Law, Religion and the Family in Africa

Edited by
M. Christian Green
Faith Kabata

13 THE CLASH OF INDIGENOUS PRACTICES AND ZIMBABWEAN LAW ON CHILDREN AND YOUTH AMONGST THE SHONA PEOPLE

Bernard Pindukai Humbe¹

INTRODUCTION

In recent years, there has been a significant growth in research studies focusing on the lives and experiences of indigenous young people throughout the world.² The focus of this chapter is on influence of traditional cultural practices and Zimbabwean law on children and youth in indigenous communities of Zimbabwe. About 4.5 million children live in indigenous areas, where they have limited access to social services and information.³ In the context of this research study, the terms children, youth and young people are used interchangeably, though they are not synonymous. The African Charter on the Rights and Welfare of the Child (ACRWC) defines a child as anyone below the age of eighteen.⁴ In the same vein, the World Health Organization (WHO) categorises children as individuals between the ages of 10 and 24 years.⁵ However, the cultural definition of children according to customary practice in Zimbabwe states that a person is regarded as a child if he or she remains under parental authority rather than chronological age.⁶ Concurring with this view, in this study, the youth are between the age of 10 and 24 and not yet married. Though some of them might belong to child-headed families, they are still regarded as children within the broad spectrum of their extended families.

Zimbabwe has a long history of upholding a hybrid or a plural legal system, in the sense that the law currently in force was adopted from foreign jurisdictions and imposed into the country by settlers during the colonial era. However, it should

-
- 1 Lecturer, Department of Philosophy and Religious Studies, Great Zimbabwe University.
 - 2 Powell MA, Taylor N and Smith A. 2008. "Rural Childhoods: Literature Review for the Childwatch International Study Group on Rural Childhoods – May 2008". Paper produced for the Children's Issues Centre, University of Otago, New Zealand, 1.
 - 3 World Vision/Child Rights Network for Southern Africa. 2018. Child Rights Barometer, Zimbabwe, 2018: Measuring Government Efforts to Protect Boys and Girls. Harare: CRNSA, 7.
 - 4 Ncube W (ed). 1998. *Law, culture, tradition and children's rights in Eastern and Southern Africa*. Aldershot, Ashgate: Dartmouth.
 - 5 World Health Organization. 2011. Adolescent health. Online at: http://www.who.int/topics/adolescent_health/en/
 - 6 Mugwenhi S and Mafini C. 2014. "Spotlighting the Rights of Children in Zimbabwe: Roles and Challenges for Non-Governmental Organisations", *Mediterranean Journal of Social Sciences* 5(6):410.

be borne in mind that the country's law is not codified, except for criminal law.⁷ The criminal law of Zimbabwe was codified by the Criminal Law (Codification and Reform) Act, which came into effect on 1 July 2006. It should be noted that Zimbabwean law comes from several sources, which are worth considering, particularly as they affect the customary law that is often determinative in Zimbabwe's rural areas and amongst its indigenous peoples.

First, there is the common law, which refers to the unwritten law or non-statutory law, including the Roman-Dutch criminal law. It does not apply to criminal matters. This is by virtue of Section 3 of the Criminal Law (Codification and Reform) Act, which unequivocally states that Roman-Dutch criminal law is inapplicable in all criminal matters in Zimbabwe.⁸ It is worth noting that the Zimbabwean common law excludes the customary law that applies to the lives of the Shona people in indigenous communities. Second, there is the legislation that is produced by the Parliament of Zimbabwe.⁹ The legislature is a bicameral system consisting of a National Assembly and the Senate, with both houses having the power to initiate, prepare, consider, and reject legislation. The legislature derives its authority from the people, vested and exercised in accordance with the provisions of the Constitution. A third source of law is the Constitution of Zimbabwe, 2013, itself, which is the supreme law of the land.¹⁰ The supremacy of the Zimbabwe Constitution stretches to the extent of binding every person, natural or juristic, including the State and all executive, legislative, and judicial institutions and agencies of government at every level and expects fulfilment of imposed obligations.¹¹ As shall be shown later in this chapter, any indigenous customary practice, law, practice, custom or conduct that is inconsistent with the Constitution is invalid to the extent of the inconsistency. A fourth source of law is the judicial law of case or precedent.¹² Precedents in Zimbabwe establish the legal position of cases tried in the courts and the reasoning for decisions made by the judges in each particular case, thereby guiding the courts in making future decisions in similar cases brought before them. A fifth source of Zimbabwe law is customary law, which is generally unwritten.¹³ Customary law refers to the customs and practices of the tribes of Zimbabwe which have been in practice since time immemorial.

