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### Teen's death sparks child marriages outrage

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# Apostolic sect in court over child marriages

*...as law-based group, women's coalition mount anti-child marriages campaign*



Through mobile legal clinics held in outlying areas in Zimbabwe, ZLHR is helping to close the divide between urban and rural communities in rights literacy and community engagements.

**H**ARARE—Stung by the death of a 14-year old girl, while giving birth at a Marange Apostolic Church of St Johanne, a Masvingo resident and two human rights organisations have gone to court to force the church and others to start preaching against child marriages.

While Machaya's case made global headlines and attracted condemnation from the United Nations (See page 4), the practice has been ongoing for decades and reports indicate that the practice is continuing. A religious doctrine that claims the holy spirit can

distribute young girls to older men within the church is blamed for fuelling the scourge.

The church has to change its ways, and a good start would be to incorporate anti-child marriage messages as part of its weekly gospel, say the applicants in their submissions.

In the summons filed recently at Harare High Court, Sharon Moffat, a Masvingo resident, Legal Resources Foundation (LRF) and Women's Coalition of Zimbabwe (WCoZ) want the court to order the Marange

Apostolic Church of St Johanne and the Apostolic Churches Council to publish messages indicating that the marrying or giving in marriage of girl children is not an aspect of their respective faiths.

LRF is a law-based human rights organisation while WCoZ is a network of women's organisations involved in the preservation and protection of women's rights including the rights of children. Moffat, LRF and WCoZ also want the High Court to order the churches to take steps to end the practice of marrying and giving in marriage of girl children by declaring to congregants and adherents that child marriages should not be committed in the name of the religion. Moffat, LRF and WCoZ are represented by Paidamoyo Saurombe of Zimbabwe Lawyers for Human Rights (ZLHR) and Advocate Thabani Mpfu, Advocate Regina Bwanali and Advocate Choice Damiso, instructed by ZLHR.

The messages should be published for 19 consecutive weeks at every shrine or every place of worship to clarify this stance to congregants and adherents.

Health and Child Care Minister Constantino Chiwenga, Justice, Legal and Parliamentary Affairs Minister Hon. Ziyambi Ziyambi, Home Affairs and Cultural Heritage Minister Hon. Kazembe Kazembe, Women's Affairs, Community, Small and Medium Enterprises Development Minister Hon. Sithembiso Nyoni, Zimbabwe Republic Police, Zimbabwe Gender Commission and Zimbabwe Human Rights Commission should also take action.

These authorities must identify children married in terms of the practice, ensure their removal from such marriages and place them in places of safety that are established in terms of the Children's Act for their rehabilitation, according to the demands contained in the court summons.

Moffat, LRF and WCoZ also want the criminal justice system to be activated against all men who have married or otherwise have had sexual intercourse with minor children in the name of religion. This is especially important given that the practice has continued

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# Teen's death sparks child marriage outrage



Preaching against child marriages...Advocate Thabani Mpfu and Paidamoyo Sauroombe together with Advocate Regina Bwanali and Advocate Choice Damiso are assisting Sharon Moffat, LRF and WCoZ to challenge the practice of child marriages

**M**UTARE-Rape sanitised as child marriages. Heart-wrenching. Unscrupulous. Alarming. These were the terms used to describe the fate of Anna Machaya, a 14 year-old girl who died while giving birth at a Johanne Marange apostolic sect in Manicaland's Marange area in July.

Her "husband" is now being charged with murder and for sleeping with a minor. Prosecutors say after impregnating Machaya, Evans Momberume took her to the shrine for child birth.

Apart from the uproar, the case brought to the fore a cancer that has plagued Zimbabwe for decades: old men hiding behind religious beliefs to violate young girls whom they force into becoming their wives.

Machaya's case was not the first, nor the last. Over the past several decades, thousands of young girls, some barely into their puberty, have been forced to surrender their childhood for motherhood and marriage.

