bring marriage and AIDS together.
Table 3: Key Informants Interviews

<table>
<thead>
<tr>
<th>Interviewees</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doctors</td>
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<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Pharmacists</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>MOHCC</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>NAC</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>SAFAIDS</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>WASN</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>ZNNP+</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>ZHLR</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>11</td>
<td>6</td>
<td>17</td>
</tr>
</tbody>
</table>

3.6 Key Informants Interview

This method involves collection of data from the perceived “knowers” or those with experience on the issue or some people of influence in the community. I made appointments with government officials and NGOs and they were granted without hassle and easily. I was also able to talk to private doctors who happen to be my family doctors and pharmacists as well. The key informants gave me a deeper insight of my topic at both a theoretical and
practical standpoint. Whereas the NGOS gave me crucial information on women and men, their sexual and reproductive rights and HIV/AIDS issues, Zimbabwe Lawyers for Human Rights and The National Prosecuting Authority gave me the legal implications of the same issues whilst NAC and The Ministry of Health and Child Care came in with a health perspective and when the issues are combined the results are a force to reckon with.

3.7 Observations

I made various observations throughout my research. I did a lot of observations on women as they fiercely discuss this topic during focus groups as I sometimes would move from the forefront to the backbench to observe their body language, facial expressions and change of emotions and I did the same observations with those women who confided in me about their HIV positive status as I normally gave them the stage to narrate their story as I watched for their emotions and body language. I even observed the conduct of women and men whilst I was visiting in their homes. I observed women and men selling herbs/chemicals for dry sex practices and their customers purchasing the same products. Observing women at various stages in the research helped me to able to see where they were portraying sincere feelings and where they were trying to impress their fellow counterparts with the knowledge they possessed on this particular subject.

3.8 Phone Interviews

My phone interview was limited to one instance where the official was always busy and always out of office in the fieldwork outside Harare and after several attempts to set an appointment in person failed I resorted to the telephone interview to gather the data I wanted because the official was the only person who could give me what I needed and so we agreed to do our interview telephonically and I had the privilege of a workplace that offered me this phone service without incurring expenses on my part as it was quite a long call.

3.9 Policy and Documents Review/Internet Research

This was a combination of internet and library research where I was trying to gather information from articles, books, international instruments, national policies and laws and literature review on women’s sexual rights in marriage and the implications of HIV.
3.9.1 Limitations of Study

The study has been limited in that I was only able to focus my attention on two locations in Harare that is Dzivarasekwa and the CBD. The study was also focused on the Shona society to the exclusion of other ethnic groups such as Ndebele. This is because of constraints encountered, such as financial resources to go around many suburbs in Harare, time, distance and human resources. Granted time and opportunity an inclusion of all ethnicities and both the urban and rural areas nationwide would give a complete understanding of the Zimbabwean women’s sexuality and the problems they face relating to HIV/AIDS in marriages. Despite, these limitations the methods and methodologies used gave sufficient information to draw conclusions about women’s sexuality and socio-cultural practices that hinder behavioural change of women in era of HIV/AIDS.
Chapter Four: Investigating the Socio Cultural Practices Arena

4.1 Introduction

This chapter focuses on findings and it dwells on specific socio cultural practices that are marriage related and increase the risk of infection to married women and compromising their reproductive rights in the process.

4.2 Socio Cultural Practices

Cultural norms and beliefs are recognised as promoting dangerous sexual behaviour among individuals especially women and they are regarded as a key factor in the spread, transmission and treatment of infectious diseases globally (Doherty et al, 2005, Akwara 2003, Parker 2001).These include roora, polygny and promiscuity and the dry sex practice.

4.3 Roora

Various terms are used to define lobola which consists of a number of stages before a couple is said to be married. Among the Shona –speaking people in Zimbabwe, the practice is referred to as roora (WLSA, 2002).The term roora is where in a marriage process bride price is paid by the husband’s family to the wife’s family. Roora consists of essentially two stages the introductory where small payments are made to indicate the beginning of marriage and the main stage where bigger payments are made of danga (father’s cattle) (WLSA, 2002).

As I went into the field I started to recognise the significance attached to roora by the Shona society in general and I also begun to realise that this was one cultural practice they were not prepared to part with easily without a fight no matter the negative effects that could directly or indirectly emanate from it which were possibly harming to women. On the issue of roora one Tsitsi started by remarking that...

“Hapana mukadzi asingade kubvisirwa roora chero ari kuchaya mapoto chaiwo nekuti zvinopa unhu”. The respondent meant that every woman wanted her bride price to be paid including those in informal unions because it gives woman dignity.

In acknowledging the important role of roora in any Shona woman’s marriage the respondent pointed to the fact that even those co-habitating were still looking forward to payment of
roora someday no matter the number of years they have stayed in such a union. The female respondents view was that roora was a culture that should continue to be upheld as it gives women validates the status of women in society and went on to say that sometimes out of desperation some women ended up paying for their own roora. The female respondents were socialised to accept that the portion known as “rusambo” in roora implies that the husbands have unlimited sexual access to the wives they paid for roora.

The male respondents subscribed to the view that roora is the pillar of a family as propounded by the female respondents. The male respondents did not view the practice itself as the problem but the way it was being commercialised in modern day. One respondent argued that roora is only playing a “victim role” in marriage where some men use it to validate their superiority and dominance in marriage creating inequality.

The NAC official stated that most married women by virtue of our Shona society and cultural expectations where roora has been paid are precluded from making decisions on sexual and reproductive issues within the marriage hence increasing their vulnerability to HIV/AIDS. The women’s sentiments were that roora transfers their permanent ownership to their husbands and as such in a discernible way disempowers women thus restraining them from accomplishing safe and satisfactory sexual health. In confirming this position one of the respondents Tendai said,

“Kuramba kuita bonde nemurume akakubvisira roora chinhu chakaoma uyezve varume vacho havazvitambiri”.The respondent meant that if a husband paid bride price for his wife she found it very difficult to refuse him sex and even where she attempts to do so the husband does not take kindly to such behaviour.

