

A HUMAN RIGHTS BASED APPROACH TO REPRODUCTIVE HEALTH AMONGST ADOLESCENT GIRLS IN ZIMBABWE

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Dedication

To my father and mother, the people who have moulded me.

Abstract

The universality of all human rights cannot be denied. The discourse on human rights includes, reproductive rights, which have emerged to be controversial in African countries. This controversy has been exacerbated by economic, social, religious and political factors. The key issues posed in this thesis are, debates about whether adolescent girls should have access to dual protection methods, dual information measures, the right to education on sexuality and the right to participation in reproductive health programmes. This has led to the need to engage in Human Rights Based Approaches to Development (herein referred to as RBAD.) This is due to the fact that human rights, human development and development have proved to be mutually dependent concepts.

This work demonstrates that civil, political, economic and social rights are interdependent, interlinked, interrelated and indivisible. I argue that due to the indivisibility of human rights, governments should not prioritize any single category of rights. As evidenced by the Zimbabwean case study which shows the existence of a hierarchy of rights where civil and political rights are given primacy over economic and social rights. Religious and cultural norms greatly influence adolescent girls` enjoyment of reproductive rights. National laws should not be used to go against the “democratic genesis” of international and regional human rights law. These practices should be abolished because Zimbabwe has ratified human rights conventions dealing with adolescent girls` right to information, protection measures, education and participation without any reservations. In this instance, treaty law is binding and Zimbabwe has to enforce the treaties in good faith. Finally I point that the Rights Based Approach to Development contribute to the politics of governance, service provision and shapes the policy making discourse. Zimbabwe should use the rights based approach in shaping its agenda for political, economic, social and religious governance. This study is multi disciplinary and is based on the RBAD and the Actors and structures methodology in international human rights law.

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The Lord is my shepherd; I shall not be in want (Psalms 23 verse 1)

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List of Acronyms

AIDS	Acquired Immune Deficiency Syndrome
AIPPA	Access to Information and Protection Privacy Act
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CEDAW Committee	Committee on the Elimination of Discrimination Against Women
CESCR Committee	Committee on Economic, Social and Cultural Rights
COSATU	Congress of South African Trade Unions
CPAA	Criminal and Procedural Ammendment Act
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HIV	Human Immuno Virus
ICCPR	International Covenant on Civil and Political Rights

ICESR	International Covenant on Economic, Social And Cultural Rights
ICPD	International Conference on Population and Development
INGO	International Governmental Organization
NCA	National Constitutional Assembly
RBAD	Rights Based Approach to Development
RME	Religious and Moral Education
STIs	Sexual Transmitted Infection
TARSC	Training and Research Support Centre
NGO	Non Governmental Organisation
POSA	Public Order and Security Act
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNICEF	United Nations International Children's Educational Fund
USAID	United States Agency for International Development

VCLT	Vienna Convention on the Law of Treaties
WAG	Women Action Group
WLSA	Women in Law in Southern Africa
WOZA	Women of Zimbabwe Arise
ZAPA	Zimbabwe Aids Project Advocacy
ZANU PF	Zimbabwe African National Union Patriotic Front
ZBH	Zimbabwe Broadcasting Holding
ZINATHA	Zimbabwe National Association of Traditional Healers
ZNFPC	Zimbabwe National Family Planning Council
ZWRCN	Zimbabwe Women Resource Centre Network

1 Adolescent girls and reproductive health, the plight to be heard

1.1 Introduction

The issue of sexual and reproductive rights of adolescent girls has gained much momentum in today's era. This is because these rights form part of the philosophical underpinnings of the human rights doctrine which embraces social justice as the major outcome of the realisation of human dignity. Zimbabwe's current political, economic, social and religious status has grave implications for the realisation of adolescent girl's reproductive rights.¹ It should be noted that a devastating rupture has developed in the Zimbabwean political discourse, between redistribution of public goods and rights issues. The ruling party the Zimbabwe National Patriotic Front (ZANU PF) has demonised the human rights issues as a minority concern, driven by Western backed opposition forces as evidenced by the collapse of the health service delivery system. Brian Raftopoulos argues that, "The issue of human rights incorporates individualisation and judicialisation as integral aspects of the promotion, protection and enforcement of human rights, while keeping this in mind distributive programmes cannot be achieved without a broad based democratisation of existing post colonial polities."²

Using Zimbabwe as a case study, this work will explore the problems of a State which is not committed in keeping up with international obligations, which evolve from the ratification of human rights treaties. The issue of adolescent girls' reproductive rights in Zimbabwe is jeopardised by a significant range of factors, religious beliefs, poverty, the HIV/AIDS menace, the lack of information, the lack of human rights education and sex

¹ They embrace certain human rights already recognised in national laws, international human rights documents. These rights rests on the recognition of basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and to attain the highest standard of reproductive and sexual health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence. ICPD Para 7.3

² B. Raftopoulos et al, Zimbabwe's Unfinished Business Rethinking Land, State and Nation, pg 23, 2003.

education in schools, which has proved to be a controversial subject in contemporary Zimbabwe. The issue of adolescent girls` reproductive rights is closely linked to the issue of human development. Martha Nussbaum 2001 has pointed out that for development to be meaningful certain capabilities such as health, education, food and the capacity to be able to be and to do what you want to do should be central to governments in policy making discourses. These capabilities all add quality to the right to life which should not be compromised, as evidenced by the need to fulfil the reproductive health status of adolescent girls in Zimbabwe. Nussbaum articulates that there should be a balance between State policies, religion and health concerns of women, which in this case points to the need for the upkeep of adolescent girl`s reproductive rights and their capacity to make choices in terms of accessing information and dual protection methods. Nussbaum gives priority to reproductive choice and hence it is a development issue.³ Reproductive health refers to the “state of complete mental, physical and social well being and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its functions and processes.”⁴ I will focus specifically on adolescent girls of school going age, aged between 13-18 years, because this is the age when most adolescent girls become sexually active in Zimbabwe.

My focus will be on the right to information, the right to education, right to dual protection measures and the right to participation which forms part of the web of the most important rights in the development of adolescent girls` reproductive rights. This is because of the need to show the indivisibility, interconnectedness, interdependence and interrelatedness of civil, political, economic, social and cultural rights. Anne Hellum notes that, “The emphasis on indivisibility, interrelatedness and mutual interdependence realisation, however, implies that certain rights may be facilitated by simultaneously fulfilment of other rights.”⁵ This raises the issue of the right to education which has been defended as a genuine human right and not an economic good.

³ Development signifies progress towards desired goals in the realisation of economic, social and political spheres.

⁴ ICPD, Para 41, 1993.

⁵ Hellum and Staib Knudsen, A Southern African perspective on women`s and teenage girls` right to reproductive choice, pg 5, 2006.

1.2 Statement of the problem

The term adolescence is defined as “a period characterised by rapid physical, cognitive and social changes including sexual and reproductive maturation, the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities requiring new knowledge and skills.”⁶ The issue of adolescent girl’s right to reproductive health in Zimbabwe is highly problematic due to a myriad of factors. Religious beliefs have played a fundamental role in impeding the adolescent girls to fully enjoy their reproductive rights. Zimbabwe is predominantly Catholic; Catholicism is strongly opposed to issues of contraception and sex education. Catholics believe that if these issues are discussed openly they will increase involvement of adolescent girls in premarital sex and hence violating their doctrine. The other Christian groups in Zimbabwe, the Mapositori, Protestant churches for example Methodist church and Anglican are also against issues of reproductive rights and sexuality. This makes it very difficulty to deal with these issues in such a society. Religion evidently impacts on the right to information, participation, and sex education in the schools because it becomes a taboo to discuss the issues.

It should also be observed that African Traditional Religion is against the discussing of reproductive rights at the family level. This is because fertility is centred between two families and not on individual basis. It is believed that if adolescent girls are involved in sex at an early age, outside marriage they will bring bad omens upon the community. Most Zimbabweans believe in Christianity and African Religion; this will be further revealed in chapter 4. A point to note is that such beliefs curtail the promotion of human rights because human rights are individualistic, so each individual should have a choice and a voice in reproductive health issues. The reality on the ground is that with the economic hardships in Zimbabwe most adolescent girls are involved in sexual relations with sugar daddies.⁷ They

⁶ General Comment 4, 2003.

⁷ A phenomenon common in Zimbabwe, South Africa and Botswana. Young girls are sexually active with older men worth to be their fathers, because these older man can provide them with money, and can pay up for any miscellaneous items they desire.

engage in premarital sex at an early age, and sometimes this leads to unwanted pregnancies and they can be sent away from school.

This boils down to the lack of information on the part of some adolescent girls, for example information about contraceptive use, safe and effective measures of preventing pregnancy such as condoms and the places where to get help in situations when they are kicked out of school and their parents send them away from home. This is why I will focus on the right to information, sex education, the right to access dual protection measures and the right to participation in my paper.

1.2.1 International Legislation

Zimbabwe has ratified the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) without reservations. She is supposed to fulfil the obligations laid out in the conventions without failure. Article 24(f) of the CRC is worded as “To develop preventive health care, guidance from parents and family planning education and services.”⁸ This demonstrates that adolescent girls should have the right to information with regards to their sexuality and parents should play a crucial role in the realisation of effective reproductive health of adolescent girls. Article 12 (1) of CEDAW codifies women’s right to health, reproductive health included. It states that “State parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”⁹ The issue of discrimination is further buttressed by CEDAW’s article 1, which lays out the fact that the term discrimination against women shall mean any “distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human

⁸ CRC article 24(f).

⁹ CEDAW article 12.

rights and fundamental freedoms in the political, economic, social, civil or any other field.”¹⁰

She has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) without reservations. Article 12 of ICESCR points out that “The State parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹¹ Article 17 of the CRC, shows that dissemination of information is crucial and the government has the legal obligation to do so. Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR) provides that “Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art, or through any other media of his choice. To what extent is Zimbabwe fulfilling these obligations?

1.2.2 Regional Legislation

Zimbabwe has ratified the African Charter on Human and People`s Rights (ACHPR). Article 18(3) stipulates that “The State shall ensure that they shall be the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in international declarations and conventions.” The concept of non discrimination should be observed. Article 14 of the African Charter on the Rights of the Child provides that “Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. Of interest to the author is article 14 (f), which provides for family life education in terms of health and article 14(h), which also provides the need to provide information on health care issues. In Zimbabwe adolescent girls are not provided with information on health care at the family level because of religious and cultural barriers.

Education in terms of reproductive rights is a taboo subject; it is seen as a private domain which should involve the maternal aunts of the girls. The African protocol on the rights of women which entered into force on the 25th of November 2005`s article 14,

¹⁰ CEDAW article 1.

¹¹ IESCR, Article 12.

provides for (a) the right to control fertility, (b) the right to decide whether to have children, the number of children and the spacing, (c) right to choose any method of contraception, (d) the right from protection and to be protected against sexually transmitted infections, including HIV/AIDS.....” Zimbabwe has not ratified the protocol. It will be interesting to see the effectiveness of the Protocol with the nature of African societies which are heterogeneous and characterised by legal and religious pluralism. This will be one of the author’s issues to explore.

1.2.3 National legislation

Zimbabwe’s laws do not sufficiently cater for full access to information for its people, including children, to the standard required by International human rights law. The constitution of Zimbabwe does provide for the right to information for its citizens, in a limited sense. The Official Secrecy Act is designed to deny citizens information about the affairs of the government. Some adolescent girls face obstacles in accessing information about contraception, condoms and sex education because of the existence of the Censorship and Entertainment Control Act. This act tabulates that programmes on sex education are immoral and as such any advertisement dealing with issues involving sexual issues should be heavily censored, as it is contrary to the religious beliefs of most Zimbabweans.

Zimbabwe’s constitution is silent on the right to health, and reproductive rights. The constitution does not give a clear definition on the term discrimination, this is because of the way section 23(3), is worded. “No person shall be treated in a discriminatory manner except in the following matters adoption, marriage, divorce, or personal law.....”¹²

This shows that most adolescent girls face gender inequalities in issues of reproductive health because the matters revolve within the private sphere and the State promotes personal laws that are discriminatory towards the girl child. There are no clear cut laws on sex education, which is controversial “with some arguing that giving children information about reproductive health is likely to encourage them to have sex, others point

¹² Constitution of Zimbabwe.

out that the young will continue to have sex, and it is better they practise safe sex , especially in light of increased HIV infections”.¹³

Tamale has pointed out that “demystifying sex, dissocializing teenagers from the belief that sex is a taboo activity, dissociating sex from procreation and morality, and engaging in effective sex education.”¹⁴ This serves to show that sex education should be the doctrine to preach to adolescent girls and not abstinence as called for by Christian groups, the State and the family. It is through the right to information and accessible means of information that adolescent girl’s reproductive rights can be promoted.