"There is an on-going and unabated practice in religious and cultural sects of rape, child abuse, and marrying-off young girls, exposing them to child pregnancies and worse," said Zimbabwe Lawyers for Human Rights (ZLHR), condemning the practice.

Usually forced to be members by indoctrinated parents, their dreams and ambitions give way to church doctrine.

"Child, forced and early marriages are also linked to higher rates of school dropouts, unintended pregnancies due to sexual abuse and also increased risks of miscarriage, unsafe abortions, stillbirth, intrauterine haemorrhage and increased vulnerability to HIV/Aids and other sexually transmitted infections among young girls," lamented ZLHR.

The apostolic church's doctrine is a mixture of Christian beliefs and African traditions. It is the country's biggest religion, according to some studies. Its distinctive feature is the belief that instructions come from the Holy Spirit, which speaks through church leaders.

Young girls are often forced to abandon school and enter into polygamous marriages with older men under the guise of instructions from the holy spirit. Many shun hospitals, with older church women acting as midwives at church shrines turned maternity wards. This is where Machaya met her death.

Civic society organisations and government agencies rallied to call for an end to the practice.

"Remaining silent on this matter is not only failing Anna Machaya, but also sets precedence for future perpetrators to continuously violate the girl child and get away with it. Remaining silent on this matter means that we have failed as a nation to appreciate the principle of 'best interests of the child' that our Constitution and the Convention on the Rights of the Child envision for all children in Zimbabwe," said Women's Coalition of Zimbabwe.

Said Human Rights Watch (HRW): "Child marriage is rampant in Zimbabwe, especially among Indigenous apostolic churches. A member of an apostolic church told HRW, "As soon as a girl reaches puberty, any man in the church can claim her for his wife."

"Forcing any girl into marriage causes her untold suffering and long-lasting harm. Girls are often sexually abused, beaten by their husbands and in-laws, confined in their homes, forced into pregnancy and labour, exposed to serious reproductive health risk including risk of death, and denied an education," HRW said.

"It is actually rape," said Zimbabwe Gender Commission Chief Executive Officer, Virginia Muwanigwa.

Women's Coalition of Zimbabwe agreed, and called on law enforcement agents to pursue perpetrators.

"We, as mothers and sisters are angry that this happened in a country that has established laws on rape and on child abuse yet the focus of this issue has been on this minor's pregnancy and not the gross inhuman violation of her body and her person.

"The rapist and the accomplices who took this child and stayed with her during this whole ordeal remain officially unnamed, anonymous and protected to the disadvantage of Anna getting justice," the group, which is one of those spearheading the campaign against child marriages said.

## Apostolic sect in court over child marriages

*Continued from Page 1*  
even after the Constitutional Court ruled against child marriages (*Mudzuru and Another v Minister of Justice, Legal and Parliamentary Affairs and Others in Case No. CCZ-12-15*).

Marange Apostolic Church of St Johanne, Apostolic Churches Council, Chiwenga, Ziyambi, Kazembe, Nyoni, Zimbabwe Republic Police, Zimbabwe Gender Commission and Zimbabwe Human Rights Commission are cited as respondents in the summons.

The applicants argued that some members of the Marange Apostolic Church of St Johanne church have taken to marrying and marrying off girl children falsely claiming such practice to be part of their religious beliefs while such a breach has also taken root in most church organisations represented by Apostolic Churches Council.

Moffat, LRF and WCoZ accused Marange Apostolic Church of St Johanne and Apostolic Churches Council of not taking a position to affirm their true beliefs and faith and to disassociate themselves from their adherents who violate the law in their name.

Moffat, LRF and WCoZ argued that Marange Apostolic Church of St Johanne and Apostolic Churches Council had accommodated the criminal practices and given the impression that they not only tolerate them, but that those practices constitute a fundamental component of their faith.