With respect to the relationship between constitutional and customary law, in particular, it should be noted that current Zimbabwe Constitution explicitly recognises customary law in various provisions; however, the recognition is conditional.¹⁴

7 Pfumorodze J and Chitsove E. 2021. *The Law in Zimbabwe*. July/August. Online at: <https://www.nyulawglobal.org/globalex/Zimbabwe1.html>

8 Pfumorodze and Chitsove, *The Law in Zimbabwe*, ch 3.4.

9 Pfumorodze and Chitsove, *The Law in Zimbabwe*, ch 3.1.

10 Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

11 Pfumorodze and Chitsove, *The Law in Zimbabwe*, ch 4.

12 Pfumorodze and Chitsove, *The Law in Zimbabwe*, ch 3.2.

13 Pfumorodze and Chitsove, *The Law in Zimbabwe*, ch 3.3.

14 Pfumorodze and Chitsove, *The Law in Zimbabwe*, ch 3.3.

13. The clash of indigenous practices and Zimbabwean law on children and youth...

The customs must be certain, reasonable and must have attained the recognition of formal law. For example, the criminalisation of incest in the Sexual Offences Act and the Criminal Law (Codification and Reform) Act is the recognition of customary law, which prohibits incest or sexual relationship with certain degrees of blood affinity.¹⁵ It should be borne in mind, however, that the customary law of Zimbabwe is limited in scope in its application. It does not cover criminal law by virtue of Section 193 of the Constitution, and it only governs in areas of marriage, inheritance and guardianship.¹⁶

Within this pluralistic legal tradition in Zimbabwe, limitations on sources of law, such as customary law, have given rise to a legal system characterised by contestations, especially when it comes to nurturing of the youth in indigenous societies. The problem emanates from the idea that other sources, especially common law, have hegemony over customary law, even though it is customary law that appeals to and provides for the indigenous people's cultural practices and belief systems. As these legal systems clash, the inadequacy of customary law lies in its nature of being sustained by unwritten traditional practices, while common law provides laws and regulations that protect and care for children in situations of violence and vulnerability.¹⁷

In indigenous communities, application of a crossbreed legal system on the welfare of the youth is sometimes circumstantial. The indigenous families then use their powers creatively to gratify expectations of large number of either those subscribe to the traditional Shona way of life or those who adhere to the dictates of the Zimbabwe Constitution or the modern way of life. In traditional communities, traditional religious beliefs, which also serve as customary laws, play an important role in shaping a people's worldview. They emphasise strong adherence to conventional behaviour and kinship control of behaviour, as well as conformity to cultural norms and values. In contrast, modern orientations to life emphasise individualistic behaviour, strong adherence to secular values and rejection of customs and traditions. Trends towards modernisation in most rural areas are reflected in social establishments, such as schools, in communication facilities, such as internet, television sets and radios, and in the greater movement of rural people from place to place. In some situations, there is early social detachment between families and their children in the pursuit of education.

This chapter examines the effects of these various components of Zimbabwean law on family life in traditional communities of Zimbabwe. Using a phenomenological and sociological approach, this qualitative study gathered data through the use of interviews and observations. The majority of the participants in the qualitative research involved in this study emphasised that Shona marriages are meant to raise

15 Pfumrodze and Chitsove, *The Law in Zimbabwe*, ch 3.3. See also Criminal Law (Codification and Reform) Act [Chapter 9:23] Act 23 of 2004.

16 Pfumrodze and Chitsove, *The Law in Zimbabwe*, ch 3.3. See also Constitution of Zimbabwe, 2013, art 193.

17 World Vision/CRNSA, Child Rights Barometer, Zimbabwe, 2018.

children. Yet, as this chapter will show, in the contemporary world, the laws used to raise children in indigenous Shona communities sometimes clash with traditional arrangements.