1.3 Objectives

1. To demonstrate what the rights based approach to reproductive health of adolescent girls has to offer in religious and legal pluralist societies, corollary to that I will analyse,

1.1 The importance of access to information, dual protection methods, education and participation as important conditions for human development and development of the nation.

2. To demonstrate the need to meet State obligations in international law and to create a series of human rights laws that are binding nationally as the present legal regime is weak in its human rights laws.

3. To counteract the fact that in Christian religion and African Traditional Religion adolescent girls do not engage in sexual relations before marriage, and to demonstrate that sexual relations are not for the married and for procreation purposes as is the norm within the mentioned religions.

1.4 Research questions

1. To what extent are Zimbabwe’s municipal laws in consonance with regards to regional and international obligations in matters of reproductive health of adolescent girls?

¹³ Fareda Banda Women, Law and Human Rights An African Perspective, pg 189, 2005.

¹⁴ S Tamale” How Old is enough? pg 82 2001.

2. What extent has religious /cultural considerations been used as a justification of the denial of information, education, participation and dual protection methods to adolescent girls in Zimbabwe?
3. How far does the Rights Based Approach to development, put reproductive rights on the agenda of the Zimbabwean government's manifesto of governance?

1.5 Methodology

The term “method” in research refers to the ways and means of gathering data which seeks to prove a tentative hypothesis. This study is interdisciplinary; Anne Hellum notes that “To make reproductive choice real, we suggest an interdisciplinary and contextual approach that acknowledges the mutual interdependence between a spectre of rights.”¹⁵ In dealing with the problem of access to information, education, protection and participation, I use the Rights Based Approach to Development. This is because “one of the ways of starting to address the structural impediments to women and girls` access to benefits of development has been by way of lobbying for legal change, in a bid to strengthen women`s rights and improve their access to resources.”¹⁶ This may be termed the Gender, Law and Development (GLAD) approach.¹⁷ This approach solidifies the misty that has existed for a long time that lawyers should be concerned with human rights and economists and other social scientists with development issues. The coming together of law, human rights and development issues has led to what is now known as the rights based approach to development. Amartya Sen has pointed out that the rights based approach to development is based on the following:

Human rights and human development are both about securing basic freedoms. Human rights express the bold ideas that all people have claims to social arrangements that protect them from the worst abuses and deprivations – and that secure the freedom for a life of dignity. Human development, in turn is a process of enhancing human capabilities – to expand the choices and opportunities so that each person can lead a life of respect and

¹⁵ Anne Hellum et al, pg 3, 2006

¹⁶ F Banda pg 273, 2005.

¹⁷ Ibid pg 273.

value. When human development and human rights advance together, they reinforce one another-expanding people's capabilities and protecting their rights and fundamental freedoms.¹⁸

I used the RBAD because of its value addition in promoting human rights. This approach emphasises linkage to national and international human rights, non discrimination, accountability, participation and empowerment. It emphasises that governments should be accountable to their citizens in any programmes and plans that they initiate on reproductive health matters. RBAD emphasises non discrimination, equality should be observed in service delivery programmes. Adolescent girls should not be discriminated against when they seek dual protection measures which is more often the case in Zimbabwe.

Adolescents should participate in donor driven programmes that seek to improve their knowledge and provide them with information on reproductive health matters. In doing so they will understand about human rights and their importance in their maturation process into full adulthood. The issue of participation is linked to empowerment which is important in the reproductive health. If adolescent girls are given the capacity to make choices about matters of reproduction, then goals of human development and development are effectively realised because they can do a cost benefit analysis and come up with choices that will reduce unwanted pregnancies and STI infections.

I use the actors and structures methodology in this paper because it "assumes that legal changes takes place through interactions between human beings as individuals."¹⁹ It is mainly concerned with "the women and girls' experiences and then looking at the normative structures that impinges on their lives."²⁰ This methodology is used because the researcher feels that everything being researched is "people centred" and "people structured." The adolescent girls are the major subjects of the research; hence the semi autonomous social fields and structures identified are the family planning clinic, the

¹⁸ United Nations Development Report 1998.

¹⁹ S. Moyo Social, Educational and Legal Attempts at the Management of teenage Sexuality and Pregnancy's, pg 10, 1996

²⁰ Ibid pg 10.

educational system, the doctors, the nurses and pharmacists²¹ this methodology enables us to find out how these structures respond to the adolescent girls' sexual needs and whether they integrate international human rights norms in their work.

1.6 Sources of information

This study will be based on International human rights law and municipal law currently in use. The interpretation of the law will be based on the dynamic interpretation. In light of the current challenges and developments the treaty bodies have adopted such an interpretation. "The wording of human rights treaties is not seen as exhaustive but is interpreted with a view to changing circumstances."²²

1.6.1 International law

The legal framework of this thesis will be the Children's Convention (CRC), the Women's Convention (CEDAW), African Human Rights Charter (ACHPR), African Protocol on Women's Rights, the Economic, Social and Cultural Covenant (ICESCR), Covenant on Civil and Political rights (ICCPR) and General Comments from the Committees. This is because from these mentioned treaties and soft laws governments have international obligations which they should fulfil hence this is in line with the rights based angle. I will also refer to the concluding observations of State reports by the committees. They are aspects relevant to adolescent girls' reproductive health status.

1.6.2 Domestic law

Reference will be made to the constitution of Zimbabwe, the Public Health Act, the Patient Charter, The Education act of Zimbabwe, the Legal Age of Majority Act of 1982, the Public and Order Security Act, Access to Information and Privacy Act, Broadcasting Act and other statutes which are useful in analysing reproductive rights.

²¹ Ibid pg 10.

²² Manfred Nowak, pg 16, 2002.

1.6.3 Case Law

I will look at the case law thus the judgements that have been passed whether they are in line with the human rights doctrine, one case to note is the *Macheke Primary v Ministry of Higher Education 2005*. Another interesting case to make parallels with would be the *Gillick v West Norfolk and Wisbech Area Health Authority*. In this case the House of Lords ruled that the child had to include parents or guardians in the decision. Where do we mark the boundary between individuality and parental involvement in reproductive rights? I have referred to the *Kjeldsen v Denmark* case, on sex education. *Open Door Counselling and Dublin Well Woman v Ireland* has been referred to on the right to information.

1.6.4 Legal text books

A number of scholarly work has been consulted. Anne Hellum, Fareda Banda, Rebecca Cook and Corrine Packer's text books have given me valuable insight in understanding the nature of reproductive rights from legal as well as social perspectives. Other text books, journals and United Nations reports have been used.

2 International and Regional Human Rights Obligations

2.1 Introduction

This chapter outlines the position under international law in relation to improving the reproductive rights of adolescent girls. It explores the usefulness of the RBAD in enhancing reproductive health of adolescent girls. The issues to be addressed range from the human rights obligations which arise from international human rights law and regional law, interpreting them based on the Vienna Convention on the Law of Treaties (herein referred to as VCLT 1969) and the dynamic interpretation used by treaty bodies because of the current challenges to International law. I am particularly concerned with the RBAD in its potential of modifying barriers such as religious beliefs through providing adolescent girls with dual information measures, education, participation and dual protection methods. Focus will also centre on horizontal and vertical accountability.

State obligations are categorised as positive and negative. A negative obligation refers to the State's mandate not to interfere in an individual's exercise of rights. Positive obligations allude to the need for a State to take action towards the realisation of rights, preventing third parties from interfering in individual exercise of rights. Negative obligations of respect regulate State party actions towards individuals, requiring dealing with measures that hinder individual enjoyment of the right to information, participation, education and protection measures in reproductive health. The duty to protect "requires States to take all necessary measures to ensure that each person within its jurisdiction has opportunities to obtain satisfaction of their needs, especially those recognised in human rights law."²³

The VCLT emphasises that treaties should be interpreted in good faith. Article 26 of the VCLT has the provision, "Every treaty is binding upon the parties to it and must be

²³ R Cook, pg 5, 1998.

performed by them in good faith”²⁴ based on the rule of *pancta sunt servanda*. If States have ratified treaties they should implement them juridical. The binding nature of the treaties ratified imposes a duty to fulfil the treaty provisions. The VCLT is important because Zimbabwe has ratified international human rights treaties governing adolescent girl’s right to dual protection measures, dual information measures, participation and education.

2.2 The Rights Based Approach in International Human Rights Law

In recent years there has been a shift in terms of development policy by organisations, be it at the level of the United Nations agencies and bilateral donor agencies who have introduced the doctrine of human rights observance in their programmes. The RBAD builds on mutual agreement between States in promoting human rights, in as far as both the donor and the recipient country that has ratified the covenants. This is evidenced by Scandinavian countries, Holland, International non governmental organisations (herein referred to as INGOs), and State society relations. The idea has been to give much reference to the importance of economic, social and cultural rights as well as civil and political rights, showing that an interdependent relationship exists between the rights.

My point of departure is two fold, socio economic rights are legally and normatively valid as civil and political rights. Second, although socio economic rights are therefore justiciable²⁵ and integral to a more holistic conception of human dignity, fulfilment of these rights encounter political obstacles. The RBAD has been defined as “integrating the norms, standards and principles of the international human rights framework into plans, policies and processes of development.”²⁶ The approach therefore impacts on national planning processes by introducing the mandate to redirect resources and to militate against policies that undermine the realisation of economic, social and cultural rights.

²⁴ VCLT, 1969.

²⁵ These rights can be invoked in a court of law, See Jones and Stokke, pg, 2, 2005.

²⁶ Ibid pg, 4.

The RBAD provides the “normative and legal framework derived from internationally negotiated norms and legal standards. As the main duty holder, these standards are binding on States and enable scrutiny of State obligations to respect, protect and fulfil each right.”²⁷ The point to note is that rights are indicators of change, standards for planning and assessment that development planners can use to establish clear objectives, ensure meaningful participation and set appropriate benchmarks and indicators.

A human rights perspective therefore provides the normative and legal protection to vulnerable groups in particular, which is further reflected in the principles of the “minimum core” and “adequate realisation.” Here in view of resource constraints placed particularly on developing countries, I am concerned with steps that States take towards the progressive realisation of the right in question to the “maximum available extent of its resources.” Minimum core obligations are regardless of resources hence, “.....progressive realisation means that State Parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realisation of article 12 of the ICESCR (the right to the highest attainable standard of health).”²⁸ The approach therefore embraces those most in need as it identifies those whose rights are most denied.

The empowerment of the neediest based on the recognition of State obligations supposedly results in increased participation and, hence, ownership and sustainability. It should be pointed out that the RBAD should support governments to ensure that they satisfy their minimum obligations relating to each right in the International Bill of Rights; plan strategies and programmes for the eventual fulfilment of all their obligations, monitor both the fulfilment and the obstacles to the fulfilment of these obligations over time. The RBAD therefore asks politicised questions of legal and policy reforms in relation to how these rights can be enjoyed.

In terms of implementing the RBAD the obstacles to entrenching human rights legislation in political and judicial structures in Africa, for example are considerable and systemic. A key tension in the African rights debates is whether economic, social and

²⁷ Andreassen pg 32, 2003.

²⁸ General Comment 12, ICESCR.

cultural rights or civil and political rights should be prioritised and what the necessary political arrangements should be to implement them. An Naim points that,

Not least, the discrepancy between the failure of many African states to protect social, economic and cultural rights, for whatever reasons, as well as being perpetrators of human rights abuses, at the same time as they are also considered in international law as defenders and implementers of “human rights”, therefore casts doubt on the role of the African state and constitutionalism to deliver rights.²⁹

The RBAD is anchored with claims, rather than charity. RBAD is inherently about mechanisms of accountability directed at those violating the claims. At times the legal and judicial reform mechanisms will be suitable remedies. At other times the more traditional tactics of the “spiral theory”³⁰ will prove useful to deal with the States not conforming to the normative principles. Such strategies should go beyond the legal approach and work on many non legal, social and political paths for ensuring enforcement of rights claims. All these approaches contribute to a climate of accountability, not only for States, but arguably all development actors. There is the need for cultural norms, religious beliefs, symbols and traditions of non Western societies to enter into the international human rights discourses unless these continue to be seen “in the Third World as invasive of sovereignty, a result of imbalances of power and ethnocentrism.”³¹ In practice religious beliefs and traditions often legitimise traditions that violate fundamental human rights such as the, the right to reproductive health of adolescent girls.

