

# The impact of the customary practice of *chiramu* (sexual dalliance) on the rights of girls in Zimbabwe

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**Abstract:** Cultural norms and practices play an influential role especially in African societies. This is also true in Zimbabwe where culture is a moral ingredient that epitomises a sense of identity, purpose and belonging. Despite the high moral values embodied by culture in Zimbabwe, research has worryingly shown that the customary practice indigenously known as *chiramu* or sexual dalliance is harmful particularly to girl children. As a State Party to various international and regional instruments, Zimbabwe recently enacted the 2013 Constitution that can be used to address the custom of sexual dalliance. The article, therefore, firstly highlights the effects of sexual dalliance on girl children. Secondly, the article shows that the custom of sexual dalliance does not pass the constitutional muster in safeguarding the rights of girls. As a result, possible suggestions are encapsulated in ensuring children's rights protection in Zimbabwe. These include: civic education and a strong nationwide public awareness of the new Constitution as the guarantor of human rights protection.

**Keywords:** 2013 Constitution, children's rights, culture, sexual dalliance, Zimbabwe

## Introduction

In Zimbabwe, the cultural practice of sexual dalliance, indigenously known as *chiramu*, has existed since time immemorial. By way of definition, *chiramu* connotes a situation where brother-in-law (*babamukuru*) has the 'rights and/or privileges' to have a casual romantic or sexual relationship with his wife's younger sister or niece (*muramu*).<sup>1</sup> It must be noted from the onset that terms '*chiramu* or sexual dalliance', '*babamukuru* or brother-in-law' and '*muramu* or wife's younger sister or niece' are going to be used interchangeably throughout the article. Within the confines of this custom, men regard sexual dalliance as a socially acceptable harmless 'innocent, flirtatious banter'.<sup>2</sup> However, the effects associated with *chiramu* are vivid and catastrophic. For example, sexual dalliance is more than just verbal playful repartee. In fact, sexual dalliance is a smokescreen that entitles a brother-in-law the right to flirtatiously or sexually indulge with his minor sister-in-law. Though culturally acceptable, the article argues that the customary practice of *chiramu* has a negative impact on the rights and welfare of girls in Zimbabwe. The article therefore purports that sexual dalliance violates the rights of girls which are enshrined in the 2013 Constitution of Zimbabwe. In light of these violations, the paper calls for the need from both private and public sectors for a purposive and transformative interpretation of the constitutional children's rights to particularly protect girls against all forms of abuse including customary norms such as sexual dalliance. The paper concludes by recommending that social policies, through civic education on human rights, must extend their mantle to protect girls against patriarchal stereotypes, such as *chiramu*.

### The negative effects of sexual dalliance

#### Unwanted Pregnancy

The nature of sexual dalliance allows a brother-in-law to flirtatiously and/or sexually indulge with *muramu*, if he so wishes. A girl's consent to engage in sexual intercourse is thus immaterial. This position exposes young girls to risks such as of forced and/or unwanted pregnancies. The paper opines that girls are forced by the custom and not by their own desires to fall pregnant while young. For this reason, sexual dalliance perpetuates the threat of forced and/or

<sup>1</sup>Mahachi-Harper SN Echoes in the shadows (Mambo Press Gweru 2004) 47.

<sup>2</sup>Mahachi-Harper SN (supra) at 15.

unwanted pregnancies among teen girls in Zimbabwe because it is the custom (*chiramu*) and not the girls themselves that requires them (girls) to give in to the desires of their brothers-in-law. More importantly, Zimbabwe is strongly a patriarchal milieu and is the heads of the households and has overarching power to make decisions over women and children alike.<sup>3</sup> For this reason, there exists an unequal power relationship between a brother-in-law and his wife's minor sister which compromises the girl's negotiation capacity even sexual decision making.<sup>4</sup> As a result, decisions on how and when to have sex, let alone protected sex, remain exclusively those of *babamukuru*. Without safe sex, *chiramu* is unquestionably a major contributor to unwanted or forced pregnancies.

Within the above context of pregnancy, girls suffer child birth complications such as prolonged labour and *obstetric fistula*.<sup>5</sup> Dube rightly concurs with these assertions by observing that pregnant adolescents have underdeveloped pelvis bones incapable of facilitating the normal vaginal delivery of babies.<sup>6</sup> These complications are life threatening and may lead to death.<sup>7</sup> More importantly, child pregnancy can also lead to the death of the mother and her unborn child. More worrisome is that pregnant children may lack the 'insight and experience' to medically take care of their offspring.<sup>8</sup> For these reasons, *chiramu* does not only lead to unwanted pregnancies, but also to child mortality and morbidity. Sexual dalliance is therefore physically detrimental to the enjoyment of girls' rights.

In addition, sexual dalliance considers a girl as the second wife without necessarily getting married.<sup>9</sup> *Babamukuru* therefore assumes connubial rights over *muramu* until she is eventually married by another man. The brother-in-law has the responsibility to nurture the younger sisters-in-law into well mannered and responsible women once they get married.<sup>10</sup> Such responsibility includes teaching young nieces how to sexually please their husbands in bed.<sup>11</sup> It is therefore clear that *chiramu*, by its very nature, encourages men to sexually abuse their wives' sisters despite the cultural justifications. More so, the practice subjects girls to engage in unprotected sex. By allowing *babamukuru* to sleep with his *muramu*, society promotes promiscuity in terms of extra marital affairs that can leave girls at the mercy of contracting sexually transmitted diseases, such as HIV and AIDS.

### Social Stigma and Post Traumatic Stress Disorder

*Chiramu* is also closely linked with social stigma more especially in Zimbabwe where the society is patriarchal.<sup>12</sup> For example, victims of sexual dalliance are afraid to report the sexual abuse fearing castigation from society as well as their families. Girls who report sexual dalliance abuses claims are simply not taken seriously and often blamed for having morals that allows the brother-in-law to rape them. In addition, girls shy away from reporting sexual abuse claims fearing that the ancestors will curse them: a curse that can lead to a disastrous life. Due to fear of antagonising the spirit mediums, girls are prone to abuse. Given the extent of castigation and intimidation, victims of *chiramu* are powerless and most their rape cases shrouded and swept under the carpet.<sup>13</sup> In instances where sexual dalliance cases are reported, girls are shockingly reminded that a brother-in-law has every right to indulge with them. Customary practices such as *chiramu* are therefore responsible for silencing girls and forcing them to submit and conform to unjust male subordination. In addition, unmarried pregnancies as a result of sexual dalliance are strongly frowned upon.<sup>14</sup> As a result, *chiramu* subjects girls to emotional as well as psychological depression and

<sup>3</sup>Hindin MJ "Women's power and anthropometric status in Zimbabwe" (2000) *Social Science & Medicine* 1522.

<sup>4</sup>Mashiri L "Conceptualisation of Gender Based Violence in Zimbabwe" (2013) *International Journal of Humanities and Social Science* 98.

<sup>5</sup>Laurie R *Weaving a Malawi Sunrise: A Woman, A School, A People* (University of Alberta Michigan 2015) 193.

<sup>6</sup>Phipps MG and Sowers M "Defining Early Adolescent Childbearing" (2002) *American Journal of Public Health* 125.

<sup>7</sup>Laurie R (supra) at 195.

<sup>8</sup>Pinzon J and Jones F "Care of Adolescent Parents and Their Children" (2012) *Pediatrics* 1743-1756.

<sup>9</sup>Gwandure C "Mubobobo: Women have no Sexual Fantasies in their Sleep" (2009) *The Open Anthropology Journal* 79.

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<sup>11</sup>Gwandure C "Sexual Desire and Expression among Girls in a Traditional Shona Context" *Anthropologist*, 14(5): 415-423 (2012) 416.

<sup>12</sup>Page RM *Stigma* (Psychology Press Hove 2015) 108.

<sup>13</sup>Hlupo T and Tsikira J "Still Caught-Up in the Cultural Abyss: The Plight of the Girl Child" (2012) *Journal of Emerging Trends in Educational Research and Policy Studies* 235.

<sup>14</sup>Kanchense JH "Urologic and Gynecologic Health Problems Among Zimbabwean Women: What is the Role of Poverty?" (2007) *Urologic Nursing Journal* 373-389.

this can cause post-traumatic stress disorder (PTSD). PTSD is a ‘mental health condition that's triggered by a terrifying event, either experiencing it or witnessing it.’<sup>15</sup> From this definition, *chiramu* causes PTSD when girls engage with their brothers-in-law in flirtatious banter or sexual intercourse.

### Child marriage

Due to the social stigma associated with unmarried pregnancies, *chiramu* often forces girls to succumb to the pressure of getting married. The reason why girls marry is twofold: First, by getting married, it means that the baby has a known father although the pregnancy is not biologically his. Secondly, since pregnant girls are likely to be uneducated, they marry for their financial dependence as well as that of the baby. Thus, girls marry with prospects of being looked after by their husbands. In some instances, girls end up joining their sisters in marriage (polygamy) due to desperation and fear of exclusion. With little or no education, a girl's probability of employment is also seriously diminished, thereby forcing pregnant girls into marriage.

In view of the above discussion, it is clear that *chiramu* is not only detrimental to the physical well being of girls, but emotional and psychological as well. Having established the effects of *chiramu*, the article will now focus on contextualising sexual dalliance with the constitutional and human rights paradigms.

### Contextualising *chiramu* within constitutional paradigms

#### The supremacy of the 2013 Constitution

The Constitution of Zimbabwe is the ‘supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency’.<sup>16</sup> Section 2 of the Constitution has a binding effect to render laws and/or customs that do not conform to the supreme law including sexual dalliance are null and void. In addition to the supremacy of section 2, Masunungure and Shumba rightly observe that section 3 of the Constitution verbalises the importance of the Constitution as ‘sovereign and all state organs operating under it must be consistent with it’.<sup>17</sup> What is clear is that the Constitution is the watch dog that ensures that all laws, customs and conduct of the public or private organs of the State adhere to the concept of constitutionalism.<sup>18</sup> By incorporating the notion of constitutionalism, it is also clear that the practice of *chiramu* is not exempt from the rule of constitutional supremacy.

#### Exploring the impact of section 81 of the Constitution on *chiramu*

The manner in which the Constitution itself is interpreted requires a clear and precise jurisprudence.<sup>19</sup> As such, the interpretation of the Bill of Rights must be transformative. According to Klare, transformative constitutionalism:<sup>20</sup>

‘connotes an enterprise of inducing large-scale social change through non-violent political processes grounded in law ... a transformation vast enough to be inadequately captured by the phrase “reform”, but something short of or different from ‘revolution’ in any traditional sense of the word’.

Indeed, the life-changing evolution of child autonomy is evidenced by section 81 of the Constitution. Section 81 provides:

- ‘(1) Every child, that is to say every boy and girl under the age of eighteen years, has the right
- (a) to equal treatment before the law, including the right to be heard;
  - (b) to be given a name and family name;
  - (c) in the case of a child who is
    - (i) born in Zimbabwe; or
    - (ii) born outside Zimbabwe and is a Zimbabwean citizen by descent; to the prompt provision of a birth certificate;
  - (d) to family or parental care, or to appropriate care when removed from the family environment;
  - (e) to be protected from economic and sexual exploitation, from child labour, and from maltreatment, neglect or any form of abuse;
  - (f) to education, health care services, nutrition and shelter;

<sup>15</sup>Post-traumatic stress disorder [Online] available at <http://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/basics/definition/con-20022540>.

<sup>16</sup>S 2 of the Constitution.

<sup>17</sup>Masunungure V and Shumba JM *Zimbabwe: Mired in Transition* (Weaver Press Harare 2012) 63.

<sup>18</sup>Mudzuru and another v Minister of Justice, Legal and Parliamentary Affairs (CCZ 12/15) p 48.

<sup>19</sup>Chihava & Another v Provincial Magistrate Mapfumo N.O. & Another (CCZ 6/2015) p 9.

<sup>20</sup>Klare K “Legal culture and transformative constitutionalism” (1998) South African Journal on Human Rights 150.

- (g) not to be recruited into a militia force or take part in armed conflict or hostilities;
  - (h) not to be compelled to take part in any political activity; and
  - (i) not to be detained except as a measure of last resort and, if detained—
    - (i) to be detained for the shortest appropriate period;
    - (ii) to be kept separately from detained persons over the age of eighteen years; and
    - (iii) to be treated in a manner, and kept in conditions, that take account of the child's age.
- (2) A child's best interests are paramount in every matter concerning the child.
- (3) Children are entitled to adequate protection by the courts, in particular by the High Court as their upper guardian'.

### Section 81(1)(a) of the Constitution and *chiramu*

First and foremost, section 81(1)(a) explicitly states that children, regardless of sex, must be treated equally. This position entrenches the principle of non-discrimination.<sup>21</sup> Section 81(1)(a) is also compatible with articles 2 and 3 of the Convention on the Rights of the Child and African Charter on the Rights and Welfare of the Child, respectively and prohibit any preferential treatment between boys and girls on the basis of sex, gender or birth. Given this view, it is evident that the constitutional as well as international human rights instruments outline the normative frameworks to eliminate gender discriminatory practices. Equality norms expose that *chiramu* disproportionately affects girls than boys as girls are forced by the custom to have sexual intercourse despite their immaturity and incapacity to negotiate sex. Sexual dalliance therefore affords preferential treatment of men to girls.

For this reason, harmful practices such as *chiramu* perpetuate patriarchal prejudices against girls and such stereotypes are inconsistent with the section 81(1)(a) of the Constitution and must be eliminated.

It, therefore, becomes imperative that the Government must put in place preventative and awareness measures which affirmatively modify or eliminate harmful practices, such as *chiramu*. In addition to a transformative interpretation, the Constitution must also be generously interpreted to give full effect to the freedoms and liberties that are contained in the Declaration of Rights, such as the right of children to non-discrimination.

### Section 81(1)(e) of the Constitution and sexual dalliance

Section 81(1)(e) contains the overarching right of every child to be 'protected from economic and sexual exploitation, from child labour, and from maltreatment, neglect or any form of abuse'. Simm defines sexual exploitation as 'any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the exploitation of another'.<sup>22</sup> On the other hand, sexual abuse is 'the actual or threatened physical intrusion of a sexual nature, whether by force, or under unequal or coercive conditions'.<sup>23</sup> For the purposes of this article, the author argues that these terms can be used interchangeably because the common feature of these two definitions is the existence of 'real or imminent abuse' which has the effect of threatening, invading and degrading the bodily integrity of girls. In this context, *chiramu* is a smokescreen by men to sexually exploit and abuse vulnerable girls. Hence, *chiramu* is a practice detrimental to the well-being of girls in particular and perpetrators must be held criminally and delictually liable. These legal sanctions are essential in girl rights protection and courts, in particular the High Court as their upper guardian must extend their mantle in addressing gender stereotypes such as *chiramu*.

### Section 81(1)(f) of the Constitution and sexual dalliance

Section 81(1)(f) enforces child rights to 'education, health care services, nutrition and shelter'. This provision guarantees both boys and girls to acquire education; an interpretation which is closely linked to the principle of non-discrimination. Without discrimination, all children regardless of sex have equal opportunities to exercise and enjoy the right to education. *In re The School Education Bill of 1995 (Gauteng)*<sup>24</sup> the South African Constitutional Court held that educational rights impose positive obligations on the State as far as the provision of education is

<sup>21</sup> The principle of non-discrimination is internationally recognised in Articles 2 and 3 of the United Nation Convention on the Rights of the Child (1989) and African Charter on the Rights and Welfare of the Child (1990).

<sup>22</sup> Simm G Sex in Peace Operations (Cambridge University Press New York 2013) 11.

<sup>23</sup> Neudorfer K Sexual Exploitation and Abuse in UN Peacekeeping: An Analysis of Risk and Prevention Factors (Lexington Books Maryland 2015) 18.

<sup>24</sup> Gauteng Provincial Legislature In re: Gauteng School Education Bill 1996 (4) BCLR 537 (CC) para 9.

concerned. In *Brown v Board of Education*,<sup>25</sup> the Court ruled that the right to education is ‘the very foundation of good citizenship’ and ‘it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education’. In support of these valuable judgements, the Committee on Economic, Social and Cultural Rights emphasise that education is a vital right that plays ‘a vital role in the promotion of human rights’ as well as catalyst ‘by which economically and socially marginalised children can lift themselves out of poverty’.<sup>26</sup>

While the right to education has been constitutionally guaranteed, the practice of *chiramu* has the effect of subjecting or potentially subjecting girls to early and unwanted pregnancies and/or marriages. Once pregnant, teenage mothers are stigmatised and discriminated against by society (teachers, family members, fellow pupils) and end up abandoning their education.<sup>27</sup> An estimated number of 3000 girls ‘leave school every year due to pregnancy’.<sup>28</sup> Since *chiramu* is associated with either pregnancy or marriage, it also destroys the future dreams of its victims who fall short of education which is viewed as the driving force behind women’s emancipation.<sup>29</sup> For this reason, it becomes essential to protect girls against harmful practices, such as *chiramu*, that can undermine the educational right of girl children.

Apart from education, section 81(1)(f) also provides for the children’s right to health. Importantly, the right to health must be understood in the lenses easy availability and accessibility of health care and services. Daniels defines ‘health care’ as including ‘not only certain personal medical services but also a broad range of health related services, including certain public health and preventive measures’.<sup>30</sup> In the words of Kinney, the right to health care must be understood as the ‘provision of medical care for the diagnosis and treatment of disease and injury for those unable to pay’.<sup>31</sup> Though the right to health must be realised, it must be achieved progressively, subject to the availability of government resources.<sup>32</sup> It cannot, therefore, be argued that the State has a duty to provide for health care if it can be shown that it does not have any resources for its provision thereof.<sup>33</sup> Notwithstanding the limitation of resources under this section, the ‘availability test’ does not imply that the Zimbabwe must become redundant. Instead, Zimbabwe has international human rights has positive obligations to show the measurable ‘progressive realisation’ of the right to health.<sup>34</sup> The doctrine of progressive realisation was precisely summed up in *Edwards v Attorney General Canada* as ‘a living tree capable of growth and expansion within its natural limits’.<sup>35</sup> For this reason, any retrogressive measures limiting or removing existing entitlements would require special justifications.<sup>36</sup> Consequently, measures must be put in place to ensure that adequate health services are delivered not only to girls, but to the public at large.

Bearing in mind that *chiramu* is sexually exploitative, the customary practice exposes girls to sexually transmitted diseases and other non-physical health effects such as trauma, stress, or depression, the right to health plays a pivotal role to ensure that victims of sexual dalliance can still enjoy ‘the highest attainable standard of physical and mental’ well-being despite the abuse suffered.<sup>37</sup> Thus, the right to health is an important ingredient in safeguarding the survival of victims of patriarchal stereotypes to enjoy other rights such as education, life, survival and development.

<sup>25</sup>*Brown v Board of Education* (1954) 347 U.S. 483, 493.

<sup>26</sup>United Nations Committee on the Economic, Social and Cultural Rights (CESCR) (1999) para 1.

<sup>27</sup>Chigona A and Chetty R “Teen mothers and schooling: lacunae and challenges” (2008) *South African Journal of Education* 261–281.

<sup>28</sup>The Zimbabwean “Teenage mothers denied education” available at <http://www.thezimbabwean.co/2015/09/teenage-mothers-denied-education/>

<sup>29</sup>Guvonen F and Rendall M “Women’s emancipation through education: A macroeconomic analysis” (2015) *Review of Economic Dynamics* 931-956.

<sup>30</sup>Daniels N “Rights to Health Care and Distributive Justice: Programmatic Worries” (1979) *The Journal of Medicine and Philosophy* 180.

<sup>31</sup>Kinney ED “The International Human Right to Health: What Does This Mean for Our Nation and World?” (2001) *Indiana Law Review* 1457.

<sup>32</sup>*Soobramoney v Minister of Health, Kwazulu-Natal* 1998 (1) SA 765 (CC) para 59.

<sup>33</sup>*Soobramoney v Minister of Health* (supra) at 59.

<sup>34</sup>Zimbabwe is State party to the International Convention on Economic, Social and Cultural Rights (1966) which binds State Parties to do their best to provide health care services.

<sup>35</sup>*Edwards v Attorney General Canada* 1930 AC 124.

<sup>36</sup>Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) para 8.

<sup>37</sup>Article 12 of the International Convention on Economic, Social and Cultural Rights (1966).

### Section 81(2) of the Constitution and sexual dalliance

Section 81(2) of the Constitution provides that the ‘child’s best interests are paramount in every matter concerning the child’. When interpreting what the best interests of the child are, the personal circumstances of the child, her historical background, and present and future needs must be taken into account. For this reason, Ncube rightly observed that the principle of the best interests of the child is the nucleus of children’s rights. Thus, any interpretation related to the welfare and protection of children’s rights must harmonise with their primary interests. Zimbabwe is compelled to implement the principle of safeguarding best interests of the child because it is not only a constitutional right but enshrined in the United Nation Convention on the Rights of the Child (1989) and African Charter on the Rights and Welfare of the Child (1990) to which Zimbabwe is party. According to Alston, ‘what need to be taken into account when dealing with matters concerning children are not just the child’s overall interests, but the child’s best interests’.<sup>38</sup> Though constitutionally guaranteed, the implementation of the right of the best interests of the child under customary law is negligible because children must be subordinate to their elders. In the context of sexual dalliance, the best interest of the child principle is relevant as the custom gives priority to the interests of parents or family at the expense of girls’. Section 82(2) of the Constitution gives children particularly girls in patriarchal milieus, such as Zimbabwe, protection against human rights violations associated with sexual dalliance.

### Section 81(3) of the Constitution and sexual dalliance

As an independent and impartial arm of government, section 81(3) entitles children to ‘adequate protection by the courts, in particular by the High Court as their upper guardian’. Courts have a constitutional duty to purposively and interpretively act as the upper guardian of children in upholding their best interests. In this regard, section 81(3) must be read together with section 44 of the Constitution, which requires ‘the State and every person, including juristic persons, and every institution and agency of the government at every level to respect, protect, promote and fulfil the rights and freedoms’ set out in the Bill of Rights.<sup>39</sup> Undoubtedly, courts are the legal gatekeepers and custodians of child protection against discriminatory practices, such as *chiramu*. In *S v Banda* and *S v Chakamoga*, the constitutional duties and obligations of the judiciary were confirmed when Charewa J noted:<sup>40</sup>

‘Judicial officers must ensure paramountcy of children’s interests in all proceedings before them, including handing down appropriate sentences that deter those preying on children to refrain from doing so in order to give the maximum protection accorded to children by law. The courts must be seen to apply the law in a manner that achieves the intended aim of the legislature in these cases: that is, to effectively protect children from predatory older persons and ensure the eradication, or seriously attempt to eradicate the problem’.

In light of the above, courts must pursue purposive and transitional interpretation of the Declaration of Rights.<sup>41</sup> Thus, it is trite that it is the duty of the judiciary to declare not only legislation but customs and conduct which are inconsistent with the Constitution invalid. In doing so, the courts must strive to reach value based objective judgements which protect not only children’s interests but the Zimbabwean people’s interests at large.<sup>42</sup> As a result, courts have an obligation to underpin and portray the Constitution as a bridge from patriarchal and discriminatory norms to an open and democratic society based on human dignity, equality and freedom for all. In the context of *chiramu*, courts are without a doubt sending a signal to society that they will come down heavily on child sexual, physical and emotional abusers.

### Conclusion

This article has briefly highlighted the nature and context of *chiramu* in Zimbabwe. As a cultural practice, it must be acknowledged that, just like in any other society, culture is a way of life which not only gives an identity but a meaning to co-existence for the Zimbabwean people.<sup>43</sup> Despite this, the exercise of cultural rights must pass the

<sup>38</sup>Alston P “The best interests principle: Towards a reconciliation of culture and human rights” (1994) International Journal of Law and the Family 11.

<sup>39</sup>S 44 of the Constitution.

<sup>40</sup>*S v Banda & S v Chakamoga* (2016) ZWHHC 47 p3.

<sup>41</sup>*S v C (a Juvenile)* (2015) ZWHHC 718 p7.

<sup>42</sup>Ex Parte Attorney General, Namibia: In RE Corporal Punishment by Organs of State 1991 (3) SA 76 available at <http://www.saflii.org>.

<sup>43</sup>Almqvist J *Human Rights, Culture, and the Rule of Law* (Hart Publishing Oregon 2005) 12.

constitutional muster and meet the aspirations of human dignity and equality for all.<sup>44</sup> By delving into the domain of gender stereotypes in the context of cultural practices, such as *chiramu*, the article has exposed fundamental issues that affect young girls. Several conclusions with constitutional implications can therefore be drawn from the practice of *chiramu*. First, it is clear that only girls, and not boys, are subjected to the practice of sexual dalliance. As a customary practice applicable only to girls, gender equality is called into play and needs to be addressed fast. Second, the discussion has also shown that girls have sexual intercourse without free and/or full consent. This violates their bodily integrity and freedom to make their own choices. Third, it is also evident that *chiramu* is a serious contributor to early pregnancy and child marriage.

To ensure efficient child protection, it is important that girls' voices be heard as a way of unmasking silent social hazards such as *chiramu* that are often swept under the carpet. Therefore, social awareness programmes must advocate against discriminatory practices to promote reciprocal relationships between culture and human rights and not thrive in vilifying the other. Thus, there is need for society and the law to complement each other in ensuring that the welfare and rights of children are safeguarded.

In addition, the deficiency of legislation in addressing social attitudes perpetuates gender inequality. This failure only fast-tracks and extends the perpetuation of gender inequality. Supplementary legislation must be aligned with the spirit, purport and object of the Constitution including the 'respect for the values and principles of gender equality'.<sup>45</sup> For this reason, child related legislation must be modified to ensure that the rights of children, particularly girls, are of paramount importance. In this view, the paper proposes the need to enact the 'Prohibition of Harmful Cultural Practices Act' which targets gender stereotypes such as sexual dalliance that lead to child rights violations. By criminalising harmful practices that do not pass the constitutional muster, Zimbabwe will be drawing a line in the sand about the unacceptability of sexual dalliance.

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<sup>44</sup>S 63 of the Constitution.

<sup>45</sup>S 3 (1) (g) of the Constitution.

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### **International and Regional Human Rights Instruments**

- [1] African Charter on the Rights and Welfare of the Child
- [2] Convention on the Rights of a Child
- [3] International Covenant on Economic, Social and Cultural Rights

### **Legislation**

- [1] The Constitution of the Republic of Zimbabwe, 2013.

### **Cases**

- [1] *Brown v Board of Education* (1954) 347 U.S. 483, 493.
- [2] *Edwards v Attorney General Canada* 1930 AC 124.
- [3] *Chihava & Another v Provincial Magistrate Mapfumo N.O. & Another* (CCZ 6/2015)
- [4] *Ex Parte Attorney General, Namibia: In RE Corporal Punishment by Organs of State* 1991 (3) SA 76 available at <http://www.saflii.org>.
- [5] *Gauteng Provincial Legislature In re: Gauteng School Education Bill 1996* (4) BCLR 537 (CC) para 9.
- [6] *Mudzuru and another v Minister of Justice, Legal and Parliamentary Affairs* (CCZ 12/15)
- [7] *S v Banda & S v Chakamoga* (2016) ZWHHC 47 p3.
- [8] *S v C (a Juvenile)* (2015) ZWHHC 718 p7.
- [9] *Soobramoney v Minister of Health, Kwazulu-Natal* 1998 (1) SA 765 (CC).