Moffat, LRF and WCoZ want the High Court to declare that the practice of marrying and marrying off girl children to be declared as not an essential element of the religious beliefs of Marange Apostolic Church of St Johanne and the organisations represented by Apostolic Churches Council and for such practice to be declared to be in breach of sections 19(1), 19(2)(a), 19(2)(d), 19(3)(b)(iii), 26(a), 26(b), 27(2), 51, 53, 78(1), 78(2), 80(3), 81(1)(d), 81(1)(e) and 81(2) of the Constitution (See Know Your Rights on p4 for more on these constitutional provisions).

## Change the gospel, lawyers tell church

*...apostolic groups asked to preach against child marriages*



Preach a different gospel...Sharon Moffat

**M**UTARE-For decades, the apostolic sect has been associated with child marriages in violation of the country's laws.

Despite operating under the terms of the country's laws, which criminalise child marriages, church leaders seem to continue to condone such practices.

In summons filed recently at Harare High Court, Sharon Moffat, a Masvingo resident, Legal Resources Foundation (LRF) and Women's Coalition of Zimbabwe (WCoZ) want the church to preach a different gospel.

Below are excerpts from the court summons:

"The gospel preached by the first defendant (Marange Apostolic Church of St Johanne), and the religious values it espouses are also the hallmark of the more than 600 Indigenous Apostolic African Churches represented by the second defendant (Apostolic Churches Council).

Both the first defendant and the organisations represented by the second defendant are established in terms of the law and purport to act in their

doctrine in terms of all the laws of the country without exception and in particular those that uphold fundamental human rights and secure the protection of the rights of the girl child as set out in the Constitution.

In breach of first defendant's doctrine, faith and the laws of Zimbabwe, certain of its membership have taken to marrying and/or are marrying off girl children falsely claiming that to be part of their religious beliefs.

In the wake of these breaches, first and second defendant have not taken a position to affirm their true beliefs and faith and to disassociate themselves from their adherents who violate the law in their name.

In the result, they have accommodated the criminal practices and given the impression that they not only tolerate them, but those practices form a fundamental component of their faith(s).

Owing to confusion whether these practices are part of the religious beliefs of the Indigenous Apostolic African Churches and in the light of first and second defendant's inaction, third to ninth defendants have generally not acted or have otherwise been slow to act on these practices which has made them take root.

# Girls have rights too

“THE practice of marrying, or marrying off of girl children is not an article of faith of Marange Apostolic Church of At Johanne in all its forms or any of the independent African apostolic churches and being at variance with the law, is a void practice that may not be continued in the name of religion.”

This is part of the order being sought by Sharon Moffat, a Masvingo resident, Legal Resources Foundation (LRF) and Women’s Coalition

of Zimbabwe (WCoZ) in a case in which they want the apostolic church to publicly denounce child marriages. Alternatively, they want an order declaring that “marrying, or giving in marriage of minor children is not an essential component of the faith of the Marange Apostolic Church of At Johanne or any of the independent African apostolic churches that fall under the Apostolic Churches Council.”

Child marriages, many of them fuelled by religious doctrine, are

denying thousands of girls the chance to enjoy their constitutional rights. Many of them end up enduring gender-based violence that undermines their health, growth, dignity, security and development. Higher rates of school dropouts and unintended pregnancies due to sexual abuse and health complications have also been reported.

The Know Your Rights series below outlines some of the rights that girls should enjoy but are routinely violated in the name of religion.



ZLHR partners with ZHRC in rolling out mobile legal clinics across the country including reaching out to communities in Masahwi, Mudzi in Mashonaland East province

## Know Your Rights:

### Section 19 of the Constitution: Children

- The State must adopt policies and measures to ensure that in matters relating to children, the best interests of the children concerned are paramount.
- The State must adopt reasonable policies and measures, within the limits of the resources available to it, to ensure that children—
  - enjoy family or parental care, or appropriate care when removed from the family environment;
  - have shelter and basic nutrition, health care and social services;
  - are protected from maltreatment, neglect or any form of abuse; and
  - have access to appropriate education and training.
- The State must take appropriate legislative and other measures—
  - to protect children from exploitative labour practices; and
  - to ensure that children are not required or permitted to perform work or provide services that—
    - are inappropriate for the children’s age; or
    - place at risk the children’s well-being, education, physical or mental health or spiritual, moral or social development.

### Section 26 (a)(b) of the Constitution: Marriage

The State must take appropriate measures to ensure that—

- no marriage is entered into without the free and full consent of the intending spouses;
- children are not pledged in marriage

### Section 27(2) of the Constitution: Education

The State must take measures to ensure that girls are afforded the same opportunities as boys to obtain education at all levels.

### Section 51 of the Constitution: Right to human dignity

Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected.

### Section 53 of the Constitution: Freedom from torture or cruel, inhuman or degrading treatment or punishment

No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.

### Section 78(1)(2) of the Constitution: Marriage rights

- Every person who has attained the age of eighteen years has the right to found a family.
- No person may be compelled to enter into marriage against their

will.

### Section 80 of the Constitution: Rights of women

- Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities.
- Women have the same rights as men regarding the custody and guardianship of children, but an Act of Parliament may regulate how those rights are to be exercised.
- All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement.

### Section 81(1)(d) of the Constitution: Rights of children

Every child, that is to say every boy and girl under the age of eighteen years, has the right—

- to family or parental care, or to appropriate care when removed from the family environment.

### Section 81(2) of the Constitution: Rights of children

- A child’s best interests are paramount in every matter concerning the child.

## Govt adamant on child marriages

**H**ARARE-President Emmerson Mnangagwa’s government is adamant that it has accomplished a lot in stopping child marriages in Zimbabwe despite some reported rising cases of the pervasive practice.

In response to summons filed at Harare High Court on 28 September 2021, government lawyers are unwavering that President Mnangagwa’s administration has taken all the legislative and other steps required at law to stop child marriages including enforcement of the same.

The lawyers argued that a request for an order from the High Court to secure the rights of the girl children exposed to the practice of child marriages is misplaced, unnecessary and incompetent.

In March 2021, government released some shocking figures showing that 4 959 girls fell pregnant between January and February 2021 alone at a

time when the scourge of child marriages increased due to the effects of the coronavirus pandemic and associated national lockdowns.

The response by government filed at High Court on 18 October 2021 came after Sharon Moffat, a Masvingo resident and two human rights organisations recently asked the High Court to order Marange Apostolic Church of St Johanne and the Apostolic Churches Council to mount a campaign denouncing the practice of child marriages.

In the application, Moffat, Legal Resources Foundation (LRF) and Women’s Coalition of Zimbabwe (WCoZ) want Marange Apostolic Church of St Johanne and the Apostolic Churches Council to be ordered to publish at every shrine or every place of worship, a message for 19 consecutive weeks, clarifying, for the benefit of their congregants and adherents, that the marrying or giving in marriage of girl children is not an aspect of their respective faiths and should not be

committed in the name of their religion.

Moffat, LRF and WCoZ also want the High Court to order Health and Child Care Minister Constantino Chiwenga, Justice, Legal and Parliamentary Affairs Minister Hon. Ziyambi, Home Affairs and Cultural Heritage Minister Hon. Kazembe Kazembe, Women’s Affairs, Community, Small and Medium Enterprises Development Minister Hon. Sithembiso Nyoni, Zimbabwe Republic Police, Zimbabwe Gender Commission and Zimbabwe Human Rights Commission, to take steps to bring to an end the practice of marrying and giving in marriage of girl children in Marange Apostolic Church of St Johanne and in Independent African Apostolic Churches represented by Apostolic Churches Council.

The trio want Zimbabwean authorities to conduct an identification of children married in terms of the practice, their removal, from such marriages and placement in places of safety established in

terms of the Children’s Act for their rehabilitation. They also want the activation of the criminal justice system against all men who have married or otherwise have had sexual intercourse with minor children in the name of religion post the decision of the Constitutional Court in Mudzuru and Another v Minister of Justice, Legal and Parliamentary Affairs and Others in Case No. CCZ-12-15 and the publication of a summary of the declaraturus in all national newspapers and on all national radio stations in all vernacular languages.

Moffat, LRF, which is a law based human rights organisation and WCoZ, a network of women’s organisations involved in the preservation and protection of women’s rights including the rights of children are represented by Paidamoyo Saurombe of Zimbabwe Lawyers for Human Rights, Advocate Thabani Mpofu, Advocate Regina Bwanali and Advocate Choice Damiso.

The matter is yet to be set down for hearing.

## Zimbabwe Lawyers for Human Rights Press Statement

### *A call to an end to child, forced and early marriages in Zimbabwe*

**Z**imbabwe Lawyers for Human Rights (ZLHR) is alarmed by media reports that a 14-year old girl, Anna Machaya, passed away recently while giving birth at an apostolic sect church shrine in Marange in Manicaland province, and reports that child, forced and early marriages are increasing in Zimbabwe.

The culture of child, forced and early marriages in Zimbabwe perpetuates gender-based violence and undermines the health, growth, dignity, security and development of the girl child in Zimbabwe.

Child, forced and early marriages are also linked to higher rates of school dropouts, unintended pregnancies due to sexual abuse and also increased risks of miscarriage, unsafe abortions, stillbirth, intrauterine haemorrhage and increased vulnerability to HIV/Aids and other sexually transmitted infections among young girls.

Zimbabwe has a clear obligation under international and regional treaties and conventions and national legislation to take measures to prevent child marriages and address all forms of violence against women and girls.

Sections 78 and 81 of the Constitution provide that anyone below the age of 18 years is a child, and the constitutional court has confirmed that marriage with children under 18 years is prohibited. Section 78(2) of the constitution provides that no person can be compelled to enter into a marriage against their will.

Section 70 of the criminal law (Codification and Reform) Act (chapter 9:23) provides that any person who has sexual intercourse with a person below the age of 16 years, with or without their consent, shall be guilty of rape or aggravated indecent assault or indecent assault.

The domestic violence act (chapter 5:16) criminalises abuse derived from any cultural or customary rites or practices, including child and forced marriages that discriminate against or degrade girls and women.

Sadly, in spite of these legal protections, there is an on-going and unabated practice in religious and cultural sects of rape, child abuse, and marrying-off young girls, exposing them to child pregnancies and worse.

It is against this background that ZLHR calls on:

- members of the apostolic sect to desist from practising these harmful practices as they expose young girls to sexual predators and is tantamount to rape and child abuse.
- the Zimbabwe Republic Police and human rights institutions such as the Zimbabwe Human Rights Commission (ZHRC) and Zimbabwe Gender Commission (ZGC) to investigate this issue and bring the perpetrators to account according to section 245 of the Constitution. Law enforcement agencies should enforce the law without fear, favour or prejudice.
- the parliament of Zimbabwe to pass the marriages bill 2019 into law as a matter of urgency, during its current sitting, to align the legislation with sections 78 and 81 of the constitution by repealing outdated provisions allowing young girls to get married at 16 years, or younger with the consent of the minister.
- all stakeholders such as the civil society, ZHRC, ZGC, traditional and church leaders to coordinate themselves and engage on child, early and forced marriages.
- all stakeholders to conduct awareness programmes to inform rural and urban dwellers about the dangers of child, early and forced marriages and the laws that are being violated. It is also important to educate society as a whole about gender-based violence and the laws and policies that exist in the country.
- communities to report child, early and forced marriages to the police and other stakeholders working in this area. Most cases remain underreported due to fear of retribution.

## A shared responsibility



Advocate Choice Damiso

**I**t is a shared responsibility to protect the Girl Child! Women's Coalition of Zimbabwe (WCOZ), a non-partisan national network of women's rights organisations and activists striving for the rights of women and girls, expresses its outrage over the reported death of 14 year-old girl who has been identified as Memory Machaya, who died whilst giving birth at a church shrine (which has been named as the Johanne Marange Church shrine) in Bocha, Mutare.

According to reports, Memory Machaya, who had been forced out of school and into marriage at age 13, died on July 15 and was secretly buried two hours later by the church.

We, as mothers and sisters are angry that this happened in a country that has established laws on rape and on child abuse yet the focus of this issue has been on this minor's pregnancy and not the gross



Advocate Thabani Mpfu

inhuman violation of her body and her person.

The rapist and the accomplices who took this child and stayed with her during this whole ordeal remain officially unnamed, anonymous and protected to the disadvantage of Memory getting justice. This is in cognisance of the fact that section 70 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] provides that any person who has sexual intercourse with a person below the age of 16 years, with or without their consent is guilty of a criminal offence.

Therefore, what has been sanitised in this regard as a 'child marriage' is in fact rape and child abuse and the perpetrator must face the full wrath of the law.

Remaining silent on this matter is not only failing Memory Machaya, but also sets precedence for future perpetrators to continuously violate

## United Nations Statement on the death of Memory Machaya, a 14 year-old pregnant adolescent girl during childbirth

The United Nations in Zimbabwe notes with deep concern and condemns strongly the surrounding circumstances leading to the untimely death of 14 year-old Memory Machaya from Marange, who died while giving birth at an apostolic sect shrine.

Sadly, disturbing reports of the sexual violation of under-aged girls, including early forced child marriages continue to surface and indeed this is another sad case. A situation where one out of three girls in Zimbabwe will be married before the age of 18 years is also not acceptable.

The current trend of unresolved cases of violence against women and girls in Zimbabwe, including marriages of minors cannot continue with impunity.

All forms of violence and early forced marriages severely affect the mental and physical health of girls and is a violation of the Convention on the Rights of the Child which Zimbabwe is a signatory.

The United Nations welcomes the investigations announced by the Zimbabwe Republic Police and the Zimbabwe Gender Commission into the death of Memory Machaya and look forward to the perpetrators being brought to justice.

Efforts by the Government, civil society and faith-based organizations and development partners, including the Spotlight Initiative, a partnership between the UN and the European Union must be strengthened to end violence against women and girls.

We call on the Government of Zimbabwe to fast track the adoption of the Marriage Bill, which recognizes child marriage as a crime and to intensify the roll out the National Action Plan on Ending Child Marriage.

7th August, 2021

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the girl child and get away with it.

Remaining silent on this matter means that we have failed as a nation to appreciate the principle of 'best interests of the child' that our Constitution and the Convention on the Rights of the Child envision for all children in Zimbabwe.

Lest we forget, we as a nation committed to recognising the fundamental human dignity of all children and the urgency of ensuring their well-being and development and this makes it clear that a basic quality of life should be the right of all children. rather than a privilege enjoyed by a few.

What we have witnessed in Memory's case is a horrific practice and we therefore strongly call upon:

The Zimbabwe Republic Police to conduct serious investigations into this matter and arrest the perpetrators and accomplices. The Zimbabwe Republic Police must enforce the law without fear, favour or prejudice.

The traditional leadership, community, media, the Ministry of Justice, Legal and Parliamentary Affairs, Ministry of Women Affairs, Community, Small and Medium Enterprises Development and the Chapter 12 institutions, particularly the Zimbabwe Gender Commission and the Zimbabwe Human Rights Commission to work with the Zimbabwe Republic Police through investigations to bring justice to Memory's case and expose many others that have gone unreported.

The Parliament of Zimbabwe to pass the Marriages Bill, 2019 into law as a matter of urgency so as to align marriage laws to sections 78 and 81 of the Constitution which provide that anyone below the age of 18 years is a child and that marriage with children below the ages of 18 is prohibited. Section 81 of the Constitution reiterates that the interests of the child are paramount in every matter concerning the child.

We will not tire to continuously fight for the rights of women and girls and call for justice for our daughters!