2.3 The right to health within the debate

Reproductive rights have emerged as important in the human rights jurisprudence. This is because most States have not been interested in the promotion of these rights. It has emerged that, they constitute an important arena of political, economic and social

²⁹ An Naim, Mohan and Holland “Human Rights and Development in Africa: Moral Intrusion or Empowering Opportunity.” *Review of African Political Economy* 88, pg 177, 2001.

³⁰ This approach is popularly known as the naming and shaming approach in which local ngos, international ngos and foreign governments condemn human rights abuses perpetrated by the State. Risse at al, *The Power of Human Rights*.

³¹ Jones, pg 10, 2005.

governance. The issue of reproductive rights cannot be divorced from the right to health. This is because health is a guaranteed right in most human rights treaties, declarations and national constitutions. It should be noted that individual health, subjective and intangible as this concept may be is an important condition for one's well being and dignity. Human dignity is a central concept in international human rights law as evidenced by the preamble of the Universal Declaration of Human Rights (herein referred to as the UDHR), which emphasises that "whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."³²

I define human dignity as the innermost and social right to respect with regards to the value to which each and every person is entitled purely because they are human. In terms of the debate regarding the provision of information, education, participation and dual protection measures, human dignity means that the State must cease to carry out all acts that encroach upon human dignity. The State must do everything in its power to counter violations of human rights, including violations carried out by third parties.

The right to health has traditionally been considered to be part of the economic, social and cultural rights as opposed to civil and political rights. Nevertheless the right to health serves "as a good example of the fact that there is no a clear cut division between the two categories."³³ It is economic and social in character because it seeks to safeguard that the individual does not suffer social and economic injustices with respect to health. Toebes shows the link between the right to health and the rights based approach she notes that "Several human rights-civil and political as well as economic, social and cultural ones-are related to health, a fact that underlines the interdependence and indivisibility of all human rights."³⁴ Article 24 of the CRC recognises the right of the child to the "enjoyment of the highest attainable standard of health.....and no child shall be deprived of his access to health care service." One interpretation of this article is that the young girls have a right to be treated of STIs, and to enjoy reproductive health.

³² Para 1 of UDHR Preamble.

³³ Toebes, Economic, Social and Cultural Right, pg 170 ,2001

³⁴ Ibid pg, 170.

General Comment No (14) seeks to rest many of the queries as to the meaning and scope of the right provided for in article 12 of the ICESCR. “It recognises that the right to health includes the right to control one’s body and health including sexual and reproductive freedom, the right to be free from interference ...”³⁵ The Committee has interpreted the right as an inclusive right extending not only to timely and appropriate health care, but also underlying determinants of good health. ICESCR has been modelled on the tripartite typology pioneered by Asbjorn Eide, with the obligations to respect, promote and protect. The African Charter provides for the right to health in article 16. States are obligated to ensure that service provision is equitable; however African States fail to meet this obligation because of their excuse based on resource constraints, which is not therefore allowed as an excuse in the enjoyment of economic and social rights.

2.4 Reproductive Rights and the Rights Based Approach

The term reproductive rights has been used synonymously with terms such as the right to reproductive self determination, the right to reproductive choice, the right to reproductive decision making and the right to reproductive freedom. The issue of choice and the capacity to make free and unforced decisions is the central. CEDAW’s article 12, worded as, “State parties should take appropriate measures to eliminate discrimination against women in the field of health care, to ensure on the basis of equality of men and women access to health care services related to family planning. The African Protocol on Women provides for a right to reproductive health in article 14. The treaty has been criticised because of its silence on the monitoring mechanism. This can be seen as a reflection of the competence of the commission or perhaps the Commission’s lack of interest in feminine issues. The African Child Charter provides for the right to the highest attainable standard of health. Interestingly, it is silent on reproductive rights, leading to the argument that girls are not supposed to be rights holders, in this context. Reproductive rights have been defined as including:

- (a) the freedom of individuals to marry or not;
- (b) the freedom to choose one’s spouse;

³⁵ Para 8 of General Comment 14 of 2000.

- (c) the freedom to decide how many children (if any) one wants to have;
- (d) entitlement to family planning information and services;
- (e) the right to control one's body;³⁶

The right to reproductive health is a composite right, because the constituent rights making up reproductive health are inseparable. The rights which form this web of rights consists of the right to marry and found a family, freedom to chose contraception, right to information, right to participation, freedom from non discrimination, right to benefits of scientific progress and right to privacy. (Note that this is not an exhaustive list which makes reproductive rights a composite right.) Part (e) of this definition is controversial with some authorities maintaining that it is not useful to include in the definition because all human rights are premised on the need to realise human dignity which can be secured by the capacity to control one's destiny. I argue that it is crucial to include this element because adolescent girls in some communities do not have control over their bodies because of religious or cultural considerations as will be revealed in the next chapters. Realisation of reproductive rights is possible when civil, political, social, and economic rights coexist.

Reproductive rights are firmly rooted in the most basic human rights principles. Adolescent girl's right to dual information measures, education and access to dual protection methods, form the most crucial components that should exist in the realisation of sound reproductive health of adolescent girls. I define the following phrases as follows; "dual protection methods" refers to the means of preventing simultaneously unwanted pregnancy and Sexually Transmitted Infections (STIs), including HIV and AIDS. Dual protection methods include a condom in combination with another contraceptive method. The phrase "dual information services" refers to information, counselling and education regarding dual protection methods offered as an element of comprehensive sexual and reproductive health care services and education. The "right to access dual protection methods and information" is a component of a broader set of internationally recognised

³⁶ C Packer, *The Right to Reproductive Choice*, pg 16, 1996.

reproductive rights, including the fundamental rights to reproductive self determination, non discrimination, and reproductive health care.

General Comment No (16) on the equal rights of men and women to the enjoyment of economic, social and cultural rights is important and noteworthy from a rights based approach because it rejects the traditional formalistic notion of gender equality that merely requires equal treatment of men and women. Instead it endorses a particular, progressive, notion of equality that takes cognisance of the structural inequalities between men and women in our society. This alludes to the fact that adolescent girls should not be the bearers of the goal of formal equality they should not be excluded in reproductive health programmes rather they should be the independent subjects of the programmes. Reproductive rights should be part of the RBAD because; through democratic citizenship adolescent girls can access information and human rights education and hence improve their reproductive health status. This is why I have focussed on the right to information, education, participation and dual protection measures in relation to adolescent girls in Zimbabwe, because;

Asserting a right to health means that not only has a government moral or humanitarian responsibilities to attend to the health needs of the most vulnerable and economically disenfranchised of the population, but it also has legal obligations, that at minimum, require it to establish a normative framework consistent with international law, to reflect health as a priority in its budget, and to devise a plan to take deliberate steps to move toward the progressive realisation of the right to health.³⁷

2.5 Content of the right to Information

The right to information is provided for in the conventions. The CRC provides the strongest legal support for the position that adolescence are entitled to information. Adolescent girls' right to seek and obtain information and the right of all children to education provides the basis for adolescent girls' right to information and education on family planning, including contraception and STI prevention methods. Article 17 of the CRC provides that "the right to access information and material aimed at the promotion of

³⁷ Jones pg 15, 2005.

their social, spiritual and moral well being.” Adolescent girls as the most vulnerable compared to their male counterparts have the right to knowledge about dual protection, and the State’s obligation is to fulfil this mandate without compromising the enjoyment of reproductive rights to adolescent girls. In terms of articles (13, 17 and 24), General Comment No (3), on HIV and the rights of the child, in paragraph 16 provides that; ...Children should have the right to access adequate information related to HIV/AIDS prevention and care, through formal channels (e.g. through educational opportunities and child targeted media) as well as informal channels (e.g. through those targeting street children, institutionalised children or children living in difficult circumstances.) State Parties are reminded that children require relevant, appropriate and timely information which recognises the differences in levels of understanding among them, is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality in order to protect themselves from HIV/AIDS infection.³⁸

It is worthwhile to note that, “The right of adolescents to access appropriate information is crucial if State Parties are to promote cost effective measures, including through laws, policies and programmes, with regard to numerous health related situations including those covered in article 24.....such as family planning.”³⁹ A closer examination of paragraph 10 serves to show the importance of reproductive health information for adolescent girls and the fact that this can be realised if governments are politically willing to improve their enforceability mechanisms.

Health care providers have a duty to keep confidential medical information, concerning access to means and services of adolescents. Information should be provided with the consent of the girl. Although this should be the case, in practice some States even encourage the disclosure of information from the health personnel to the legal guardians. The African Charter provides for the right to information, in article 9, which notes that, “Every individual shall have the right to receive information.” The State should create all possible measures to ensure free flow of information to citizens. This will unfold in the chapters on Zimbabwe.

³⁸ General Comment No 3 of CRC.

³⁹ General Comment No 4 of the CRC.

CEDAW provides the clearest and broadest articulation of, the right to information and services in the context of reproductive health. CEDAW focuses on women and girl's right to be free from discrimination in the exercise of all their rights, it sets the standards with respect to reproductive health information and services that are more broadly applicable. In its interpretation of CEDAW, the CEDAW Committee has recognised its provisions as a guarantee to reproductive health information to adolescents, including information on contraception and STI prevention. The Committee asserts that State Parties "should ensure, without prejudice and discrimination, the right to sexual health information... for all women and girls...."⁴⁰

The ICESCR has useful tenets on the right to information in terms of the girls. With regards to the obligation to respect, States should refrain from censoring, withholding or intentionally misrepresenting health related information.

The ICCPR in article 19(2) provides for the right to information. Information can be withheld for the purposes of public order and safety. Restrictions on the provision of information should not be considered necessary in a democratic society. Information on sexual matters aims at enhancing the extent to which the girls can protect themselves from procreation and STIs. In the *Open Door Counselling and Dublin Well Woman v Ireland*, The ECtHR ruled that Britain violated the right to impart and receive information under the governmental ban on counselling and circulation of information regarding where to find legal abortions. Enforceability of human rights principles has limitations; enforceability depends on the State's willingness to comply with international law.

The African Charter provides for the right of every person to receive information. An interesting feature is that, since culture and religion play a crucial role in Africa, the transmission of the information is jeopardised. In essence every individual has a duty towards the family and the community, making it difficult for the girls to access information about sexuality, a taboo subject to discuss in the family. Adequate realisation of adolescent girl's reproductive rights rests on the availability of dual information measures.

⁴⁰ Para18 of General Recommendation No 24.

2.6 The right to participation

The right to participation refers to the meaningful involvement of adolescence in developmental spheres that affect their lives. States should ensure that, “adolescent girls and boys have the opportunity to participate actively in the planning and programming of their own health and development.”⁴¹ Governments should note that the girls are active subjects of development, hence they deserve recognition. States must fulfil the obligation that, “they should have opportunities to participate in decisions affecting their health, to acquire life skills and to make appropriate health behaviour choices.”⁴² The African Child Charter advocates for participation. It states that, “to ensure the meaningful participation of non governmental organisations, local communities and the beneficiary population in the planning and management of basic service programmes for children.”⁴³ States should involve and empower the girls so that they can be actively involved in reproductive health projects.

2.7 The right to education

The right to education is closely related to the right to information, in terms of promoting adolescent girl’s right to reproductive health. It forms part of the civil and political rights as well as the economic, social and cultural rights. The UDHR, which has evolved as customary international law has a provision on the right to education thus article 26. Article 13 of the ICESCR points to the fact that, “Every one has the right to education.....shall be directed to the full development of the human personality and the essence of its dignity, and shall strengthen the respect for human rights and fundamental freedom.” Education is important in the sense that most adolescent girls fall prey into unwanted pregnancies or STIs, because they lack sex education and knowledge about reproductive health in general. The African Child Charter provides for the right to education. An important development to note is article 11(6) which notes that, “State parties to the Charter shall take all appropriate measures to ensure that children who

⁴¹ Para 39 (d) of General Comment 4 of CRC.

⁴² General Comment 4 of CRC.

⁴³ Article 14(i).

become pregnant before completing their education shall have an opportunity to continue with their education on the basis of individual liberty.” This evokes the argument that States do not have the mandate to expel girls who get pregnant out of school; this violates their right to individual liberty and education.

The CRC lays out the importance of education of the child. Article 28 provides that State Parties recognise the right of the child to education; States have to ensure that there is reproductive health education. Rebecca Cook notes that “the adolescents have a right to health education, and services.”⁴⁴ Corrine Packer argues that education is important in reproductive health matters but what scholars should realise is that in the “African set up, there is more to human rights education and reproductive health education that is needed, the society structures should be transformed first before talking about education, because these are the greatest impediment in terms of the rights based approach to reproductive health.....”⁴⁵

The Cairo Report notes that “the central role lies with families, parents and other legal guardians to educate their children about sexual and reproductive health.”⁴⁶ There is a need for a holistic approach which factors that, education and information on reproductive health issues should be administered by the school authorities as well as the societal structures thus the extended family, parents, churches and youth guidance clubs where some of the adolescent girls spent most of their time.