So roora makes women the subject matter of the contract rather than a party to it and with these intimate relations subordination of women begins and dependency is institutionalised. The described situation above is succinctly captured in May’s proposition when she said that men will never regard women as free and equal members of the society as long as lobola system exists.(May, 1987:41).
4.4 Polygny and Promiscuity

According to ZDHS (2010-11) polygny is the practice of having more than one wife. Eleven percent of women in Zimbabwe are reported to be in polygynous unions. And in Harare out of the 972 women that ZDHS interviewed 85, 1% said that there were in monogamous unions, 5, 1% said that they had 1 co-wife, 0, 9% said they had 2 co-wives and 8, 9% did not know whether they had co wives or not bringing the total to 100%(ZDHS 2010-11).

Promiscuity is a practice where one has more than one sexual partner whom they indulged sex with either married or not. I looked in the ZDHS for the percentages of men and women in Harare who had 2 partners and it indicated that women had 1.75% whereas men had 12 % (ZDHS 2010-11).

Customary Marriages Act allows men to be polygynous thereby increasing the risk of infection to women and even married men under Chapter 5:11 were also committing a lot of bigamy these days by marrying women under customary law without either divorcing the first wife or in addition to the presence of the first wife. Polygny increases the risk of infection for women and men in such marriages because if their co-wives are not sexually satisfied or financially catered for they are likely to go out and have extramarital affairs and in the process contracting STIS and AIDS and the whole cycle of sexual partners network are automatically at risk. Polygny mostly entails women who are not independent economically and looking for security in marriage though they are a few women who are educated and capable of providing for themselves but are still part of these polygynous unions probably because they want the status of a wife. The women respondents stated that polygny these days was identified as either disclosed or undisclosed and most of it took place without the knowledge of the first wife or the co-wives such that by the time they realised they are in a polygynous situation a lot of compromise has already occurred including their sexual and reproductive rights unless practised by religions such as Johanne Marange sect that publicly embraced polygny.

The women respondents complained that the practice was biased and favoured men whilst it disempowers women as it allows men to prevail over women... In subscribing to this view that shows inequality between women and men as endorsed by society one woman said....

“Barika harirambidze murume kutora vakadzi vakawanda zvaanoda asi haribvumidze vakadzi kuita zvimwe chetezvo uye haripe vakadzi simba rekuriramba kana murume
“Yakashatira circulation yezvirwere mazuva ano zvepabonde kunyanya HIV/AIDS”. The women meant that polygny’s main disadvantage was the increased risk of infections such as STIs or HIV/AIDS.

though a few women indicated that it might be a good solution in the case of a wife’s infertility or bareness most of them generally disliked polygny and only entertained it for certain reasons and mostly out of little or no choice of their circumstances. This observation was also made by Rodriguez (2007) who stated that sometimes Zimbabwean women give in to polygny as a result of culture or fear of social discrimination.

The women said that they stay in polygny for various reasons such as to look after their children, financial or economic dependence on the husband as shown by one of the woman who said,

"As long as murume ari kundichengeta ndinogara akatora mumwe mukadzi why should I leave? The respondent meant that as long as the husband looks after her financially she had no reason to leave if he takes another woman.

All women agreed that promiscuity was like a fashionable trend on the rise where men generally were regarded by society as the main actors. The women acknowledged that although some men were deterred by religion the trend had actually increased with the small house saga prevalence to an extent such that a considerable number of married women had also joined the train of extramarital affairs. Beauty said...

“Anenge ahurirwa solution ndeyekuhurawo it’s a 50/50 situation arwadziwa ngaabude”.The respondent meant that when one of the couples discover the other is committing adultery they resolve to do the same so that they are at par and whoever is hurt most will get out of that marriage.

The male respondent simply indicated lack of respect for the marriage institution in our society by couples as the cause of promiscuity as he pointed to one of the newspapers known as H-Metro which on the particular day I interviewed him had the following headline,
“Married woman dated 27 men and aborted 5 pregnancies within 5 years”.

He also stated that this behaviour for men was a result of compensatory behaviour that comes into play in that what a man cannot get from his wife he gets it from his girlfriend because girlfriends are willing to please married men in any way and treats them so good which a married wife with many duties and obligations may be unable to do. In support of his colleague another male respondent stated that...

“Dzimba idzi midhuri chete”. This respondent’s meant that other couples just lived in matrimonial homes as a formality but they are otherwise as good as divorced and it is only the marriage certificates that holds them together for failure of getting divorce.

The male defended their own actions that resulted in them having extramarital affairs and bluntly stated that if women fail to perform their wifely and motherly duties they were prepared to flee and seek solace elsewhere.

WASN director stated that men normally start cheating during courtship and women still pursue that relationship to get married because society says,

“Hapana murume asingaite misikanzwa”. She meant that there was no man who did not cheat.

She went on to say that in most marriages usually the man cheats and the woman forgives all the times and eventually HIV/AIDS come as part of that cycle because married women find it difficult to refuse unsafe sex with her husband even when she is aware that he is coming from his girlfriend. She stated that culturally it is allowed and acceptable for men to have more than one sexual partner besides his married wife but the same does not apply to women and society chastises the deviants for attempting to do the same. Women stated various reasons why they stay in marriages despite their husband’s promiscuity and one of the reasons was that

“Vakadzi vanofira kusada kusekwa kuti ndakarambwa”, This means women risk death in marriage for fear of being ridiculed as a divorcee so they persisted in failed marriages all their lifetime.
4.5 Dry Sex Practices

Dry sex practice is when women dry and tightens their vagina for sexual intercourse (Brown JE, Ayowa OB, Brown RC, 1993). Traditional herbs and medicinal drugs and substances are used to dry the vagina before and during sexual acts. This is achieved by inserting various drying and absorbent materials and agents before and during the sexual act itself (Soul City et al, 2009). The reason for dry sex practice is simply to get rid of excessive fluids in the vagina and increase friction during sex. The main reason for using such preparations is to ensure a tight, warm vagina without “excessive” vaginal secretions during sexual intercourse (Runganga A and KasuleJ, 2010). Women engage in this practice to increase sexual pleasure for men (Runganga A, Pitts M, McMaster J, 1996)

This is one prevalent practice in Harare done by women to sexually please their sexual partners and in so doing to avoid the wandering of the husband to someone else if they do not get sexual satisfaction. One woman Chido said,

“Varume kana muri pabonde havadi mazimvura mvura anobuda pamukadzi vanoda friction instead”. She meant that during sex men preferred dry to wet sex.

So in their quest to please their husbands they seek these products from different sources such as pharmacies, traditional markets and even sangomas and prophets and these products were either processed or traditional unprocessed herbs. The women stated that they normally do not enjoy the sexual experience as they usually bruise and tear their intimate parts due to the friction that they would have created by trying to restore virginity. As a result women are prepared to keep their sexual partners no matter the price even at the expense of their own health.

The pharmacists and street vendors of these dry sex products acknowledged that business was booming as usual. One male pharmacist confirmed the discomforts caused to women by using alum salts to illustrate an example that if women puts the salts on cotton and directly put the cotton in their vagina without dissolving it first they will experience the burning sensation that is painful. The sellers on the streets on the other hand praised the efficiency and effectiveness of their traditional herbs and one of those sellers indicated to me that.
“Ukashandisa mushonga uyu ukarara nemurume hapana kwaachabuda achienda kunotsvaga bonde zvekare”. The vendor’s statement was to the effect that once you used the herb on your partner they will never be promiscuous again.

Both the doctors and the pharmacists indicated that the practice had severe health implications for women as it increases their chances of contracting cancer of the cervix. Further they also stated that the friction that is desired by women and men bruises and tears during sexual encounters and exposes them to easy contraction of HIV/AIDS. In subscribing to this view The Ministry of Health and Child Welfare in 2000 noted that women practise such acts as dry sex practice because,

“Sexual pleasure is perceived to be under the control of the male counterpart and women are not supposed to express enjoyment. It is believed that sex is centred on the pleasure and satisfaction of men putting women at the risk of carcinoma of the cervix and other infections”.

Figure 1: Picture of Ivan woman wash herbal soap used in dry sex practices by women in Harare.

The picture of the soap was taken from the glass counter of a herbal pharmacy in Nkwame Nkrumah and surrounding the soap are winnowing baskets and one contains another unidentified product used in dry sex practices.

4.6 Emerging Issues Discussions

During my research a lot of emerging issues arises and amongst them was the hard hitting fact that promiscuity was no longer a male domain only because some women were also busy practising it for various reasons and this pose the risk to men of contracting HIV/AIDS in
marriage. This issue brought to my attention one important point which was that maybe it was high time we moved away from regarding men as the sole transmitters of the virus into marriage as women in some instances were also solely responsible for the same act. This was even confirmed by one male interviewee who is also a close friend who was able to narrate his story of how his wife brought this virus into the marriage though he was lucky enough not to be infected and how she still went on to have extramarital affairs in their marriage when their financial situation went downhill as a result of the husband’s loss of a job. The other issue raised was that roora instead of the positive cultural connotations it should carry it is now a get rich quick scheme (commercialised) and no longer serves its original purpose of being a token of appreciation that unites two families and as a result of this twist women were also bearing the negative brunt that comes with such commercialisation. This was described as an undesirable situation and both sexes were against the way roora was being handled in modern days. Further to that argument men were arguing that roora was discriminatory to them as men were not paid for in marriage. Another of the emerging issues was that there is the practice of child marriages in the polygynous set up found in Johanne Marange Apostolic Sects. This issue was crucial because from the interview with one of the respondents who attended this church the girl’s lives were at a cross roads as they experienced untold suffering in these so called marriages. With the prohibition of child marriage through the recent constitutional case of Mudzuru (2015) it remains to be seen whether churches like Johanne Marange sect will implement the changes by making a complete turnaround of their doctrine or they will continue secretly with such practices until forcefully stopped by the hand of law. As if the situation is not already a dire health hazard for women in that church they also give birth at “chitsidzo” without receiving medical attention even when they develop birth complications like fistula. When that is compounded with their doctrinal teaching that for a man to be regarded highly and respected and have a position in church the man had to have many wives and many children the doctrinal teaching of the that church makes women more vulnerable.
4.7 Further Analysis

4.7.1 Marriage and the State

The law is contradictory in that whilst the Constitution invalidates some of these harmful cultural practices other pieces of legislation still upholds them such as the Customary Marriages Act which still allows polygny and roora payment. The Customary Marriages Act by allowing polygny allows men to have multiple sex partners as they will excuse their behaviour by referring to the law yet a formal recognition of polygny union’s amounts to strengthening of the patriarchal idea that women should inactively agree to their husband’s sexual decision making. Section 12 of the Customary Marriages Act which retains the provision of proof of roora when registration of marriage is sought for an African couple seek to keep women in subservience position because by payment of roora a woman is positioned under her husband and by implication it is the start of the inequality system as the purchaser and purchased relationship gives one power over the other(source). In light of all these circumstances described above it leaves no imagination as to why reproductive and sexual rights in marriage are violated continuously and consistently despite clear cut legal obligations? The answer lies in the limitations of law as one recognises that the law ends somewhere and the social realm begins to operate hence the need to look further than law formulation in order to protect these rights.

4.7.2 Women, Roora and the Right to Sexual and Reproductive Health

Roora is related with children and family lineage, and as such, directly control decisions about family planning and safer sex practices (Ansell, 2001). Roora as it is linked with reproduction can generate circumstances where men think they should have power over reproductive decisions after paying roora resulting in them refusing to use any contraceptives or practice safer sex (Bawah, Akweongo, Simmons, & Phillips, 1999). This is subscribed to by (WLSA, 2002) which stated that roora is paid for the woman’s reproductive capacity and it is usually considered the woman’s fault if there are no children born in the marriage. Roora has also the result of shifting the procreative function of the wife to the husband’s family hence the children born belong to the husband(WLSA ,2002). Since roora is still a requirement under custom if a woman’s family realises that she had a marriage without their involvement they will leave her to deal with her marital problems alone and the grooms family will not view her as their wife culturally(WLSA ,2002). So African women normally
will not have the courage to marry or to register their marriage without involving their family completely.

So with disempowerment hanging around her how can a women be in a position to bargain about anything, including sexuality and safe sex, especially in view of the real threat of sexually transmitted diseases including HIV/AIDS) whether to have any children or not, the number of spacing of such children and her general reproductive health requirements unless empowered to do so. Considering that the exercise of reproductive rights by women is far from reality even with the existence of international law because of the patriarchal model which govern our society on the one hand and traditions and negative practices existing in our society on the other hand (WLSA, 2002). A clear violation or bodily integrity is illustrated clearly where a woman has to seek her husband’s permission before conducting family planning and where she continues to bear children against her doctors advise because her husband said so (WLSA, 2002). If a woman does not have control of her fertility her health is affected negatively because it gives her husband the power to decide she dies or leaves in operation cases that has reproductive connotations (WLSA, 2002). Hence, one cannot deny that a better consideration of factors that impact sexual and reproductive decision-making, including roora, is crucial as it can facilitate in efforts made to prevent HIV infection in Zimbabwean women (WLSA, 2002).

4.7.3 Conclusion

Everything puts the framework on equality between spouses and in theory men and women should be sexually equal but married women appear to be unable to do so that married women lack the capacity to demand safe sex so in practise this is not happening because socio-cultural aspects comes into play.
Chapter Five: Marriage And Reproduction: Is It Marital Bliss or Myth?

5.1 Introduction

This chapter presents the findings of my research pertaining to marriage and a discussion of the key issues that ensue.

5.2 Marriage

Figure 2: Picture of a monogamous marriage taking place in the form of a wedding

Source: Internet: www.mas.leon.com

Marriage is sold as glamorous and this is an image of a perfect couple. The embroidery on the husband’s suit matches the wife’s gown.
Such advertisements are everyday occurrences and one begins to think whether this is all about upholding the marriage institute or rather it has become a money making scheme that gives one the impression that is it marrying the dress or the person that is in question.

Both key and individual informants subscribed to the fact that marriage is regarded as a socio-cultural practice that is generally held in high esteem such that every woman should participate in it if she is to be regarded as a “real good and complete woman” . This social duty in society requires that every women of every class and social status should partake of it. The significance attached to marriage and family as a prevalent notion in Zimbabwe is highlighted by one Rutendo (30) who said,

“Muchivanhu chedu chechiShona munhu wese anonzi mukadzi anotarisirwa kuroorwa nekuvaka imba yake akatadza kudaro haana chiremera mumhuri kana nzvimbo yaanogara”. She meant that in our Shona culture every woman is expected to settle down through marriage and establish a family of her own otherwise failure to do so means that society will fail to respect her as much as they respect a married woman.

Chitauro-Mawema (2003:14) reiterated the same view by observing that when it comes to marriage Zimbabwean women considered it the eventual destination.
It was also my part of my findings that the society validates marriage by the payment of roora no matter what kind of marriage the parties intended to enter into and when such payment is not made the families of the couple frown upon the relationship and may never even accept that relationship as marriage even where they could be existence of a marriage certificate that legally recognises the couple as married. A significant number of the women in focus groups who were either never married or divorced/separated indicated they frequently resisted the ongoing pressure around them to marry since they were hesitant to commit themselves when they look at the challenges that were part of the marriage institution.

Marriage is indicated as a risk factor that enhances the risk of vulnerability of women to HIV/AIDS infection. The Director of WASN captured this when she said that in her view the urge of being married maybe a bigger need that demands one`s attention first before one can contemplate their personal health. Hence where roora is paid for a woman she is socialised not to refuse her husband sex whenever he requests for it. Furthermore once roora has been paid in Shona culture the woman bind herself to the husband as her only sexual partner whereas the same does not apply to men who have the liberty to pay bride price for more than one wife. So roora as a companion of marriage is used by men as a justification for asserting control over their wives’ sexuality and reproductive rights as they claim that they bought her.

Therefore married women cannot use condoms even if they believe that they are positioned at a risk of contracting HIV/AIDS whilst their single counterparts to a greater extent succeeds in asking their sexual partners to use such protection. One of the women said that when she once attempted to request for use of the condom she was scolded by her husband who said to her,

“Ndinyadyire sweet yangu mupepa here ndiwe wave hure rangu here wakazwiwanezi zvauri kutaura unofurirwa neshamwari dzako”. The respondent meant that her husband was refusing use of condom by alleging that he will not eat the sweet he purchased in its plastic wrapping and neither was she his prostitute that she could make such a request to him and he was blaming her behaviour by putting the blame on her friends.

In affirmation of that position Dr Bopoto stated that, “

“The incapability of married women to use condoms exposes them to HIV/AIDS as they lack the bargaining power to ask for safe sex and to protect their reproductive rights”.

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Married women are expected to fulfil and honour expectations related with their roles, and they perform their task and function in childbearing notwithstanding the risk of contracting HIV/AIDS. The respondents stated that marriage and reproduction in Shona society were inseparable because without bearing children in a marriage it is never regarded as a complete marriage and as a result if a woman is unable to have children polygamy ultimately follows or promiscuity with a small house lurks somewhere in the shadows or she ends up divorced and sent back to her parents. The male respondents stated that the use of condoms in marriage was unacceptable because it contravened the African culture pursuance of fertility.

To show the importance of fertility one respondent stated that,

“Kubara ndiko kunokudza rudzi nedzinza saka mukadzi asingabare ane nhomo panyika”. She meant that the sole existence of a woman is based on her ability to have children otherwise failure to do so means she has problems for a lifetime.

Simply put society requires women to reproduce and reproduction of such nature includes unsafe sex thus exposing women to HIV/AIDS. This is a view that was subscribed to by both officials in NAC and Ministry of Health that non use of condoms predispose women to the incidence of HIV/AIDS. From the discussions and interviews that I undertook, it was the stereotyped teachings that come with marriage in the Shona society that made women more vulnerable to HIV/AIDS as they consider themselves duty bound to please their husbands sexually. By merely looking at these findings marriage and its institutional demands and rewards can be labelled as one of the socio-cultural practices that increase Zimbabwe women’s vulnerability to HIV/AIDS.
This woman is posed as the perfect image of a wife who is capable of fulfilling her procreative role as expected by the society and in the process proving her fertility capabilities.

5.3 Linking Marriage and Violence

Throughout my research fear was a common denominator among married women that I interviewed as they tried in every possible manner not to upset the balance in their marriages. It was this same fear that barred them from actively asserting themselves in sexual matters or any other matters of importance that directly concerned them. This fear was sometimes unspoken and implicit but sometimes it was caused directly by the violence that was meted out to them by their husbands in marriage which included, physical, verbal, emotional and financial. The ultimate fear which was held by these women was the dissolution of their marriages. Violence therefore presented a much bigger problem for the same women who cannot leave their marital home for one reason or another because they want to hold on to the
married title and avoid shaming their parents and relatives by coming back home as divorced. One respondent clearly stated that,

“Zvinonyadzisa kunzwa kuti munhu akarwambwa nemurume pamusoro penhau dzebonde”. She meant that it was a shaming act that one would be divorced by her husband for sexual issues.

Therefore for various kinds of fears surrounding marriage collapsing the women choose to ignore their reproductive health.

The Zimbabwe SADC Gender Protocol Barometer (2014) observed that regardless of the country’s fairly strong Gender Based Violence (GBV) legal framework the incidence of all forms of violence against women, especially physical and sexual violence were still increasing (Barometer,2014). They also realised that the most common form of GBV which were suffered by women and committed by men happened in intimate relationships (Barometer,2014). About 90% of the women interviewed suffered intimate partner violence (IPV) while 73% of the men admitted to causing this form of violence (Barometer,2014). The same information is substantiated by the Information Bulletin Series, Number 1 study that highlighted that it was a result of the high rates of HIV infection in women that have put into sharp focus the problem of violence against women.

The Ministry of Health and Child Welfare (2004.45) did not fail to notice that

“The exposure of women /girls to HIV infection was result of the manifestation of power imbalances in the form of sexual violence”.

However the above assertion confirmed my findings that there is no open discussion of sex issues between both sexes as a result of the dominating positions of husbands. The female respondents attested to wife battering as normal and common in households either to themselves or witnessing their fellow women go through such. The female respondents did not fail to acknowledge their worries over the gruesome murders that were publicised in the national television Zimbabwe Broadcasting Cooperation and the newspapers that we read every day that shows murders done in the name of love. As a result of these domestic violence murders cases were flooding the judiciary system as the State sought justice on `behalf of the murdered women mostly and their relatives. As illustrated by the recent headlines in the following article and the picture below
Figure 5: Picture taken from Newsday Newspaper article published on the 3rd of March 2016 on gender based domestic violence.

Source: Newsday Newspaper published on the 3rd of March 2016

This Newsday article here confirms the link of gender based violence to marriage as this woman was killed intentionally by her husband on the basis of suspicions of infidelity yet most of the husbands are promiscuous and goes scot free most of the time because of the power imbalance in marriage.
Article: Dilemma of domestic violence victims

Source: Internet: www.sundaymail.co.zw published on the 28th of February 2016

This is a picture taken from the internet showing a Zimbabwean married woman who is suffering from gender based violence in a marriage set up. It confirms the assertions made in this research that where there is violence women fail to stand for themselves in issues that affect them such as sexual matters.

This kind of violence results in women adopting a silent culture where they would rather not talk about sex or insists on condoms. One of the respondents Fadzai stated that,

“Kana uchida kunetsana nemurume kana kurohwa naye taura nyaya yemacondom mumba”. The respondent simply meant that the requests of condom use could result in one either being verbally abused or more so being beaten by the husband.

As a result I came to realise that the use of force by husbands to have sex with their wives is a risk factor in itself. This kind of violence and its threat support discrimination between men and women compromising the autonomy of the women, their health, their security and dignity. This is worsened by the fact that other people in society still accept wife beating for
supposedly bad behaviour thereby normalising domestic violence in the process and making it a private business rather than putting it into the public arena for legal scrutiny. Koffi Anan the Secretary General (2005) observed that a woman who experiences violence daily cannot is not a free woman because this fear and violence results in submissiveness and as a result is unable to negotiate sex and in the process risk infection whilst endeavouring to please men.

This I also witnessed from one of my respondent Nyasha who stated that she was coerced by her husband into having unprotected sex with him about four months into the marriage. The respondent was given an ultimatum by her husband’s family after a meeting was called by the “aunties” as soon as her husband had reported her to them, that she either indulges him and have unprotected sex or she immediately leaves the matrimonial home and she gave in and contracted the virus within a short space of time. In her heart rending words she said,

"Kuda imba ndiko kwandisvitsa pandiri nhasi kwandiita nditarisane neguva ndiri mvana mudiki pamusoro pechirwere chandasangana nacho nhasi nekuda kuwanikwa”. She meant that her desire to be married had led her to her death as a young woman because of the HIV/AIDS infection she had contracted on the matrimonial bed.

This was simply a young woman’s lamentation of the position that marriage has put her beyond the feared risk of infection by most married women into the real situation of having contracted the virus straight from the matrimonial bed. And she is representative of many other women in this situation who either feel too embarrassed to speak of their HIV status or who are now just resigned to fate. The respondent will never know whether her husband got the virus from his previous marriage or the exposure of multiple sex partners all the time he lived as a divorced person. But what will remain clear is the fact that the husband was probably aware of his HIV positive status hence the refusal to go for HIV testing and through the coercion of unsafe sex he passed on the virus under the guise of marriage. So it is safe to conclude that fear and violence in marriage is a factor that impedes attaining of safe sexual methods for women in the face of HIV/AIDS.
5.4 Substantive or Formal Equality in Marriage vs Sex Relations

The husband is considered the head of the family and holds the decision-making power in all family matters. From the beginning of relationships there is major power imbalance from which makes it impossible for a woman to attain her own sexual autonomy. The Mudzuru case gives a ray of hope to the inequality suffered by women from the inception of marriage and by removing the child marriage the platform was set a stage higher for achieving substantive instead of formal equality. (Mudzuru, 2015).

The Mudzuru case identified that gender inequality in marriage originates from the differential treatment of girls and boys which is then formalised by the impugned legislation and in this case particularly section 22(1) of the Marriages Act and Customary Marriages Act in so far they allowed a girl child who is less than 18 years to be married (Mudzuru, 2015). The judge pointed to this as an old stereotypical perception which destined women for home and child rearing whereas males were the ones qualified to work in the public sphere (Mudzuru, 2015). The women respondents confirmed the stereotypical view on the ground when they said men can never see their wives as equal counterparts in marriage because they basically think that there cannot be any equality between the two sexes as men regards themselves as more superior than women.

However taking a deeper analysis of the pluralistic marital regimes in Zimbabwe provides one with gaps of inequality before, within and after marriage. The implementation of the law is personal in that it only regulates the behaviour of a person but not their attitudes therefore have its limitations. For example in the choice of marriage the law does not give women the bargaining power because power remains in the gender relations between male and females in society as a result men usually chose the type of marriage that he feels comfortable with and as witnessed by the statistics most of the marriages are in fact unregistered customary marriages (Dube, 2013). Most of my female respondents desired to have the Chapter 5: 11 marriages complete but most of them found themselves “stuck” with unregistered customary unions as their husbands are reluctant to register the marriage for various reasons such as that women begins to disrespect their husbands when they have marriage certificates. As a result of the socio-cultural expectation to be married the man’s whim to choose the type of married he wants is indulged and a woman will remain in any type of marriage even that not of their choice rather than being single. This situation as outlined here shows that the provision of the
human right instruments and the reality on the ground does not tally as marriage equality is largely documented in law but not in reality. The Zimbabwean society has been largely identified as one where community priorities precede the individuals’ (Rodriguez, ND; Dunkle et al, 2008, Mhaka, 2010). For this reason traditional norms and values which are revered by the community which in most case are in favour of men are likely to act as a vehicle for HIV/AIDS transmission among women through their partners.

5.5 Semi-Autonomous Social Fields (Religion, Family and Society) vs Marriage and Marital Rape

“Vakadzi vanorepwa mudzimba asi vangani vanoenda kucourt nesociety yedu ino akasazvinyarira anenge achitsiudzwa nevamwe kuti ndochii chawave kuita ichocho”. (SafAIDS Official, 2015). This means marital rape occurs often in marriage but not many women go to court because of the society because if not ashamed yourself to report others will be busy reprimanding you for attempting such prosecution against your husband.

Zimbabwe is one patriarchal society that is flooded with other factors besides law that control what happens in marriage and these include family and society, and religion itself and the operations of these factors are so strong that married women do not get away from its grips that easily. The family and the society will try to keep a woman in a marriage no matter that it turns out to be good or bad at all costs because divorce and the single status is still something they still prefer not to deal with in their families. Women before they go into marriage are already socialised to respect their husbands. Mary Sandasi of WASN captured this situation nicely when she indicated during our interview that it was the “aunties” of the woman that started by disempowering the woman by teaching her that she should succumb to sexual relations with her husband without any questions whenever he so desires. The aunties referred to here are the sisters of the fathers bride who when their niece gets married they sit with her and explain the expected roles and duties she is required to perform when she goes to her husband’s matrimonial home and one of the duties taught to her is that she should never refuse her husband sex no matter the circumstances to protect him from seeking extra marital affairs. The ladies at kitchen parties also do the same task and same preaching.

So when she gets married submission is already a priority in her marriage and she does not think of the consequences of such silence on her health as a woman until she is given a rude awakening by maybe getting STIs or HIV itself. Whilst the family and society are playing
their part religion comes in and reinforces the message of submissiveness. The religious background one has always influences on the way one lives and acts. Therefore religion and its teaching expose women to the risk of HIV/AIDS especially on the doctrine of submission as per biblical scriptures.

From the respondents I interviewed I discovered that in Johanne Marange sect condom use is nonnegotiable and neither is taking of medication of any sort for any disease as going to medical institutions is forbidden yet marriage is expected to take place within the circles of the church meaning that there is high risk of infection and reinfection both ways. The subordination of women to men in a way means they owe their HIV status to men for example where in church a woman is expected to forgive her husband for infidelity and pray whilst still performing all her duties as wife and mother. In affirmation of this view the Ministry of Health in 2000 stated that,

“*The submissive role of women disempowers and makes her unable to question issues pertaining to their health and sexuality. The inability to question pertinent issues regarding their sexuality makes women susceptible to HIV/AIDS and STIs*”.

Society knows no marital rape when there is a presumption that a woman must submit sexually to her husband whether she wants sex or not. As a result many married women from different classes and social status are made prisoners in their own homes because marital rape occurs often enough in the matrimonial homes yet women feel powerless to do anything about it because the society they live in does not acknowledge marital rape. The respondents in the field acknowledged that marital rape is common but women have learnt to turn a blind eye to it to avoid societal castigations. Rudo said,

“*Kakawanda mupenyu paunonzwa kusada kurara nemurume asi anongokumanikidza chete nekuti varume vakasikwa vachingoda zvebonde zvakanyanya*”. Respondent simply meant that marital rape occurs often enough and a woman is powerless to do anything about it.

Nonetheless the failure of women to protect themselves from sexually transmitted diseases within a marriage is a dangerous factor in light of the high prevalence of HIV/AIDS infections in Zimbabwe.

To understand the position of women in terms of legal implications I then interviewed prosecutors in their offices who stated that marital rape issues were a thorny ground to
explore. Whereas the law criminalises that conduct and gives women the right to sue the perpetrator most of the women never approach the court on such issues though of course marital rape cases are prosecuted now and then. The prosecutors stated that marital rape was tainted with scepticism as one would never be sure whether the wife is bringing the case with a genuine cause or to fix her husband for one wrong doing or another hence the safeguard to obtain the Prosecutor’s General authority. The prosecutors agreed that to a large extent criminalisation of marital rape was rendered weak by the society and the church who advocates against it by their teachings. The Criminal Code and Reform Act section 79, 68 and are meant to deter marital rape and wilful transmission of HIV but in reality the law it fails to act as a deterrent and in the end a lot of women are being infected quietly at home.

5.6 Criminalisation of Wilful Transmission of HIV/AIDS and Its Effect on Married Women

As has been indicated above married women are exposed by marriage and its cultural practices. In subscribing to this view the SaF AIDS official said that a woman can be exposed to the risk of contraction of HIV/AIDS during her normal performance of sexual duty without the slightest knowledge that the husband is now positive. In the case of wilful transmission by husband to wife of HIV usually the criminalisation of laws is rendered useless as most of the times infected women do not approach courts of law to prosecute their husbands.

According to the female respondents they chose to keep their marriages intact rather and accept their fates especially where they are dependent on him financially and economically. One of the respondents clearly said,

“Kana ndabatwa chirwere kuburukidza nehunhu hwababa ndinotambira zvinorwadza asi hapana pandichasiya vana vangu kana musha wangu nekuti zvinenge zvichabatsirei nekuti hachirapike”. She meant that once she is infected through her husband she is prepared to stay in her matrimonial home as there are no measures she can take that will change her HIV positive status.

So unless there is breakdown of the marriage criminalisation is never an issue with women.

The problem that comes with criminalisation of wilful transmission of HIV/AIDS is that women becomes the target point indirectly by virtue that when they get pregnant and go for antenatal classes they are tested for HIV/AIDS and hence most of the time they discover their
HIV status first. The fact that they discover their status first create a problem when they go back to disclose it to their husbands who normally reacts negatively by deserting/divorcing them and remarrying which only increase the spread of infection and by prosecuting them under section 79 of the Criminal Code and Reform Act as the liable transmitters of the virus. The law fails to take into cognisant certain factors at the start of the prosecution such as the fact that the woman may actually be a victim of circumstance who only got infected by her husband in her marriage but is the one that normally discovers her status first most of the time.

In the end it appears as if by virtue of the first discovery of the virus she is the infector. In that regard the law rewards the real perpetrator by prosecuting the innocent victim. S v Mlilo (SC 340/12) is a typical case of how section 79 violates women’s rights and puts women at a disadvantage. Mlilo was in an abusive relationship and was the first to be tested when she got pregnant and could not disclose her HIV positive status to her husband for fear of violence against her. She was convicted despite there being no conclusive proof that she is the one who had infected her husband. ZHLR has approached the Supreme Court in this matter.

Although the prosecutor stated that most of the time they usually fail to prove beyond reasonable doubt who infected who and so most of those cases usually end in acquittals, women in a number of cases have been prosecuted successfully and have to challenge their cases in Constitutional Court as seen by the pending cases of Pitty Mpofu v State SC96/12 and Samukeliso Mlilo v State SC340/12 to mention a few. Therefore the dilemma and position of women cannot be overlooked in the criminalisation of wilful transmission of HIV/AIDS.

Therefore, Zimbabwe Lawyers for Human Rights (ZLHR) subscribes to the fact that criminalisation is a bad response and section 79 needs to be repealed as it infringes on the human rights of women and fuels gender based violence as women are the ones more likely to know their status first compared to men. When they test positive they have to disclose to their spouses thereby face the risk of abuse, violence and eviction from matrimonial home. If they fail to disclose they will face prosecution. In addition, Section 79 is wide enough to cover mother to child transmission in cases of pregnancy. However, the Prosecutors were adamant that this law was specifically enacted with the purpose of protecting women from
wilful infection of HIV/AIDS and so far the law seems to be doing a great job in their eyes when women were diligent enough to invoke it.

Nevertheless WASN director agreed with the ZLHR point of view and stated that she was amongst the women`s civic group that fought for criminalisation of wilful transmission but in so doing they never thought of who will be criminalised and it is turning out that women get sued mostly as they discover their HIV positive status earlier than men. She went on to say that in her own opinion criminalisation actually victimise women and having realised their blunder later on that women will suffer from criminalisation of wilful transmission the civic groups are now in need of coming together to try and rectify this error by taking a look at the law and try to advocate for its modification/repealing where suitable.
Chapter Six: Conclusion and Recommendations from the Study

6.1 Concluding Remarks

This chapter presents a summary of the research and recommendations which flow from it. Generally the conclusion of the research is that the Zimbabwean legal framework grants women marriage rights and reproductive rights and autonomy as provided for under various regional and international human rights instruments. The problem within the Shona society under examination is that despite the availability of such law the implementation of such law is the problematic aspect because married women fails to realise and utilise their rights not only because they do not know their rights but because even with such knowledge the patriarchal nature of the society holds them back.

It has come to my realisation that when it comes to the control of sexual behaviour in a marriage it solely depends on one’s willingness to change their attitudes, their beliefs and concepts of power and sense of responsibility. When it comes to bedroom issues the arm of the law has its own limitations in the social realm because at some point it stops and other social ideologies and philosophies come into play to inform an individual choice therefore there is need for a more holistic approach that extends beyond law to come into operation. Limitation of the law means that addressing married women’s vulnerability to HIV/AIDS remains a challenging issue because the factors that catalyse married women’s vulnerability are often the result of deeply entrenched social and cultural roles and stereotypes.

The married women’s vulnerable position frequently require them to go on with unsafe or harmful practices merely because the social, economic and cultural costs of avoiding these risks may be too high. Basically a woman’s life is at a juncture because on the one hand there is patriarchy and harmful stereotyping which equates a woman’s worth with her reproductive capacity and on the other hand the women’s subordinate role in communities are also exposing a vulnerable woman to the risk of infection.

Married women are easily susceptible to the virus because of their limited bargaining capacity in sexual encounters notwithstanding the fact that the right of reproductive autonomy is assured in the Constitution. The reality on the research ground gives a clear picture of how absent the realisation of these rights are from most of the lives of the married
women. Ultimately specific behavioural changes are required to address the issue of HIV/AIDS vis-a-vis married women and their reproductive autonomy. The starting point being to address behaviour through communication

6.2 Recommendations from the Study

Zimbabwean law is to a large extent compatible with the international human rights frameworks as regards to the women’s reproductive rights and autonomy as well as marriage rights. Thus in my opinion what is required is the realization utilization and of those rights. The following are some of the interventions I consider prudent in the circumstances.

Recommendations

Legal

1. Harmonisation of the pluralistic marriage regimes in Zimbabwe to make it one and by so doing removing the discrimination that is created by the Marriage Act versus Customary Marriages Act so that women are given the same marriage protection and equality even on paper. And men will no longer make excuses that the law sanctions some of their behaviour.

2. Alignment of the Marriages Laws with the Constitution so that there is no gap for existence of provisions that still create discrimination and inequality as recently found by the Constitutional Court in the Mudzuru case which impugned certain sections of the Marriages Laws.

3. Education of women by informing them different marriage regimes and the implications of choosing one.

4. Empowerment of women in marriage institution and how they can protect their women’s reproductive rights.

5. To redress women reproductive rights violation there should be establishment of well functioning structures and systems because Human rights instruments and national legislation does not suffice.
6. Zimbabwe needs to adopt effective means or measures to promote and fulfil the reproductive rights of women and men

7. Abolition of polygny to remove discriminatory aspects.

8. Abolition of roora will remove the purchase power view attached to the practice that gives men oppressive power over women and propagate and intensify gender violence against women and children

9. Sensitisation of the entire country that is men and women in our society, law and policy makers on the practices of roora and polygny and their implication on women and why advocating for their abolition should succeed.

10. A test case that brings the issues of roora and polygny before the Constitutional Court case challenging their constitutionality

11. Repealing of section 79 of the Criminal Code and Reform Act to the extent that it violates the human rights of people living with HIV and other vulnerable groups and to the extent to which it is counterproductive to HIV prevention, treatment, care and support efforts and replacing it with general criminal laws that are not HIV specific.

12. State must implement policies and enact legislation against harmful traditional practices that increase vulnerability to HIV

13. Advocating for State to implement their existing national and international law commitments by Society

14. Protestation against policies that perpetuate gender and sexual inequality through advocating
Social

1. Causes of gender-based vulnerability to HIV must be addressed in relevant programs.

2. Use of condoms in marriages should be a nationwide education and make sure that men are involved in such workshops.

3. In promoting condom use religious and opinion leaders must be part of the programmes to enable effective behaviour change strategies.

4. Use of couples that are HIV positive in outreach programmes as role models to educate their fellow colleagues on the importance of behaviour change.

5. Open communication on sexuality issues must be encouraged between men and women as couples or groups.

Economic

1. To empower women there is need to support income generating activities by allocating greater resources towards those activities.

2. Prioritisation of vocational and educational training programs for women.

3. State must take progressive steps in ensuring economic empowerment of women.

6.3 Areas for Future Research

In my opinion there is need for more quantitative empirical studies Zimbabwe on how HIV/AIDS links with the risk of infection through marriage and the cultural norms such as roora, polygny and promiscuity, dry sex and when these are then combined with qualitative studies that has been undertaken this will continue to strengthen the findings. Further there is need to extend this kind of research to the rest of Zimbabwe with an inclusive of role of both women and men in combating HIV/AIDS because it is a crucial and important research that impact on their daily lives and both sexes needs empowerment to be able to realise and actualise their sexual and reproductive rights in the marriage setup.
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