TRADITIONAL SHONA CULTURAL LIFE

Africans make up 98% of the total population in Zimbabwe and are mainly related to the two major Bantu-speaking groups, the Shona (*vaShona*) and the Ndebele. The Shona are the dominant group, constituting about 82% of the population, followed by the Ndebele, who constitute about 14%, and other groups such as Tonga, Tsonga, Tshangani, Sotho, Venda, and Hlengwe, who account for 11% of the African populace. Whites make up 1% of the non-African population. Asians and peoples of mixed ancestry make up the remaining 1%.¹⁸

The Shona people of Zimbabwe are a diverse ethnic group, who are predominantly found in the eastern half of Zimbabwe, north of Lundi River. It was after about three decades of colonisation that the term “Shona” was officially ascribed to this group of the indigenous people of Zimbabwe by a white South African linguist, Clement Martyn Doke, who considered their dialects to have mutual intelligibility. The Penn Language Center estimates that Shona is spoken by about 75% of the Zimbabwe population and that the language has multiple dialects.¹⁹ As a result, the term “Shona” is then meant to embrace five major dialects, which are Karanga, Zezuru, Ndau, Manyika and Korekore.²⁰ These dialects are also known as chiShona. The vaShona people are in close cultural contact with the Ndebele, Tonga, Tsonga, Tshangani, Sotho, Venda, Kalanga and Hlengwe people. Though the government now officially recognises about 16 languages, chiShona remains a principal language, along with Ndebele and the official business language, English.

The Shona people are largely exogamous, patrilineal and patriarchal. This has a bearing on their way of life in Zimbabwe, as elsewhere in Africa. Mostly, patrilineal groups are the basic unit of economic cooperation and, usually, of residence. In Zimbabwe, the idea of a “family” amongst the Shona people traditionally refers to an expansive kinship network. Having the nuclear family as well as the extended family in mind, it can be said that the “family” is a large, closely knit community of blood relatives that is constitutive of the life and destiny of each of its members. Kinship in Shona indigenous society constitutes the paramount social reality.²¹ Sometimes it is also viewed in the context of totemism, for example sharing the same *mutupo* (totem), and deep friendship between individuals (*chisahwira*). In this

18 “Africa, Zimbabwe”. *Nations Encyclopedia*. Online at: <https://bit.ly/3ena2rA> [Accessed 15 November 2021].

19 Gudhlanga ES. 2005. “Promoting the Use and Teaching of African Languages”, *Zimbabwe Journal of Educational Research* 17(1):54.

20 Maposa RS and Humbe BP. 2012. *Indigenous Religion and HIV and AIDS Management in Zimbabwe: An African Perspective*. Saarbrücken: LAP Lambert Academic Publishing.

21 Paris PJ. 1995. *The Spirituality of African Peoples: The Search for A Common Moral Discourse*. Minneapolis: Fortress Press.

13. The clash of indigenous practices and Zimbabwean law on children and youth...

context, kinship imposes mutual obligations of hospitality, generosity and material assistance to community members in need.

All this shows that in the traditional Shona cultural life, one has deep connections and obligations to relatives, especially when it comes to nurturing of children. In parenting, a person's behaviour is seen as the community's responsibility, as well as their responsibility to the community. Because of this, in Zimbabwe, as in many other African countries, there is a wide belief that rural communities are better places for upbringing of children. It is the nature of rural society, with everybody knowing everybody, everybody caring for everybody. The sense of social interaction, punctuated by strong adult surveillance, is also associated with sets of traditions and values which result in people cherishing rural childhood.

The present study takes into account that when dealing with traditional life, indigenous communities are not an isolated geographical space. In their rural composition, people are connected to urban environments and diaspora in various ways, such as by travellers, and through information and communication technology. Rural-urban migrants make behavioural shifts when moving between these different social situations, almost as if they have a split personality, living in two worlds.²² The contrast between urban and indigenous geographical spaces is often associated with dichotomies, such as modern-traditional, progressive-conservative and change-continuity.²³ In fact, rural perceptions of the city emphasise moral decay, crime and consumerism. Despite the influence of modernisation and its civil law, in rural areas, a person is judged by their manners and the respect they accord to another person. In a society like that of the Shona, who are accustomed to living so close to each other in villages, it is imperative that the code of behaviour to be carefully practised by all children and included without exception.