A point to note is that freedom of religion is a human rights issue that cuts across information, education and participation. Parents have a right to protect their religious beliefs and those of their children. Most parents are not comfortable with sex education classes, because they feel the school should not concentrate on that, some school authorities are not comfortable with the subject too. The issue which becomes useful to consider is the solving of the boundaries between religious concerns and the notion of individual rights of the child. The legality of the tensions was resolved in the *Kjeldsen v Denmark 1976 ECHR 7111*. The European court ruled that, the issue of compulsory sex education syllabus for

⁴⁴ R Cook Reproductive health and human rights, pg 283.

⁴⁵ C Packer Using Human Rights to Change Tradition, pg 144, 2002.

⁴⁶ ICPD, Cairo, 5-13 September 1994.

State schools was to convey information in an objective, critical and pluralistic, manner that did not constitute indoctrination or disrespect of parents' religious or philosophical views. Hence it did not violate Protocol No 1 of the European Convention of Human Rights (herein referred to as ECHR.)

The government has the duty to ensure that education administered to every child meets the cognitive and social development of that child. CEDAW article 10(h) provides that "access to specific educational information.....including information and advice on family planning."⁴⁷ The State Party has the legal duty to ensure that adolescent girls acquire education on family planning issues. This shows that the right to education and the right to information are cross cutting themes in the promotion of adolescent girl's right to reproductive health. A state has the obligation to protect, fulfil and promote the right to education of the girl child in matters of reproductive health.

The Human Rights Committee (herein referred to as HRC) has used anti discrimination and privacy provisions of the ICCPR to address reproductive health needs of adolescents. The HRC in its interpretation of Article 3 and 26 has recommended that State parties, "adopt all necessary legislative and other measures to assist adolescent girls faced with unwanted pregnancies to obtain access to adequate education facilities."⁴⁸ In monitoring compliance with article 19(2), the Human Rights Committee has also asked "governments to introduce sex education into the public school curriculum."⁴⁹ Celina Romany has argued that the "Human rights discourse is a powerful tool within international law to condemn those State acts and omissions that infringe core and basic notions of civility and citizenship."⁵⁰ The human rights discourse of protection has not been available to adolescent girls who are treated as paradigmatic alien subjects of international law. What I mean by "alien" is to be "another", to be an outsider. The doctrine of State responsibility becomes necessary to reflect upon. Cook argues that State responsibility "provides that a State is legally accountable for breaches of international obligations under customary

⁴⁷ CEDAW article 10.

⁴⁸ Ecuador and Argentina HRC Comments, 1998.

⁴⁹ Concluding Comments of Ecuador and Argentina reports` 1998.

⁵⁰ Celina Romany, State Responsibility Goes Private:, pg 85, 1994.

international or treaty law that are attributable or imputable to the State.”⁵¹ International law of State responsibility of human rights has been developed to require governments to take preventive steps to protect the exercise and enjoyment of human rights.

2.8 Accountability

Accountability is crucial in the promotion and protection of human rights and an important facet of the RBAD. The connection between accountability and reproductive health status of adolescent girls rests on the notion that public officials have a distinct duty to create a conducive political, economic and social environment that leads to reproductive rights realisation. Accountability has been defined as “holding responsible elected or appointed individuals and organisations charged with a public mandate to account for specific actions, activities or decisions to the public from which they derive their authority.”⁵²

Related to accountability is the issue of budgeting and accounting. A budget refers to a quantitative economic plan made with regards to time, the budgeting responsibility is my main interest, plans and resulting information on the performance of the plans ought to be expressed in terms of human responsibilities, because it is people, not reports that control operations. In Zimbabwe the national budget’s large share is premised towards the Ministries of Defence, Agriculture, then Health and Education sectors. The Parliamentary Committee on Public Expenditure and Budgeting has tried several times to push for health and education as priorities but rather it has been ignored. In terms of reproductive rights there is need for a pro gender budget, so that vulnerable groups such as adolescent girls can participate in the formulation, implementation and evaluation of programmes concerning health and education. In order to promote budgeting and accounting, government officials should exercise ministerial responsibility and should not conceal budgetary information from citizens.

Accountability focuses on the ability to account for the allocation, use and control of public spending and resources in accordance with legally accepted standards of

⁵¹ Rebecca Cook, pg 229, 1995.

⁵² African Development Report, pg 185, 2005.

budgeting, accounting and auditing. In relation to the human rights doctrine, my interest lies in political accountability.⁵³ Actors and institutions that promote the realisation of reproductive health should attempt to bind the exercise of power to specific benchmark standards. Zimbabwe is a Presidential State where the President has some control of the executive, legislature and judiciary. This is controversial; others maintain that to some extent the judiciary in Zimbabwe is independent.

Vertical accountability refers to the “relationship between the people and their elected representatives in parliament. Institutions achieving vertical accountability are the electoral channels (elections, political parties, the legislatures, the mass media and civil society organisations.)⁵⁴ It should be observed that in several African countries, Zimbabwe included; vertical accountability is often very minimal as elected officials rarely relate with members of their electorate.

In Zimbabwe parliamentary portfolios which seek to enhance democratic participation in public policies and programmes have been introduced. Added to these structures have been the parliamentary constituency offices which seek to promote accountability between public officials and citizens at the grass root level.⁵⁵ The portfolio on health has to some extent been active, outreach programmes on reproductive health were carried out with NGOs and the parliamentary portfolio on health, but in 2000, they had to minimise operations due to political interference. This jeopardises the reproductive rights of adolescent girls as they cannot relate with the mentioned bodies about the importance of dual information services, education and dual protection measures.

Horizontal accountability is characterised by “the existence of a constitution, which defines the rules of the political game, the legislature, and the judiciary and accountability agencies.” The accountability agencies referred to are the human rights commissions and the office of the ombudsman. In Zimbabwe the office of the ombudsman is provided for in the constitution and article 108 sets the duties of the office, it is worded as, “The

⁵³ The term refers to the constraints placed on the behaviour of public officials by organisations and constituencies which have the power to apply sanctions to them.

⁵⁴ African Development Report, pg 185, 2005.

⁵⁵ www.kubatana.net, visited 23 March 2006.

ombudsman may investigate action taken by any officer or authority referred to in sub section (2) in the exercise of administrative functions of that officer or authority in any case where it is alleged that a person has suffered injustice in consequence of that action and it does not appear that there is any remedy reasonably available as a way of proceedings in a court or appeal from court.”⁵⁶ This reflects that, only cases which carry public functional utilities can be corrected and the injured remedied. The constitution does not list the specific issues that the ombudsman should investigate, and it does not specify the job specification, as to whether he or she `s job extends to cover adolescent girls who have been injured at public institutions,

Zimbabwe does not have a human rights commission and this negates the quest for horizontal accountability because it is not clear who should be responsible for the promotion of human rights principles, especially in relation to reproductive health of adolescent girls. The promotion of political accountability, vertical and horizontal accountability can be promoted through democratic consolidation.⁵⁷ Respect of human rights and the free flow of information, education and the freedom of the media serve to the reality of achievable development plans. For accountability to be functional there is need to reform the political and legal structures such as political competition, separation of powers/ checks and balances(horizontal accountability), external oversight by civic groups and the media (vertical accountability) through the honouring of regional and international human rights obligations.

2.9 Conclusion

This chapter has demonstrated the importance of State obligations. This is based on treaty ratification and the interpretation of treaties based on the VCLT and the dynamic interpretation. I have centred on the positive and negative obligations shaping State conduct in promoting, protecting and respecting human rights obligations. The RBAD is useful for the girls in order for them to access information, education, protection measures and to

⁵⁶ Zimbabwean Constitution chapter XII, article 108.

⁵⁷ Refers to deepening democracy, through diffusion of democratic values, judicial reform, civilian supremacy, routinisation of politics, alleviation of poverty, introduction of mechanisms of direct democracy and economic stabilisation.

participate in programmes. I have highlighted the importance for the need for a pluralistic understanding of freedom of religion with regards to the right to information and sex education of adolescent girls in trying to solve their quest for individuality and parental concerns as evidenced by the *Kjeldsen* case.

The human rights discourse emphasizes the importance of State responsibility in meeting obligations. Political commitment of governments, the major actors in international law should be a matter of concern in addressing the reproductive rights of adolescent girls.

3 Zimbabwe's Legal Dilemmas

“If I will not fight the battles who will fight them, and when?”

3.1 Introduction

In chapter 2, I noted that States should fulfil human rights obligations by virtue of being members of the international human rights regime. State Parties should respect, promote and protect human rights of adolescent girls. I will give a background of the current political, economic and social dynamics in Zimbabwe which makes it important to dwell on the rights based approach in promoting reproductive health. I will discuss international and regional laws ratified by Zimbabwe, and how the national legal system utilises human rights norms in reproductive health of adolescent girls. An analysis of the education and health sectors with regards to how adolescent girls are denied dual information services, participation, education and dual protection methods will be made. Tied to the RBAD is the need to fulfil the Millennium Development Goals (herein referred to as MDG), which also emphasise the centrality of reproductive health and education as goals to be achieved by 2015. Zimbabwe was a party of the governments which committed themselves globally to realise the goals.

3.2 Zimbabwe's political economy and socio behavioural context

The crisis of political, economic and social governance in Zimbabwe is now in its sixth year (2000-2006.) The crisis is evident through persistent human rights violations, a failing economy characterised by an inflation rate of 1023%⁵⁸, the HIV and AIDS menace⁵⁹ and the rise in the number of people living in poverty, estimated to be 80 % of

⁵⁸ www.newzimbabwe.com accessed 12 May 2006.

⁵⁹ 40% of the active population in Zimbabwe is HIV positive, UNAIDS Report 2005, pg 25.

Zimbabweans living in extreme poverty.⁶⁰ Economic failure has led to a deterioration of the health and education sectors. This has made it difficult to foster a culture of human rights dialogue, access to information, participation and education because of a raft of laws that restrict the voices of those who criticise the government and try to protect human rights. The government uses repressive laws such as the Public Order and Security Act to restrict the right to freedom of association, assembly and expression of civil society activists and the opposition, “this has a detrimental effect on the ability of human rights groups operating in the promotion of economic, social, civil and political rights to operate freely, as they fear persecution for political reasons or forced to shut down their operations.”⁶¹ This serves as a basis of how reproductive rights of adolescent girls in Zimbabwe have been violated.

3.3 Zimbabwe and International Human Rights Law

Zimbabwe ratified the ICCPR in May 1991, the ICESCR in May 1991, CEDAW in May 1991, and the CRC in September 1990 which are the major human rights treaties. She has not ratified the Optional Protocol to the ICCPR and the CEDAW Optional Protocol which provides for the individual complaint mechanism for the injured. This prevents individuals in Zimbabwe, particularly adolescent girls, who have suffered economic and social injustice to complain about their human rights violations on the international fora. She is a State Party to the ACHPR ratified in 1986, African Charter on the Rights of the Child entered into force in 1995, and she has signed the Protocol on Women’s Rights in Africa and has not ratified. From these international and regional treaties Zimbabwe has to meet the obligations that arise for her to interpret those treaties in good faith and provide adolescent girls with all the necessary information, protection methods, and education about reproductive health without justifying non compliance with religious or cultural justifications.

⁶⁰ Human Rights Watch World Report, pg 196, 2006.

⁶¹ Ibid page 197.

3.4 Zimbabwe's Constitutional framework and adolescent girls' reproductive rights.

Zimbabwe's constitution is very weak in terms of social and economic rights. Section 3, of the constitution which forms the Declaration of rights advances civil and political rights only. This can be evidenced by the provisions in the constitution which range from the right to life, protection from inhuman treatment and deprivation of property. The doctrine of dualism⁶² has been the greatest stumbling block for the observance of human rights in Zimbabwe. International Law will only become part of domestic law after an Act of parliament has been passed and approved by a two thirds majority. Section 111 of the constitution is worded as,

Except otherwise provided for by this Constitution or Act of Parliament, any convention, treaty or agreement acceded to, concluded or executed by or under authority of the President with one or more foreign states or governments or international organisations (a) shall be subject to approval by Parliament and (b) shall not form part of the law of Zimbabwe unless it has been incorporated into the law by or under an Act of Parliament.⁶³

This impedes the incorporation of human rights principles in domestic law. This curtails the realisation of adolescent girl's right to dual information services, education, participation and dual protection methods. The constitution is interpreted in different ways with different authorities because of the fusion of politics and the law;⁶⁴ this can be evidenced by judgements delivered in the Supreme Court under the Chidyausiku era as compared to those judgements which were progressive during the Dumbutshena and Gubbay era.⁶⁵ There has been a rapid decline of the human rights jurisprudence in Zimbabwe since 2000. More than 17 constitutional amendments have been made, willy nilly for political mileage. Amendment (no17) 2005 does not promote the human rights jurisprudence. The constitution does not have a clause on the rights of children like the

⁶² G. Linnington, *Constitutional Law of Zimbabwe*, pg 152, 2003.

