



***Till death do us part?  
Marriage in Zimbabwe.***

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## Introduction

Zimbabwe has obligations under the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) to “*eliminate discrimination against women in all matters relating to marriage and family relations.*”<sup>1</sup> It also has the duty to “*modify social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.*”<sup>2</sup>

In February 2012, Zimbabwe was reviewed by the Committee on the Elimination of All Forms of Discrimination against Women (the CEDAW Committee) in line with the state’s obligations under CEDAW. Among the many recommendations that the Committee made (presented as ‘concluding observations’)<sup>3</sup> were specific points relating to the issue of marriages in Zimbabwe. The Committee noted the prevalence of child marriages as one of the biggest challenges to girls’ access to education.<sup>4</sup> The Committee also expressed its concern with the continued discrimination against women by customary laws and practices in relation to divorce/ separation, inheritance and property rights, and noted that the continued existence of a variety of marriage laws which give different rights to men and women, in particular that the practice of polygamy and lobola continue to discriminate against women.<sup>5</sup>

The CEDAW Committee recommended that the state amend, with immediate effect, any and all laws and regulations that discriminate against women in matters relating to their family, marriage and divorce, and to ensure that women are treated fairly and justly when marital property is divided after divorce, whether they contributed with money or not to the purchase of that property.<sup>6</sup> The CEDAW committee also encouraged the state to prohibit polygamy in line with the Committee’s General Recommendation 21<sup>7</sup>, which explains, among other things, the negative impact of polygamy on women and children, as well as for the state to consider creating and adopting a unified family code in which marriage laws are harmonised, both men and women have equal inheritance rights, and both men and women have equal access to property and land rights, and polygamy is prohibited.<sup>8</sup>

Parallel to this review process, stories of the Prime Minister of Zimbabwe, Mr. Morgan Tsvangirai’s personal relationships made headlines. The reports were that in November 2011, Mr. Tsvangirai

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<sup>1</sup> Article 16 of CEDAW.

<sup>2</sup> Article 5 of CEDAW.

<sup>3</sup>The Concluding Observations are available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ZWE-CO-2-5.pdf>.

<sup>4</sup>Paragraph 29 of the Concluding Observations.

<sup>5</sup> Paragraph 37 of the Concluding Observations.

<sup>6</sup> Paragraph 38 of the Concluding Observations.

<sup>7</sup> Available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

<sup>8</sup> Paragraph 38 of the Concluding Observations.

paid US\$36 000 bride price (*lobola/roora*) for Ms Locardia Karimatsenga.<sup>9</sup> The veracity of these claims was never quite ascertained. A week later, Mr. Tsvangirai and Ms Karimatsenga were reported to have gone their separate ways. Mr. Tsvangirai denied marrying Ms Karimatsenga<sup>10</sup>, and claimed he had only paid damages (*dhemeji in Shona* and *idemeji in Ndebele*), a traditional token of acknowledgement of responsibility, as well as an apology from a man who believes that he has impregnated a woman outside wedlock.

The controversy surrounding the nature of Mr. Tsvangirai's relationship with Ms Karimatsenga arose when Mr. Tsvangirai was reported to have paid bride price (*lobola*) for another woman, Ms Elizabeth Macheke, and had intentions to tie the knot with her in a civil marriage.<sup>11</sup> Ms Karimatsenga sought an order from the High Court of Zimbabwe to stop the marriage from going through, arguing that Mr. Tsvangirai was customarily married to her, that their unregistered customary law union still subsisted, and that he had not gone through the requisite customary rites of divorce ordinarily observed through the payment of money/livestock known as *gupuro*.

At the centre of the gossip, the tabloids, and the speculation lay the very important issue of the fact that the structure and form of Zimbabwe's marriage system made it possible for the confusion surrounding the Prime Minister's marital life to arise. In her opening remarks in the case of *Locardia Karimatsenga v Morgan Richard Tsvangirai & Others*,<sup>12</sup> Justice Antonia Guvava of the High Court of Zimbabwe stated; "*This matter once again brings to the limelight the lack of harmony in the marriage laws and the unfortunate consequences of the application of two parallel laws with one legal system and for the same group of people.*" Justice Guvava went on further to state the position that the women's movement has been advocating for years, that "*there is need for urgent legislative intervention which has been sadly lacking despite numerous calls by this court and women's groups for a resolution.*"

Of crucial note are Justice Guvava's remarks regarding the state of the marriage system in Zimbabwe that "*it is not in dispute that a very large number of marriages in Zimbabwe are in terms of unregistered customary law unions. It is also not in dispute that legislature has not done anything to try and rationalise the marriage laws of this country so that problems such as the one that presents itself in this case are dealt with.*"

Zimbabwe has a pluralistic marriage system. It is one of the countries where choices of the type of marriage are wide and varying. One can choose to co-habit (*kuchaya mapoto*), to get married in an unregistered customary law union, to be in a registered customary marriage, or to be in a registered civil marriage. These different marriage types are a consequence of Zimbabwe's dual legal system

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<sup>9</sup> The Herald, 'Tsvangirai pays US 36 000 lobola' Lovemore Chikova and Tendai Mugabe, 22 November 2011 Available at <http://allafrica.com/stories/201111221043.html>.

<sup>10</sup> RadioVoP, 'Tsvangirai Denies Marriage Reports' 24 November 2011 Available at <http://www.radiovop.com/index.php/national-news/7592-tsvangirai-denies-marriage-reports.html>.

<sup>11</sup> The Zimbabwean 'Tsvangirai's 'lover' slept outside his house for 3 days' Lance Guma, 30 November 2011 Available at <http://www.thezimbabwean.co.uk/news/zimbabwe/55086/tsvangirais-lover-slept-outside-his.html>.

<sup>12</sup> *Locardia Karimatsenga vs. Morgan Richard Tsvangirai, Elizabeth Macheke, Bishop Kadenge and the Registrar General (Tobaiwa Mudede) (NO)*. HH 369/12 HC10324/12.

which allows customary law to exist simultaneously with general law.<sup>13</sup> The rights and duties accruing in each relationship differ with each type of marriage. Customary marriages are governed by customary law while civil marriages are governed by general law. However, the prerogative to choose the type of marriage one wants to enter into predominantly lies with the male partner. Consequently, the advantages of being in one type of marriage as compared to another are enjoyed by the male, while the negative consequences mainly affect the female partner.

## **Background**

Since 2000, women's groups have been lobbying for marriage law reforms. This began with research analysing the laws that govern the family institution and assessing the critical legislative and policy changes required to address the deficiencies in the law.<sup>14</sup> This was followed by a series of consultative processes between 2001 and 2004.<sup>15</sup> In 2004, the Ministry of Justice released a White Paper, proposing several amendments to the marriage laws. These included;

- full legal recognition of unregistered customary law unions;
- the division of matrimonial property within unregistered customary law unions in terms of the Matrimonial Causes Act ([Chapter 5:13] Act 6/2000), the establishment of a uniform minimum age of marriage for both boys and girls under both customary law and civil marriages;
- the emphasis on the need for free and informed consent of the parties to the marriage, the removal of religious and customary procedures as a pre-requisite for the solemnisation of marriages,;
- the creation, and maintenance of a central marriage registry for all marriages; and
- the decentralisation of the High Court's jurisdiction in respect of matrimonial matters concerning all civil marriages.

However, despite the release of the White Paper in 2004, today - eight years later - no fundamental changes can be seen in the marriage system. Although the Attorney-General's office (the AG's office) announced in the latter half of 2011 that it was now harmonising the marriage laws, the process has dragged on. Consequently, women continue to fall headlong into the gaping hole that is the chaotic marriage system in Zimbabwe.

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<sup>13</sup>As dictated by Section 89 of the Zimbabwean Constitution.

<sup>14</sup> Research conducted by Olivia Zulu, Dumi Mashingaidze and Lutanga Shaba (consolidated and revised by Professor Julie Stewart of the Women's Law Centre at the University of Zimbabwe).

<sup>15</sup> These included the Zimbabwe Women Lawyers Association (ZWLA) regional workshops, workshops with other CSOs, with the judiciary, with government ministries, parliamentarians, and UN agencies, religious and traditional leadership.

In the months of January and February 2012, RAU facilitated eleven (11) focus group discussions with a representative sample of 160 women from nine (9) different provinces in Zimbabwe. These women came from urban, rural, and peri-urban areas.<sup>16</sup> Among the issues discussed were those of access to identity documents. A report detailing the various challenges that the women indicated they faced in accessing all other identity documents and acquiring citizenship for themselves, and for their children was released in July.<sup>17</sup> In that report it was hinted that a detailed report reflecting the views of the women regarding marriage certificates and marriages in Zimbabwe would follow. Those views are captured in this report highlighting the need to raise awareness so that all women understand the different types of marriages available, as well as the consequences that each marriage type represents in their lives. Coupled with the events relating to the Prime Minister's marital status, the women's views flag the urgent need for reforms to the marriage system in Zimbabwe to be expedited with such swiftness as to reflect the urgency of the situation, bearing in mind the dire consequences that the current system has on women and children every single day.

### **What are the laws on marriage?**

Marriage (also called matrimony or wedlock) in Zimbabwe is perceived as a legal union if it occurs between two consenting adults. It can only be valid if both parties consent; the Domestic Violence Act of 2007 prohibits forced marriages and identifies forced marriage as one of the harmful cultural practices that discriminate against and degrade women.<sup>18</sup> Marriage to a child who, under Zimbabwean civil law, is presumed to be legally unable to consent, and is interpreted to mean a boy who is not yet 18 years of age and a girl who is not yet 16 years of age<sup>19</sup>, is a crime unless the person marrying the minor receives permission from the minor's guardian. However, under customary law such age limits are not defined hence the prevalence of child marriages.<sup>20</sup> Marriage is also legally permitted where the relationship is not incestuous; which means that the parties involved are not closely related by blood in a manner that is prohibited by law.<sup>21</sup> Zimbabwe's laws do not recognise gay marriages. Although both lesbianism and homosexuality are not explicitly prohibited, elements of homosexuality such as sexual intercourse (defined as sodomy), as well as exchange of affectionate

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<sup>16</sup> They were from Bindura, Buhera, Bulawayo, Chegutu, Chinhoyi, Chivhu, Gwanda, Gweru, Gokwe, Harare, Masvingo, Marondera, Mount Darwin, Mutare, Mutoko, Murehwa, Muzarabani, Rusape, Shamva, Shurugwi, and Uzumba Maramba Pfungwe.

<sup>17</sup>R. Dube, *Identity, Citizenship and the Registrar General: The Politicking of Identity in Zimbabwe*, July 2012, Research and Advocacy Unit (RAU).

<sup>18</sup> Domestic Violence Act [Chapter 5:16] Act 14 of 2006 Section 3 (1) (l) (4).

<sup>19</sup> This is in terms of Section 22(1) the Marriages Act. The Customary Marriages Act does not specify a minimum age for marriage and under unregistered customary law unions there is no age restriction.

<sup>20</sup> M. Shonge, *Married too soon: Child Marriages in Zimbabwe*, 2011, Research and Advocacy Unit (RAU).

<sup>21</sup> First Cousins or second cousins cannot marry in terms of Section 75 of the Criminal Law Codification and Reform Act [Chapter 9:23] Act 23/2004 6/2005 9/2006 SI30A/2007 134/2007 as read with Section 24 of the Marriages Act [Chapter 5:11].

touches, are prohibited by the law under the Criminal Law Codification and Reform Act (Chapter 9:23 Act 23/2004).<sup>22</sup>

### ***Monogamous/Civil Marriage***

Monogamy is a form of marriage in which an individual chooses and is permitted by law to have only one spouse at any given point in time. This means that a man will only have one wife, while a woman will have one husband. Under Zimbabwean law, this marriage is provided for in the Marriages Act [Chapter 5:11]<sup>23</sup>, formerly known as Chapter 37. Such a marriage can be presided over by a legally designated marriage officer, who can be a religious minister such as a priest or pastor, or by a marriage officer at the Magistrates Court.<sup>24</sup> Marrying a second wife or husband is strictly prohibited under this marriage regime, and anyone who does so will be committing the crime of bigamy.<sup>25</sup> Bigamy is punishable by a prison sentence of just one year or a fine or both.<sup>26</sup>

### ***The advantages of a civil marriage***

A civil marriage gives the best protection to spouses within the marriage. There is no legal discrimination against women and girls with respect to inheritance rights. In terms of the 1997 Administration of Estates Act, the surviving spouse and the children of a deceased person are the major beneficiaries.<sup>27</sup> It is no longer the eldest son. The matrimonial home – that is, the home which the spouses acquired during the subsistence of their marriage - whatever the system of tenure under which it was held and wherever it may be situated, remains with the surviving spouse.

Ordinarily guardianship of children born during the marriage is vested in the father who exercises this right in consultation with the mother.<sup>28</sup> In the event of death of one spouse, parental authority and guardianship rights over their children remain with the surviving spouse. Where the parents get divorced after a civil marriage, custody is determined in the best interests of the child. In practice, guardianship and custody is commonly vested with the mother unless the court determines it is in the best interests of the child not to do so, and vests those rights in the father.

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<sup>22</sup> With such sexual intercourse defined as sodomy in Section 73 of the Criminal Law Codification and Reform Act [Chapter 9:23] Act 23/2004, 6/2005 (s. 11), 9/2006 (s. 31). SIs 30A/2007, 134/2007

<sup>23</sup> Marriages Act [Chapter 5:11] Acts 81/1964, 6/1967 (s. 15), 35/1967.(s. 32), 20/1968, 42/1971 (s. 5), 37/1972, 21/1973 (s. 66), 41/1978 (s. 4), 17/1979 (s. 7), 29/1981 (s. 59), 15/1982 (s. 3), 18/1989.(s. 37), 22/2001 (s. 4); 23/2004 (s. 282); S.I's 213/1982, 666/1983.

<sup>24</sup> Section 4 and 5 of the Marriages Act.

<sup>25</sup> Section 104 (1) (a) of the Criminal Law Codification and Reform Act.

<sup>26</sup> Section 104 (1) (i) of the Criminal Law Codification and Reform Act.

<sup>27</sup> Section 68 (1) of the Administration of Estates Act [Chapter 6:01] Ord. 6,1907; Acts 12/1929, 3/1932, 2/1935, 37/1938 (ss. 19 and 20), 29/1951 (s. 2), 25/1956 (ss. 6 and 7), 3/1957,15/1958, 9/1962, 14/1962 (s. 2), 22/1964 (s. 54), 30/1969, 29/1970 (s. 2), 42/1971 (s. 5), 77/1971 (s. 21), 57/1972(s. 4), 39/1973 (s. 52) 19/1977, 39/1978 (s. 13), 41/1978 (s. 31), 17/1979 (s. 13), 15/1981, 29/1981, 15/1982,11/1991 (s. 21), 9/1995, 6/1997, 9/1997, 12/1997 (s. 4), 16/1998 (s. 68), 9/1999 (s. 82), 22/2001 (s. 4); R.G.N.s26/1963, 386/1964, 217/1970; S.I. 574/1981 (and by 789/1981), 638/1981.

<sup>28</sup> Guardianship of Minors Act [Chapter 5:08] Acts 34/1961, 43/1973, 42/1978, 19/1980, 29/1981 (s. 59), 39/1983, 9/1997 (s. 10), 22/2001, 23/2001 (s. 49), (s. 4), 14/2002 (s. 5).

### ***Potentially polygamous marriage***

This type of marriage is called a potentially polygamous marriage because it allows a man to marry more than one wife. Although a man can then decide not to marry more than one wife, should he do so then he will be acting within the parameters of the law. There are two types of potentially polygamous marriages both of which are guided by customary law. The first is a registered customary marriage prescribed under the Customary Marriages Act [Chapter 5:07], formerly known as Chapter 231, or in vernacular '*muchato wekwamudzviti*.' Such a marriage allows a man to marry more than one wife. This marriage is recognised as a marriage at law. A man in such a marriage is not obliged under any law to notify (inform) his wife of his intention to marry a second wife. Neither does he have an obligation to request the consent of his first wife or other wives before marrying other women.

The second potentially polygamous marriage is an unregistered customary law union). This type of marriage is limited to the cultural practice of the payment of bride price (*roora/lobola*) by the man to the woman's family. Although all the other types of marriages may be preceded by the payment of *lobola*, their uniqueness lies in the registration of the marriage. For an unregistered customary law union, once the *lobola* process is done, then the two are considered married and can live together. The Zimbabwe Women Lawyers Association (ZWLA) estimates that 70% of people in Zimbabwe are living in unregistered customary law unions.<sup>29</sup> Currently the law only recognises this union as a marriage with regard to a few circumstances; for instance, when the court makes a decision on the protection of children from the union in cases of maintenance or inheritance and in cases of inheritance. However, if the parties divorce (or do not want to be in the marriage anymore), each one will go away with what they brought into the marriage. This usually works to the disadvantage of women, particularly housewives, who are considered not to have made any direct monetary contributions towards the purchase of the matrimonial property because they have '*never worked*.' The women's indirect contributions in raising the children, taking care of the home, and all such other chores are not given any monetary value.

Under the unregistered customary marriage, a man can marry as many wives as he wishes. Although traditionally all subsequent marriages were entered into after notification to the other wives, in modern times that is seldom the case. For most Zimbabweans who follow a patrilineal structure in which descent is through the male line, after marriage a woman moves into her husband's home. Hence, if the man is polygamous, he will live in the same homestead with all his wives, each with her hut. The only exception is the Tonga people who follow a matrilineal system, where the husband moves to the home area of his wife. However, in urban areas where couples automatically find their own home soon after they marry, polygamy consists of men acquiring separate homes for the different wives frequently with each of the wives not being aware of the existence of the other wife/wives.

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<sup>29</sup> The ZWLA Concept Paper on Marriage Law Reform (2000) Unpublished.

## What are the gaps in the marriage system?

### *Inequality before the marriage*

#### *i. Choice of marriage*

The law can only regulate behavior, not attitudes. Although women may be well aware of the benefits of being in registered marriages, or being in a monogamous relationship, they usually lack the bargaining power to choose and insist on the chosen type of marriage that affords them the best protection. The law cannot grant them that bargaining power because the power lies in the gender relations between men and women in society, whereas the reality on the ground is that a man determines the type of marriage that he wants to enter into based on his own preferences. Usually that preference is for the marriage NOT to be registered because of the supposed implications that registration has on him. The women in the focus group discussions spelled out these suppositions to include, but are not limited, to the following;

- *The cultural belief which informs a man that a wife is not his next of kin but the bearer of his children and hence he should not draw her too close through a 'binding' marriage;*
- *The belief that when a man enters into a civil marriage he ties his property to his wife and could lose it all;*
- *The belief that getting a divorce in a civil marriage is not just cumbersome but almost impossible and will give a man problems should he no longer want to be with the same wife;*
- *The superstitious belief by a man that if he enters into a civil marriage then his wife will bewitch and kill him so that she can inherit his property;*
- *The belief that when a woman is secure in a registered marriage where she knows she is the only wife; she will underperform her roles as a wife and make it difficult for her husband to 'manage' her, whereas if she knows he can get another woman, she will continue at her best.*

The socio-cultural expectation for a woman to get married at least once in her lifetime also renders her susceptible to a man's whims in choosing the type of marriage. In the end, the woman will choose to remain in any type of marriage- even one that she does not prefer- because being married is perceived to be better than being single.

#### *ii. Minimum age of marriage*

There is no minimum age of marriage for either the registered customary marriage under the Customary Marriages Act or unregistered customary law unions. It is only under the civil marriage that the Marriages Act prescribes the ages at 16 for girls and 18 for boys. This exists despite the legal age of majority being 18 years. In essence, what the civil law does is to legalise child marriages with regard to girls but not to boys, while with customary law there is no regulation at all. In fact, 'anything goes.'

### **Inequality within the marriage**



Women occupy positions of inequality within their marriages in both customary and civil marriages. Such inequalities relate to women's authority regarding;

- i. ***Their children:*** married women do not have guardianship rights over their children. This is why a woman cannot travel with her children out of the country without clear authorisation from her husband, particularly if she has not changed her maiden surname to that of her husband and her surname appears differently from those of her children.
- ii. ***Their sexuality and reproductive rights:*** women in Zimbabwe are socialised at every point within marriage to succumb to the sexual desires of their husbands. Hence, it is notorious that women cannot negotiate for sex, let alone safe sex. This is why, although the Domestic Violence Act is very clear that a woman can be raped within marriage, this concept is hardly acceptable within a society where it is presumed that a woman has the duty to submit sexually to her husband whether she wants to have sex or not. Most women cannot determine the number of children that they want to have; their husbands decide for them. Should they make unilateral decisions based on their physical needs, then society justifies the husbands should they choose to have children with other women outside their marriages, be they monogamous or polygamous marriage. Hence, women cannot make choices, for themselves, of family planning methods or of safety measures to protect themselves from sexually transmitted diseases within marriage, a dangerous factor given the high prevalence of HIV/AIDS infections within the country.
- iii. ***Registration of matrimonial property:*** -it is common cause that property within any marriage usually tends to be accumulated in the name of the husband. The woman's contribution, be it through money or other means, is usually deemed to be extra money that should not go towards property accumulation but rather to family upkeep and incidentals. This then causes problems upon the breakdown of the marriage, whereupon the woman's contribution is dismissed as insignificant and where the man claims to own everything the couple has.
- iv. ***The sanctity of the marriage:*** the ambiguities within the law provide room for men to make decisions that prejudice women. For instance, the law does not prohibit explicitly a man in a customary marriage, or an unregistered customary law union, from getting into a civil marriage with anyone else except his present wife. This is why it would be possible for a man to pay lobola for one woman, live with her for 10 consecutive years as his wife and then get married in court with another woman, completely neglecting his wife of 10 years.

However, it is important to point out that aggrieved partners of a man or woman in an unregistered customary law union, or registered customary marriage, who now wants to enter into a civil marriage

with another person, could have a remedy within the current system. That remedy is to object to the marriage and cite the reason(s) for such objection. Section 19 of the Marriages Act states that any person who wishes to object to a marriage can lodge an objection with either the person who publishes the bans of marriage (orally and confirm the objection in writing), or lodge it with the magistrate who issues the marriage license or with the marriage officer who will be scheduled to solemnize the marriage.

The challenges with this remedy however are that the law assumes that:

- the aggrieved party is aware of the pending marriage;
- the aggrieved party has knowledge of the individual who published the bans, the magistrate who issued the marriage license or the marriage officer scheduled to solemnize the marriage; and that
- the aggrieved party will have easy access to this information in time to file their objection before the other marriage is solemnized.

The reality on the ground is that most citizens do not know the law and do not know about the existence of this option to object to the issuance of a marriage license. Further, those who do know may fail to get the requisite information about who will solemnize the marriage for numerous reasons including corruption and bureaucratic hurdles in accessing certain information. The system hence does not protect women who are in these customary marriages, are unaware of the law, or unaware of the prospects of their husbands marrying. Although it is a principle of our law as captured in the Roman Dutch Law principle of *ignorantia juris non excusat* or *ignorantia legis neminem excusat* (ignorance of the law is no excuse), it is in such cases that principles of natural law that prioritise fairness should be followed, emphasising the need to protect women subject to this discrepancy as they are in the majority.

### **Inequality outside and after the marriage**

The challenges that the marriage system poses to parties within the marriages usually manifest when relationships begin to break down. For instance, when a man in an unregistered customary law union decides to marry another woman in a civil marriage, or when a man in a polygamous relationship gives his younger wives property that he acquired with the first wife, or when a man in a monogamous relationship decides to distribute property acquired in the marriage (but registered in his name) to women he engages in extramarital affairs with (known in Zimbabwe as '*small houses*'), then problems arise.

The law does not adequately and equitably protect all women in all marriages upon divorce, separation, or dissolution of a marriage through the death of a spouse. Women in unregistered customary law unions have to create safety nets for themselves which the law does not provide for them. These may include, but are not limited to, keeping a record of their marriage themselves by securing written proof of the *lobola* agreement, or securing affidavits from relatives who witnessed

the payment of the *lobola*. The relatives may include the woman's father or the representative who acted as the father on the day the *lobola* was received, the go between known as "*munya*", or other people who were present on the day the *lobola* was paid. In the absence of such proof, women face challenges concerning inheritance from a deceased estate, as often witnesses may refuse to testify if, by denying the wife's existence, the witnesses themselves stand to gain from the deceased estate.

The women in the focus group discussions highlighted the following as some of the main problems that arise from the plurality of the marriage laws in Zimbabwe:

### ***Men marrying other wives without their wife/wives' knowledge***

The women reported that, despite being in registered civil marriages, men can still marry other wives under customary law. Some of the women also reported instances in which a man married customarily, proceeds to marry another wife under the civil marriage. For instance, one woman reported;

*"In my area, we have a Jobane Marange (apostolic faith sect) man who married his 5<sup>th</sup> and last wife in a Chapter 37 (5:11 marriage). When he died, it came as a shock to the other wives because he had left all his registered property to the last wife with whom he had a marriage certificate."*

### ***Difficulties accessing children's identity documents***

The women expressed concern with the difficulties that women in unregistered customary law unions face in getting birth certificates for their children in the event of divorce or the death of their spouse in the absence of a marriage certificate and where the husband's relatives are not willing to cooperate and assist. One woman had this to say;

*"My husband died after 3 years of marriage. I wanted to get a birth certificate for my child but the Registrar General's office required a marriage certificate. I did not have one because we had not registered our marriage. My husband was also an alien (of Mozambican origin) and I did not know of any of his relatives to attest to the fact that we had actually been married and that my child was his child too. I do not know what to do..."*

### ***Dispossession of women of their property***

The women were also concerned with the rampant dispossession of property that women in unregistered customary law unions face. Some mentioned losing their property when their husbands died. Others had their husbands bequeath all the property they had acquired together to other women in their wills. Others, still, lost all the property upon dissolution of the marriage because they did not have the knowledge of what to do and how to have the property distributed equitably.

### **What are the benefits of equal marriage status in all types of marriages?**

If all marriages are given equal recognition under one Act, then the same rights and limitations will be applied to all marriages. Such rights include;

- i. The right to ownership of property*
- ii. The right to inheritance of the remaining spouse from the deceased estate*
- iii. The right to improved access to identity documents such as birth certificates, identity documents and passports for the spouses as well as their children.*

It can be argued that if women are given equal and unfettered access to property and inheritance rights, this will improve their access to resources, lead to better economic opportunities, higher security, and less dependence on male relatives or transactional sex. Recognising unregistered customary marriages will also remove barriers in obtaining death certificates, registering deceased estates, and inheriting property, hence giving widows better economic protection.

### **Why have the reforms taken so long to complete?**

#### *i. Lack of political will*

One of the biggest challenges in pushing for any legal reforms is always the lack of political will. Where political will lies, reforms are swift. For instance, the amendments to the Constitution to allow for compulsory acquisition of land went through Parliament swiftly, because at the time the issue of land reform was a priority for politicians, and hence the political will to see those amendments go through was high. If an issue appears not to be a priority to lawmakers, then they will drag their feet in seeing it through. The delays can arguably be attributed to the lack of sensitivity in the makeup of both the cabinet (which proposes laws) and parliament (which debates and passes laws). Currently, Zimbabwe has 12 female Ministers in Cabinet, representing 21% of the whole cabinet of 57. There are 28 female parliamentarians out of the total of 210 and 23 senators out of the 91, comprising 13% and 25% of these bodies respectively.<sup>30</sup> Given the perceptions discussed above that shape men's understanding of the registration or non-registration of marriage, it would be very difficult for a predominantly male cabinet and parliament to swiftly create a system in which males are perceived to be losing an advantage. The fact that it has taken 9, and possibly more, years to finalise marriage reform is testimony to the lack of political will in these key bodies that should be driving the process.

#### *ii. Complicated Parliamentary Processes*

The process of law reform or formulation is not systematic, but rather ad hoc and haphazard. Parliament cannot propose laws (except through private members' bills), but these are extremely rare. Cabinet has the responsibility to propose laws informed by their needs assessment on any particular subject. This is why the Attorney General in 2004 prepared and presented a White Paper before Cabinet and Parliament on the issue of marriages. From those discussions, the drafters

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<sup>30</sup> R. Dube, *Ratification, Rhetoric and Rare implementation of International and Regional standards on Women's Right to participate in decision making in Zimbabwe: If adopted; will the new Constitution change anything?* October 2012, Sokwanele.

should have drafted the proposed amendments to the existing laws, which amendments would then have gone through the numerous procedures of Parliament including the first, second, and third reading up to the point when the Draft would have been presented to the President for his signature and assent. Without political will, the process of passing legislation can be interminable, as seems has been the fate of the White Paper of 2004.

## **Recommendations**

The participants in the focus group discussions expressed an overall preference for registered marriages, be they under Chapter 5:11 or Chapter 5:07. They proposed various solutions to the problem of marriages by identifying the root of the problem to be in men's conceptions about the meaning of marriage which influence men's decisions to refuse to get into registered marriages, preferring to remain in unregistered customary law unions. The women hence recommended that:

- There must be compulsory registration of every marriage, including customary law unions;
- There must be a central registry that reflects all marriages available at every district so that whoever wishes to get married must be cleared first before they can get married;
- The law must be reformed so that it:
  - reflects fairness and equity within marriage and upon divorce/death or such other separation of spouses;
  - ensures that no marriage is entered into without the free and full consent of the intending spouses;
  - provides for the minimum age of consenting to marriage at 18 years, in customary as civil marriages, for both men and women -to protect the girl child from child marriages;
  - protects everyone of marriageable age by granting and securing their exercise of free will to marry the person of their choice;
  - ensures equality of rights and responsibilities of spouses during marriage and at its dissolution;
  - provides the necessary protection of any children and spouses in the event of dissolution of a marriage, whether through death or divorce;
  - sets out clear legal measures deterring men in monogamous marriages from committing bigamy by marrying other wives in customary unions and preventing men in customary marriages from committing bigamy by marrying a wife in a civil marriage, or from marrying other wives customarily without the other wives' express consent;
  - standardises the grounds on which divorce can be granted. The argument raised was that, under unregistered customary law unions, women find it extremely difficult to divorce their husbands because it

is culturally taboo to do so. This is the case despite the husbands' behaviour and treatment of the women. Hence, if a man is unhappy in such a marriage, he can just marry another woman and neglect the old wife, but women do not have the same prerogative.

- That new constitutional provisions advocating for the recognition of a single marriage system that gives equal rights to all the spouses involved should be promulgated. Should the current Draft Constitution be adopted, these concerns may be addressed;
- That women's direct monetary contributions towards the accumulation of wealth within marriages in the form of money, or their indirect contributions such as child rearing and housekeeping, should be valued, considered as a significant contribution to the accumulation of matrimonial property, and should therefore not be dismissed as insignificant work upon dissolution of a marriage;
- That there must be an equitable property sharing system that recognises wives within any type of marriage and awards them the same rights and privileges in line with Article 7 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).

## Conclusion

Although law reform is needed to protect women from some of the glaring injustices discussed above, there is a greater need for transformation of societal (and especially cultural) attitudes towards women within marriages. Such transformation must include society recognising that women are equal human beings with the same rights as men. As the participants in the focus group discussions noted, the issue of marriages should be addressed from a gendered perspective; namely, to stop looking at it as a women's issue, but rather assess the effects of the marriage system on men as well as women and their children. One woman had this to say:

*"We should not be one-sided and say that a marriage certificate will benefit a woman only. I have seen examples and situations where a husband is at a disadvantage when a woman dies and her family takes all their furniture. A man should understand that getting a marriage registered is something beneficial to him and his wife as well as their children if they have any."*

Furthermore, there must be efforts to address some of the central concerns that bar some people from seeking a registered marriage, one of these being the difficulties associated with the process of divorcing under the Marriages Act. Although a 5:11 marriage can be solemnised by any magistrate, religious leader, or any other designated person, the dissolution of the same marriage can only be done by the High Court. There are only two High Courts in Zimbabwe, one in Harare and the other in Bulawayo. The High Court rarely sits in circuits in the smaller towns. Individuals requesting orders of divorce face many challenges because of the location of the courts. They spend a lot of

money and time travelling to reach the courts. Many of them lack knowledge of the processes of the court. The justice system must either increase the accessibility of the High Court so that such matters can be dealt with expeditiously, or give the Magistrates' Court the power to solemnise and to dissolve all marriages.

In getting a divorce, parties are also required to convince the court that their relationship has irretrievably broken down (that their marriage has fallen apart and cannot under any circumstance be repaired or revived). Although this measure seeks to protect the institution of marriage from nefarious dissolutions and other business transactions (marriages of convenience), and although it may be similar to the lengthy negotiations that families play in reconciling couples having problems in customary law unions, the fact that the court can refuse to grant the order if it is not convinced that the marriage has broken down makes many men wary of being 'tied down' in such a fashion. There is need for a delicate balance between protecting the institution of marriage and protecting the parties within it when they seek solutions from the justice system.

Given the discussion above, it appears imperative that the Attorney General expedite marriage law reform to meet the state's obligations under CEDAW and to give women and girls protection. Such marriage reform must prioritise giving all women equal status and protection, with the same rights and privileges accruing in all marriage types. Only when such a system exists can women's discrimination at the most basic level of power - the family - be protected.