CHILDREN'S RIGHTS UNDER ZIMBABWE LAW

The Constitution of Zimbabwe of 2013 provides for children's rights in Section 19.²⁴ To be more precise, Section 19(1) clearly sets out that the State adopts policies and measures to ensure that in matters relating to children, the best interests of the children concerned are paramount.²⁵ In Section 19(2), the State undertakes to ensure that children enjoy family, parental or appropriate care when removed from the family environment; that they have shelter and basic nutrition, health care and social services; that they are protected from maltreatment, neglect or any form of abuse; and that they have access to appropriate education and training.²⁶

22 Anderson JA. 2002. *Going places, staying home, Rural-urban connections and the significance of land in Buhera district, Zimbabwe*, PhD dissertation, Wageningen Universiteit.

23 Anderson, *Going places, staying home*.

24 Constitution of Zimbabwe, 2013, s 19.

25 Constitution of Zimbabwe, 2013, s 19(1).

26 Constitution of Zimbabwe, 2013, s 19(2). See also World Vision/CRNSA, Child Rights Barometer, Zimbabwe, 2018.

All this is necessitated by the Zimbabwe government's ratification of child rights instruments, such as the United Nations Convention on the Rights of the Child (UNCRC), the United Nations Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), the African Charter on the Rights and Welfare of the Child (ACRWC) and many other related child rights instruments.²⁷ So, a need clearly existed for the special protection of children, considering that they are the most valuable assets of the future.²⁸ To compliment the Zimbabwean government's effort, a plethora of NGOs proliferated, and they eventually became alternative voices on children's rights and other social welfare issues in Zimbabwe.²⁹

INDIGENOUS CHILDREN'S RIGHTS AT A LEGAL CROSSROADS

Children occupy a very important place in the indigenous family order. The majority of the participants in the qualitative research involved in this study were in agreement, emphasising that Shona marriages are meant to raise children. It is imperative to say that as the children grow, they are generally adventurous. In the contemporary world, the laws used to raise children in indigenous Shona communities sometimes clash with traditional arrangements. Parents and guardians are the ones who are at pains, due the impact of this dual legal system on their children.

In traditional communities, the patterns of thinking and acting that have been instilled into children are fundamental to instinctive patterns of behaviour. There are traditional moral laws, which consist of those that govern individual conduct and those that govern social and community relations. There are also moral laws that govern social conduct and community relations and thus protect the group; and these tend to be rigorous, because the welfare of the group is highly valued.³⁰

There are many examples of the impact of Zimbabwean law on indigenous families. In rural communities, the clash between the traditional cultural practices and the law has affected families' patterns in problem-solving and decision making in

27 See World Vision/CRNSA, *Child Rights Barometer*, Zimbabwe, 2018. See also Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* Jan. 18, 2002; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* Feb. 12, 2002; African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999.

28 Mugwenhi and Mafini, "Spotlighting the Rights of Children in Zimbabwe", 409.

29 Mugwenhi and Mafini, "Spotlighting the Rights of Children in Zimbabwe", 410.

30 Mbiti JS. 1991. *African Religions*. London: Heinemann Press, 234.

13. The clash of indigenous practices and Zimbabwean law on children and youth...

matters involving children. Mostly, families use a group solving technique that involves thoughts, discussions, actions and decisions that occur from the first consideration of a problematic situation to the decision goal. Because problems brew an undesirable situation in a family,³¹ Shona families usually resort to use of corporal punishment as a way of correcting a child and to instil good manners and behaviour. Corporal punishment is unlawful as a sentence for crime under a 2019 Constitutional Court ruling, but the prohibition has not yet been confirmed through law reform.³² One youth bragged saying that “even if I wrong my family members or the community at large, no one has the mandate to use corporal punishment, whoever dares to do so will face the wrath of the law”.³³ A certain educator was convinced that it was because of the ban on the use of corporeal punishment in schools by the government that the youth abhor it, even outside the school context.³⁴ But some of the elderly participants noted with concern that withdrawal of corporal punishment amongst the indigenous young people has paved the way for incessant unruly behaviour amongst children.

Besides corporal punishment in the indigenous communities under study, there is also a traditional practice known as *kuripa ngozi* that has come under scrutiny.³⁵ *Kuripa ngozi* is one of the features of Shona customary justice system that is of local origin and administered as a means of bringing peace and reconciliation between close-face-to-face community members.³⁶ A girl child becomes obligated to save her natal family from perishing. One participant responded saying she was pledged into forced marriage by her natal family as compensatory payment when she was 17 years old after her father had committed a murder crime. She described how her dreams were shattered because that is when she was asked to quit her secondary education.³⁷ She concluded by saying, “People in the community call me *mukadzi wengozi*.”³⁸ Through *kuripa ngozi*, the girl child becomes a victim of forced marriage thus denying her right to freedom.³⁹ The gendered image of the traditional Shona communities with predominantly male symbols and activities, may mean that girls feel less comfortable in this social context.⁴⁰ Because of lack of consultation, the girls

31 Pokras S. 1989. *Systematic Problem-Solving and Decision-Making*. California & London: Kogan Page.

32 End Corporal Punishment. 2020. Corporal punishment of children in Zimbabwe, July.

33 Interview with a Zimbabwean youth by BP Humbe, Zimbabwe, 5 May 2021.

34 Interview with a Zimbabwean educator by BP Humbe, Zimbabwe, 20 November 2020.

35 *Kuripa ngozi* is a Shona customary practice of offering a young girl or grown women as compensatory payment in inter-familial disputes, as well as in the appeasement of avenging deceased spirits.

36 Chivasa N. 2019. “Kuripa Ngozi as a conflict resolution model in Shona communities of Zimbabwe: a conceptual analysis”, *Critical African Studies* 11(2):159-175.

37 Interview with a Zimbabwean girl by BP Humbe, Zimbabwe, 18 November 2020.

38 The term *mukadzi wengozi* is meant to stress the idea of the woman being bonded to the spirit of the murdered person as her wife.

39 Chivasa, “Kuripa Ngozi as a conflict resolution model”, 166.

40 Chivasa, “Kuripa Ngozi as a conflict resolution model”, 166.

are victims of social exclusion, whereby when faced by customary law practices, they feel powerless to object to their parents' decisions and impositions. They go into marriage at a disadvantage with regard to their husbands, who tend to be older and to have more experience of school, work and often, previous relationships.⁴¹ Other harmful consequences may include exposure to HIV infection, violence in the home and limited freedom to interact with their peers or to participate in civic and cultural activities in their communities.⁴²

Girl pledging contravenes the Domestic Violence Act, which states that "pledging women or girls for purposes of pleasing spirits" or "forced marriage is an offence".⁴³ An example to show how this practice of *kuripa ngozi* has been challenged in Zimbabwe is the following case in Manicaland, which happened in 2006 through the intervention of non-governmental organisations.⁴⁴ In 2006, an arrangement to pledge seven girls to family members of the deceased victim as compensation in Honde Valley, Manicaland province, Zimbabwe, was halted following interventions by the Girl Child Network, which collaborated with the Zimbabwe Republic Police (ZRP) to ensure that the pledged girls were returned to their rightful families.⁴⁵ Other human rights groups that have been active in challenging the practice of *kuripa ngozi* include Shamwari YeMwanasikana (Friend of the Girl Child), Campaign For Female Educators (CAMFED) and Rujeko, the last of which literally means "Light". All of the girl participants acknowledged that through the workshops they have attended, facilitated by these NGOs, they have become well versed with the evil of *kuripa ngozi* and would not consent to such practices. They all agreed that the Domestic Violence Act prohibits social deprivation of the girl child.

This study underlying this chapter also noted that the issue of sexual and reproductive health in children has resulted in emergence of controversies in rural areas. Whereas communities rely on counsel provided by the elderly, the Zimbabwean legal system seemingly has created a gap which has left the youth unguided. The age of consent in Zimbabwe was raised from 12 to 16 years through an amendment to the Criminal Law (Codification and Reform) Act. Section 61(1) of that Act defines a "young person" as "a boy or girl under the age of 16 years", while Section 70 of the same act then makes it a criminal offence to have consensual sexual intercourse or performing indecent acts with a young person.⁴⁶

Some children opined that knowledge about reproductive health is learnt at school, but that they want to experiment with it practically on their own.⁴⁷ As regards

41 Greene ME. 2014. Ending Child Marriage in a Generation: What Research is Needed? New York: Ford Foundation, January.

42 Greene, Ending Child Marriage in a Generation.

43 Domestic Violence Act, Chap. 5:16, s 3(1)(l)(iii-iv). See also World Vision/CRNSA, Child Rights Barometer, Zimbabwe, 2018.

44 Chivasa, "Kuripa Ngozi as a conflict resolution model", 166.

45 Chivasa, "Kuripa Ngozi as a conflict resolution model".

46 Criminal Law (Codification and Reform) Act, ss 61(1) and 70.

47 Interview with Zimbabwean youth by BP Humbe, Zimbabwe, 16 December 2020.

13. The clash of indigenous practices and Zimbabwean law on children and youth...

access to contraceptives that are in the form of barrier methods, such as condoms, the Zimbabwean legal system is mute about age restrictions, as these are readily available over the counter, without parental consent being required. There have been calls to put condoms in primary and secondary learning institutions to avoid the spread of sexually transmitted diseases and unwanted pregnancy. In the view of elder generations, use of contraceptives is against the moral value of abstinence amongst children.⁴⁸ Traditional laws seek to protect children from early sexual activities. One parent bemoans that the end result of all these modern approach to sexual and reproductive health is that they have had a negative bearing on courting and marriage practices. The youth's social attitudes and reasons for marriage have been impacted. In some situations, dating is done privately, followed by co-habitation and then sometimes marriage.

There is a practice called *chiramu* (sexual dalliance) in traditional Shona communities.⁴⁹ In *chiramu*, the traditional communities empower the girl child to be socially and psychologically mature. A parent clarified this by saying the girl is nurtured to be accustomed to relating with people of opposite sex without having any emotional feeling of love.⁵⁰ However, the Zimbabwean law discourages *chiramu*, conceiving it as a form of abuse. Criminal law protects children against sexual offences that might be committed against them. Section 87 of the Criminal Law (Codification and Reform) Act states that anyone who allows a child to be a prostitute commits a crime. Meanwhile, Section 70 of the Criminal Code also penalises adults who have sexual intercourse with minors or who perform indecent assaults on young people.⁵¹ One respondent argued that *chiramu* should be banned completely because it promotes sexual abuse and contraction of HIV and AIDS.⁵²

Child labour has become a contentious issue in rural communities of Zimbabwe. Throughout the world indigenous communities and child labour are clearly related.⁵³ Children may be perceived as available and valuable assets by subsistence farming parents, for their productive capacity and economic utility.⁵⁴ Through observations, the following are tasks associated with children's work in rural communities: crop farming, animal husbandry, fetching water, cutting thatching grass, thrashing traditional grain, pounding traditional grain, grinding traditional grain, fetching firewood, brick moulding, doing dishes and household tasks,

48 Interview with Zimbabwean parents and children by BP Humbe, Zimbabwe, 16 December 2020.

49 *Chiramu* is a cultural practice that involves dallying, flirting, and an amorous play between *babamukuru* ("brother-in-law") and his wife's single younger sister or an unmarried *muzukuru* ("niece-in-law").

50 Interview with a Zimbabwe parent by BP Humbe, Zimbabwe, 1 June 2021.

51 Muchenje R. 2015. "Children's rights in Zimbabwe: An analysis of how the State seeks to protect Children's Rights – A legal perspective", Jesuits Zimbabwe Mozambique. Online at: <https://bit.ly/3eq94ee>

52 Interview with Zimbabwean survey respondent by BP Humbe, Zimbabwe, 10 October 2020.

53 Powell, Taylor and Smith, "Rural Childhoods", 12.

54 Powell, Taylor and Smith, "Rural Childhoods", 12.

childcare and cattle herding. These activities are subject to gender differences in the division of labour. Some parents argued that children are subjected to work at an early age not for purposes of exploitation, but in the context of their traditional culture, wherein work makes someone a complete human being.⁵⁵ So, child work is part of socialisation, education, training and play. The advantage of exposing children to work is that work is not isolated from other aspects of their lives. For example, girls collecting water, meet their friends, play. This helps a child to grow up as a self-sustained person who is able to practise indigenous works for survival.

However, child labour clashes with Zimbabwean law, which prohibits children 13 years and below to work.⁵⁶ Some participants in the study for this chapter appreciated the prohibition of child labour. They opined that where child labour was rife, there was a litany of problems, including decreased school attendance, poor academic performance, school dropouts, early child marriages and work-related injuries.⁵⁷ Hence, the Zimbabwean law seeks the elimination of all forms of exploitation or abuse against children.