⁶³ *Constitution of Zimbabwe* page 38.

⁶⁴ Report of the International Bar Association, pg 3, 2004.

⁶⁵ *Ibid* pg 5, 2004.

constitution of South Africa.⁶⁶ The South African Constitution has been paralled with the Zimbabwean constitution because it has clauses on civil and political rights as well as economic, social and cultural rights, being one of the most human rights friendly constitutions globally. Zimbabwe's constitution is silent on the right to health and reproductive rights.

The constitution of Zimbabwe allows discrimination on the grounds of marital status which makes it possible for the girls to be discriminated against when seeking reproductive health services, because section 23 (1) does not specify the grounds upon which discrimination should not be made. It is worded as “...a law shall be regarded as making a provision which is discriminatory and a person shall be regarded as having been treated in a discriminatory manner if, as a result of law or treatment, persons of a particular description by race, tribe, place of origin, political opinions, colour, creed are prejudiced...”⁶⁷ This is contrary to CEDAW's article 1 on non discrimination which forms a blanket provision emphasising non discrimination of women, hence access to health services included. Zimbabwe does not meet this international requirement violating the girl's right to reproductive health. In terms of education, the same thing exists. Hellum, argues that; “In the Zimbabwean constitution, customary law takes precedence over legislation in relation to family law.....As such the constitution, policies, statutes and acts comes into conflict with other human rights principles, such as the principle of gender equality.”⁶⁸ Banda notes that, “Zimbabwe is still operating within a strongly cultural relative constitution which undermines the effectiveness of the international law of human rights, particularly in raising the status of the girl child and women respectively.”⁶⁹ This conflict of laws curtails the realisation of reproductive rights of the girls.

⁶⁶ South Africa Constitution section 27 and section 28.

⁶⁷ Zimbabwean Constitution.

⁶⁸ A Hellum, pg 235, 1999.

⁶⁹ F Banda, pg 25, 2005.

3.5 The right to Information in Zimbabwe

Zimbabwe does have laws concerning access to information for its citizens. The problem is however the interpretation of these laws which tends to suit the political question of the day and restricts access to information to the citizens.⁷⁰ The Official Secrets Act chapter 11:09 of 25 February 1970 and as amended by Act 22 of 2002⁷¹ is basically designed to deny citizens information about the affairs of its government thus violating the right to information which forms one of the fundamental pillars of a democratic society. I am interested in “deliberative democracy,” “that is deliberation about matters of common concern should not be restricted to political representatives, judges, media pundits, technocrats and other elites, but should infuse a society so structured that it underwrites ongoing processes of public opinion formation and judgement.”⁷² In any democracy citizens should have information disseminated to them regarding the operations of the State. Governmental affairs constitute a public function which makes free access of information an important feature to be upheld by those in power.

The right to information involves information pertaining to education and knowledge about the way services can be accessed particularly with regards to health matters and how public policies are formulated and implemented. This is a crucial individual right and the State has a positive obligation to fulfil it. In terms of the print media, part of it is heavily controlled by the government, in that sense adolescent girls like; adults have a limited access to information from diverse sources. As far as information from television is concerned one cannot have free access to information because of the Zimbabwe Broadcasting Act Chapter 12:01 which until 2001 gave the state a monopoly in the area of radio and television broadcasting. In 2001 the Zimbabwe Broadcasting Services Act was initiated, which advocates the opening up of the media to the society. Section 20 of the Act provides that “No political party or organisation shall hold or have control of any broadcasting licence or signal carrier licence.”⁷³ This exists in theory, as the Mugabe

⁷⁰ Amy Tsanga UNICEF Report pg 35, 2004.

⁷¹ www.parlzim.gov.zw, visited 4 April 2006.

⁷² D Moyo Broadcasting Policy Reform and Democratisation in Zimbabwe, 1990-2005, pg 34. 2006.

⁷³ Broadcasting Act of Zimbabwe, pg 20, 2001.

regime currently controls the print and electronic media in Zimbabwe. Although the Supreme Court which acts as the Constitutional court of Zimbabwe in terms of fulfilling the human rights mandate has declared the monopoly unconstitutional thereby paving the way for independent broadcasting, the State has circumvented the decision by enacting regulations that render it impossible for independent broadcasters to emerge.

The Broadcasting Services Act provides that, “In developing codes of conduct relating to matters referred to in paragraphs (b) and (c), community attitudes to the following matters are to be taken into account (b) the portrayal in programmes of sexual conduct and nudity.....”⁷⁴ The Zimbabwe Broadcasting Holding (herein referred to as ZBH) interprets the Act as meaning that programmes which perpetuate any information concerning sex and dual protection methods should be censored. Instructions of the functioning of the ZBH are based on the “top to bottom” approach, where Tichaona Jokonya, the Minister of Information and Publicity issues guidelines on the nature of programmes to be screened and broadcasted. There is no case law that has been brought to the Supreme Court concerning the censoring of public programmes by the ZBH.

The official interpretation of this Act has been to the effect that information on reproductive rights is not possible to transmit due to the need to uphold community values which forms the central basis of ubuntu⁷⁵ in African societies, but this spirit violates adolescent girl’s reproductive rights as the girls are treated as people without full humanity. This clause has been used as the basis of operation for the Entertainment and Control Board as evidenced by its banishment of programmes that advertise dual protection methods on the national television, for example the directive to stop the Futures group drama on HIV and AIDS amongst the youth in 2004, the decision had political connotations because the funding came from the USAID. It can therefore be said that Zimbabwe’s laws do not sufficiently cater for full access to information for its populace, including children to the standard required by the CRC, which has a provision on the right of the child to access information as evidenced by article 17.

⁷⁴ Section 24(5) Broadcasting Act, pg 22, 2001.

⁷⁵ Reflecting a true spirit of Africanism, promoting and maintaining the values.

Another impediment in terms of adolescent girls' right to access dual information measures has been the Entertainment Control Act which establishes a Censorship Board with powers to prohibit the publication or broadcasting on radio or television of prohibited material. In terms of section 10(2), it has power to prohibit publication of a film or advertisement on the grounds of it being obscene, indecent, pornographic, immoral or too violent. It may also place age restrictions on films or television programmes or direct that certain television programmes be shown in the later hours of the night in the interests of protecting children from watching programmes deemed to be of a threat to their cognitive development.

For the purpose of protecting children the powers of the Board are too wide and extensive based on the fact that they curtail the enjoyment of the right to access information about sexuality for adolescent girls. This is worsened by VISION 30, a broadcasting reform made in 2001, which banned all foreign funded advertisements and campaigns in the electronic media. The problem is that this result in children being denied information on subjects vital to their lives, for example programmes on sex education and HIV and AIDS may be deemed immoral by an overly conservative Board. This jeopardises adolescent girl's access to information on reproductive health matters as they constitute the most vulnerable group prone to suffer structural discrimination, violating article 1 of CEDAW, which clearly lays the fact that discrimination is to be outlawed in national laws so as to guarantee equality between men and women, in terms of accessing dual protection methods, education, participation and dual information services.

3.6 The Right to Participation

Sandra Coliver has argued that adolescent girls should be active participants;

In order to be able to participate effectively in an open, public debate about the issues and interests affecting their reproductive capacities and health. With decisions about family planning policies being heavily influenced by politicians,

religious hierarchies, pharmaceutical companies and foreign donors, the views of adolescents are often ignored.⁷⁶

Coliver`s argument demonstrates that through the RBAD adolescent girls can access participatory structures, and improve their reproductive health. Participation refers to meaningful involvement in issues that affect one`s development. Empowerment means the capacity to be recognised as a person who makes decisions that affect your central functioning as a human being. Moyo defends political rights as crucial for participation and communication since they are positive liberties, “They guarantee not freedom from external compulsion but the possibility of participation in a common praxis, through the exercise of which citizens can first make themselves into what they want to be- politically autonomous authors of a community of equal and free persons.”⁷⁷ The right to participation and access to information is also hampered by repressive laws that were passed by the government in 2002, these are the, Public Order and Security Act (herein referred to as POSA) which prohibits and shuts down any public meetings. An interesting dimension of this law in relation to adolescent girl`s reproductive health is the fact that it dissents any human rights voices from the civil society and persecute its opponents. Tied to this is the Access to Information and Privacy Act (herein referred to as AIPPA) which is reinforced by the Criminal and Procedural Amendment Act, (herein referred to as CPAA.) These laws criminalise dissemination of information and participation in human rights forums, curtailing the promotion of economic, social and cultural rights. Without media freedom and participation adolescent girls cannot access information and education about protection methods.

The debate which comes into play is one premised on the right to participation in public programmes and the right to information as interlinked components in ensuring rights based development. AIPPA curtails the freedom to access information, participation, the right to education and the freedom of association because section 19 is worded as, “any meetings in which information is divulged which is against the President, and governance

⁷⁶ Sandra Coliver, *The Right to Know, Human Rights and access to reproductive health information*, pg 42, 1995.

⁷⁷ D Moyo, pg 36, 2006.

of the country shall be in contravention of public order....”⁷⁸ Restricted access to participation and information impinges on the dissemination of information about the prevention of unwanted pregnancies, the spread of HIV and AIDS because those tasked with the mandate to provide the services are always afraid of contravening the laws and statutes.

3.7 The Educational Sector

The right to education is not captured in Zimbabwe’s constitution which remains fundamentally weak in matters of social and economic rights. Section 15 of the Education Act Chapter 25:04 deals with compulsory education at the primary level only. Article 10 (f) of CEDAW requires States to deal with the problem of girls dropping out of school and ensure that they are programmes provided to enhance the educational status of girls who have left school before completing their studies. Zimbabwe through her mosaic of laws is not honouring this obligation as evidenced by the CEDAW Committee which notes that, “The committee was concerned with lack of support systems to enable pregnant teenagers to continue their schooling. The Committee also noted that they were no detailed statistics available on teenage pregnancy.”⁷⁹ This practice of barring the adolescent girls to continue with their schooling is further exacerbated by the religious factor which comes into play.

Most boarding schools in Zimbabwe are private institutions run predominantly by the Catholic Church, Methodist and the Anglican Church.⁸⁰ The doctrine of these schools revolves around abstinence, girls who are found to be pregnant are expelled from school, and this applies to the State run schools. There is neither a legal requirement nor a coherent system or procedure requiring and ensuring the expulsion of pregnant examination candidates. The only mention of expulsion of pregnant school girls is in the Education Policy Circulars. Neither the Education Act nor its regulations authorise such circulars, given their drastic effects which even contravene International law. The Special Rappouter on the right to education during his country visit to Botswana (January 2006), noted that

⁷⁸ AIPPA Act 2002.

⁷⁹ CEDAW’s Concluding Comments to Zimbabwe’s 1998 Report.

⁸⁰ Schools add up to 53; Education in Zimbabwe, pg 5, 2003.

“the government should not expel pregnant adolescent girls from school, because there is need to foster the rights based approach to education.”⁸¹ This promotes reproductive rights of adolescent girls. Jessie Majome notes that, “In any event, the discipline circular P 35 does not dictate that pregnant girls be expelled. The register’s circular P 66 clearly out lines and contravenes the guidelines for discipline as elaborated in circular P 35.”⁸²

Tied to this, is the issue of sex education, which refers to the fact that “adolescence should be taught about their sexuality, physiology and biological mechanism in preventing unwanted pregnancies and the contraction of STIs.”⁸³ Sex education has been provided for in the primary and secondary education curriculum of Zimbabwe starting from grade 4. The major inhibition has been the attitudes of the school headmasters and teachers who will avoid teaching sexual and reproductive health issues. One headmaster said “What is needed is sexual abstinence and not sex education.”⁸⁴ The education personnel will use their own discretion to determine the topics to cover in the Education for Living Classes. The personnel are in a dilemma between their own religious and cultural beliefs which they will always guard against compromising. This negates the imparting of sex education to the girls. Notably they will always teach Christian values based on respect for elders and non involvement in sexual activities. This is because it is deemed immoral and parents are most likely to cause an uproar if it comes to their attention that their children are taught about sexuality and contraception at school. Some parents especially the affluent might accept sex education classes but mostly such topics are ignored to avoid contradistinctions amongst pupils, parents and teachers.

The AIDS Action Plan for schools adopted by the Ministry of Education in 1997 is in support for life skills and abstinence. It favours traditional values and responsible sexual behaviour by promoting morality, abstinence and postponement of sex until marriage. Marindo notes, “the underlying theme is the reluctance to acknowledge that some young people are sexually active and therefore may choose to use condoms to prevent HIV

⁸¹ www.sapf.co.zw accessed 14 February 2006.

⁸² www.sapf.co.zw visited 14 February 2006.

⁸³ My definition for the purposes of this thesis.

⁸⁴ Herald 22 January 2006.

infection. No public or religious school in Zimbabwe provide students with condoms on school premises.”⁸⁵

Sex education is paramount in the development of adolescent girls who are the most vulnerable, because they can access information about dual protection measures. These elements form the core components of the full enjoyment of adolescent girl’s reproductive health. Compulsory Religious and Moral Education (herein referred to as RME) classes emphasise abstinence, this creates a conflict of norms and hence the adolescent girls do not have clear information and education on how to prevent unwanted pregnancies and STIs.

Cook notes that, “In addition to the widening bio social gap in human societies today, “the family no longer serves in the dominant role of transmitting intergenerational knowledge such that the school system becomes the only effective mechanism to do so”⁸⁶ Sex education is important and the most profound issue connected to education as elaborated in the MDGs. Zimbabwe was a party of the governments which committed themselves globally to realise the goals but in reality she is not meeting the commitment agreed at the United Nations Millennium Declaration in 2000. Banda robustly advocates for sex education and argues that, it is better for the girls sexually active to practise safe sex, especially in the light of HIV and AIDS.

Sex education should transcend the normal school boundaries and should be a critical area of concern for families and other social structures concerned with the regulation of the sexual behaviour of adolescent girls. This is in line with international human rights laws to which Zimbabwe is a party. The importance of sex education cannot be underestimated in Zimbabwe, as evidenced by the recent case of *Macheke Primary School v Ministry of education 2005*, the facts of the case are that 15 adolescent girls ranging from the ages of 10-13 were raped by the school caretaker and one teacher. The headmistress of the school argued that she was not aware that such activities occurred, the judgement is still pending. The question which arises then is, if the school system which is supposed to be the custodian of moral and religious values jeopardises the human rights

⁸⁵ R .Marindo et al, Condom Use and Abstinence among Unmarried Young People in Zimbabwe. pg 7, 2003.

⁸⁶ R Cook et al, pg 278, 2003.

norms and, is the place where most adolescent girls spent most of their time, what then should be the way forward? It is interesting to see whether the judiciary will reflect upon international human rights law in passing the judgement.

3.8 The Health Sector and adolescent girls` reproductive rights

Adolescence constitute approximately 36% of the population of Zimbabwe.⁸⁷ About 26.4% of adolescence in the age range of 15-19 are infected with HIV and AIDS, 50% of adolescent girls have unplanned pregnancies and 15% of the girls are involved in infanticide crimes.⁸⁸ The Zimbabwe National Family Planning Council report of 2002 notes that there are an estimated 60 000- 70 000 unsafe abortions performed every year which are just the tip of an iceberg. This is because the Termination of Pregnancy Act (1977) allows abortion in a limited sense. Their knowledge and perception about HIV/AIDS and reproductive health is limited but they are a high risk group.

The Public Health Act Chapter 15:09 is silent on reproductive rights. It does not clarify the government`s position on providing contraception to adolescents. Reproductive rights are not included in the HIV and AIDS Policy,⁸⁹ which also excludes issues surrounding the provision of information and education on contraception to adolescent girls. The enforcement of Zimbabwe`s restrictive laws and policies on adolescent girl`s access to dual protection methods, dual information services, participation and education results in a number of human rights violations. Service providers and practitioners operate in a vacuum where no law or policy regulates the area. “National laws generally uphold parental consent requirements for adolescence below the age of 18 to access services and information on contraception and sexually transmitted infection prevention.”⁹⁰ The Patient Charter incorporate parental consent requirements, placing adolescent girls under the control of their parents and guardians, thereby barring access to services and information on contraception and STI prevention.

⁸⁷ Adolescent Reproductive Rights in Zimbabwe, pg 54, 2001.

⁸⁸ Lisa Garbus et al, HIV/AIDS and Youths in Zimbabwe, AIDS pg 5, 2005.

⁸⁹ National HIV/AIDS Policy of Zimbabwe, pg 10, 2002.

⁹⁰ Patient Charter of Zimbabwe, pg 10.

Partially due to the lack of laws and policies, Zimbabwean health workers use their own discretion to interpret laws and policies in a restrictive manner. For example, service providers interpret criminal law in a manner that results in denial of services to adolescents under 18. The Criminal Amendment Act and the Sexual Offences Act makes it a crime for anyone to have extramarital sexual intercourse with anyone under the age of 16.⁹¹ This has been interpreted by providers to prevent sexually active adolescent girls from obtaining dual protection methods, dual information methods and education about reproductive health. Health service providers are reluctant to provide contraception or STI prevention to anyone under the legal age of consent without parental agreement because; of fear that they will be found criminally liable as an accomplice to statutory rape.⁹² Such restrictive interpretations of the law by service providers violate adolescent girl's right to access dual protection methods and dual information services.

The Zimbabwe National Family Planning Council, (herein referred to as ZNFPC) is the main body tasked with reproductive health policy making in Zimbabwe. It does not have any provision dealing with adolescent girls of school going age; this is because the government has not prioritised issues of reproductive health in the discourse on development planning. The ZNFPC Act establishes a National Board of Family Planning and some of its objectives as outlined in section 22 of the Act can be summarised as follows, "(1) to popularise and promote the provision of adequate and suitable family planning facilities, (2) To provide facilities to investigate and treat infertility and (3) To research into reproductive health issues and the effects of contraception."⁹³ These provisions from the act, do not cater for adolescent girls' reproductive rights, rather their wording is merely general and not specific in terms of how it seeks to advance reproductive health services amongst which particular segment of the population. Services are accessed by older women who are married; this is because of religious and legal pluralism coupled with political innuendos which will be elaborated in the next chapter. The ZNFPC's

⁹¹ Sexual Offences Act, CH 9:21 Sub Section 3 (2) (2001).

⁹² Revealed through interviews carried out by the Centre for Reproductive Law. See Report on Adolescent Reproductive Rights in Zimbabwe, pg 54, 2001.

⁹³ ZNFPC Act establishing the National Board of Family Planning, Act (no) 22.

policies demonstrate the fact that they are not consistent with human rights principles emanating from hard and soft law, which emphasise that adolescent girls sexually active should be provided with contraceptives and the State has a duty to do so.

Adolescent girls who are 18, are supposed to be autonomous human beings under the Legal Age of Majority Act of 1982. This law has received criticism by Christian denominations and parents because some of them argue that it seeks to create promiscuity amongst the girl child and legitimise “unAfrican traditions” such as having sex outside marriage. This creates dilemmas for the health professionals because the Public health Act does not clarify the government’s position. This leaves the adolescent girls more vulnerable to STIs, HIV/ AIDS and early unwanted pregnancies.

The CEDAW Committee proclaim that, “The Committee was concerned about reports relating to the refusal of some health care providers to give family planning services to sexually active adolescents.....”⁹⁴ This inhibits the quest of international human rights law which requires that adolescent girls access services, information and education without prejudice from those responsible for doing so. The most affected girls are those who reside in the rural areas where it is more difficult to access the services. They end up resorting to traditional methods of family planning such as inserting some herbs in the vagina which are harmful. Religiously, it is deemed inappropriate for a service provider to deliver the contraceptives or information as he or she is seen as promoting promiscuity. The RBAD is useful as it advocates the need for non discrimination as a major goal of international human rights law. Article 5(a) read in conjunction with article (2) of the African Protocol on Women, have advently elaborated on the need to modify social and cultural practices which hamper effective enjoyment of adolescent girl’s right to reproductive health.

There is a critical shortage of reproductive health kits, especially at rural health centres. This has been made worse by the prevailing economic hardships and poses a challenge to service providers and practitioners in children’s health rights due to the increasing number of adolescent girls seeking help.⁹⁵ Adolescent girls have a right to

⁹⁴1998 Concluding Comments on Zimbabwe’s CEDAW Report.

⁹⁵ Adolescent reproductive rights in Zimbabwe, pg 1, 2001.

access services and health care providers at clinics should not turn them away on the basis of age, because they do have a right to services.

Lack of well trained staff due to the current brain drain in Zimbabwe, has also led to the violation of adolescent girls' reproductive rights. This should be noted as a deterrent to the provision of quality services at some reproductive health centres particularly in the rural health centres. The issue of male nurses at reproductive health centres as reproductive attendants further complicates the matter. In some instances the adolescent girls cannot confide with a member of the opposite sex, as it is considered a taboo. Most adolescent girls acquire information from unreliable sources and perpetuate limited knowledge in reproductive health issues, further going against international human rights law, which emphasises the need to promote adolescent girl's sexual development by providing them with information and protection measures.

3.9 The role of Non Governmental Organisations

Africa has been the slowest of all continents in institution building and human rights, the number of local Non Governmental Organisations (herein referred to as NGOs) concerned with reproductive rights is still very low. The renaissance of interest in civil society has added recent emphasis to the role of NGOs, which make up the fabric of civil society in ensuring a democratic entity. Human rights are better promoted through grassroots organisations; among the functions of NGOs is the gathering, evaluating and dissemination of information to the people. At present in Zimbabwe, NGOs involved with reproductive health of adolescent girls are the ZAPA project whose activities will be dealt with in the chapter on Religious and Legal Pluralism. There is also the Training and Research Support Centre (herein referred to as TARSC), Child line Foundation, Women and Law in Southern Africa (herein referred to as WLSA) and the Zimbabwe Women's Resource Centre Network (herein referred to as ZWRCN).

Most NGOs are concerned with civil and political rights, economic and social rights are considered as not carrying much importance. This is a wrong perception if analysed from the interconnectedness between civil, political, economic and social rights. The Women of Zimbabwe Arise (herein referred to as WOZA) has been the most active in the need to address women's economic, political and social issues. Through their Director

Jenny Williams they have “demonstrated against the government’s refusal to allow sanitary pads donated by the Congress of South African Trade Unions (herein referred to as COSATU) to enter the country duty free.”⁹⁶ In Zimbabwe the product is heavily priced forcing some girls to use unmedicated pieces of cloths, which pose a health risk in their physiology. I argue that the issue of sanitary pads is related to reproductive rights as they are very important during an adolescent girl or woman’s menstrual cycle. Demonstrations carried out on Valentine’s Day (14 February 2006) showed how WOZA tries to influence government policy through the RBAD. Their efforts have been jeopardised by the police who always take them to prison and are charged in courts for contravening the Public Order and Security Act, such allegations are contrary to the spirit of true human rights principles.

The Women’s Action Group (herein referred to as WAG) has been involved with reproductive rights since 1985. They have been producing a newsletter in all three languages (English, Shona and Ndebele.)⁹⁷ The major criticism against WAG is that it has not focussed on adolescent girl’s reproductive health rather its focus has been on promoting women’s needs. Currently they are involved in a project in Shurugwi, a district in Zimbabwe focussing on health information dissemination, it remains to be seen how the religious and cultural attitudes towards them will be. NGOs focussing on women and the girl child in Zimbabwe have been criticised for their “western feminism” stance ignoring the realities of the societies in which they operate. This makes their advocacy difficult because they are associated with western educated elite women, who are single and associated with trying to proselytise girls towards immorality. It has been pointed out that at least they should move towards “third world feminism” and appreciate the living realities in the third world. I introduced this debate to show how feminist discourses conflict with religious and cultural beliefs in the quest of adolescent girl’s reproductive rights.

The 1993 World Conference on Human Rights emphasised the interdependence, indivisibility, interrelatedness and interconnectedness of human rights. Civil and political rights are important for the realisation of economic and social rights; a hierarchy of rights must not exist. In Zimbabwe a hierarchy of rights exists, in which civil and political rights

⁹⁶ www.newzimbabwe.com, visited 14 February 2006.

⁹⁷ www.wag.co.zw, visited 14 March 2006.

are given more recognition. The major drawback in their operations has been the Non Governmental Organisation Bill of 2004⁹⁸, which has led to difficulties in operating since activities of NGOs are scrutinised by the government. Most of NGOs promote the rights language but however their communication strategies are hampered by AIPPA, which restricts the transmission of information from NGOs to citizens, a way of killing human rights conscientisation of NGOs to the people. The relationship between NGOs and churches has been characterised by mistrust because churches believe that, NGOs are active in demoralising society through the need to accord the girl child status in society. Efforts for dialogue have been tried but the outcomes never yield any meaningful results as evidenced by the ZAPA initiatives with the Mapositori.

NGOs stopped the publication of newsletters because section 10 of the Non Governmental Organisation Bill provides that such action lead to closure. Development is meaningful if it includes a human rights component to enable people to participate actively in a free society.

3.10 Conclusion

This chapter explored the Zimbabwean case in relation to adolescent girl's right to dual information services, participation, education and access to dual protection methods. My aim has been to demonstrate that reproductive rights are part of political governance, which should be addressed timely. I highlighted the legal lacuna that exists in Zimbabwe, as demonstrated by the constitution with regards to the right to information and the right to education. The mosaic of laws that restrict access to information and participation such as AIPPA and POSA have been analysed. I have analysed the right to information and education in Zimbabwe, with reference to adolescent girls. The constitution is silent on economic and social rights making it difficult for the adolescent girls to realise that they are rights holders and the government is the duty bearer.

My main argument is centred on the fact that adolescent girls should not be the objects of reproductive health issues; rather they should be the subjects. There is a need for "the democratic genesis of law", thus the priority in legislative politics concerns how a

⁹⁸ NGO Bill initiated as a means to kill the human rights promotional activities.

matter can be regulated in the equal interest of all, the need for citizen participation in determining the laws that bind them together in a community.

Cases law has been used to buttress how information, sex education and protection measures are important for adolescent girls. Pregnant girls cannot take examinations and are expelled from school, yet this has no legal relementation. NGOs should play a critical role in the mainstreaming of economic and social rights. Economic and social rights are crucial, as demonstrated by WOZA`s plight through demonstrations.

The health sector has been analysed, it is surrounded by lack of clearly defined laws and policies in its operations. A distinction between professional and religious ethics is needed to avoid the maladies associated with denying adolescent girls information, services and education.

4 Religious and Legal pluralism

4.1 Introduction

In the previous chapter, I demonstrated the legal and political realities that exist in Zimbabwe which hamper the effective promotion of adolescent girl's reproductive health. This chapter's main objective is to explore how legal and religious pluralism affect girl's reproductive rights. I will first explore the constructions, norms and values relating to procreation, gender relations and marriage in coexisting religious belief systems. My interest centres upon adolescent girl's sexuality, the doctrines of these churches with regards to teenage sexuality. This is because the traditional, Catholics, Mapositori and other Christian denominations are opposed to reproductive rights, as they believe, they lead to the decay of the moral fabric of society. The influence of religion in policy making will be analysed.

4.2 African Traditional Religion

There are no reliable statistics to show the believers of this sect, as people mix the religions.⁹⁹ African Traditional Religion and culture is against the issue of liberalising beliefs, adolescent girls should not engage in premarital sex, they should not access dual information services, education and dual protection methods. Hellum in her study on managing infertility in Zimbabwe demonstrates that procreative beliefs are tied to traditional beliefs and spirituality.

The Shona meaning of procreation is associated with giving birth to children whilst a virgin, in a marriage, this will lead to acceptance by society. They are sanctions against those who do not procreate and adolescent girls who are engaged in procreative matters before marriage are considered as full adults. Hellum seems to argue that to a

⁹⁹ US Report on International Religious Freedom in Zimbabwe, pg 2, 2005.

certain extent culture may facilitate as an aid to social transformation rather than merely seeing it as the burden and an impediment that it has sometimes been constructed as being. She argues for a pluralist understanding of human rights. In light of Hellebrandt's assertion I maintain that culture and religion have been the basis which has been used to deny adolescent girls their rights. I am sure that analysis of the culture/ human rights conundrum has been exhausted; my aim is to reflect upon the violation of reproductive rights that emanate from religion.

Traditional beliefs play a prevalent role in Zimbabwe, for example the role played by the Zimbabwe National Association of Traditional Healers (herein referred to as ZINATHA) headed by Professor Gordon Chavhunduka has criticised the provision of education, information and protection measures to adolescent girls as this body argues that such behaviour lead to the "anger of spirit mediums and this leads to lack of good rains because young girls are now allowed to behave as adults something which never happened during the days of Nehanda and Kaguvu."¹⁰⁰ David Lan in a study conducted in Dande acknowledged that spirit mediums played an influential role in the religious and political life of the people, as they are associated with the blessings of rains, if people uphold their traditional values.¹⁰¹ The culture of silence should be observed by the girl child, she should not ask sexuality questions as she will be considered of a "loose moral character."¹⁰² The African fathers believe that they should be "spousal veto", that is men should decide whether girls should access contraception or not, which violates girl's reproductive autonomy.

In a research carried out by the Women and Law in Southern Africa group on gendered crimes of violence in 2001, it was noted that African Traditional Beliefs and cultural notions influenced a great deal how the respondents perceived reproductive rights of adolescent girls. Most of the respondents pointed that provision of dual information services, education and dual protection methods to adolescent girls was intolerable and if

¹⁰⁰ www.zinatha.co.zw accessed 31 March 2006.

¹⁰¹ D Lan, *Guerrillas and Spirit Mediums in Zimbabwe*, pg 75, 1985.

¹⁰² Fitnant Naa – Adjeley Adjetey, *Religious & Cultural Rights Reclaiming: African Woman's Individuality*, pg 224, 2003.

encouraged would lead to promiscuity. Within the same research some respondents argued that they did not mind reproductive rights awareness as long it was done out of their sight as mothers and guardians.

Denial to provide adolescent girls with dual protection methods, education and information contributed to the commission of gender generated reproductive crimes of violence such as infanticide amongst some teenage girls who found themselves pregnant and had nowhere to turn to, for help because of fear of reprimand from the society. For the African girls, the most severe violations of their human rights are “rooted deeply within the family system, bolstered by community norms of male privilege and frequently justified by religious doctrines or appeals to custom or tradition.”¹⁰³ I argue that African female children are taught from an early age that the man is the head of the household, and are advised by their mothers to remain in complete subjugation to their husbands. This deviates from human rights norms which are based on the fact that rights are individualistic. The African set up evidently shows the violation of the right to reproductive choice.

4.3 Catholicism

Catholics constitute 55% of the population.¹⁰⁴ Constitutionally Zimbabwe does not have a state religion. Anne Hellum has noted that, “today, the choice between family based arrangements and more individualistic solutions often leads to dramatic conflicts between the older and the younger generation.”¹⁰⁵ This becomes central with regards to the role that Catholicism plays in relation to adolescent girl’s right to dual protection methods, dual information systems and education. Catholic doctrine maintains that sex is a gift from God and should be for married couples. Providing girls with information, protection methods and giving them a leeway to participate in reproductive rights is seen as violating God’s commands based on procreation accounts in the bible. Sex education is limited, teachers have to refer to biblical texts to avoid unchaste and encourage abstinence. These beliefs

¹⁰³ Ibid, pg 224, 2003.

¹⁰⁴ www.zimreligions.co.zw, visited 1 March 2006.

¹⁰⁵ Anne Hellum, pg 255, 1999.

violate reproductive rights of the girls, because human rights treaties advocate the need to repeal such practices.

An interesting argument concerns the Vatican's cultural anthropology on matters involving sex outside marriage, the issue of contraception and abortion. The Vatican strongly voiced its disregard of reproductive rights at the Beijing International Conference on Women and the Cairo Population Conference. Pope John Paul II, repeatedly and forcefully obstructed the consensus reached on sexual and reproductive rights. I treat the Holy See, as a "Quasi State" because of the fact that the Vatican participated in the international conferences and is treated as an important actor in international forums. Zimbabwe was inactive in the proceedings at the 1995 Beijing Conference, the Beijing after 5 and Beijing after 10, but the NGO sector through the Zimbabwe Women Resource Centre Network produced a shadow report condemning the violation of reproductive rights in Zimbabwe. Barbra Klugman has argued that the discourse on sexuality and reproductive rights in Southern Africa is influenced more by Christianophobia, such that at Beijing the regional block was inactive in the proceedings.

Kari Borresson notes that, "In fact most Catholics in socially advanced societies no longer "respect Vatican sexology, thereby producing a healthy criticism of ecclesiastical theocracy."¹⁰⁶ The fact that Catholic conceptions of reproductive health are losing momentum such that sooner or later this will creep into developing societies. The State and the church tend to sideline the notion that although adolescent girls acquire full legal empowerment on the day they reach majority age 18; they usually gain increasing legal rights in their development.

In the English case of *Gillick v West Norfolk and Wisbech Area Health Authority* 1986 AC 112, a Catholic mother challenged the decision of a local health authority to issue guidelines to doctors operating within its area to the effect that if they were consulted by a minor under the age of 16, who was seeking contraception/contraceptive advice without explicit consent of a parent, doctors should provide it. The House of Lords pointed out that the doctor had to persuade the minor to include a parent or guardian in the decision. If

however the doctor clearly sees that the child would not do so and will go ahead and have intercourse, and the child understood consequences of her actions then the doctor had to offer contraceptive advice and assistance to the child, as the doctor deemed appropriate. Interestingly the court had to include parents and guardians evidently accepting the fact that adolescent girls should be treated as legal minors. The collapse of powerful forces in shaping the doctrinal theology of the Vatican should be seen as raising new dimensions in girls` reproductive health.

4.4 Mapositori

I have focussed on the Johani Marange Mapositori,¹⁰⁷ mainly because of the fact that their core beliefs influence the policy making process in Zimbabwe. This can be observed in a research carried out by the Zimbabwe Aids Project Advocacy (herein referred to as ZAPA) which was concluded in 2005, where the policy hierarchy of the Mapositori rejected the HIV and AIDS Policy which some members of the church had drafted with the assistance of ZAPA and the United States Agency for Development, (herein referred to as USAID Project.)¹⁰⁸ This denial of a change in attitudes and modification of religious beliefs shows the lack of commitment to human rights. They do not believe in contraception, imparting information about sex to girls and participation of the girls in reproduction, as they believe that it is against the biblical teachings of the apostoles. Mapositori disagree with sex education and withdraw girls from school when they reach 12.

The highest authority in the church known as “Madzibaba Johani Marange” encourages polygamy and normally girls aged 13 have to be betrothed to an older man even above 50 years. Of late reports of HIV and AIDS cases are noted to be high amongst the sect. This is made clear in the research carried out by ZAPA, a non governmental organisation which is working with faith based organisations in Zimbabwe on issues

¹⁰⁷ Different categories exist namely Johani weChishanu, Mapositori ekwa Nzira and Johani Masowe. They are all identified by their white regalia and shaven bald heads. Focus is on Johani Marange because of their strong beliefs which are very conservative. Other mentioned sects are a flexible; they send the girl child to school and attend hospitals unlike the Johani Marange.

¹⁰⁸ www.zapa.co.zw visited 27 March 2006.

involving HIV and AIDS.¹⁰⁹ Religion becomes a powerful force in denying these girls dual information services, education and dual protection measures and the government is not concerned with such issues.¹¹⁰ These beliefs are contrary to individual decision making, the girls do not have bargaining power to control their reproduction as is the norm in human rights.

4.5 Mapositori and Catholics

Catholics and Mapositori believe in heterosexual marriages, use of contraceptives and sex education is prohibited. Both groups believe that the girl has to observe these moral codes and be married as a virgin, which unfortunately is no longer the norm in today's evolving society. These sects have points of divergence, Catholics strictly do not allow polygamy, which the other part appreciates, they believe in educating the girl child and HIV and AIDS issues are taught in the Education for Living classes, unlike the Mapositori who do not send the girls to school.

4.6 Zimbabwe's Christian denominations

Zimbabwe's Christian religions include the Protestants, the Methodist Church, the Anglican Church and the Seventh day Adventist Church.¹¹¹ These churches operate on the norm that adolescent girls should not be provided with, education, information and they should not participate in reproductive health because it encourages promiscuity and violate the biblical accord of Jesus who was born to the "virgin Mary." S. Moyo in a study conducted in Gweru, highlighted that pastors acknowledged the rise in number of teenage pregnancies and were now preaching sexual abstinence. The Pastor is quoted saying, "If the partners are Christians they understand the doctrine, however there is a problem if the girl meets a partner who is not a Christian....."¹¹² In such situations it is difficult for the

¹⁰⁹ www.zapa.co.zw, visited 27 February 2006.

¹¹⁰ Simon Gregson et al carried out a study in Rusitu Valley in Manicaland where the Mapositori dominates. He found out that the Mapositori believed that it is contrary to the spirit of Christianity to educate people about reproductive health as it is against the teaching of the apostles in the bible. *Journal of Population Studies*, pg 10, 1999.

¹¹¹ N Pashapa, *Interdenominational faith in Zimbabwe, A critical Appraisal of the doctrines*, pg 25, 2001.

¹¹² Sakhile Moyo, pg 47, 1996.

adolescent girls to access dual protection measures, education and information, because of church beliefs. The Church has always denied that sexual intercourse takes place outside marriage and preaches abstinence. Influence of the church has been seen by the United States` regime of George Bush, which allocates funding for AIDS prevention but has tied the aid insisting that “abstinence should be pushed as the only acceptable form of behaviour”¹¹³ with condom use being spoken off to high risk groups such as sex workers/prostitutes. The preference is for the “ABC approach.”¹¹⁴

Christian religion severely undermines the reproductive rights of adolescent girls, which leads to the need to dwell on the tenets of the RBAD. Hellum notes that through the case histories she observed in Zimbabwe, “Christianity and Socialism were factors that influenced men and women’s perceptions of self, fertility and marriage, and thereby the way they integrate the different values and expectations embodied in the coexisting forms of kinship and marriage.”¹¹⁵ Christianity has an influence on the perceptions of life and political sphere, as these two cannot be divorced.

The Pentecostal churches are viewed by the majority of the population, ruling elites and the mentioned religious groups as “liberal churches and Western influenced”. This is because they promote the teaching of sex education, participation and information dissemination to adolescents. Although the issue of freedom of religion is crucial in human rights circles, I differ with the doctrine of the first group of churches, because with the changing face of the world today most adolescent girls engage in premarital sex at an early age, and a point to consider is the fact that adolescent girls involved in premarital sex should have access to contraceptives to protect themselves from mistimed pregnancies, STI infections and the HIV and AIDS pandemic.¹¹⁶ The “sugar daddy syndrome” is so pervasive amongst most of school girls, and has exacerbated early sexual involvement.

¹¹³ Banda, pg 190, 2005.

¹¹⁴(A) Abstinence, (B) Be faithful, (C) Condom usage.

¹¹⁵ Anne Hellum, pg 215, 1999.

¹¹⁶ Ammy Tsanga et al, pg 85, 2004.

4.6.1 African Religion and Christianity

Most Zimbabweans believe in African Religion and Christianity. Hellum in her study on managing procreation notes that,

Women who face procreative problems turn to both traditional healers and to modern doctors. Their commitment as members of a church community is usually combined with active participation in a patrilineal extended family who on occasions like marriage, birth and death establishes contact with ancestral spirits.¹¹⁷

Both religions have some similarities for example in terms of reproductive rights they all converge on the fact that adolescent girls should not be involved in premarital sex, they should not access the information because those supposed to provide the information uphold the same religious beliefs too. They should not be given dual protection methods as this encourages promiscuity and parents and the school cannot discuss such issues as they are deemed as stretching beyond the religious doctrine. The situation on the ground reveals that adolescent girls are involved in premarital sex and should enjoy access to dual information methods, education and dual protection methods.

4.7 The Policy Making Process and Religion in Zimbabwe

Policy making refers to the “cyclic process of problem identification, searching for the best alternatives, a cost benefit analysis and the choice of the optimal solution, implementation and evaluation of the chosen policy to deal with the problem.”¹¹⁸ In Zimbabwe the policy making process is fused with what is considered to be high level politics, such that reproductive health policies are seen as constituting low level politics. They are not part of high prioritisation in the agenda setting process when policies are crafted.¹¹⁹ St Thomas Aquinas the Catholic Philosopher made it clear that there is no separation between the church and the State; hence I maintain that Christianity influences the policy process in Zimbabwe. This is evidenced by the fact that State functions are

¹¹⁷ Anne Hellum, pg 245, 1999.

¹¹⁸ From the discipline of public policy from political science.

¹¹⁹ High level politics is associated with issues of foreign policy and war. Low level politics is associated with women`s issues.

presided over by Catholic Fathers. The influence of Catholicism is made plain in the speech which marked the 82nd birthday of the President when he condemned sex before marriage amongst adolescence he said, “*zvebonde hazvimhanyirirwe, pachinyakare chedu kurasa hunhu mirirai svitsa, kuti musabatwe neshuramatongo yapedza vamwe,*”¹²⁰ This serves to show how Catholicism and African Traditional Religion influence the notions of reproductive health in Zimbabwe particularly amongst adolescent girls.

Most government policies in my analysis are influenced to a certain extent by Catholicism and the Mapositori beliefs. In this instance a point to consider is that, the then Minister of Youth and Gender, Madzibaba Border Gezi who was a staunch Mapositori ekwa Marange member, was responsible for the crafting of the current National Gender Policy, and this evidently demonstrates that religion influences policy making. The National Gender Policy of Zimbabwe, whose section on health and reproductive health is silent on the need to provide adolescent girls with reproductive health information and services. Interestingly the crafters of the policy in the opening sentence of the National Gender Policy pointed out “that they had to include the aspect of reproductive health of women because of the devastating effects of HIV and AIDS in Zimbabwe.”¹²¹ International human rights law emphasise the need to integrate a gender dimension in policy decisions, legislation and development plans. In Zimbabwe these obligations are not honoured, what exists is what I term the “religionisation of politics,” in some areas of policy making. This is because the powerful elites are Catholic¹²² and will some how use Catholicism to shape policies.

Kari Børresen notes, “unfortunately the Holy See `s privileged status at the United Nations strengthens its political influence in underdeveloped countries.”¹²³ I argue that

¹²⁰ Translated as, “Do not engage in premarital sex as it is against our religion and culture. Doing so amounts to deviant behaviour, and to avoid contracting HIV/ AIDS wait until marriage.” www.newzimbabwe.com visited 13 March 2006.

¹²¹ National Gender Policy of Zimbabwe, pg 10, 2002.

¹²² Russell Belk pointed that the majority of the ruling elite in Zimbabwe are Catholics as evidenced by their active consumption patterns. They are extravagant, they always sponsor anything tied to Catholicism but leaving the vulnerable groups in poverty. He has suggested the need for a consumption index formula based on Christianity to be enforced in Zimbabwe. *Journal for Consumption Patterns*, pg 2, 2001.

¹²³ Kari Børresen, pg 552, 2004.

“public policies are whatever governments chose to do or not do” It should be noted that prioritisation of issues in the African policy making process, dwells on political issues such as diplomacy and foreign policy relations. The human rights doctrine is still believed to involve issues which governments can simply ignore. I argue that ratification of human rights treaties lead to the need to fulfil obligations. Political mileage should not be an excuse for sidelining creation of policies which cater for the needs of adolescent girls.

4.8 Different strategies

The issue at the crux of this thesis then is, how do you deal with the issue of freedom of religion and the human rights language which is almost universal today?

I adopt the revolutionary stance advanced by Chaloka Beyani, whose major critique is that religious and cultural practices that violate human rights enjoyment in the African system should be abolished in line with article 5 and article 2(f) of CEDAW if the State Party has ratified the conventions without reservations as is the case in Zimbabwe. This is because a clash exists between the family, the church and the adolescent girls, in trying to resolve these conflicts; it is paramount to reflect upon the international human rights regime to which Zimbabwe is a party. Banda advocates for a human rights approach by suggesting the need for the “cultural exit option”, she argues that those whose rights have been violated should abandon such cultural norms and cut ties with the society. Banda’s stance is closely associated with Beyani’s position.

Their point of difference lies in the fact that Banda tends to blame the colonisation process as treating Africa as the woman of the world, it is a fact. However I argue that history should not be used as an excuse in the violation of human rights because ratification of treaties means that African countries have assumed the role of political actors which are independent entities in International Relations and should abide with obligations emanating from these treaties. An Naim argues for the internal discourse, a middle of the road approach, he advocates that religious and cultural traditions cannot be easily transformed; rather it has to be a gradual process, where some of the traditions that violate human rights are reformed. Tove Stang Dahl and Hellum suggest the need for a discourse on women’s issues which extends beyond the legal interpretation. Needless to point out that the preamble of the African Protocol on Women’s Rights emphasises that any societal,

religious or cultural practices that hinder the physiological development of women and girls should be condemned and eliminated. This is buttressed by article 2(2), which is worded similarly to article 5(a) of CEDAW; State Parties have the mandate to modify social and cultural patterns of conduct through public education, information and communication strategies which are based on the idea of the inferiority or the superiority of either sex or on stereotyped roles for women and men.”¹²⁴ African Traditional Beliefs, Catholicism and Mapositori beliefs evidently come into conflict with international human rights law, because they all advocate that adolescent girls should not have reproductive rights.

4.9 Conclusion

I demonstrated how religious pluralism interacts with health, education, access to information and services in dealing with adolescent girl’s reproductive rights. Interpretation of international human rights law, municipal law and the policy making process is influenced by a combination of these two. In practise customary norms are an important factor in shaping behaviour especially with regards to sexuality, marriage and family life.

Christian Religion and African Traditional Religion have an influence on the daily operations as evidenced in parliamentary debates, schools and hospitals. A point to note is that these two, often reinforce each other in fostering patriarchal attitudes which affect the girl’s reproductive rights enjoyment. I noted how Christian religion particularly the Catholic Church and Mapositori`s cultural anthropology inhibits adolescent girl’s access to dual information services, education, participation and dual protection measures.

Their doctrines on sex are modelled along chastity and sex as ordained for married people and not for enjoyment. I pointed that other Christian groups are against the promotion of reproductive rights of the girls. On another note I have shown that some Pentecostal churches have recognised the need for the provision of dual protection methods and dual information services to adolescent girls meeting the realities of the world today. Case law has been used to buttress how dual information services, sex education and dual protection measures are important for adolescent girls. My aim has been to bring that the

¹²⁴Article 2 of the African Protocol on Women`s Rights.

pluralisms mentioned will always go against human rights law observance, promotion and tolerance. Børresson's assertion of a global change of attitudes within Catholicism proves to be useful with regards to the need to uphold of principles of justice human rights.

Zimbabwe`s legal conundrum and Christian religion as demonstrated violate human rights law. She is not fulfilling obligations arising from international human rights law. The author points that, with the existence of legal and religious pluralism it is difficult to realise adolescent girl's right to information, education, and participation and protection methods. The way to balance the tension that revolves around individual (adolescent girl) the State, the Church and parental autonomy, would be to adopt Beyani`s argument which centres on the revolutionary doctrine, which advocates that since Zimbabwe has ratified international human rights treaties she is obliged to repeal religious and societal attitudes that guard against the realisation of reproductive health of the girls.

5 The Way Forward and Conclusion

5.1 Introduction

I have analysed the importance of dual information measures, education, participation and dual protection methods as the key components that should exist in order to achieve adolescent girls' reproductive health in Zimbabwe. My theoretical framework revolved around the RBAD in international human rights law and the Actors and structures methodology. The research findings evidently demonstrate that Zimbabwe's current political, economic, legislative, religious and social environment is not conducive for promoting reproductive health of adolescent girls. My recommendations centre on the need to improve the mentioned situation with regards to the, "interdependence, indivisibility, interrelatedness and interconnectedness" of civil and political rights and economic and social rights.

The major findings of this research are as follows,

- Although Zimbabwe has ratified most human rights treaties without reservations, application of the treaties is limited by the doctrine of dualism which prevails in the constitution, and this affects the litigation process.
- The RBAD is to a large extent not part of the policy making process in Zimbabwe. Economic and social rights are not entrenched in the constitution, civil and political rights are the recognised human rights.
- Discrimination of the girl child is provided for by section 23 of the constitution creating a culture of non observance of human rights principles.
- Adolescent girls' reproductive rights are to a large extent hampered by lack of access to dual information services, education, participation and dual protection methods.

- Adolescent girls in Zimbabwe do not enjoy their reproductive rights because of the influences of Christian Religion, African Traditional Religion and Customary practices that are still recognised as important in shaping the girl child's life.
- There are vast differences between the ways in which the composition, bodily processes, autonomy and the role of the female are conceptualised in bio medicine and in the Christian and African Religion perspective and how this affects the modern use of contraceptives amongst adolescent girls in Zimbabwe.
- The political process which involves public policy making is to a large degree influenced by conservative Catholicism and Mapositori doctrines in the shaping of policies and plans involving reproductive rights of adolescent girls.
- The health and education sectors do not have clear cut policies dealing with provision of dual information, provision of dual services and education of adolescent girls.

5.2 How far does the Rights Based Approach Bring Change?

Reproductive health of adolescent girls has encountered political, economic, religious and social barriers. This is due to the nature of governance at the State, family and church level. Zimbabwe ratified the human rights instruments which give these girls full rights, but however the situation on the ground deviates from treaty law. I argue that an effective compliance with human rights obligations requires the Gender, