

**“WHAT CAN SHE SAY” EXPLORING THE NEGATIVE IMPACT OF  
CHILD MARRIAGES ON WOMEN’S MEANINGFUL PARTICIPATION  
IN THE PUBLIC SPHERE**

**BY**

**MILDRED MASHOZHERA**

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**SUPERVISOR: DOCTOR R. K. KATSANDE**

## Contents

Dedication.....	vi
Acknowledgements.....	vii
Abstract.....	viii
Executive Summary.....	ix
Acronyms.....	xi
Local Legislation .....	xii
Human Rights Instruments .....	xii
Case .....	xii
List of tables.....	xiii
Chapter 1.....	1
1.0 Introduction.....	1
1.1 Background of the Study/ Why I chose this topic.....	1
1.2 Description of the area of research (Epworth) .....	1
1.3 Where is the problem?.....	2
1.4 Objectives of the study.....	4
1.5 Assumptions .....	5
1.6 Research questions .....	5
1.7 Limitations .....	5
Chapter 2.....	7
2.0 How I researched: Informative Signs on my Path!.....	7
2.1 “It starts with the Women” .....	7
2.2 The gathering of information .....	11
2.3 The voices of Men.....	12
2.4 Engaging with Institutions and the role of decision makers .....	12
2.5 Applying Elements of Human Rights .....	13
2.1.1 The Course I took! Research Methods.....	15

2.1.2	Focus group discussions.....	15
2.1.3	Individual interviews.....	15
2.1.4	Targeted Key Respondents Interviews.....	16
2.1.5	“Who did I research?” Table of Respondents .....	17
2.1.6	Use of Technology .....	18
2.1.7	Legal advice as a research method.....	18
2.1.8	Observations of the VFU.....	19
2.1.9	Impact of Methodologies on findings .....	19
2. 2	Challenges .....	20
Chapter 3	.....	22
3.0:	The impact of Child Marriages on women Capacity and Agency.....	22
3.1	Participation .....	22
3.2	“Shattered Dreams” Unequal gender relations in Child marriage .....	25
3.3	“ <i>She must know her place!</i> ” Culture and Religious Beliefs.....	32
Chapter 4	.....	41
4.0	<i>Drawing Water with a sieve!</i> Inadequate implementation of constitutional provisions .....	41
4.1	Trivialization of Child marriage practise .....	41
4.1.1	Trivialization by Courts .....	41
4.1.2	Trivialization by Law Enforcement Agents.....	42
4.2	Lack of Political Will .....	43
4.2.1	Laws have not yet been aligned.....	43
4.2.2	Lack of Awareness of the law.....	43
4.3	Lack of Resources .....	44
4.3.1	Department of Social Welfare .....	44
4.3.2	Ministry Of Gender and Women Affairs .....	45
4.3.3	Education Policy .....	46

4.4	<i>Where is her protection?</i> The need for legislative and other measures .....	49
4.4.1	The State obligation under international law .....	49
4.5	“To my Surprise” Emerging issues .....	54
Chapter 5 .....		57
5.0	Interrogating the Link? Discussion .....	57
5.1	Child Marriage Vs Women meaningful participation .....	57
5.2	<i>They are glued!</i> The inseparable bond between the Best interest of the Child and Women’s Agency .....	59
Chapter 6 .....		62
6.0	What Should Be Done! Conclusion and Recommendations .....	62
6.1	Conclusion .....	62
6.2	Recommendations .....	63
6.2.1	The Need for girls and women capacitation through: .....	63
(a)	Resourcing Education policy .....	63
(b)	Modifying of the Education Curriculum .....	64
(c)	Resourcing Social welfare .....	64
6.2.2	Changing of attitudes and encouraging women participation through: .....	65
(a)	Dialogue .....	65
(b)	Mentoring Strategy .....	66
6.2.3	Changing of Societal Expectations through: .....	66
(a)	Information Dissemination .....	66
6.2.4	Adequately implementing Constitutional Provisions through: .....	67
(a)	Multi – Sectoral Approach .....	67
6.2.5	Legislative and Other measures to Protect Girls from Child Marriage through:	
	69	
(a)	Alignment of laws .....	69
(b)	Capacity Building: Training of police personal: .....	69
(c)	Media strategy .....	69

(d) Shadow Reporting.....	70
Bibliography .....	71

## **Dedication**

I dedicate this work to My Mother Docas Chabvuta Mubaiwa who lived a life of abuse. She sacrificed all, in her mission to make me a better woman and for me to have a better life. Amai I Love You and I know Thank You is not enough.

To My Husband Stephen Tazvitya Mashozhera, thank you for your unfailing love and unwavering support. You where send from above.

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## Abstract

Having been born in a family of 13 by a woman who got married at 15 years of age and was abused, oppressed and refused her right to education and to participate in the public sphere, as a women's law researcher I seek explore the negative impact of child marriages on women participation in the public sphere. Child marriage is one of the factors that diminish women capacity and agency which then leads to ineffective participation.

The international and regional instruments and the constitution Zimbabwe protect girls from child marriage and provide the right for women participation in decision making positions. Be that as it may, lack of resources, trivialisation of child marriage practise by law enforcement agents, the courts and other state institutions and lack of political will is fuelling early marriages in Epworth. Culture and traditional beliefs and practises that encourage child marriage regard the public sphere as a place for men and that, women should participate according to the roles assigned to them in the family and society.

Different methodological approaches were employed in the field research which included the women's law, grounded and the human rights approach as they unearthed women lived realities through the one on one interviews, focus group discussions, key informants interviews and observations. The interviews revealed that most child brides do not meaningfully participate in the public sphere. Most of them drop out of school, are abused, oppressed and forced into submission. Their capabilities are deformed and most of them have resorted to vegetable vending and sex working as a way of living. The law enforcement agents have trivialised the child marriage practise and the lack of effective implementation of the best interests of the child principle has exposed girls to sexual abuse and exploitation which eventually leads to child marriages. Cultural practise of payment of lobola and poverty has reduced girls into commodities for sell and pushes them into early marriage. Though the Education Policy and Education Act provides for the right to education and the Constitution has provided for the same right to be provided freely, the right is limited to availability of resources to which the state has prioritised the Ministry of Defence and the Ministry of indigenization and very little to state funded education for children coming from poor families. It is recommended that there is need to effectively implement constitutional provisions that protect girls from child marriages and for the state to resource the education policy and social welfare.

## Executive Summary

Women participation in the public sphere is important for the advancement of children and women's rights. The right to participation is recognised in international, regional instruments and the Constitution of Zimbabwe. Women meaningful participation is hindered by many factors and child marriage is one of them which affects women capacity and agency which then leads to ineffective participation. The Constitution of Zimbabwe has outlawed child marriages but this has not stopped the prevalence of the practise.

This dissertation will explore the impact of Child marriages on women agency and capacity. A field research was conducted and limited to Epworth which is one of the biggest slum settlements near the capital city Harare. The objectives of this study included assessing and investigating the impact of child marriages on women participation in the public sphere and assessing the link between the best interest of the child and women meaningful participation. The assumptions mainly focused on child marriage as an intentional tool used by those who practise it to hinder women participation in the public sphere. The methodological approach such as the women's law approach assisted in getting the data from child brides as the approach takes women as the starting point and focuses on women lived realities. Other approaches i.e. grounded, masculinity and the human rights approach were also engaged. The in-depth one on one interview, focus group discussions and key informants interviews assisted in gathering information from different groups and individuals in Epworth. The different groups of women interviewed included old woman who got married very young, mother in laws and aunties who receive young girls for daughter in laws and sister in laws. Men were also interviewed and revealed that marrying of young girls is a matter of power and control for them. Observations at the Victim Friendly Unit Domboramwari Police Station and Legal Aid advice were also methods employed so as to gather a large pool of data.

The findings for the study revealed that, unequal gender relations within child marriages incapacitate women. Due to the abuse, oppression, subordination and forced submission that child brides are exposed to, this affects their self-respect and self-assertion. They then become too dependent and lack initiative. Most of them are refused their right to education and have their capabilities deformed. Most interviewed child brides and women from a Child marriage background revealed that they were either vegetable vendors or sex workers. Some former child brides have resorted to child prostitution as a way of living. Culture and religious beliefs regard the public sphere as a place for men and that women are to participate

according to their roles assigned to them in the families or society and not according to their abilities or capacity. The cultural practise of payment of lobola and poverty has reduced most young girls into commodities for sell and pushes/pulls them into early marriage.

The inadequate implementation of the constitutional provisions that protects girls from child marriage and the trivialisation of the practise by law enforcement agents who assign police volunteers who are not salaried to out investigations and effect arrests on child marriage perpetrators fuels child marriages. The failure to effectively implement the best interests of the child principle exposes girls to sexual abuse and exploitation and to early marriages which incapacitates them and negatively affects their participation in the public sphere. This indicates the inseparable bound between best interest of the child and women meaningful participation.

In conclusion, child marriages affect women agency and capacity which then leads to ineffective participation by women in the public sphere. The law is only a starting point and is not enough to eradicate child marriage. This paper recommends that the state of Zimbabwe need to resource the education policy, social welfare department and provide compulsory free primary and secondary education for girls as there are the ones who are mostly affected by child marriage and forced to drop out of school. Need for the speedy alignment of the marriage laws, children's Act and the Criminal code with the Constitution so as to have a uniformed definition of a child and 18 years as the minimum age for marriage. Mentoring and media strategies should be employed as a way to capacitate women and to raise awareness of the negative impact of child marriages on individuals, children, society and the country at large. Lastly, a multi-sectoral approach to child marriages so as to have as many girls as possible in school and being given the opportunity to develop physically, mentally and psychologically before being exposed to marriage which will capacitates them.

## Acronyms

ACRWC	African Charter on the Rights and welfare of the Child
CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
Women's Protocol	Protocol to the African Charter on the rights of Women in Africa
SADC Protocol	SADC Protocol On Gender and Development

## **Local Legislation**

Children's Act Chapter 5:06 of 2002

Constitution of Zimbabwe Amendment NO 20 of 2013

Criminal Law (Codification & Reform) Act Chapter 19:23

Customary Marriages Act Chapter 5:07 of 2001

Domestic Violence Act Chapter 5:16 of 2007

Education Act (Chapter 25:04)

Marriages Act Chapter 5:11 of 2004

## **Human Rights Instruments**

African Charter on Human and Peoples Rights

African Charter on the Rights and welfare of the Child

Convention on the Elimination of All forms of Discrimination against Women

Convention on the Rights of the Child

Protocol to the African Charter on the Rights of Women in Africa

## **Cases**

Mudzuru & Tsopodzi Vs Minister of Justice, Legal & Parliamentary Affairs N.O & others

CCZ 12/2015

## List of tables

Table 1: Showing the targeted key respondents .....	16
Table 2: Showing all the respondents .....	17

## List of figures

Figure 1: Could have been a lawyer now a Sex worker .....	27
Figure 2: She could have been a medical doctor but now a vegetable vendor, a wife, and mother of 6 at the age of 14 .....	29
Figure 3: She wanted to be a Nurse eventually settled for unpaid midwifing in the rural areas .....	30
Figure 4: Wanted to be a School teacher and settled for vegetable vending and a casual labourer in people's fields .....	30
Figure 5: Drawing water with a sieve .....	48
Figure 6: Three fold state obligations .....	53
Figure 7: Multi-Sectoral Approach to Child marriage.....	68

# Chapter 1

## 1.0 Introduction

### 1.1 Background of the Study/ Why I chose this topic

She was only 15 when she got married and gave birth to 13 children - 10 girls and 3 boys. Pictures of her on the floor being kicked on her sides and being stepped on, sometimes being locked outside the house and enduring the cold, wet nights all by herself, still ring fresh in the memory. I remember one day she came back home around 7pm from a political meeting where she was the Chairperson of the Women's League and we were having supper. The moment that she walked into the house the atmosphere just changed. In no time our plates were on the floor and the dining room became a live boxing ring with her as the punch bag - just receiving blows and powerless to fight back.

She eventually lost her position in the political party because she was unable to read and write and she stopped attending evening meetings to avoid the violence at home. She turned her focus to cross boarder trading. If it wasn't for the lack of education, the abuse and her absence at meetings, my mother Docas Chabvuta Mubaiwa today could have been one of those powerful political leaders. Effects of an early marriage shattered her dream of becoming a politician. As it is, she has had to settle for less - 25 years a cross-boarder-trader and working as a maid in South Africa. From a politician to a maid – a dream shattered!

### 1.2 Description of the area of research (Epworth)

Situated about 12km East of Harare, Epworth is probably the biggest slum settlement near the Capital City. In Harare, the mere mention of the name Epworth invokes images of a poverty-stricken, drugs-infested, high crime and deplorably dirty place. This is however not an exaggeration. As I walked up and down the narrow dust roads of Epworth, passing through “match-box” houses made from unbaked bricks, no piped water, no electricity and no sewage system and quite a number of blair toilets I concluded that Epworth is a “Forgotten City”.

According to Zindoga and Kawadza (2014), Epworth was established in the 19<sup>th</sup> century by Methodist Church missionaries. In 1983 the church however handed over the settlement to the Ministry of Local Government because the settlement had expanded beyond the church's control. Biti et al (2014) the population of Epworth was about 130 000 and after Operation Murambatsvina<sup>1</sup>, the population increased to about 156 000. In one of the areas known as Magada<sup>2</sup>, residents in that area bath and do their laundry at the river. Biti et al (2014) stated that by 2010 more than 6 500 families had settled in Magada area. From morning till night the streets are packed with people but from around 7pm the number of women and young girls seems to double on the streets. Dialogue on Shelter (2012) noted that on average, 70% of Epworth residents are into informal sector with a majority specializing in vending and small-scale home industries. According to Medecins Sans Frontiers<sup>3</sup> (2015) the HIV positive rate in Epworth is below 20%, which is higher than reported at the national level (15%). In 2014, Medecins Sans Frontiers placed 165 HIV positive patients mostly girls aged less than 20 years on Anti-retro-viral drugs in Epworth. 8% of these patients were under the age of 15 years. There are no big shops or supermarkets but mostly tuck-shops and vendors on the streets. Shopping does not entitle trolleys and baskets - people buy enough for the day. Cooking oil, sugar, salt, meat and mealie-meal is sold in small portions priced below a dollar but enough for a meal. Medecins Sans Frontiers (2015) stated that the majority population in Epworth is below the poverty line<sup>4</sup>.

### 1.3 Where is the problem?

Zimbabwe has signed a number of both regional and international instruments which advocates for equal representation and participation of women in positions of decision making. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Protocol To The African Charter On Human And People's Rights On The rights Of Women In Africa (Women's Protocol), African Charter on Human And Peoples' Rights (ACHPR), International Convention on Civil and Political Rights and The SADC Declaration On Gender and Development (SADC Protocol), all advocates for women participation in the

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<sup>1</sup> Operation Murambatsvina was a "clean up" exercise conducted by government in 2005 where shelters which were regarded as "illegal shelters".

<sup>2</sup> Magada is a shona term which can be loosely translated to mean "as we please" referring to the unplanned and unauthorised nature of the settlement.

<sup>3</sup> Is an International Independent medical humanitarian organization

<sup>4</sup> According to Merriam Webster dictionary, it is a level of personal or family income below which one is classified as poor according to governmental standards

public sphere<sup>5</sup>. The SADC Protocol<sup>6</sup>, Article 12 and 13 puts an obligation on the State to ensure that at least 50% of decision making positions in the public and private sectors are held by women and that there is equal participation of women and men in decision making.

The Constitution of Zimbabwe provides for equality and non-discrimination of persons<sup>7</sup>, equal opportunities in political, economic and social activities for men and women<sup>8</sup>, election of senators every list should be headed by a female candidate<sup>9</sup> and provision of additional sixty women members in parliament<sup>10</sup>, all these provisions, promote and encourage for women participation in the public sphere. Effective implementation of these instruments and national provisions is a challenge due to practices such as child marriage<sup>11</sup> which has the effect of affecting mainly women<sup>12</sup> and impacting negatively on their capacity and agency which leads to ineffective participation in the public sphere.

Child marriage is prevalent in Zimbabwe<sup>13</sup>. A child is defined in the Constitution as anyone below the age of eighteen<sup>14</sup> and yet the Children's Act<sup>15</sup> defines a child as anyone below the age of 16. The Criminal law Code defines a minor as any one below the age of 16<sup>16</sup>. This unclear definition of a child in the laws has exposed girls below 18 year to sexual abuse which results to teenage pregnancy and loss of virginity which factors have pushed most young girls into early marriage. The Constitutional Court Judgment in the case of Mudzuru & Tsopodzi V Minister of Justice, Legal & Parliamentary Affairs & Others<sup>17</sup> outlawed child marriages in Zimbabwe as the court ruled that 18 years was the minimum age of marriage and that all other cultural and religious practises/beliefs that authorised child marriage were inconsistent with section 78 (1)<sup>18</sup> of the Constitution. The court further stated that, a teenage pregnant girl is still entitled to her children's rights, the right to parental care and schooling. Thus a teenage pregnant girl is entitled to claim maintenance from her parents for schooling

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<sup>5</sup> Refers to public space where people gather and articulate the society needs with the state (Habermas 1991)

<sup>6</sup> Signed and ratified by Zimbabwe in 2008

<sup>7</sup> Section 56

<sup>8</sup> Section 80 (1)

<sup>9</sup> Section 120 (b)

<sup>10</sup> Section 124 (1) (b)

<sup>11</sup> It is the marriage of a girl or boy who is below the age of 18 years

<sup>12</sup> Girls are more affected by child marriage because of their biological set up

<sup>13</sup> According to Cisse Mahomed AU's Coordinator of the African Committee of Experts on the Rights and Welfare of the Child

<sup>14</sup> section 81 (1)

<sup>15</sup> Section 2

<sup>16</sup> section 61

<sup>17</sup> CCZ 12/2015

<sup>18</sup> Provides that "every person who has attained the age of 18 years has the right to found a family

and her upkeep. Despite the progressive nature of the Constitutional Court Judgement, reality on the ground is that even after the Constitution came into force on the 22 of May 2013 and outlawed child marriages, the practise did not stop in Epworth. Most of the child brides interviewed got married after May 2013.

Girls who enter or who are forced into child marriage by religious, cultural and economic factors have their rights to education and health taken away. There are forced to drop out of school and are exposed to early pregnancies. Because their bodies would not have fully developed, there are at a high risk of dying while giving birth, or give birth prematurely and or it may result to health complication such as fistula<sup>19</sup> and all this has negative impacts ones' wellbeing which then affects ones capacity and agency. Meaningful participation<sup>20</sup> of Women in the public sphere is key and central for the advancement of women rights globally. Article 19 (b) of The Women's Protocol provides for the participation of women at all levels including decision-making and political life of the country<sup>21</sup>.

#### **1.4 Objectives of the study**

1. To assess and investigate the impact of child marriage on women participation in the public sphere
2. To assess the link between child marriage and woman participation in the public Sphere
3. To assess the implementation of children and women's rights in the constitution and the impact of both the implementation and non implementation of the rights on women's participation.
4. To investigate the patriarchal system<sup>22</sup> views and voices in regards to child marriage and its impact on women participation
5. To device legal and non legal strategies to address the problem of child marriages and women participation in the public sphere

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<sup>19</sup> Fistula is a hole between the vagina and rectum or bladder that is caused by long hours of labour which has an effect of leaving a girl or woman incontinent of urine or faeces or both

<sup>20</sup> Refers to one's ability to be able be empowered to contribute to informed decisions about their lives, social, family and political development.

<sup>21</sup> Article 9, and 13

<sup>22</sup> It is a system where men are and have authority over women in all aspects of society (McCallister J) The System includes also women who push or encourage male dominance

## **1.5 Assumptions**

1. Child marriage perpetuates unequal gender relations within marriage which incapacitates women's potential to participate in the public sphere.
2. Cultural and religious practise that fuel child marriage discourage women/girls participation in the public sphere
3. Societal expectations that in marriage a man should be older and a woman younger so as to dominate the woman hinder her participation in the public sphere.
4. Inadequate implementation of the constitutional provisions exposes girl children to child marriages
5. There is need for legislative and other measures to address child marriages so as to ensure full and meaningful participation in the public sphere

## **1.6 Research questions**

1. Does Child marriage perpetuates unequal gender relations within marriage which incapacitates women's potential to participate in the public sphere?
2. Do Cultural and religious practise that fuel child marriage discourage women/girls participation in the public sphere?
3. Do societal expectations that in marriage a man should be older and a woman younger so as to dominate the woman hinder her participation in the public sphere?
4. Does the inadequate implementation of the constitutional provisions exposes girl children to child marriage?
5. Is there need for legislative and other measures to address child marriages so as to ensure full and meaningful participation in the public sphere?

## **1.7 Limitations**

This research was limited to Epworth a peri urban settlement outside Harare. It is focused on child marriage as a tool intentionally used to incapacitate women and hinder their meaningful participation in the public sphere. Focus for the research was limited to the children rights which are violated by child marriage and how that violation negatively affects or impacts on women capacity and agency. In this dissertation, reference is also made to education but education in terms of basic primary and secondary schooling.

This dissertation will establish the link between child marriage and women meaningful participation in the public sphere. It will explore how failure to effectively implement children's rights has an impact mainly on girls which will then affect their capacity and agency, which leads to ineffective participation by women since girls are the future women. It will establish how Child marriage has a negative impact on women agency and capacity<sup>23</sup> and how far the State of Zimbabwe has fulfilled its three fold obligations<sup>24</sup> so as to eradicate Child marriage and capacitate girls/women.

Chapter 2 will discuss how I researched, the different methodological approaches and methods used to gather data. Two feminist theories, the Dominance theory as propounded by MacKinnon and the Nego-feminism or African feminism shall be discussed in a bid to explore why child marriage is prevalent in Epworth. The effectiveness of methods used and challenges encountered in the field shall be outlined. Chapter 3 will discuss the field findings and reveal different reasons and factors why child marriage has an impact on women capacity and agency. The capability theory<sup>25</sup> will also be discussed so as to establish the impact of child marriage on women capacity and agency. Chapter 4 will discuss the impact of inadequate implementation of constitutional provisions that protect girls from early marriage and the 3 fold state obligation under international human rights law. Chapter 5 is an analysis/discussion which then shows the link between child marriage and women meaningful participation in the public sphere. Human rights principles such as equality in marriage, women participation, and best interest of the child will be discussed to show how these principles all prohibit child marriage and advance women participation in the public sphere. Chapter 6 is the conclusion and focuses on the way forward, Legal strategies and other measures that should be put in place to the advancement of capacitating women and effectively do away with child marriage.

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<sup>23</sup> It is one's ability to be able to be or to do what they desire which will have an impact of their quality and freedom of life

<sup>24</sup> These are state obligations under the international law the obligation to protect, promote and fulfil.

<sup>25</sup> What one is able to do or has the capacity to do given their background or the environment they grew up in

## Chapter 2

### 2.0 How I researched: Informative Signs on my Path!

#### 2.1 “It starts with the Women”

When I went into the field, I targeted women because my focus was to establish whether there is a link between child marriage and women meaningful participation. It was intention to also ascertain whether child marriage incapacitates women which then leads to ineffective participation by women. Women were my starting point. This methodology of taking women as the starting point was influential in exploring the lived realities of child brides in Epworth and how child marriage has impacted on women agency and capacity. Engaging with the women first assisted me to gather information on whether women in and from child marriages are able to meaningful participation in the public sphere and what impact has child marriage made on their capacity and agency. It was my assumptions that child marriage incapacitates women’s potential to participate in the public sphere and that societal expectation that in marriage a man should be older the woman younger leads to domination of the woman which then negatively affects her capacity and agency as a woman. According to Dahl (1987), the women’s law approach focuses on examining and understanding the position of women in the law and how the law corresponds to women lived realities.

Using the women’s law approach, theories that make clear the push and pull factors of girls into early marriage, why women participation is negatively impacted, and why the practise of early marriage has continued for generations in Epworth materialized as I researched. One such issue which materialised was the trivialization of the child marriage practise by law enforcement agents in Epworth which lead to inadequate implementation of the constitutional provisions that outlawed child marriages. I however pulled different strands of feminists’ theories so as to show how these strands evidently describe the position of women in the society and how the local legislation (law) in some regards is actually a vehicle which is encouraging child marriage and on the other hand encouraging women participation in the public sphere.

Focusing on the current legislation for instance the Marriage Act (5:11) section 22 which permits girls below the age of 18 to get married and the Customary Marriages Act (5:07)

which does not provide an age restriction for marriage. These laws though they have been outlawed by the Constitution, they have not yet been aligned with the constitution. These marriage laws however are not based on the liberal feminist tenet which is concerned about attaining equality between men and women and the exclusion of gender bias from the law. The marriage laws discriminate against women by protected boys from child marriage. Liberal Feminism solution to have women meaningful participating in the public sphere is by eliminating laws and practices (cultural or religious) that deny women access to public sphere hence demote them to the private sphere. Be that as it may, the Constitution section 56 provides for equality before the law and the right to equal protection of the law, section 75 (1) (a) everyone's right to Education, section 78 provides 18 years as the minimum age for marriage for both boys and girls and section 80 the rights of every woman to full and equal dignity of person with men. These provisions are based on the liberal feminist principle of striving to achieve equality between men and women by making the rules of the game fair. However it is one thing to make the rules of the game fair and it is another to level the playing field so that both men and women have the equal outcome without any hurdles.

Despite the outlawing of Child marriage, the practise is still prevalent in Epworth. According to MacKinnon (1987), the dominance of women is as a result of sex inequality which takes the form of gender, the subordination role assigned to women by society. She noted that gender is a question of power, specifically of male supremacy and female subordination. My third assumption was that societal expectation that in marriage a man should be older and a woman younger so as to dominate the woman hinder her participation in the public sphere. According to MacKinnon (1987) the dominance approach centres on the most sex-differential abuses of women as a gender, abuses that sex equality law in its difference garb could not confront. Mackinnon (1987) further noted that gender emerges as the congealed form of the sexualisation of inequality between men and women so long as this is socially the case, the feelings or acts and desires of particular individuals notwithstanding gender "inequality" will divide the society into two communities of interest. The male centrally features hierarchy of control while the female, subordination is sexualised in the way that dominance is for the male. In Epworth, most men interviewed exposed that child brides do not challenge instructions and orders given to them, they do exactly what they would have been instructed and that even when they grow to be older women, they are so submissive and do not challenge authority. This then explained why domination in marriage incapacitates women's potential to participate in the public sphere because if one is forced into submission at a

young age through domination in marriage, it is difficult for that individual to then think or act out of their own will or to fulfil their capabilities that is what they can do or are able to do. Domination then becomes one of the reasons/factors why men marry young girls and why most child brides and women's speech is not just differently articulated but it is silenced. Mackinnon (1987) stated that the whole point of women's social relegation to inferiority as a gender is that most of the abuse they go through or which done to them aren't done to men.

The different varying strands of African feminism as noted by Gaidzanwa (undated) on the other hand, commonly feature how African women have recognised the male dominance in their different societies but do not want to do away with it but work with it. The strand of Nego-Feminism then influenced my research as it enabled me to investigate why mothers where allowing their young girls to get into early marriage knowing the abuse, oppression and challenges that one experience as a result of early marriage since most of them also got married while minors. In Epworth even though most women knew that the law protects girls from early marriage by the criminalization of sex with a girl below 16, preferred to negotiate their way with their male counterparts so as to try and not have their young girls married off. Nnaemeke O (2004), described nego-feminism as no ego feminism or the concept of negotiation. This requires negotiating with those regarded to be in power or in the position of authority. In this women will not have directly challenge male dominance. In other words because most women (African women) have recognised the male dominance in the hierarchy of society, they are willing to negotiate with and around men even in difficulty circumstances (Nnaemeke 2004). It is not a battle where the woman fights to clinch some of 'men's power' noted Hudson-Weems (2004). Mrs Chin'anga 42 years of age explained that<sup>26</sup>

*“ini pandakaona kuti mwana ava nepamuviri uye panga potaurwa nevakumurume vacho zvokuda kuroora, ndakanyengetedza baba vake kuti vambofanotambira mari yedamage asi mwana kana apedza chikoro wozorora zvavo”*

*Meaning “ when i saw that my young girl was pregnant, and that negotiations about the paying of her bride price where now going on, I talked to her father for him to receive money for damages<sup>27</sup> for now and after she is done with her schooling, they can then go ahead with marriage arrangements”*

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<sup>26</sup> Interviewed at Overspill Shops on 17/12/2015

<sup>27</sup> This is the money the is paid to the girl's father by the man or his family who would have slept with his daughter without having paid bride price first. It is called damage because in the girl would have lost her virginity and this has the effect of reducing her bride price if she is to get married to another man not the one who would have taken her virginity

Women negotiating with men gave them the opportunity of advancing their concerns without causing or unsettling the authority or power of the men. In this way women maintain their relations in the family and the society hence relations influence most women's choices and decisions. According to E. Bonthuys and C. Albertyn (2007), for most women relationships are a source of strength rather than the mechanism of oppression. This made me understand why women are in the position that they occupy in marriages in Epworth and who makes the decision for them to get married and remain in that marriage.

My fifth assumption that there is need for legislative and other measures to address child marriage so as to ensure women full and meaningful participation in the public sphere, recognised that in the African society in regards to the power hierarchy, women do not want to unsettle relations by the use of the law and hence negotiate, accommodate and compromise so as to co-exist with men. The law though it outlawed early marriage<sup>28</sup> and encouraged women participation, the law does not address the different power dynamics in the African family set up and the push and pull factors such as poverty and societal attitudes and beliefs. Hellum and Katsande (2015) noted that, interrogating power is critical because power relations affect how change is brought about. Sanday (1981) defined power as the ability to act effectively on persons or take things, to take or secure favourable decisions which are not of right allocated to the individual or their roles. Interrogating and understanding the power relations and structures then unearthed that the law is not enough to end early marriages, other measures such as dialoguing with men, traditional and religious leaders was necessary as it emerged in Epworth that most child brides and women did not want to use the law but preferred settling matters in the families.

However negotiating with those regarded to be in power, proved to be difficult, especially in case where the women are/where so terrified by the men to an extent of not wanting to ask for anything. Negotiating with those in power requires a level of boldness and confidence in the women so that there are able to articulate their concerns to men. Some women however lacked that confidence and boldness hence they could not advance their concerns. The different strands thus assist in understanding the different factors that are pushing and pulling young girls into early marriage and why there is such a prevalence of child marriages in Epworth.

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<sup>28</sup> Section 78 (1) of the constitution 2013

## 2.2 The gathering of information

Conducting interviews in Epworth, made me understand the sensitivity of my topic and that the law was not enough to eradicate child marriage. My assumptions to the effect that inadequate implementation of constitutional provisions exposes girl children to child marriages. Interacting with some child brides, most of them would actually lie about their age and that they didn't have birth certificates as a way to protect their husbands from getting arrested. This then made me investigate why protect the man who is abusing you sexually, who has shattered your dreams and taken away your education? Bentzon (1998) stated that, the grounded theory is an interactive process in which data and theory, lived realities and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect. Some child brides explained that for them getting married was a way of helping their families with the money that is paid as bride price.

My second assumption was to the effect that cultural and religious practices that fuel child marriage discourage women participation. One Mr Ndoro 46 the apostolic white garment sect in an interview stated that,

*“musikana anokurudzirwa kuroorwa kana Mweya Mutsene wataura, zvemakore ake hazvina basa asi kuterera Mweya.”*

*Meaning “a girl is encourage to be married if the Holy Spirit has said so, her age is not much of importance but obedience to the Holy Spirit”<sup>29</sup>*

From analysing the data, and considering complications, I was able to determine what data to collect next and from where and from whom. Being on the ground made me engage with my assumptions constantly and the challenges I experienced and observed made me devise some strategies of getting data especially from the child brides. I had an incident were one man because I was interviewing his child bride, when he heard us chatting, he shouted and threatened to beat me if he came out of his house and I was still there talking to his wife. The young girl with fear whispered to me:

*“tizai nehupenyu hwenyu mukoma” meaning “run for your life”<sup>30</sup>.*

With fear that I might be attacked by “husbands” and men who thought i was a police officer in plain clothes, I devised a strategy to meet the child brides by the river were they bath and do laundry and at the boreholes were they will be queuing for drinking water. I also devised a strategy that in instances when the husbands of the child brides where around, I first had to

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<sup>29</sup> Interview conducted on 15/10/2015 at Domboramwari Mufudzi Apostolic Sect

<sup>30</sup> Interview conducted on 6/10/2015 in Magada

negotiate with them and ask for permission to talk to the child brides. According to Nnaemeka (2004), African feminism challenges through negotiations. It knows who, how, where and when to negotiate. This reaction by most men, made me aware that men knew that it was against the law to marry a young girl but were doing it anyhow. Which then made me turn my focus on the law enforcement agents so as to establish whether they were enforcing the law that criminalises child marriage. According to Bentzon (1998) grounded research process is when a researcher collects data, sifts and analyses it, considering the implications of her findings, determines what to collect next to meet her needs and continues the collection and analysis cycle.

### **2.3 The voices of Men**

According to Nkiwane (2011), we also need to focus on men in addressing gender issues, the masculinity approach helps us understand why patriarchy and other hierarchies that oppress women are so resilient and continue to be produced at all levels of gender relations from generation to generation. One of my assumptions was that societal expectations that in marriage a man should be older and a woman younger so as to dominate the woman hinder her participation in the public sphere. Amos 28 years married a 14 year old stated in interview<sup>31</sup> that,

*“ukaroora mukadzi mudiki haanesti, anoterera nokuita zvaunenge wamuudza. Chawataura ndochanoita, anogara ari pamba “ Meaning “If you marry a young girl, she will not be a problem, she listens and does whatever you have told her to do. What you tell her is what she will do, and she will always be at home”*

Thus talking to men unearthed why they mean marry young girls, that it is an issue of control, domination and power because young girls are easy to control and manipulate.

### **2.4 Engaging with Institutions and the role of decision makers**

Having gathered that Child marriage is prevalent in the Epworth and that most girls and women in and from child marriage are orphans, some are from poor families and some were running away from abusive relatives, I focused on government institutions and their agents who either enforce or implement policies. I engaged with the Department of Social Welfare so as to see what is it that they as a government department are doing to assist the Orphans, the poor and the children facing abuse so as to keep them in school, provide basic food,

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<sup>31</sup> Interviewed on 15/10/2015 near Domboramwari Police Station

clothing and shelter for them. In the field it emerged that poverty was one of the factors pushing girls into early marriages. My constantly engagement with women and child brides in Epworth and discovering that most of them where vendors, some into prostitution and a few into cross border trading, led me to approach the Ministry of Gender and Women Affairs so as to be informed if women from Epworth are meaningfully participating in the public sphere. I also interviewed the Law Enforcement Agents in Epworth so as to collect information as to what extent was the law protecting girls form sexual abuse and child marriage being implemented and if not what was hindering the implementation of the law. It hen emerged however that the law enforcement agents has trivialised child marriages by leaving community volunteers to investigate child sexual abuses. Moreau (2004) stated that, Oppressive power relations are often the indirect effect of institutional structures, structures that were not deliberately designed to harm the individuals in question, or to express contempt for them, but, nevertheless perpetuate the social or political domination of certain groups.

The Volunteers Victim Friendly Unit police officers noted that most child brides did not have birth certificates hence the police could not affect arrests or open a docket because they could not determine the age of the girls and that government did not have funding for age estimates tests. Non Governmental Organizations (NGOs) such as PADARE and Justice for Children Trust (JCT) have however been working together with the police and assisting with financial support for the age estimates. However though PADARE and Justice for Children Trust have been assisting financial but since 2013 the organisations have stopped doing so. This was due to the fact that the exercise is costly, \$80 is required for a girl to get tests done and that most of their donors shifted their attention to paying of school fees for children in rural areas as \$80 could to pay school fees for 4 children hence, better to educate 4 than assist 1.

## **2.5 Applying Elements of Human Rights**

The main focus of my research was on the impact of child marriage on women participation in the public sphere led me to look at human rights elements such as, women participation, equality in marriage, and the best interest of the child. Zimbabwe has signed and ratified regional and international human rights instruments which abolish child marriage and guarantee equality in marriage and women participation in the public sphere. The human rights based approach focuses on the obligation of the state to ensure that measures have but put in place so that people enjoy their rights. The three fold obligation on the state under the

international law that is to protect, promote and fulfil calls for the state to take measures such as resourcing policies and programmes that advance women's and children's rights are put in place.

My fourth assumption was to the effect that inadequate implementation of the constitutional provisions exposes girl children from child marriages. Using the human rights based approach, I investigated what or how the law enforcement agents were arresting perpetrators and accomplices of child marriages considering the prevalence of the practise in Epworth. The human rights based approach assisted in exploring the measures that are in place to protect girls from early marriage and encourage women participation. Considering that marriage laws, Children's Act and the Criminal code, have not yet been aligned to the Constitution so as to reflect 18 years as the minimum age for marriage and the definition of a child, the human rights approach influenced focus to be shifted to policy makers as the State's duty to fulfil makes it obligatory for States Parties to take up essential measures to accomplish full realization of human rights. That is to ensure that laws are in line with the advancement with the right to equality and non discrimination.

The constitution of Zimbabwe provides equality of persons and a quota system<sup>32</sup> so as to have many women in parliament and other government bodies and children's rights<sup>33</sup> which includes the right to education, to be protected from sexual abuse, to appropriate care and parental care. In Epworth many girls are getting married before their 18<sup>th</sup> birthday and are removed from parental care and have their right to education taken away and are exposed to sexual abuse at a young age. Shaba (2000?) noted that the relation between women and the state is reflected by how the state implements the rights of women. The seriousness of the state in pursuing its international human rights obligation that benefits women according to Shaba (2000?) reflects the relation between the state and women.

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<sup>32</sup> Section 124 (1) (b)

<sup>33</sup> Section 81

## 2.1.1 The Course I took! Research Methods

### 2.1.2 Focus group discussions

Child marriage was a heated topic<sup>34</sup> when I conducted my research in Epworth. In the public spaces, that is, the market places and the bus terminus when I mentioned “*kuroorwa kwevana vadiki*” meaning “*child marriage*” people will just gather and start contributing from where ever they will be standing some even shouting so as wanting to be heard. Focus group discussions involve interviewing a group of people with the specific intention of getting many views from those with the, or who are regarded to have knowledge on the research question(s) (Stewart 2002). This method of gathering data assisted me to get both the views of men and women and also to observe how women voice out their contributions without fear or being intimidated by men. I observed that women in the discussions would contribute without any restraint and were quick to respond to questions than men. Women voiced out how they did not want their daughters to get married before finishing secondary school and that, bride price mainly benefits men not the whole family in that most of the bride price is given to the father of the girl who then decides what he wants to do with the money. Most men emphasised on the importance virginity and that nowadays girls are becoming sexually active at a very early age hence better for them to be married early before they start bringing home many children from different fathers. Most men also stated that educating a girl mainly benefits the family she will be married to. What I found interesting about conducting a focus group was how people were willing to voice out their contribution and let arguments continue. I then took the information and views gathered so as to triangulate with different Government Ministries and Non-governmental organisations. Bentzon (1998) stated that discussion groups give pointers to the kinds of problems and views that are manifest in the community and they also give some information which then will need to be triangulated.

### 2.1.3 Individual interviews

The individual interviews were mainly with girls and women from and in child marriages. These were lengthy interviews where girls and women explained why and how they got into

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<sup>34</sup> It was a heated topic because there was an ongoing constitutional court case of Mudzuru and Tsopodzi CCZ 12/2015 who were challenging the constitutionality of marriage laws which permitted child marriage. There were also some talk shows on radio and campaigns being carried out by different NGO's against child marriage and its impact on young girls.

child marriage and what they are doing now professionally and what they aspired to do prior to marriage. These were conducted privately and were very informative and in-depth interviews were respondents felt free to express themselves and to be emotional at times.

#### 2.1.4 Targeted Key Respondents Interviews

**Table 1: Showing the targeted key respondents**

<b>Respondents</b>	<b>F</b>	<b>M</b>	<b>Total</b>
President of the Chiefs Council		1	1
Apostolic Sect Religious Leaders		4	4
Deputy Director Children's Trust		1	1
Ministry of Gender and women Affairs Gender officers	2		2
Social Welfare Harare District		1	1
Victim Friendly Unit Volunteers	1	2	3
Gender Focal persons In the Ministry of Constitutional and Parliamentary Affairs	2		2
<b>Total</b>	<b>5</b>	<b>9</b>	<b>14</b>

I targeted my key respondents after having gathered data from the ground and hence my interviews were more or less to triangulate what I had collected on the ground. My second assumption which stated that cultural and religious practise that fuel child marriage discourages women participation in the public sphere needed me to focus on the traditional and religious leaders as the respondents who had the knowledge of different beliefs and practices that encourage child marriage and discourage women participation in the public sphere and also had the capacity to influence change on such beliefs and practises. My forth assumption on the inadequacy of the implementation of constitutional provisions, needed me to focus on policy makers and implementers for provision of information on why there was inadequate implementation of the constitution provision that protects girls from early marriage.

The table of respondents below informs who was interviewed and their different positions in the society.

### 2.1.5 “Who did I research?” Table of Respondents

**Table 2: Showing all the respondents**

Description of Responded	Number	Sex	
Girls in Child Marriage	42	F	
Girls from Child Marriage	18	F	
Women in Child Marriage	14	F	
Women from Child Marriage	10	F	
Mother in Laws	5	F	
Men in Child Marriage	6		M
Public Transport Conductors and Touts	11		M
Second hand Clothes vendors	5		M
Vegetable vendors	6	F	
VFU Police Constable	1		M
VFU Volunteers	3	F	2 M
Ministry of Gender and women Affairs	2	F	
Ministry of Justices and Constitutional Parliamentary affairs	4	F	
President of the Chiefs Council	1		M
Padare (men forum) Advisor	1		M
Deputy director Justice for children Trust	1		M
Department of social welfare	1		M
Johanne Marange Domboramwari Apostolic church leaders	4		M
Domboramwari Clinic Nurses	3	F	

### 2.1.6 Use of Technology

The use of a video camera and audio recordings assisted me to gather a lot of data in a short period of time. This method was mostly effective during focus group discussions because I manage to collect all the contributions and then sit down listen to them again and again making sure I have captured all the voices. Listening to the voices again and again assisted me in my data analysis and the video recording assisted with visuals of the surroundings which then assisted me in observing the different body languages especially between the child brides and their husbands. The more I played the videos the more I was in touch with my research. One of my assumptions was to the effect that child marriage perpetuates unequal gender relations within marriage which incapacitates women's potential to participate in the public sphere. As I video recorded child brides and their "husband" I was able to capture how the child brides looked so terrified, uncomfortable and very apprehensive. I was also able to capture how the older men would dominate the child brides in the interviews even on questions which were directed to the young brides. Watching the videos kept bringing me back into the field in other words I would be in the comfort of my home but in the field.

### 2.1.7 Legal advice as a research method

Having introduced myself as a lawyer and women's law masters student doing a research for my dissertation, the VFU police officers and volunteers saw that as an opportunity for them to give me some legal aid work at the Station. I managed to talk to some child brides who had come to report domestic violence and got to know the reasons behind them getting into early marriage. One girl shared how she was forced into marriage at the age of 13 to a 25 year old man who had raped her one evening when her parents were not at home. She explained that her husband was a close next door neighbour and that when she was raped instead of the matter being reported to police, the rapist family negotiated with her parents and paid her bride price. One woman shared how she got married when she was only 15 years of age to a 36 year old man who was abusive from the onset of the marriage. She then took the opportunity to advice her daughter 14 years of age who I was interviewing and said to her:

*“ kuroorwa sandimhinduro, uchiri mwana mudiki unobatwa semuranda kwauri uko, murume anoita zvaonada newe ndakabva neko haisinyore budamo uchirikukwanisa ”*

*meaning “marriage is not the answer, you are still young and you will be treated as a slave where you are, your husband will do as he pleases with you, i have been there and it’s not easy, get out whilst you still can.”<sup>35</sup>*

This method of gathering data I had to trade with caution because I did not want to gather data that was more or less similar by being at one place dealing with women or girls who had come to the station with the intention to file complains. Hence I decided not to report to the VFU Office frequently but only go there when it was necessary or to triangulate collected data. I avoided the idea of having people getting used to me and getting advice from me because as stated by Bentzon et al (1998) that was going to result in one accepting certain happenings as normal and overlooking of important information which may also lead to taking things for granted.

### **2.1.8 Observations of the VFU**

My first day at Domboramwari Victim Friendly Unit Office (VFU), I got there around 8 am and the office was packed and with mostly women and children. Some were standing and others sitted outside waiting to be assisted. I found myself outside for about 30 minutes because only two officers were assisting women on that day. It was on a Monday morning, and I gathered that some women had reported their husbands for domestic violence over the weekend and Monday being a day for the husbands to be taken to court, a number of these women had come to actually withdraw their charges. Because I did not want to interrupt the busy officers, I decided to sit and just observe what was going on in and at the office. My unknown presence by the Victim Friendly Unit Officers made me gather information on how officers were assisting some of the child brides and women who would have come to report domestic violence. My “unknown” presence made me gather information on how the police advised women to solve problems within the family. I also observed some women sharing advice encouraging and strengthening each other before reporting to the police.

### **2.1.9 Impact of Methodologies on findings**

The methods I employed to collect data were effective. Interviewing both men and their child brides together was challenging. The men would dominate the interviews and while the child brides would not confidently contribute to discussions and would give one word answers. The targeted key respondents especially the law enforcement agents and those in the

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<sup>35</sup> Interviewed at Domboramwari police station on 22/10/2015

different governmental ministries explained and gave indicators<sup>36</sup> on why there is inadequate implementation of the constitutional provisions which protects girls from child marriage. The different religious leaders<sup>37</sup> and even the ordinary men interviewed made it clear that if a girl is married at a young age she would be submissive and dependent on her husband. Engaging with the different human rights laws and instruments and how or if they have been effectively implemented by the state reflected on the State seriousness in pursuing its international human rights obligations of advancing women's and children's rights.

## 2.2 Challenges

My main challenge was my personal experience of having witnessed the abuse and oppression my mother went through and the fact that she was refused participation in the public sphere. The research became an emotional one for me at times because I could relate to the abuse that the child brides are going through as they explained during in depth interviews. However I focused on establishing the link between early marriage and women's participation and whether child marriage incapacitates women and negatively affects their participation in the public sphere.

Getting the correct age of some of the child brides also proved to be difficult as some would lie about their age because they feared that their "husbands" will be arrested for marrying under aged girls<sup>38</sup>. Hence I devised a strategy of asking them the year they were born and then calculate their ages myself. Some of the child brides actually mistook me for a police officer in plain clothes doing undercover investigations so would refuse to be interviewed.

Most of the streets in Epworth are not named and well planned, I had difficulties locating and making follow ups on some of the child brides and woman I had interviewed. It was difficult to locate their houses, place of vending or sex working.

My other challenge was that I failed to get permission from the Ministry of education to interview school heads in Epworth to get statistics of girls who had dropped out of school for reasons such as early pregnancies or early marriages.

In conclusion, this dissertation will explore the link between child marriages and women meaningful participation in the public sphere and whether child marriages incapacitates

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<sup>36</sup> Such as, lack of political will and lack of government funding to advance women's and children's rights

<sup>37</sup> From the Apostolic white garment Sects

<sup>38</sup> Girls below the age of 18 years.

women which then leads to ineffective participation by women. Thus there is need to focus on the impact of child marriage on women's agency and capacity.

## Chapter 3

### 3.0: The impact of Child Marriages on women Capacity and Agency

Capacity and agency are important elements in an individual so as to be able to effectively participate both in the private and public sphere. Effective participation by an individual is centred on many elements which if negatively impacted on will lead to incapacitation which ultimately lead to ineffective participation. It is thus important to focus on participation so as to be able to understand why child marriage has a negative impact on women effective participation and whether one's capacity and agency is affected by child marriage.

#### 3.1 Participation

According to Miranda (2005), every human being has the right to participate in decisions that define her or his life. This right is the foundation of the ideal of equal participation in decision-making among women and men. This right argues that since women know their situation best, they should participate equally with men to have their perspective effectively incorporated at all levels of decision-making, from the private to the public spheres of their lives, from the local to the global. The Women's Protocol Article 9 emphasis on the women's right to participation in politics and decision making process. Article 19 (b) of the Protocol puts an obligation on the states to ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes. The SADC Protocol Article 13 focused on participation of women and unlike the Women's Protocol went further by putting an obligation on the states parties to ensure that policies, strategies and programmes that build women capacity for them to participate effectively are put in place. On the national arena, the Constitution of Zimbabwe section 80 (1) on the rights of women focused on women having the full and equal dignity of person with men which includes equal opportunities in political, economic and social activities. This emphasis on women participation has its foundation in the human right principle of equality. According to the mission statement of the Beijing Platform for Action, equality between women and men is a matter of human rights and a condition for social justice and also a necessary and fundamental prerequisite for equality, development and peace. A transformation partnership based on equality between women and men is a condition for people centred development. Section 56 (1) and (2) of the Constitution of

Zimbabwe provides for equality of all persons and that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social sphere.

Participation is not an event but a process. It involves an individual having his/her voice heard in matters that will affect them either directly or indirectly. Misra (1984) defined participation as collective and continues efforts by the people themselves in setting goals, pooling resources together and taking actions which aims at improving their living conditions. According to Pathways Through Participation (2010), participation means many things to many people. It has three categories namely, individual<sup>39</sup>, social<sup>40</sup> and public participation. Individual participation however has a bearing on how one participates socially and publicly. Public participation which is the main focus of this dissertation is the engagement of individuals with the various structures and institutions of democracy according to Pathways Through Participation (2010).

Public participation involves that an individual should be able to freely articulate issues and concerns without fear or intimidation. Literacy in regards to basic education then because of value as it will give an individual the confidence and capacity to understand and interact with various structures and institutions (including state institutions) Ara (2006) wrote women's equal participation in public life plays a pivotal role in the general advancement of women. It is not only a demand to simple justice or democracy but can also be seen as a necessary condition for women's interests to be taken into account.

The UN Fourth World Conference on Women (1995) recognised that without the active participation of women and the incorporation of women's perspectives at all levels of decision making, the goals of equality, development and peace cannot be achieved. Miranda (2005) stated that women comprise half of any society and must exercise their right and responsibility to participate equally with men. The participation of women however is important for the advancement of both children and women's rights. The traditional stereotyping of roles which regards women as nurtures and caregivers in the private sphere leaves women in the position of facing the burdens as a result of failure to implement rights of children by the state. Hence women participation in decision making is more likely to give

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<sup>39</sup> It is defined as the individual choices and actions that people make as part of their daily lives and that are statements of the kind of society they want to live. (Pathways Through Participation (2010))

<sup>40</sup> It is the collective activities that an individual is or may be involved in for instance being a member of a church or a community group

priority to social concerns and to the relatively disadvantaged population groups because women themselves are usually socialized into more nurturing values (Miranda (2005)). Women's participation according to Madan (2014) has impact on every realm of the social life, leadership, administration, social status, economic empowerment, literacy and education and health and hygiene.

The participation of most women however is mainly limited to the family environment. Madan (2014) stated that women have always been at an inferior position. The girl child continues to confront discrimination on the ground of sex. Child marriage which mainly affects girls<sup>41</sup> has been one of the many other factors that affect women participation. According to Girls not Brides (undated), child brides are often disempowered, dependent on their husbands and deprived of their fundamental rights to health, education and safety. With little access to education because they often drop out of or forced out of school, child brides have less economic opportunities and are mainly limited to the family environment. According to Ara (2006), education is the strongest factor to influence one's control of their own future. Tsimpo (2015) noted that child brides have less decision making ability in their households, in their individual lives and this then negatively affects their public participation. Once individual participation is compromised, it affects ones capacity and agency which eventually lead to ineffective participation.

In conclusion, it is important to have women capacitated so as to be able to effectively participate in the public sphere. Women participation is central for the advancement of women's rights. Child marriage however incapacitates women which then negatively affects their participation. Child brides are abused and oppressed by their husbands. According to Smith (1993) oppressed individuals are known for their abilities to anticipate the orders and desires of those who have power over them, to comply with an obsequiousness that is then used by the dominant individuals to justify its own dominance. Child brides because of the abuse and oppression in marriage, do not act or think out of their own initiative they wait to be given orders on what to do and to say and hence participation in the public sphere by women from a child marriage background is difficult as most of these women lack agency and capacity and live a life of shattered dreams.

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<sup>41</sup> According to Girls not Brides, while boys are sometimes subjected to early marriage, girls are disproportionately affected and form the vast majority of the victims of child marriage.

<http://www.girlsnotbrides.org/what-is-the-impact/>

### 3.2 “Shattered Dreams” Unequal gender relations in Child marriage

According to Nussbaum M, C (2003) “to measure..... a nation’s quality of life, it is important to look at capabilities, what people are actually able to do and to be.” It was important for my research to find out from women the impact of child marriage on their professional lives. Knowing what one is and wanted to be is an indicator of whether one made a choice, or where they are is simply because of unjust background. Nussbaum M, C (2003) stated that, if we ask what people are actually able to do and to be, we come much closer to understand the barriers societies have erected against full justice for women. Thus asking about what one wanted to be revealed to me the barriers that are placed on girls and women because of child marriage which then negatively impacts their participation in the public sphere. According to Nussbaum (2003) there is need to look at what one could have been especially in regards to most women, they frequently display “adaptive preferences”, preferences that have adjusted to their second-class status.

The preferences that most women have are as a result of preferences shaped and these are shaped by unjust background conditions such as child marriage and abuse. Nussbaum (2003) noted that women’s current preferences often show distortions that are the result of unjust background conditions. My first assumption was that child marriage perpetuates unequal gender relations within marriage which incapacitates women’s potential to participate in the public sphere. According to George et al (2007), unequal gender relations are relations that have been built or have occurred on an unequal basis between a man and a woman. The gender relations are however based mainly on the structure that governs how much power is embedded in social hierarchy. The Capabilities approach focus on what people and in this research “women” were able to be or could have been if it wasn’t for the inequalities they suffer and have suffered inside the family because of their biological set up. In the field I interviewed women who have settled for undesired professions because of unjust background which robbed them of their capacity to potentially participation in the public sphere. In Epworth women/girls are viewed more as objects, slaves rather than subjects. Most child brides and women in child marriage explained how their husbands are in control of the number and spacing of children and when and how to have sex. George (2007) gender inequality damages the physical and mental health of most women and girls and benefits men

through resources, power, authority and control. Unequal gender relations manifest themselves through behaviours, norms and practises. According to Moreau (2004), unequal gender relations perpetuate oppressive power relations. This has the effect of further entrenching or reinforcing power imbalances that are unacceptably large and that leave certain individuals without sufficient social or political influence.

Robeyns (2003) stated that, what is important is that a person has capabilities (freedoms) to lead the kind of life they want to lead, to do what they want to do and be the person they want to be. Once they effectively have these freedoms, they can choose to act on those freedoms in line with their own ideas of the kind of life they want to live. Below are four different case studies from the field which illustrates how child marriage negatively affects women capabilities (freedoms) which then impacts unconstructively their potential to participate in the public sphere.

## Case Number 1



**Figure 1: Could have been a lawyer now a Sex worker**

Esnat Chimedza (26) got married at 13 years, because of teenage pregnancy and now a mother of two. She ran away from her “husband” after 3 years of an abusive marriage and joined the sex work profession. It’s been 11 years in that profession and charges \$1 for short time<sup>42</sup> and \$5 for gang sex<sup>43</sup>. As a child she wanted to be a lawyer. Her ex husband didn’t want her to continue with school and or even

permit her to get a passport so that she can at least join the cross border trading. She described sex in her marriage as rape because all the time her ex husband would use force and sometimes would hit her during the sexual intercourse. She further explained that she could have been a lawyer if she had gone back to school but no one wanted to pay her fees and look after her children. When she ran away from her husband her family did not accept her so she moved into the streets joined sex work profession to make a living and send her children to school. She regards sex work better than marriage because she was forced to have sex for nothing but with sex work she can chose who to have sex with and get paid for it.

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<sup>42</sup>Short time is when she has sex with a man for less than 5minutes. She referred to it as “In and Out”

<sup>43</sup> This is when she has sex with a group of men 3 and above

According to Baber (2010), individuals are always worse off for being unable to achieve states they prefer. Individuals whose preferences are deformed<sup>44</sup> are satisfied with fruitless state of affairs, they are incapable of satisfying a wide range of nearby possible preferences that is preferences they could easily have had.

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<sup>44</sup> According to Baber (2010) these preferences could have been deformed by poverty and oppression

## Case Number 2



**Figure 2: She could have been a medical doctor but now a vegetable vendor, a wife, and mother of 6 at the age of 14**

Nyarai<sup>45</sup> (14years) married at 13 at the time of interview was 7months pregnant. An orphan with three other siblings she is looking after. Decided to get married because she was no longer in school and thought her husband will help her to look after her siblings. Wanted to be a medical doctor but could not proceed with school because there was no one to pay for her school fees and look after her siblings. When she got married her “husband” said “it was not his duty to send her back to school and who will look after the home and his children<sup>46</sup>while she is in school?” She is now a

vegetable vendor.

Robeyns (2003) stated that to measure a person’s capability, there is need to evaluate whether an individual had access to quality education, sufficient food supplies, shelter and access to good health. Robeyns further noted that there are some social constraints that influences and restricts an individual which then deforms their preferences. In Nyarai’s case, her social constrain was to the fact that as the eldest girl child in the family she had to look after her siblings and early marriage was the option for her so as to be able to provided for them.

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<sup>45</sup> Not her real name

<sup>46</sup> Nyarai’s was a second wife and the first wife had passed on leaving 3 children.

### Case Number 3



**Figure 3: She wanted to be a Nurse eventually settled for unpaid midwifing in the rural areas**

Ellah Chakonesa 82years married at the age of 14. She was denied the privilege to continue with school because she had to be married so as to raise money for her older brother to marry<sup>47</sup>. She had 11 children and 4 miscarriages<sup>48</sup>. She could not proceed with school even when she got married because her husband did not see the need of educating her and also her children were young and not spaced so she had to be at home looking after them.

### Case Number 4



**Figure 4: Wanted to be a School teacher and settled for vegetable vending and a casual labourer in people's fields**

Mavis Chinembiri (63) married at 14 has 9 children and had 3 miscarriages. Forced into child marriage because of poverty was married of for two 50kg bags of maize and 1 cow. She was a 4<sup>th</sup> wife and went to school up to grade 5. She suffered physical abuse in her marriage which resulted in the miscarriages and her losing her two front teeth. She did not proceed with school and saw the need not to because already those of her age were far ahead. She could not run

away from an abusive marriage because she was taught by her elders that a man physically abusing you was a sign of love and he did not want to be attached to the stigma of being a single parent. She narrated that at school she was the best at sewing. Nussbaum stated that

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<sup>47</sup> She explained that it was a shona custom to have a girl child married of so as to raise money for the boys in the family to marry.

<sup>48</sup> In the research miscarriages were common amongst child brides

victims of adaptive preferences are badly off even though they have successfully “adjusted” to deprivation and oppression.

In conclusion drawing from the professional lives of the women I interviewed, Nussbaum M (2003) said “capabilities are held to be important for each and every person: each person is treated as an end, and none as a mere adjunct or means to the ends of others” Women participation in the public sphere has been greatly negatively impacted because of child marriage as women/girls were “means to the ends for others”. Because of Child marriage most women are unable to reason, imagine and to think, (which should be cultivated by basic adequate education)<sup>49</sup> so as to produce works and make informed choices about their professional lives. Most women and girls interviewed showed that their emotional development was shattered by fear and nervousness which then affect their participation. There is need to look at the environment, cultural and religious practises that an individual is exposed to so as to address and be able to judge whether his or her capabilities were deformed by their back ground.

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<sup>49</sup> Note most of the girls and women interviewed only had primary level education

### 3.3 “She must know her place!” Culture and Religious Beliefs

My second assumption was that culture and religious practises that fuel child marriage discourage women participation in the public sphere. According to Moore (1990) Patriarchal society defines women’s role and behaviours in some very specific ways. These social expectations are relayed by family members, religious and traditions. It is important to note that culture and religion have such great amount of power in lives of many. These two are believed to be guilty of being forces of women oppression and subordination. Sibanda (2011) stated that tradition, religion and poverty continue to fuel the practise of child marriage. According to Musembi N C (2013) discrimination against women is produced by stereotypes and beliefs contained in moral codes such as community customs and religious norms. She further stated that religious and customary laws and practises on family relations have been regarded as the primary address for ideas of superiority or inferiority of women and men.

The Human Rights Committee in 2000<sup>50</sup> commented that “the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes”

According to Hicks (2002), some religious beliefs and practises play a part in perpetuating unequal treatment of women. When I interviewed one of the leaders of Apostolic White garment Church, Madzibaba Joseph, he explained that in their church children and women are encourage to obey the head of the family. He stated that whatever the man says as the head is final and should not be quarrelled with because he was ordained by God to be the head. He said:

*“kana baba semusoro wemba vakati mwanasikana wavo aroorwe, izvozvo hazvisi zvekupikisa nokuti panenge paine zvararatidzwa semusoro wemba”*  
meaning “ *if the father as the head of the family says his daughter should get married, it should not be refused because he would have received a vision as the head of the house*”<sup>51</sup>

Talking to child brides from the Apostolic Sects, they highlighted how they were created by God to be helpers and to be submissive and be “good women” to their husband. According to Moore (1990), moral agency means the actions that women take to respect and care for themselves. These actions include, one fulfilling her own life desires. It is about an individual

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<sup>50</sup> It is the UN Human Rights Committee in General Comment Number 28 on Equality of Rights Between Men And Women (2000)

<sup>51</sup> Interview on 18/10/2015 at Muzinda WaJehovha Apostolic Shrine Overspill

doing what makes them happy rather than doing what pleases their partner. Moore (1990) further stated that moral agency however requires that one challenges “the good woman” expressed in prevailing social norms. Most women believe that morally good women are those who fulfil well familial roles such as “the good mother”, “the caretaker”, or “the dutiful wife” regardless of the negative consequences these roles have for women’s own self-respect or well-being. Social roles for all women are based on the norm of women who remain in the private sphere caring for a family.

Most women and child brides especially from the Apostolic Sects shared how as helpers they should know their place in the family and that for them decision making position in and outside the family even in church is not their place. Most interviewed women, noted that, a helper should never be above her head (husband). According to Mackinnon (1987), women’s place is not only different but inferior, that it is not chosen but enforced. Thus the belief and the doctrine that women are helpers has forced women into submission and deforming their capabilities by the thinking that as long as they are not in decision making positions at home and outside home, they are good women following God’s word.

Paidamoyo<sup>52</sup> 15 years of age a mother of one, she explained that in her church, Johanne Marange Apostolic sect, women are not permitted to work other jobs besides vending. She further added that

*“kuchechi kwedu hatikuridzirwi zvechikoro zvekudzidza kusvika kuma form 6 kana kuenda kuUniversity nokuti vakadzi vanoenda mberi nechikoro zvinozovanetsa kuti varorwe muchechi nokuti vanonga vakuda kutonga” meaning “in our church we are not encouraged to be educated, it is not encourage for women to go up to form 6 or university because those that do so it will be difficult for them to be married in the church because such women would want to be bosses.”*

According to Sibanda (2011), the belief in the Apostolic Sects is that girls should only have minimum schooling and therefore as soon as a girl reaches puberty they are married off. The lack of education often disempowers the girls. It takes away a certain level of self confidence and self-assertion which is the ability to make plans and carry them out to envision new possibilities (Moore 1990). This will affect one’s ability to make decisions even regarding to personal health and future plans.

Madzibaba Joshua<sup>53</sup> noted that,

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<sup>52</sup> Not her real name, interviewed in Magada Epworth on 10/10/2015

*“mukadzi anofanirwa kudzikama ne kuteerera murume wake. Zvokushanda mabasa ekuti munhu anoswera asipo iye ariye akapihwa chibereko anoti zvinhiyo zvake zvochengetwa nani, munhu ngaazive zvaakarorerwa oita saizvozvo”*

*Meaning “a woman should be submissive and listen to her husband. Going to work and spending the whole day away from home and yet she is the one who was given the womb whom does she think will look after her children. She should know why she got married”*

According to Moore (1990), a certain quality of relationship is essential to develop self-respect and self-assertion. This certain quality of relationship includes a loving environment, an environment free of abuse and oppression, and an environment where one is able to develop her abilities and achieve self set goals (Moore 1990). However in most child marriages the quality of relationship is that of where child brides are dominated, oppressed and forced into submission. This has the effect of diminishing one self-respect which is the centre of one’s agency. Self respect according to Moore (1990) is an important factor in an individual’s life so as to be able to develop ones abilities and achieve self-set goals while self assertion is the ability to identify one’s own needs and seek ways to meet those needs. Moore (1990) noted that abused women moral agency is limited by abuse and by their internalization of the effects of the abuse. They distrust their judgments in the moral domain as well as in other areas. Hence it is difficult for such an individual to participate in decision making both in the private or public arena.

In relation to culture, the President of the Chiefs Council stated that there are some cultural practises that used to encourage child marriage such as betrothal of girls<sup>54</sup>, Pledging of young girls as Compensation<sup>55</sup>, wife inheritance<sup>56</sup> and others, and though they have been outlawed, some families are privately continuing with these practises. Mackinnon (2008) stated “the law alone cannot change our social condition. It can help, so far it has helped remarkably little” Sibanda (2011) stated that legal reform whilst useful is not always effective because people do not easily give up on customs and traditions.

The cultural practise of payment of lobola/bride price was noted by the president of the Chiefs’ Council as a positive culture which brings two or more families together. In Epworth,

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<sup>53</sup> Joshua (56 years) is one of the prophets in Johanne Marange Domboramwari Sect and is married to 4 wives and all of them he married before they were 16 years and has 14 children. Interview at Domboramwari Church Shrine on 26/11/2015

<sup>54</sup> It is a practice where a girl is booked for marriage while she is young.

<sup>55</sup> According to Tsanga (2011) it is when a murder is committed by a person in her family and then the girl is then given to the family of the deceased to avenge his spirit

<sup>56</sup> It is when a young sister is forced in most instances to become a wife to her late sister’s husband.

due to poverty, young girls were and are being married off for as little as a \$100. As stated by Sibanda (2011), the cultural practise such as payment of lobola exposes the girl child to child marriage. It is one of the causes of child marriage. The practise has reduced women to commodities or objects for sell because of commercialisation of the practise. Thus young girls are pushed into early marriage so that their families will gain financially from the transaction. Smith (1993) stated that once an individual is reduced to an object or commodity, that person is expected to be submissive, there is no longer any right to self-autonomy which is important for one to be able to make decisions concerning their lives, family and the society at large.

The President of the chiefs council explained that if culture is to be applied in a strict sense, a girl is not the one who decides when she wants to get married and to who. He further stated that under culture a woman remains a minor no matter her age or her level of education and should be under the authority of a man. According to Sibanda (2011), in many societies, men are expected to control women in all aspects of relationships. This involves decision-making on when, whom a girl will marry, when and how she will have sexual relations. A woman's capacity to voluntary enter into marriage, to dissolve a marriage is essential to her ability to control her life and make voluntary, informed reproductive choices stated Legal Grounds (2010). According to Degler (1980), patriarchal family structure requires that women subordinate their needs to the needs of the men and the children. The use of violence to enforce control is intrinsic to patriarchal culture.

The President of the chief's council, explained that at the traditional chief's court, women do not participate or contribute without first seeking permission to speak and most of the times it is actually their male counterparts who speak on behalf of them. The chief's court is male dominated and women only make contributions when they have been asked to do so and without being asked women are encouraged to be quite during proceedings. Morna (2011) stated that culture and tradition are major barriers to women accessing decision-making positions. Some women Councillors<sup>57</sup> stated in interview that, the culture that women should not speak in public has resulted in them not being listened to and being booed at during council meetings when they want to make contributions hence some of them have resorted to being quite in meetings which then affects their meaningful participation of women. The women councillors also shared that, most the men in the Council meetings have an attitude

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<sup>57</sup> interviewed at the Ministry of Gender and Women affairs Offices on 23/10/2015

that politics or being a councillor is not a place for a woman. Thus most women shy away from participating in politics.

Meaningful participation when one is considered a child no matter her age and level of education is a challenge and is further worsened when one is a child bride. According to the Gender Focal person in the Ministry of Gender and Women Affairs<sup>58</sup> child brides and older women at community meetings hardly participate even whatever is being discussed affects them more because of gender roles. She further stated that at the community meetings the moment a woman wants to contribute if her husband just looks at her, she quickly withdraws her statements and keeps quite. The Gender focal person in the Ministry of Gender further stated that, the fear that child brides and most women have of their husband is as a result of the age differences where the women and girls actually see their husbands more as a father who should not be challenged but should be obeyed.

The President of the Chiefs Council explained that under culture women only participates according to their roles which roles they are given in their family structures. He stated that under culture women participation is very structured, women only participates coming from a particular role assigned to them. Under culture there is no public sphere for women according to the President of the Chiefs Council. He explained that women participation in the public Sphere is a western culture because in an African setting women's space is at home with her children. Sibanda (2011) stated that, culture is one of the obstacles of the enjoyment of children's and women's rights in Africa as communities do not always observe the relevant human rights instruments that protect children from harmful cultural practices or are not aware of them.

Section 80 (3) of the constitution, outlawed all laws, customs, traditions and cultural practises that infringe the rights of women conferred in the Constitution which rights include the right to free and full consent to marriage<sup>59</sup>, the right to equal opportunities with men in political, economic and social activities.<sup>60</sup>

In conclusion, some cultural and religious practises and beliefs fuel child marriages and hinder women participation in public Sphere. Though culture is not static, but in regards to child marriages and women participations in the public sphere, culture has remained static.

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<sup>58</sup> Interviewed on 23/10/2015 at Ministry of Gender Offices

<sup>59</sup> Section 78 (2)

<sup>60</sup> Section 80 (1)

Important decisions such as when and to whom one should be married to are left to the men to decide for the woman. The practice of payment of bride price has resulted in some families pushing young girls into early marriage where most child brides are dominated which was an effect on women's agency.

### 3.4 *“What is he moulding”* Effects of domination in Child marriage on women' agency

Agency is the ability of persons to act for change towards their valued ends (Hicks (2002)). Agency freedom was defined by Sen (1985) as what an individual is free to do and achieve in pursuit of whatever goals or values she or he regards as important. The capability approach on the other hand emphasizes that the well-being of a person is fundamentally dependent upon his/her ability to be an active participant in society and freedom in its various forms requires individuals to be able to exercise their agency (Hicks 2002).

According to Mackinnon (1987), it is a male notion that power means someone must dominate. My third assumption was societal expectations that in marriage a man should be older and a woman younger so as to dominate the woman and hinder her participation in the public sphere. My findings revealed that, marrying of young girls is an issue of domination for men thus no equality in marriage. The child brides are treated as children not wives, slaves rather than subjects and restricted only to the home environment. Those that, marry young girls as per my findings do it so as to dominate them and mould them in the way that they as men desire the brides to be like. Amos, a 28 year old married a 14year old girl, said he specifically chose a young girl even though there were older girls that he could have married because he wanted someone who would listen to him and do exactly what he instructs. He stated

*“mukadzi akaerekana akura adzidza anenge onetsa kutuma kana kuudza zvekuita anonga oda kuita zvomusoro wake.*

*Meaning “if a girl becomes older, and educated it will be difficult to tell her what to do because she would what to think for herself”<sup>61</sup>.*

Most child brides interviewed, did not go back to school after marriage and their husbands even if there was a donor willing to paying for the girls schooling, did not want the child brides to be in school. According to Ara (2006) education is the strongest factor which influences women's control of their own lives. The fact that child marriage reduces the

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<sup>61</sup> Interview was carried out at Amos's house in Magada Epworth on the 15/10/2015

education attainment of girls who marry early also has implication for agency later in life (Tsimpo 2015) Agency is defined as the capacity to define one's goals and act on them. It is difficult for young girl to define and act on her goals if she in a marriage where she is dominated, oppressed and forced into submission. Thus child brides become diminished individuals who are treated as objects or slaves. Smith (1993) said diminished person is expected to be submissive; there is no longer any right to self-determination because there is no basis in equality for any such right to exist. In a condition of inferiority and objectification, submission is essential for survival. Moore (1990) noted that women's moral agency is limited by abuse and by their internalization of effects of that abuse. Abused women begin to distrust their own judgement and sense of themselves. Significantly they come to distrust their judgement in the moral domain as in the other areas hence cannot effectively participate in both private and public life (Moore (1990).

Most child brides interviewed in Epworth were not employed and most of them were vendors of vegetables, floor polish and second hand clothes. Takunda<sup>62</sup> (36years) said that he did not want his wife to become a nurse but it was better for her to become a vegetable vendor. He explained that even though his wife wanted to go back to school and become a nurse, he did not want a situation where his wife is more educated than him since he only went to school up to form 2. He explained further that if his wife was to become a nurse it meant that she will earn more money than him and if that happens, she will be vocal<sup>63</sup> in the marriage. Sen (1999) stated that the relative and regard for women's well-being is strongly influenced by such variables as women's ability to earn an independent income, to find employment outside the home, to have ownership rights and to have literacy and be educated and participating in decisions within and outside the family. Domination in the marriage, affects women's ability to be independent and achieve whatever values and goals one has.

How one is moulded at a young age has an effect on ones agency and capacity. In Epworth, most girls and women divorced from child marriages end up in child prostitution and others prostitutes or vendors. Vimbai<sup>64</sup> 16 years of age got married when she was 13 years and her husband deserted her after 2 years of marriage when she was 15 years and a mother of one stated that:

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<sup>62</sup> Takunda is married to a 15 year old and has 3 children from his first marriage. Interviewed on 6/10/2015 Epworth Overspill

<sup>63</sup> Meaning that she will now be able to speak out in the marriage

<sup>64</sup> Not her real name interviewed on 13/11/2015 at the Booster in Epworth at 20:30 hours

*“chandinoziva ibonde, kudzidza handina, hapana zvemaoko zvandinongonawo asi pabonde ndinoziva zvekuitapo”*

*meaning “what i am good at is sex. I am not educated, i can’t work but i know how to have sex”.*

Moore (1990) stated that the ability to nature self-respect and self-assertion is at the heart of moral agency, because it preserves a role for personal choice while acknowledging the social dimension of that choice. Moore further stated that moral agency means that women take actions to shape their own lives rather than expect other people or situations to shape their lives for them without their participation or assent. Most child brides interviewed in Epworth did not shape their own lives, the lives there are living of being vendors and sex working where shaped by abuse and oppression they faced/face as child brides. Abuse erodes the concrete options women have to shape their lives, women’s ability to identify and attend to their own needs and women’s sense that they are able to understand their situation and participate effectively (Moore 1990)

The President of the Chiefs Council stated<sup>65</sup> that, child brides are treated more as sex objects, slaves rather than wives and they become dependent, subservient to such an extent that they lack initiative and cannot think out of their own initiation. In regards to the relationship between child brides and their “husbands” according to President of the Chiefs Council, it is one of father and daughter where the child bride is afraid of her husband, does not ask questions and does everything to please him. According to Moore (1990) abused women pay attention to partner’s needs instead of their own in hopes of pleasing their abusers and reducing the violence. Abused women primarily depend on their abusers for physical, emotional and financial support. Abused women are known for their abilities to anticipate the orders and desires of those who have power over them (Smith (1993)) Hence child brides are moulded by abusive husbands so as to receive instructions and act accordingly. Their moral agency is diminished for they lack the capability to act on their own behalf.

In conclusion, women agency has a strong instrumental impact on the well-being of children especially girls (Hicks 2002). Child marriage however negatively affects women agency by forcing them into submission through abuse, oppression and subordination. According to Sen (1984) women adapt their preferences to become content with their situation and this acceptance of status-quo situations is the most difficult barrier to agency. Domination as a result of child marriage has the effect of a woman living life thinking she is worthless,

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<sup>65</sup> Interviewed at Rainbow Towers 20/1/2016

subservient and hence affecting one self-respect and self-assertion. There is however the need to look at what the law, policies and practises that are in place to establish whether they are protect girls from child marriages and enhance women capacity and agency for effective participation.

## Chapter 4

### 4.0 *Drawing Water with a sieve! Inadequate implementation of constitutional provisions*

According to Moore (1990), more often than not, the very institutions to which women must look for help function to obstruct their development, reinforces their moral confusion and support the designs of their abusers. My fourth assumption was inadequate implementation of constitutional provisions exposes girl children to child marriages. Constitutional provisions provides for the protection for the rights of children and women, and equality of persons under the law. Section 56 (1) of the constitution provides for equality and equal protection of the law while section 78 provides for the minimum age of marriage, 18 years and that no person shall be compelled to enter into marriage against their will. This protects girls from discriminatory laws, cultural and religious practices that encourage the girls to get married before they are 18. However, in Epworth girls are still getting married before their 18 besides their constitutional rights to family or parental care, to appropriate care when removed from family environment, and to be protected from sexual exploitation, and any form of abuse<sup>66</sup>. The trivialization of child marriage practise, lack of political will, lack of resources and attitudes of the people towards protecting and promoting women and children rights have resulted in the diminishing of women's agency and capacity which then leads to ineffective participation by women.

#### 4.1 Trivialization of Child marriage practise

The Cambridge Dictionaries Online (undated) defined trivialization as to mean to make something seem less important that it really is.

##### 4.1.1 Trivialization by Courts

According to section 81(2) and (3) of the constitution, the children are entitled to adequate protection by the courts and the child's best interests are paramount in every matter concerning the child. In the Constitutional Case of Mudzuru and Tsopodzi CCZ12/2015

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<sup>66</sup> Section 81 (1) (d), (e) Constitution

which outlawed child marriage, the Court ruled that “with effect from the 20th January 2016, no person below the age of 18 may enter into marriage.” The Constitution which outlawed Child marriage practice came into force on the 22 of May 2013 which means that from that date girls below the age of 18 were protected from child marriage and any perpetrators of child marriages after that date were liable for prosecution. However the Constitutional court did not offer adequate protection to the girls married between the period 22 May 2013 and 19 January 2016. The ruling by the constitutional court can be concluded to say it did not take into account the best interest of the child principle as a paramount consideration and that the court actually protected the child marriage perpetrators and accomplices at the expense of the young girls who the court is entitled to protect.

#### **4.1.2 Trivialization by Law Enforcement Agents.**

The law enforcement agents have the duty to enforce the law in its entirety without any fear or favours. It is their duty to protect lives and to uphold the law. According to section 219 of the constitution, the police are to investigate and prevent crimes, maintain law and order, uphold the constitution and enforce the law with fear or favour. In Epworth, the officers who are in charge of investigating and arresting child marriage perpetrators were the Victim Friendly Unit Police Community Volunteers. These Police Community Volunteers are not salaried, they are not government employees even though they wear the police uniform and carry out duties like any other uniformed law officers. According to one constable who has been volunteering since 2001 and has been staying in Epworth since 1992 given the he was given the task to investigate and arrest perpetrators of child sexual violence because he knows the community very well and lives there. However because the volunteers are not salaried, they lack incentive. The police community volunteers knew about the whereabouts the child marriage perpetrators and actually had a relationship that even in my presence would actually ask for money for beer, drinks or lunch from the perpetrators which I concluded to be bribes.

Collecting of bribes, trivialization of child marriage practise by leaving unpaid volunteers to investigate and affect arrests shows the lack of seriousness of the enforcement agents in trying to ensure children full protection of the law. According to Section 50 (9) of the Constitution, other than police services, a judicial officer acting in a judicial capacity and other “public Officer” are the persons who can affect arrests. Thus police volunteers are not covered by the constitution as persons who can affect arrests which means according to section 50 (9) a child marriage perpetrator can actually sue for illegal arrest or detention if such arrest has been done by a volunteer.

## **4.2 Lack of Political Will**

Wister (undated) stated that, lack of political will, simply means that politicians are not willing to do something, either because it will impair their chances of being elected, or getting legislation they want passed in the future, or because they simply don't want to do it because of their own personal beliefs.

### **4.2.1 Laws have not yet been aligned**

Looking at the laws, the inconsistency in the definition who is a child in the laws that is the Constitution, Children's Act and the Criminal law code, and that the constitution provided 18 years as the minimum age for marriage while the Marriage act provided that 16 years as the minimum age and the Customary marriages Act does not have an age restriction shifted my focus to policy makers. The Gender Focal persons in the Department of Constitutional Affairs in the Ministry of Justice, Legal and Parliamentary Affairs, stated that since the coming into force of the constitution in 2013, not much has been done in regards to align the marriage laws and other laws that protects girls from being exposed child marriage with the constitution. Gender Focal persons, noted that other laws which the government prioritise such as the Indigenisation laws and laws to do with economic empowerment have been aligned to the constitution. The government does not benefit financial from the alignment of marriage laws with the constitution. Priority is on laws that benefit the state financially explained the Gender Focal Persons.<sup>67</sup> Gender officers in the Ministry of Justice stated that, the issues of child marriages practice and women rights are usually paid attention to towards government elections time or when the government has received or is sourcing for funding from international donors.

### **4.2.2 Lack of Awareness of the law**

Awareness is understanding of a subject, situation or practice based on the information that has been made available or experience. According to section 62 (2) of the constitution, everyone has the right to access information for the exercise or protection of a right. Children and women have the right to know that child marriage has been outlawed and that according to section 80 (3) of the constitution, all laws, customs, traditional and cultural practise that infringe the right of women are null and void. Some child marriages were as a result of cultural and religious practises and interviewed women and girls did not know that the law had outlawed such practises. Section 80 (3), address cultural and religious beliefs that

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<sup>67</sup> Interview at the Officers on the Ministry of Justice on 15/10/2015

encourage child marriage and discourage women participation in the public sphere as being in contradiction of the constitution. If the public is to be made aware of laws and provisions that protect children and women from this has an impact on the treatment of women in the society and also on deterring child marriage perpetrators and accomplices.

While doing desk research on the reporting of the Constitutional Judgement that outlawed child marriages in Zimbabwe<sup>68</sup>, the media only reported on the case for the first four days of the outcome of the judgment. It was during those first four days that there were talk shows, radio programmes, and front page newspaper articles talked about child marriage practices and its impacts on women lives and the society at large. Afterwards for instance in the newspapers if reported it was placed right in the corner hidden spot of the paper and not as main news or one of the main article. Hence, lack of consistent, robust and vigorous campaigns, awareness and information dissemination trivializes child marriage.

### **4.3 Lack of Resources**

Lack of resources can simply be taken to mean that there is no financial support. This has an impact of bringing a project to a halt. It should not at this point that recourses can never be enough but it is a matter of prioritization.

#### **4.3.1 Department of Social Welfare**

In Epworth, I gathered that most child brides were orphans or coming from a poor background so I focused on the Department of Social welfare which has the mandate to provide social security and social care to orphans and vulnerable children. The District Child welfare Officer Harare Central stated<sup>69</sup> that in Epworth there are many orphans and poor families and that The Department used to assist with school fees and basic commodities but since 2006 as a department they have been struggling financially and as a result many children have dropped out of school. He further explained that the demand of children who needs school fees went up very high in 2006 because many families had been displaced by Operation Murambatsvina. Since 2013 the department has been receiving less than 2% of their required budget from the State. He stressed the point that the Department of Social Welfare is non profit making department so government through treasury, does not see the reason why in terms of budget the department should be given even 5% of what they would have requested. The fact that children are the future generation is not a priority.

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<sup>68</sup> Mudzuru & Anor CCZ12/2015

<sup>69</sup> Interview conducted at the Department of Social welfare on 19<sup>th</sup>/2/2016

Thus lack of availability of resources especially affects mainly girls because families would prefer to educate a boy than a girl. Tsimpo (2015) stated that education for girls is regarded as not necessary because girls must inevitably get married, and whatever wealth they accumulate benefit the families of the husbands they get married to rather than the families of their parents.

The Department has a programme under Social Protection Scheme called Basic Education Assistance Model<sup>70</sup> which supports poor families with school and examination fees, but this programme is not benefiting the poor families. The Harare District Child Welfare said this is because those in the selection committees to select children who should benefit are very corrupt and the programme is benefiting children and relatives of the committee members. As a result some poor families make the choice to educate the boy child and push the girl child into early marriage because she will be home doing nothing. According to UNICEF (2015) “the major purpose of BEAM is to prevent poor households from resorting to negative coping mechanisms such as withdrawing children from school.”

#### **4.3.2 Ministry Of Gender and Women Affairs**

Since the focus of my dissertation was on women participation and to establish whether child marriage has an impact on women capacity and agency, which then lead to ineffective participation, I focused on the Ministry of Gender and women’s Affairs. The Gender Officer in interview<sup>71</sup> stated that, as a ministry they only receive less than a percentage of what they would have request from the government treasury hence the Ministry is unable to carry out many awareness campaigns in the communities (Epworth) about the negative effects of Child marriage and just generally informing women about their constitutional rights. The Ministry however relies more on donors such as UNDP, UN Women and other Stakeholders. However relying on donors has its challenges according to the Gender officer, donors only fund their own agendas which they would want accomplished. According to Article 33 of the SADC protocol the state has to ensure that there are gender sensitive budgets and planning including designating the necessary resources towards initiatives aimed at empowering women and girls. In other words the state is to priorities women and girls programmes in allocating budgets.

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<sup>70</sup>Established in 2000 and has donors that support financial.

<sup>71</sup> Interviewed on 15/12/2015 at the Offices of the Ministry of Gender and women Affairs

### 4.3.3 Education Policy

The Education Policy<sup>72</sup> provides that a girl even when she gets pregnant has the right to continue with her education even after giving birth. In Epworth I found out that girls after getting pregnant or married were not going back to school. Questions such as who will pay the school fees, who will look after her baby while girl is in school, who will provide for the baby and for the girl's schooling were raised and these were not addressed in the policy. Section 81 (1) (f) states further that every child has the right to education. Section 75 of the Constitution provides the right to a basic State-funded education and that the state has to take "reasonable" legislative and other measures to achieve the progressive realisation of the right. This however is to be down within the limits of available resources<sup>73</sup>. Lack of resources for basic State-funded education has affected many girls even those who would have returned home to their parents after divorce or desertion. One woman explained how after the return of their daughter, her husband has refused to pay school fees for her daughter and refers to her as a "closed chapter" meaning to him he has already done everything for her and is not going to do anything more.

The constitution section 81 provides for the rights of the children. The constitution clearly provides the rights of a child to family, parental care and appropriate care when removed from the family environment<sup>74</sup>. Child marriage takes away the right to parental care of a girl child. When these girls have been removed from the family environment, they do not receive appropriate care but are treated slave. Rufaro<sup>75</sup> 15 years of age shared in interview<sup>76</sup> how her husband would give her a 25litres bucket full of floor polish to go and sell and only to return home when she finished selling. She explained that she would leave home around 6am everyday without eating anything and would walk for hours and had to try and sell the floor polish before sunset because she had to be home before 6pm. The constitution states that a child has the right to be protected from child labour, maltreatment, neglect or any form of abuse<sup>77</sup>. The findings in Epworth established that child marriage is prevalent and child brides are being abused and not going back school after marriage.

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<sup>72</sup> The education policy outlines the education system in Zimbabwe

<sup>73</sup> Section 75 (4)

<sup>74</sup> Section 81 (1) (d)

<sup>75</sup> Not her real name

<sup>76</sup> Interviewed at Overspill Shops on 18/12/2015

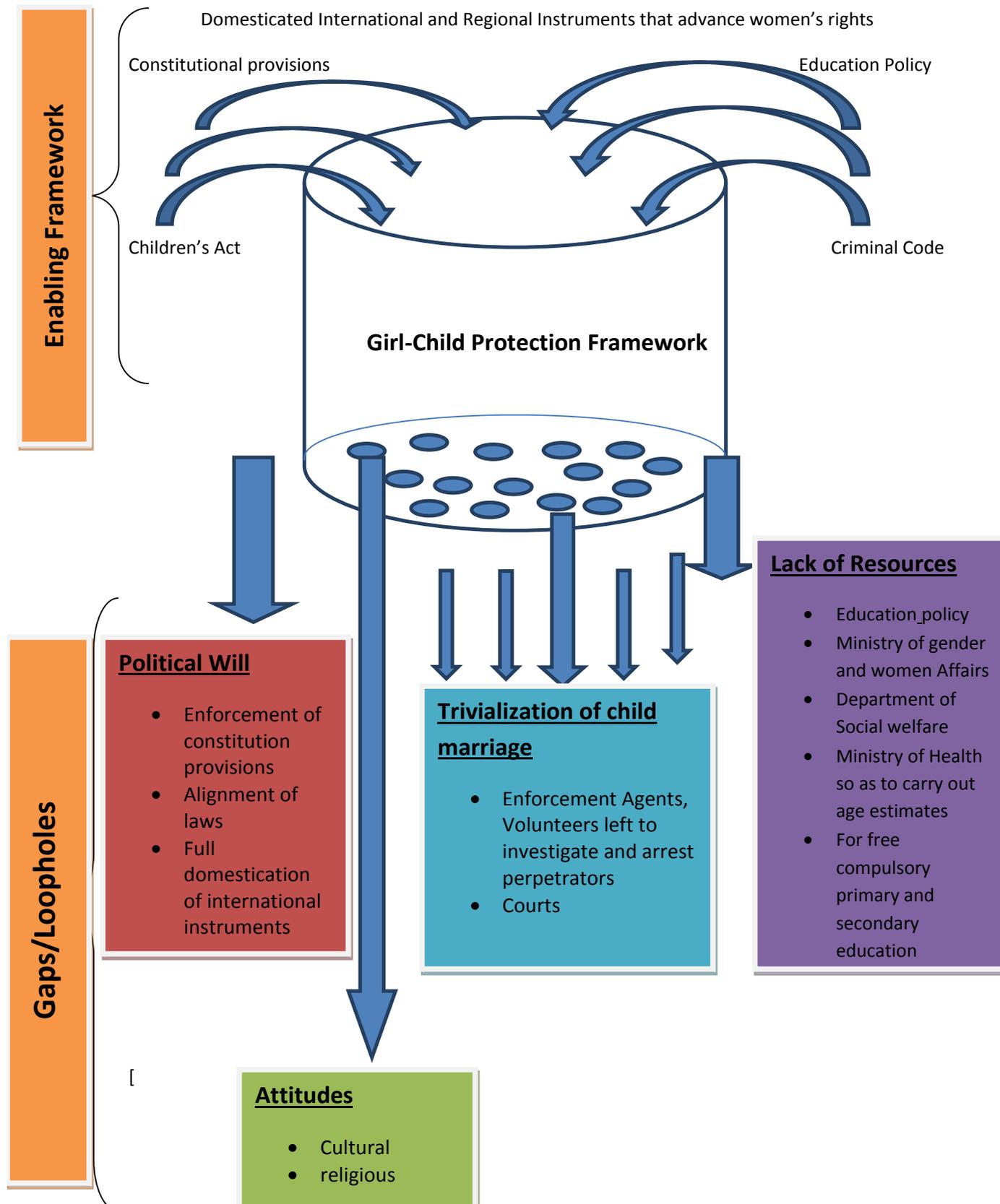
<sup>77</sup> Section 81 (1) (e)

In conclusion, the failure to effectively implement constitutional rights of children as indicated above has resulted in mainly the girl child being affected because of her biological setup which then negatively affects her transition into womanhood. The child brides are thus exposed to sexual abuse and exploitation, child labour and slavery which then affects their development. Because of the abuse as a result of early marriage, most child brides' self-respect and self-assertion is diminished. Self-assertion and self-respect are the essential aspects of agency.

The diagram below illustrates the current framework that is in place to protect girls from child marriage and to capacitate them and at the same time the gaps/loopholes which are pulling or pushing girls into early marriage.

Figure 5: Drawing water with a sieve

“Drawing water with a Sieve” Gaps/Loopholes



#### **4.4 *Where is her protection? The need for legislative and other measures***

Child marriage is now widely recognised as a violation of children's rights. It is also a direct form of discrimination against the girl child, who, as a result of the practice, is often deprived of her basic rights to health, education, development, and equality. Tradition, religion, and poverty continue to fuel the practice of child marriage, despite its strong association with adverse reproductive health outcomes and the lack of education for girls (Sibanda (2011)) Child marriages are a serious violation of human rights, and has lead to many girls in Epworth exposed to sexual exploitation and abuse.

Though there are different international and regional instruments that Zimbabwe has ratified that prohibit child marriages, reality on the ground is that most girls in Epworth are getting into early marriage. My fifth assumption was that there is need for legislative and other measures to address child marriage so as to ensure full and meaningful participation on the public sphere. According to Sibanda (2011), the practice of child marriages is one reflection of society's negative attitude towards women revealing the fact that important decisions such as marriage, choice of partner, and women's sexuality are all controlled by others from an early age until old age.

Child marriage is prohibited directly and indirectly in many international human rights instruments by including the prohibition of all forms of discrimination against girls and harmful cultural or traditional practises to children. Zimbabwe as a state has a three-fold obligation to protects, respect and fulfils rights. The obligation to "protect" means that, the State has to take appropriate steps and measures, which include putting in place legislative framework and polices that prohibits violations of human rights as stipulated in the conventions. By signing and ratifying the instruments, Zimbabwe as a state has obligations that arise from such ratification. The following instruments shall be analysed and discussed: CEDAW, Women's Protocol, SADC Protocol, ACHPR, CRC and ACRWC.

##### **4.4.1 *The State obligation under international law***

According to Articles 2 and 24 of CEDAW, the state has an obligation to take all appropriate measures, which include legislation, to modify or abolish existing laws, customs and

practises that discriminate against women.<sup>78</sup> The state has also the obligation to adopt all necessary measures aimed at achieving full realization of women's rights.

My point of departure is Article 1 of CRC which defines a child as *“every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”* This is protection of girls from child marriage for as long as they are below 18 years of age. However, CRC by including that a child depending on the law applicable can actually attain majority status earlier opened a door for a for legislation that allow a girl child below 16 to attain majority in regards to marriage according to section 22 of the Marriages Act.

It should be noted at this point that child marriage is not specifically mentioned in the CRC but prohibited if regards is to be paid to Article 3, which talks about the Best Interest of the Child, Article 34 protection of the child from all forms of sexual exploitation and abuse, Article 36 protection from all other forms of exploitation prejudicial to any aspects of the child's welfare and Article 6 right to maximum extent possible for survival and development. Since Child marriages exposes girls to sexual abuse, it's not in their best interests, hinders their development, hence CRC protects girls from child marriage. Section 26 of the constitution calls the state to take all appropriate measures to ensure that “no marriage is entered into without the free and full consent of the intending parties” In child marriage, a girl lacks the capacity to freely and fully consent because she would not have matured enough to understand the implications of marriage.

The Children's Act defines a child as any person below the age of 16<sup>79</sup> and a minor as any person below the age of 18. On the other hand, the Criminal Law Code<sup>80</sup> in terms of section 61 (1) defines a young person as any person below the age of 16. This is inconsistency in the definition of a child in the national laws and with the international and regional provisions, which defines a child as anyone below 18, prepared a way for girl child sexual abuse which then pushes them into early marriage because of reasons such as early pregnancy and loss of virginity. According to section 34<sup>81</sup> of the constitution, the state must ensure that all international conventions and treaties are incorporated into the law.

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<sup>78</sup> Child marriage discriminates against women and negatively impacts on their health and education

<sup>79</sup> Section 2 of the Act 5:07 2002

<sup>80</sup> Act Chapter 19:23

<sup>81</sup> Section 34 refers to the domestication of International Instruments. Section 327 of the constitution however states that the treaty or convention does not automatically bind Zimbabwe, it has to be approved by the Parliament

In the field I discovered that quite a number of child brides did not have birth certificate and because of that the courts were not prosecuting their matters until an age estimate has been done by trained medical doctors and there is a report to that effect. However the processes to get the age estimates cost \$80 and most girls do not have such money as life in Epworth is that of a dollar per day. As a result the police have taken the attitude that if a girl does not have a birth certificate, then there is no need to do further investigations or even open a docket. Hence some child brides because they fear their husbands have now resort to just lie that they do not birth certificates so that their matters are not prosecuted. The constitution section 81 (1) (b) however provides for the right to a name and a prompt provision of a birth certificate. Thus the state has an obligation to ensure that every child has a birth certificate. The challenge of not having a birth certificate according to some child brides interviewed was the reason why they could not register to write their grade seven exams hence dropped out of school because there was no way they were going to proceed to secondary school without sitting for grade seven exams.

Article 19 of the CRC puts an obligation on the state to take appropriate measures which include administrative and educational so as to protect a child from all forms of violence (this includes child marriage) The state needs to take administrative measures so that every girl child has a birth certificate.

In Epworth, child brides echoed that there are forced to have sex by their spouses. One Catharine<sup>82</sup> 15 years explained how her “husband” always forces himself on her and that it does not matter whether she is on her menstruation cycle. According to psychologist Hingoranny (2002), rape is a big trauma and the victim requires intensive therapy to get out of it. Some people get married because of their insecurity and the stigma that no one will marry them. But these girls barely forgive the rapist. Article 34 and 27 of the CRC and ACRWL respectively, provides that the state has an obligation to protect a child from all forms of sexual exploitation and abuse.

According to Sibanda (2011) whilst it appears that the legal framework to protect girl child from child marriages in Zimbabwe exists through constitutional provisions and policies, however, the government is often either unable to enforce existing laws, or rectify discrepancies between national laws on marriage age and entrenched customary and religious

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<sup>82</sup> Note her real name

laws. This is because of the official tolerance of cultural, societal and customary norms that shape and govern the institution of marriage and family life (IPPF (2007))

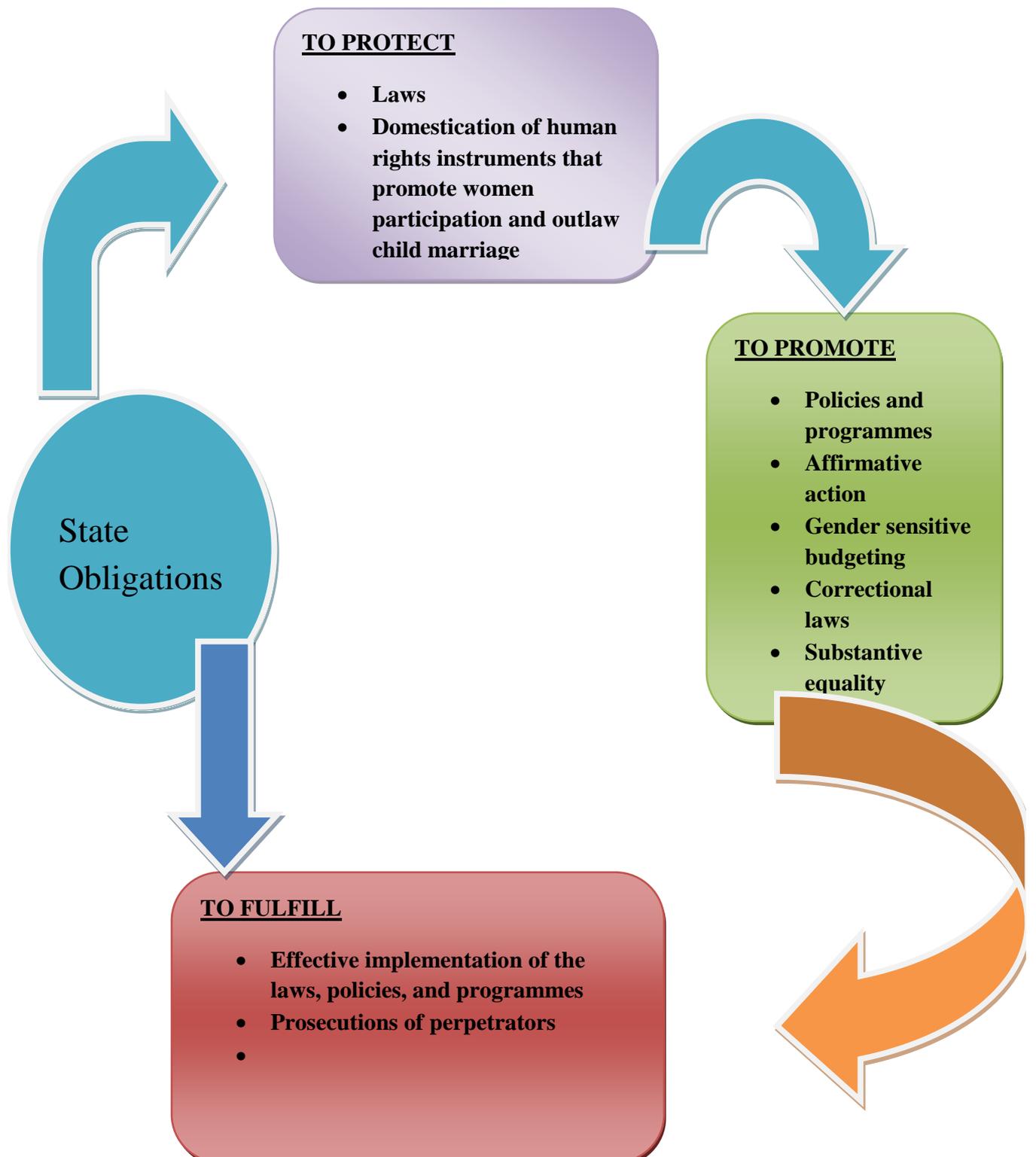
In conclusion, it should be noted that the State has obligations under international and regional instruments to protect girls from child marriage. Protection has been provided for in the human rights instruments and the constitution but failure to fully implement these rights has resulted in the prevalence of child marriage. The state needs to take correctional<sup>83</sup> and positive action so as to implement the constitutional rights of women and children.

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<sup>83</sup> These are measures to correct a wrong that was in the law, policy or practices which discriminated women. For example the wrong that was in the marriage laws which exposed only girls to child marriage.

Figure 6: Three fold state obligations

### 3 Fold State obligations



#### 4.5 “To my Surprise” Emerging issues

Firstly I assumed mothers were pushing their daughters into early marriage. My thoughts were based on the fact that because of poverty, it will be one mouth less to feed and also that the young girl will help the family with financial support from her husband. To my surprise, most women in Epworth who got married young did not want their daughters to get before they finished secondary schooling. One woman said<sup>84</sup>:

*“ ini mwana wangu akamitisa otizira, ndinoenda kunomutora. Hazvinei neni kuti ane nhumbu, nhumbu inobarwa munhu odzokera kuchikoro ini ndosara nechizukuru. Handidi nemwana wangu kuti azonoshushwa zvake bodo ”*

*Meaning “if my daughter gets pregnant and elopes, I will go and take her back. It doesn’t matter she will be pregnant she will give birth and go back to school and I can stay at home looking after my grandchild. I don’t want with my daughter and I don’t want her to be abused by her husband”*

The women have now accepted that pregnancy of a girl does not automatically mean she has to get married.

On the other end, women also explained that when their girls do return home<sup>85</sup> with a child or without, they are happy that she is back but it is the girls’ fathers who turn out to be the problem. Rutendo (39) explained how her daughter returned home from her abusive marriage<sup>86</sup> and that the girl’s father has said he doesn’t want to have anything to do with his daughter and that she should go back to her husband and work on her marriage with him.

Another woman explained how the return of her daughter brought joy to her and problems in her marriage. She shared that because she accepted her daughter’s return against her husband’s will, she was told by her husband that she should move out of their matrimonial bedroom and it’s been 8 months and she has been sleeping in the same room with her daughter and grandchild and only visits her bedroom when summoned by her husband for his conjugal rights. This sacrifice by a mother proved to me how much women/mothers are willing to give up anything and everything so that their daughters are not or will not return to a child marriage.

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<sup>84</sup> Interviewed on 22/10/2015 in Magada

<sup>85</sup> Returning because the marriage has failed

<sup>86</sup> Her daughter was married because she had gotten pregnant while doing her form two, she was only 15 years of age and her husband was 29 years and used to physically abuse her and would not buy food or clothes for her.

Virginity to most women interviewed is no longer an important element in most women's lives. It was my finding that some girls get into early marriage because they would have lost their virginity to that man. Most women in Epworth are moving with times and have now realised that virginity though very small and unseen had so much power that if broken it had an impact on, what age and to whom one should be married to. Most women especially the older women noted that it is not important to throw away a young girl's future by forcing her into early marriage because she has lost a small thing such as virginity.

Bride price is no longer the major push of some girls in Epworth into early marriage. I interviewed girls who were in "early cohabitations"<sup>87</sup> because no lobola had been paid and their families had not even bothered to ask for the money or for their return. It was clear that because of poverty families will actually be relieved if a girl is to go and stay with another family because it becomes one mouth less to feed for the parents. In other words the girls relieve burdens on their families if they cohabit early.

Education and other interventions will not be about availing money only but also considering power dynamics in child marriage. Who has the power to allow a girl in child marriage to go back to school? It was a surprise that even when donors offer money or well wishes for girls in Child marriages to go back to school, the girls had no authority to decided to go back. Her thoughts and voice did not matter but that of her husband and family. Amos a 28 year old who had married a 14 year old explained that he did not want his wife to go back to school and was comfortable with the level of education that she had since she had gone to school up to grade 7. According to Hellum and Katsande (2015) power structures inform different norms that shape the unequal gender relations in the family. Power over, concerns the ability of power holders to secure the compliance of those less powerful is evident in child marriages. The young brides do not have a say or cannot negotiate even for their right to education<sup>88</sup> with those regarded as power holders such as their husbands.

Women capacity and agency is affected by early marriage and this has a negative impact on women participation in the public sphere. Because of the unequal gender relations in child marriage, most child brides and women who got married as minors are abused. Though women in and from child marriage do not want their daughters to get married while young, the issue of the power dynamics in most marriages shows how even after returning home,

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<sup>87</sup> Since no bride price was paid, it cannot be referred to as marriage but as cohabitation. It is early cohabitations because the girls will be below the age of 18 years, which is the legal age of majority.

<sup>88</sup> Provided for according to section 75 (1) (a) of the constitution 2013

child brides are faced with further abuse and rejection by their own fathers. However the next chapter will interrogate the link between child marriage and women capacity and agency so as to establish whether failure to implement children's rights has a negative impact on women participation in the public sphere.

## Chapter 5

### 5.0 Interrogating the Link? Discussion

#### 5.1 Child Marriage Vs Women meaningful participation

Child marriage is defined as a marriage of a girl or boy who is below the age of 18 years. According to Tsimpo (2015), the practice is highly prevalent to girls hence it negatively impacts the lives of women as they are burdened by the duties of wifing and motherhood<sup>89</sup> at an early age. Tsimpo (2015) further stated that, the issue of Child marriage is crucial for the ability of girls to be able to make choices later on in life. Nyasha<sup>90</sup> a 14 year old who got married at 13 explained in interview, that she had just finished her grade seven when she got married. She stated that she wants to be maid but does not even know what being a maid entitles. The impact of child marriage in Nyasha's life is that she did not even get a chance to fully develop so that she makes informed choices in life.

According to article 268 of the Beijing Platform of Action, motherhood at a very young age entail complications during pregnancy and delivery and a risk of maternal death that is much greater than average. Overall, early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have long term adverse impact on the child brides and their children's quality of life (Shaba (2000))

Kabeer (2008) stated that a girl or women's capacity for choices is depended on 3 dimensions namely, agency<sup>91</sup>, resources<sup>92</sup> and achievements<sup>93</sup>. Focusing on the dimension of agency, child marriage clearly affects agency because girls who marry as children often have less decision making ability in their households (Tsimpo 2015). If one cannot or does not have decision making ability at home, it will be difficult for her to be able to meaningful participate in the public sphere. Meaningful participation requires one to have the capacity, opportunity and empowered so as to be able to make informed decisions not only about their

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<sup>89</sup> The burden of wifing and motherhood limits most women to the family arena so as to be able to effectively carry out their duties

<sup>90</sup> Not her real name interviewed at Domborambari Clinic on 15/12/2015.

<sup>91</sup> Agency is one's ability to be able to define objectives and act on them

<sup>92</sup> These can be social, human or material

<sup>93</sup> Achievement affects choices because they are foundations on which future agency is built ( Tsimpo 2015)

lives but about political, environmental and economic developments. Thus child marriage negatively impacts on women's meaningful participation.

Women's meaningful participation is a necessary component for the development of women's rights, the welfare of a country and the world at large. According to Budlender (1999), women meaningful participation increases the sensitivity to issues relating to children's rights, the rights of the elderly and the marginalised. Child marriage however has an effect of limiting women participation by limiting them to the family arena. This then has an impact on the implementation and recognitions on women's and children's rights. According to Sibanda (2012), child brides are frequently susceptible to domestic violence because the age difference emphasizes the powerlessness of the girl child. There is some empirical evidence that child marriage is associated with increased risk of girl's experiencing domestic violence and sexual abuse. Abuse according to Moore (1990) erodes one sense of self and results in one distrusting their own judgements resulting in diminished moral agency.

Delaying marriage has an impact on increasing schooling for girls which will mean a chance for the girl to fully develop healthy wise and increase the prospect of literacy. It should be noted that education has a way of influencing one's character and shaping one's future. Child marriage has been proved to result to girls dropping or being pulled out of school. This impacts on their character and future participation as it will be difficult for a girl who has been moulded at home by her "husband" to meaningfully participate. In child marriage the girls are moulded more by their husbands and there are moulded to think and act within certain limited parameters. Tsimpo (2015) noted that once a child is educated, they are able to behave in a civilized and diplomatic manner. Which are qualities that are important for a woman to have so as to be able participate meaningfully.

According to Muhuro (2011), child marriage is one of the harmful cultural practices which maintain the subordination of women in society and perpetuate gender-based violence. Women who grew up in an environment where they are subdued and abused usually lack self confidence and initiative. Participation of a woman who comes from an environment where she cannot do anything out her own initiative thus becomes difficulty.

Due to underdevelopment pelvis, girls who fall pregnant before 18 years experience complications at birth (Muhuro 2011) Birth complications can cause fistula<sup>94</sup> which then leads to husbands deserting the young girls. This has the consequence of causing devastating psychological torture to these girls which will have the consequence of affecting their participation as women.

Power dynamics<sup>95</sup> in child marriages have resulted in the girls not being able to negotiate safe sex hence a very high risk of contracting HIV/AIDS. Most girls in child marriages are married to older men who have been or who are in other sexual relationships. Contracting HIV/AIDS at a young age is divesting considering to the stigma<sup>96</sup> attached to the disease. This then affects the girl who then as a woman will find it difficult to participate in the public sphere. She will then limit herself to the private sphere were she feels she belongs and can participate within the limitations offered to her.

In conclusion child marriage affects the health, education and mental and emotional development of girls since they will not be ready for the responsibilities that come with the roles of being a mother, a sexual partner and a wife. This as a result will affect their capacity and agency which then has a negative impact on women meaningful participation in the public sphere.

## **5.2 *They are glued!* The inseparable bond between the Best interest of the Child and Women's Agency**

According to Hicks (2002), increasing women's agency is an efficient means towards the goal of the well-being or capability of children. The agency of women contributes both to women's own well-being and to well-being of children. When women have a more adequate education, they have a stronger position in cooperative conflicts, both within and outside the household that have bearing on children's well being.

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<sup>94</sup> Fistula is hole between the vagina and rectum or bladder that is caused by prolonged obstructed labour, leaving a woman incontinent of urine or faeces or both according to Fistula foundation

<sup>95</sup> This refers to dynamics that comes because the man is older than the girl, the man has resources that belong only to him which he alone has access and control over

<sup>96</sup> The stigma of HIV/AIDS in most society is that they are shunned, looked down upon, regarded as promiscuous people

Article 3 of Convention on the Rights of the Child<sup>97</sup>, clearly set out the principle of the best interest of the child. The convention however does not define the principle. Eekelaar, (1992) defined Best Interest of the Child as “*Basic interests, for example to physical, emotional and intellectual care development interests, to enter adulthood as far possible without disadvantage, autonomy interest, especially the freedom to choose a lifestyle of their own”* Article 8 (2) (a) of the SADC Protocol<sup>98</sup> clearly gives evidence for the link or the inseparable bond between the best interest of the child and women participation. Article 8 (2) (a) states that “*No person under the age of 18 shall marry, unless otherwise specified by the law, which takes into account the best interests and welfare of the child*”

Linking marriage to the best interest of the child is a specific indication that the end result is to have a child who is able to “enter adulthood as far as possible without disadvantages and with freedom to choose a lifestyle of her/his own”. This is so as to have a young generation that has matured and that has been moulded to such an extent that it is able to freely act and achieve or pursuit goals and values of importance to them. According to section 22 of the Marriage Act 5:11, “*no boy under the age of 18 years and no girl under the age of 16 years shall be capable of contracting a valid marriage...*” This section though now outlawed by the constitution, clearly revealed who is/was affected more with child marriage and who was protected from it. If thus the best interest of the child is applied in this regard, the girl will be protected from child marriage and hence given the chance to fully develop physically and intellectually. This will eventually led to her having a positive impact in participating in the public sphere.

The two, Best Interest of the Child and Women meaningful participation are inseparable. Without best Interests of the Child, the result is a society of women<sup>99</sup> who are victims<sup>100</sup> and dependents. Failure to effectively implement the best Interests of the Child principle and children’s rights research has shown that it’s the girl child who is affected more because of her sex and gender roles. This then ultimately has a negative impact on her agency and capacity. According to Hicks (2002) women agency has a strong instrumental impact on the well-being of children especially girls.

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<sup>97</sup> Zimbabwe signed and ratified the convention

<sup>98</sup> Which Zimbabwe as a state signed and ratified in 2008

<sup>99</sup> Specific reference is made to women because is women who are mostly affected with Child Marriage and failure to observe and implement children’s rights.

<sup>100</sup> Victims of abuse in marriage. As noted in child marriage because of the power dynamics women are abused be it sexually , physically or financially

According to Freeman M, (2007) Best Interest of the Child principle is an element which needs to be taken fully into account in implementing other rights. He further noted that the principle should be applied and where failure to observe it would affect the enjoyment of any children's rights. He stress on the fact that “ *giving greater weight to children's Best interests maximizes the welfare of society as a whole and putting children first is a way of building for the future*” This clearly links Best Interest of the Child to Women agency and capacity which are important for one to be able to effectively participation in both the private and public sphere. As discussed above girls are the future women, it is girls who are more on the receiving end of inadequate implementation of best interest of the child because of their sex and gender roles which will an adverse effect on their participation as women in the public sphere.

Adhering to and effective implementation of the best interest of the child principle according to Freeman M (2007) is giving children an opportunity to become successful adults. Successful adult is defined as someone who is mature, educated and has occupational achievements. Thus a successful adult woman is able to meaningfully participate in the public sphere. Sibanda (2011) stated that, the best interests of the child requires that any decisions made by the family or behalf of the child must be done to enhance the growth and development of the child.

In conclusion, the best interest of the child principle if taken as paramount consideration in all issues and aspects of a child has as impact of empowering girls and protecting them from sexual abusive relationship at a young age. Once a young girl is burdened with duties of wifing and mothering at a young age due to the fact that her best interests were not implemented, this will affect her future and well-being. The effective implementation of the best interest of the child principle benefits the women more. There is however the need to address the gaps that are in the law and policies and also the attitudes of the society and law enforcement agencies so as to have constitutional provisions that protect girls from child marriage effectively implemented. The following chapter will focus on the different recommendations to different government ministries, the society, law enforcement agency and policy makers.

## Chapter 6

### 6.0 What Should Be Done! Conclusion and Recommendations

As reflected in this paper, to have women in equal numbers to men meaningfully participating in the public sphere, there is demand to address child marriage as it negatively affects woman capacity and agency which then leads to ineffective participation. The law however is not enough to address child marriage, there is need to address attitudes and beliefs that have been deeply rooted in people.

#### 6.1 Conclusion

From the findings, the following conclusions are drawn,

1. That child marriage perpetuates unequal gender relations within marriage which incapacitates women's potential to participate in the public sphere. Women's agency and capacity is negatively affected by the abuse, violence and oppression that child brides face in marriage which then negatively affects their confidence, self-respect and self-assertion.
2. That, Cultural and religious practise that fuel child marriage discourage women/girls participation in the public sphere. Women are discouraged to earn more than their husbands and encouraged to be submissive and to know their place as women is not a place of decision making both in the private or public arena. Hence under culture and religious beliefs, as noted by Amina (1995) a real African woman is content with her subordinate position as wife, mother and beast of burden. She is passive in the face of abuse, tolerant of all forms of infidelity; her only real ambition is to retain respectability by labouring for the maintenance of a stable marriage and family and seeing to the satisfaction of her husband's desires.
3. That, Societal expectations that in marriage a man should be older and a woman younger so as to dominate the woman hinder her participation in the public sphere. Domination in marriage results in child brides paying attention to their husbands needs and desires and acts as per instructions. Hence they become dependents and lack initiative as since they only act and think in limited parameters as per instructions or orders given to them.

4. That inadequate implementation of the constitutional provisions exposes girl children to child marriages. The law is the starting point in correcting and eradicating child marriage. Failure to effectively implement constitutional provision that protects girls from early marriage pushes and pulls girls into early marriage. It is also concluded that the law is not enough to address child marriages and that there is also the need to address attitudes of the societies, transform cultural and religious beliefs that exposes girl child to early marriage.
5. That, there is need for legislative and other measures to address child marriages so as to ensure full and meaningful participation in the public sphere. Sibanda (2011) noted that, legal reform whilst useful is not always effective because people do not easily give up on customs and traditions which are guilty of pushing and pulling girls into early marriage and discourage women participation in the public sphere.

## **6.2 Recommendations**

From the above conclusions, the following recommendations are made:

### **6.2.1 The Need for girls and women capacitation through:**

#### **(a) Resourcing Education policy**

According to Hicks (2002) public policies can contribute to women's agency by assuring that the subtle and explicit forms of gender-based-discrimination are outlawed and that these laws are enforced. The Education policy is more beneficial to girls/women than boys. This is because it is mainly girls who are expelled or drop off school because of early pregnancy or early marriage. As much as the Education policy provides that a girl child can go back to school after giving birth, the policy also need to address the fact that the girl is no longer only a girl but is now a mother and has needs. There should be provision of monitored day care centres at secondary schools so that the young girls can go to school and leave their children to be monitored while there learning.

The Constitution<sup>101</sup> and the Education Act<sup>102</sup> provides for the Right to Education. However provision of the right does not mean implementation and there is need for free compulsory primary and secondary education especially for girls so as to keep as many girls as possible in schools so that they get a chance to fully develop and be educated without being burdened by

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<sup>101</sup> Section 75

<sup>102</sup> Section 4

motherhood and wifedom which comes as a result of early marriage. According to Hicks (2002) the importance of mother's education for the well-being of children can justify publicly funded continuing education opportunities targeting women. It should be an offence for parents, guardians or "husbands" to prevent or stop a child under the age of 18 from going to school since the Constitution<sup>103</sup> and the Education Act<sup>104</sup> provides for the children's right to education.

### **(b) Modifying of the Education Curriculum**

Children spend most of their time at school and it is mostly what they are taught at school that shapes them and which they carry on in life with. There is need to have the education curriculum to be modified so as to include subject that will encourage women participation and advancing of women's and children's rights. The Education Curriculum needs to include subject on sexual and reproductive health education in the primary schooling. This will then address the dangers of teenage pregnancy and encourage the use of different contraceptives to prevent diseases and pregnancies. The curriculum should also include teachings of the impact of child marriages on women, children and the country's development.

### **(c) Resourcing Social welfare**

In Epworth, poverty is one of the major factors that is pushing and pulling girls into early marriage. To avoid a situation where families marry off their daughters for survival or make a choice to pull off girls from school and educate the boys, the Social Welfare Department needs to receive adequate funding from the government treasury so as to be able to assist the poor families and orphans with basic food, clothing and school fees. Hence the government should provide free compulsory primary and secondary education, and the social welfare department to provide families with food, shelter and clothing.

Because of the corruption in the selection criteria of those who should benefit from BEAM Programme, funds are being channelled to undeserving children leaving the deserving orphans and underprivileged out of school and open for child marriage abuse. There is need to have an Independent Selection Committee not from the same area or school but an Committee which will do independent investigations to establish who is deserving to be on the BEAM Programme. The Committee should constantly be reshuffled so as to have new

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<sup>103</sup> Section 78 (1) (a)

<sup>104</sup> Section 4

plays in the committee and to avoid a situation where the committee becomes corrupt and channel funds to their families and relatives.

The social services should revise its policy of forcing families to take in children or a child who is an orphan merely because they are related. This policy has resulted in families then abusing that child who has been forced on them. As a result of the abuse the child will run away into the streets or pushed into early marriage as a way out. Families should not be forced to take in a child but a child who has turned at the door of Social Services or the streets should be placed in the government children's homes which are well funded and provides children with all their basic needs.

Government on the other hand needs to build shelters for abused children and orphans. Currently as stated by an official from the Department of the social welfare<sup>105</sup>, Harare has only one home, North Court Children's home.<sup>106</sup> These homes should be funded and provide children with all the facilities required by a child to feel at home. The homes should also have library facilities and should receive funding for transporting children from the home to different government schools. Every child at the home should automatically qualify for free compulsory primary and secondary education

## **6. 2.2 Changing of attitudes and encouraging women participation through:**

### **(a) Dialogue**

There is need to dialogue with traditional and religious leaders so as to enlighten them of the negatives or the impact of child marriage in women's lives and the society at large. Dialogue with men as the decision makes in most families is needed so to as educate them and make them understand the benefits of having educated daughters and marrying of matured and educated women who are able to contribute financially in the family through increased opportunities in life. Most men need to be made aware of the benefits of women participation indecision making that it impacts on the well-being of both the men and children. Dialoguing creates a platform where those in the positions of power and influence can be influenced to change attitudes and behaviours in a society or community. According to An-Naim (1994), sharing of insights and experiences in internal discourse can over time help to mediate culture and contextual differences and thereby produce common standards on the principles of the best interest of the child. Through dialogue, men can be influenced that since participation

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<sup>105</sup> District Child welfare Officer Harare Central

<sup>106</sup> The home is situated in a suburb called Mount Hamden and houses both girls and boys.

can have positive benefits for others as well as oneself, preferential attention to the inclusion of persons marginalized by gender roles can further the good of all (Hicks (2002))

According to Sibanda (2011), culture, customs and traditions are never static in any society. They are transformed by many influences and value systems. Human rights norms can therefore impact and help to reinforce aspects of culture and tradition that are positive, undermining those that contribute to violence against women and infringement of their human rights such as child marriages.

### **(b) Mentoring Strategy**

There is need for girls and women Mentoring Strategy. This strategy entails that those other women who have established themselves in different public professions and meaningfully participate in the public sphere take up aspiring young women under their wings. This will ensure that every time in any generation there are women ready to take up places and positions of decision making or influential positions and be able to effectively participate. The Mentoring Strategy is a way of empowering girls and women by giving them role models to look up to and see the gains of women's struggle for recognition and participation. This will them inspire women to occupy different position and professions in the public sphere. This strategy will change women's attitude from that of waiting to be giving power to that of getting the power by being ready to take up positions in the public sphere. It will also inspire young girls to further their education and to focus on achieving their set goals, plans and capabilities. Mentoring is a strategy that will capacitate women and girls as the different mentors will encourage the participation of women in different professions and fields.

### **6.2.3 Changing of Societal Expectations through:**

#### **(a) Information Dissemination**

Information is power. There is need to inform the public about the laws against child marriage. People have to be told and be taught about the negative impact of child marriage. The negative impact of child marriage should be taught from primary education level so as for the children themselves to know that early marriage is not paradise and has many limitations in the lives of women, their children, the society and the country at large. The children need to be taught or have information on their children rights. It is not enough to inform children about their rights but to make them understand the level of protection they have under the law. Thus children need to be away of their rights provided for in the constitution and when or where to report when their rights have been violated.

There is need for information dissemination on the women's right to participation in the public sphere and equality in marriage and that all cultural and religious practices that discourage women participation in the public arena have been outlawed. Having information on the importance of having women participating in the public sphere will push and pull more girls/women to advance themselves intellectually so as to be able to meaningfully participate in decision making both in the private and public sphere.

#### **6.2.4 Adequately implementing Constitutional Provisions through:**

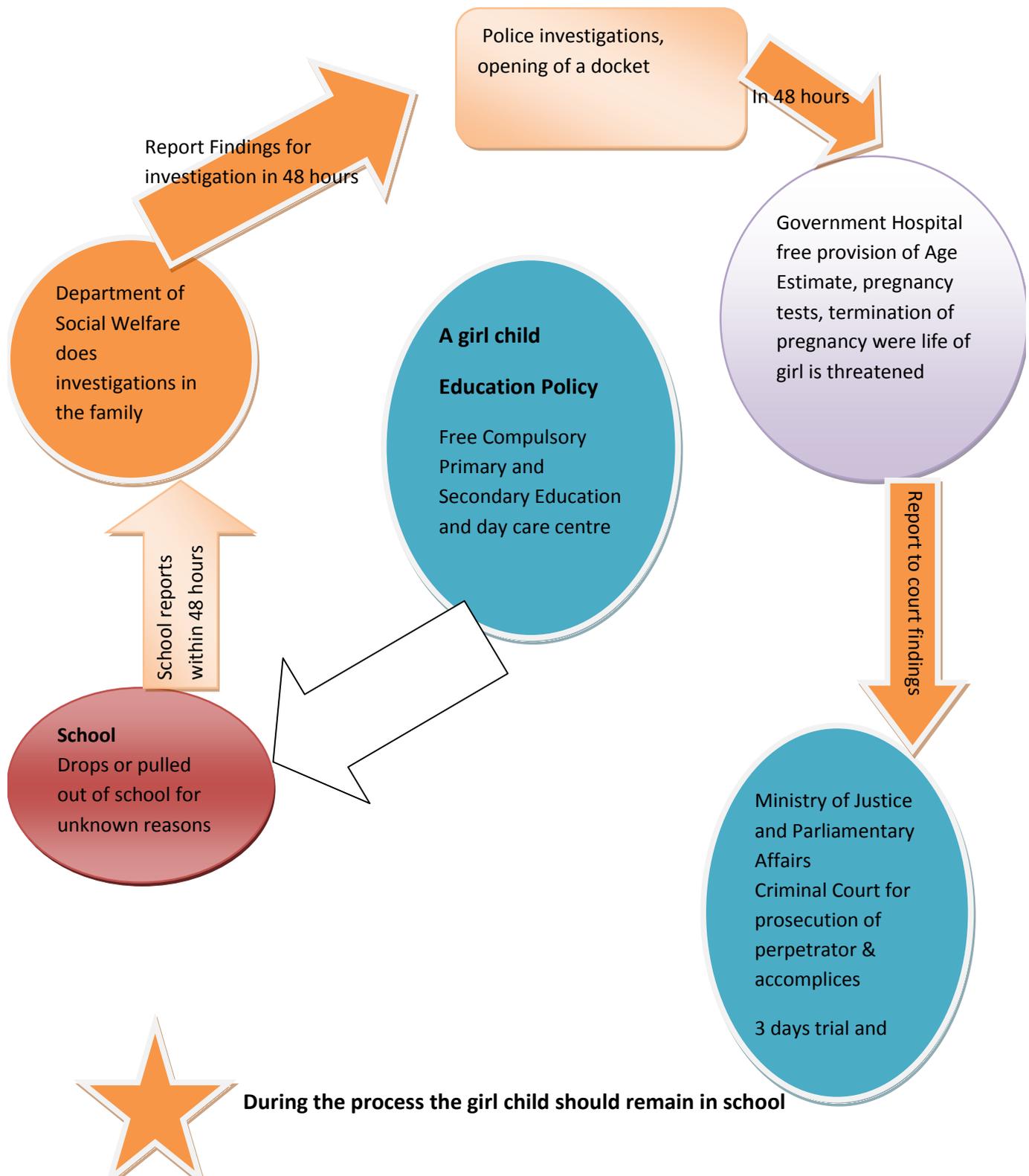
##### **(a) Multi - Sectoral Approach**

The Multi sectoral Approach is an approach where different government, private and non-governmental organizations come together so as to effectively work together for the betterment of the lives of people. In regards to child marriages there is need for this approach so as to be able to effectively do away with Child marriage and have most women meaningfully participating in the public sphere. The approach will include players such as the Ministry of Education, the Department of the Social Welfare, The Police, the ministry of Health and the Ministry of Justice. The traditional and religious leaders also form part of the approach. The benefit of the approach is that girls will be kept in school for a longer period and perpetrators and accomplices of child marriage practise will be reached by the long arm of the law

Below is a diagram illustrating the multi-sectoral approach which needs to be put in place so as to protect girls from child marriages and encourage the schooling of a girl child. The aim of the approach is to have as many girls as possible in school and have the full and effective implementation of children's rights as provided for in the law and to also have child marriage perpetrators and accomplices arrested for violating children's rights.

Figure 7: Multi-Sectoral Approach to Child marriage

### Muilt-Sectoral Approach to Child Marriage



## **6.2.5 Legislative and Other measures to Protect Girls from Child Marriage through:**

### **(a) Alignment of laws**

There is need for a speedy movement on alignment of the marriage laws with the constitution so as to have the rights provided and protected for in the constitution clearly outlined in the marriage laws. In regards to the definition of the child in the Children's Act and the Criminal Law Code, it has to be aligned to Section 81 of the Constitution.

### **(b) Capacity Building: Training of police personal:**

There is need to have trained and to specifically give a special training to police officers who have the task to investigate and affect arrest on perpetrators of child marriage.

The corruption by the VFU Volunteer offices needs to be addressed by making sure that the VFU officers are not mere volunteers but incentivised government officers. On corruption by the VFU Officers, according to ACBF Operations Research (2007) "*corruption undermines the rule of law, social and human values and raises moral concerns*" Hence it is further recommended that VFU Police officers should not operate in the same area or neighbourhood they live or grew up in. This has an impact on police officers investigating and effecting arrest on a perpetrator they know or grew up with.

It is recommended further that there is need for rotation/changing police personal in the VFU office so as to avoid police officers having an attitude towards assisting victims of the same crime over and over again. In other words to avoid a situation where police officers accept child marriage practise as the way of life in Epworth

### **(c) Media strategy**

Media is a powerful tool that can be used to make the public aware about the criminalisation of child marriage and the negative impact of the practice. The media strategy involves spirited and systematic campaign using the national radio, TV, newspapers and social media. The campaign should be continuous and involve production of songs, music jingles and dramas that discourage child marriage and encourage girls to be in and to finish their basic primary and secondary schooling. The strategy should also involve the use of different society role models, influential people, popular figures, celebrities, political leaders, cultural leaders and religious leaders to speak against child marriage and its negative impact on

women participation in the public sphere. NGOs and Human rights organisations should also avail their services and assist victims/survivors of the child marriage practise with free legal aid services.

#### **(d) Shadow Reporting**

According to Sibanda (2011), Non-governmental organisations should write shadow reports on the country's compliance with CEDAW and CRC showing how the government is faring when it comes to reducing child marriages. Further they should assess the role of customary and religious laws that condone child marriage and promote dialogue with traditional and religious leaders to identify practical ways to reduce child marriage.

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