FALLOUTS OF THE CLASH BETWEEN CUSTOMARY LAW AND THE REST OF ZIMBABWE LAW

Children have lost their *ubuntu*.⁵⁸ The elderly, especially parents and guardians, are no longer held in high regard and treated with infinite religious respect and prowess. For example, the father, sitting on the ancestral chair and maintaining a nexus between his family members and the ancestral spirits, has become powerless, as a custodian of all family cultural traditions and practices, in the resolution of family conflicts. The Constitution of Zimbabwe strips him of his status as the embodiment of the beliefs, hopes, fears and aspirations of his family members.

Indigenous mothering and aunting practices are also left aside, with the legislation, constitution and common law taking the leading role. What is expected of aunties, who have a powerful role in African families, is that they continue to assume their reciprocal social responsibilities with natal family members. Amongst other roles, aunties provide multiple forms of support to nieces and nephews by offering sage counsel or a sympathetic ear. The functionality of this office has been paralysed by the child rights advocates.

In Shona families, a mother is not perceived as an ordinary person. Motherhood and womanhood imbue a unique personality worthy of the child's reverence. A male participant succinctly stated that "a lot of children are angering their mothers,

55 Interview with Zimbabwean parents by BP Humbe, Zimbabwe, 15 April 2021.

56 Labour Act [Chapter 28:01], updated to 2019. See also World Vision/CRNSA, Child Rights Barometer, Zimbabwe, 2018, 32.

57 Interview with Zimbabwean parents by BP Humbe, Zimbabwe, 9 July 2020.

58 *Ubuntu* is a term that generally describes a perfect society, a society with oneness, a society that has love, truth, peace happiness, eternal optimism.

13. The clash of indigenous practices and Zimbabwean law on children and youth...

as a result they are receiving punishment from the maternal ancestral spirits.”⁵⁹ In the view of the Shona people, children should avoid conflicts with their mothers. Most of the elderly women acknowledged that a child they carried for nine months should be submissive always. Thus, in the traditional arrangement, children do not view their mothers as abusive. This is the reason why they are not supposed to rise against their mothers. Breaking this taboo results in misfortunes on the part of the children. The majority of the parents complain that the youth no longer value the aunting and mothering roles and think that they are grown-ups. Some educated youth cite the issue of education, emphasising that they cannot take heed of what comes from their aunties and mothers in indigenous communities because they were not educated, meaning that children perceive their aunts and mothers as uneducated. The children argue that they have the freedom of association with their peers.

The majority of participants in the study were in agreement that in contemporary indigenous areas, there are extreme cases of drug abuse, particularly marijuana and alcohol, which are cited as a strong recipe for laziness, interpersonal violence, under-age prostitution and even prostitution amongst younger adults. The rampant sexual activity has produced teenage pregnancies, illegal abortion practices and sexually transmitted infection.⁶⁰ The elderly view the youth as a homogenous generation characterised by psychological disorders and by social and moral decadence.⁶¹

CONCLUSION

People’s attitudes and behaviours are influenced by tradition, religion or modernity.⁶² Both traditional culture and Zimbabwean law influence how people think and feel and how they should act in the modern world. From the government policy perspective, the parents or guardians in traditional communities are called upon to take a new perspective on the lives of their children in terms of what the global world of human rights presents to them. For example, there are situations when traditional religious beliefs and culture can be detrimental to youth well-being, for example, *kuripa ngozi*. Families also use traditional cultural practices as a justification to maltreat children in areas such as child labour.

The problem with the traditional community context is its failure to provide what modern young people need. Indigenous children are longing to be part of the global world. This is why they now prefer what they learn from schools, NGOs, and churches, compared to wisdom that comes from the offices of mothering and aunting. Consequently, Zimbabwean law sets about to liberate children.

59 Interview with a male survey participant by BP Humbe, Zimbabwe, 11 July 2021.

60 Interview with a male survey participant by BP Humbe, Zimbabwe, 11 July 2021.

61 Interview with a male survey participant by BP Humbe, Zimbabwe, 11 July 2021.

62 Chivasa, “Kuripa Ngozi as a conflict resolution model”.

Zimbabwean law has certainly affected people living in the indigenous communities. There are some parents who have traditionally derived their status in the community from the behaviour patterns of their children and the reputation of the family, but this is changing. Elders are gradually losing their leading position in the lives of youths. The youth are excited to grab ahold of the process and promise of modernisation initiated in their local indigenous communities. The youth have a great desire to transform old cultural practices and embrace new patterns of modern life. Indigenous Shona people are characterised by collective identity, based on their indigenous cultural values and traditions. However, indigenous youth have been losing their cultural identity as a result of the influence of Zimbabwean law. Knowing the supremacy of Zimbabwean law, the elder generation in indigenous communities is at pains in matters of socialising the younger ones in line with African values and norms for fear of breaking the law. This has paved way for young people to be engrossed in Western value systems, which are more inclined to the values protected by the Zimbabwean law at the expense of their own traditional cultural identity. Yet cultural identity of the indigenous youth should be attached to the identification with their cultural contexts, such as the traditional laws, values, symbols and language of their indigenous communities.⁶³

There are several limitations associated with the Zimbabwean law in the lives of children in indigenous communities. It provides limited guidance regarding child well-being, especially in the areas of their indigenous social networks. Children need the community to realise their full personhood. For example, the common law is seen as spiritually empty or bankrupt, and not generating the worthwhile vision or supplying intense or transcendent experiences to their children. In the indigenous community arrangement life is religious, thus laws which guide them inevitably have a religious base. Traditional religious leaders and the elderly have the avowed goal of achieving, through customary practices, the highest standards of cultural values, not only for their communities, but also for the whole country. For them, customary law, which is partially adopted by Zimbabwean law, is almost wholly embedded in the social, economic, political, and religious life of the indigenous people. In most cases, customary law is revered by indigenous communities. A law which is spiritually accommodative induces the citizens to avoid evil, to respect one another and to cooperate for the benefit of the community and not an individual. This explains why there is estrangement of the contemporary youth in indigenous communities, for the country's hybrid legal system is failing to meet the needs of these communities.

An essential point is how the custodians of families in indigenous communities have managed to keep their bearings, retain their identity and maintain control of their children's lives. Despite the power of Zimbabwean law, the elderly have maintained their basic ideas and customary practices about children, life, family and kinship and, what is more important, these ideas are still fully operative in managing the

63 Birhan W. 2018. "A Review on Normative and Other Factors Contributing to Africa's Adolescent Development Crisis", *Philosophical Papers and Review* 9(1):1-9.

13. The clash of indigenous practices and Zimbabwean law on children and youth...

family traditions. These cultural traditions are not simply survivals from another era, carried around like relics by elderly people. They are, on the contrary, shared to a great extent by younger generations. The idea that everybody knows each other in relational terms in indigenous communities can be expressed as a positive factor in the contemporary world, particularly when mobilising notions of safety. The youth can feel observed, under surveillance, and singled out for disapproval and intolerance.

Overall, Zimbabwe has done well in ensuring that children's rights are respected. The Constitution of Zimbabwe provides that any law that is not in consonance with it will be annulled to the extent of the conflict with the constitution.⁶⁴ The present study has looked at the indigenous society's comprehension of how and why Zimbabwean law has played a pivotal liberating role in the fight against oppression and abuse of children, along with its concern to maintain indigenous cultural values and to legitimate and perpetuate traditional cultural practices. There is need for a holistic approach to viewing children's rights and everyday experiences in indigenous communities. This type of approach shows how children integrate different aspects of their childhoods and negotiate autonomy, at home, at work, at school and at play.⁶⁵ When indigenous culture and rights are separated, indigenous culture becomes trivialised. However, when play and work are intertwined in indigenous communities, they provide the context for the acquisition and use of environmental knowledge, which is a key aspect of socialisation for the youth.⁶⁶ While human rights are fundamental, they should be seen as important not only for the sake of individuals, but also for the collective survival of the indigenous community. This is because community morals govern the family unit, from maternal and paternal relatives to extended families, clans, and lineages.

64 World Vision/CRNSA, Child Rights Barometer, Zimbabwe, 2018.

65 Haan H and Long N (eds). 1997. *Images and Realities of Rural Life: Wageningen Perspectives on Rural Transformations*. Assen, Netherlands: Van Gorcum.

66 Haan and Long. *Images and Realities of Rural Life*.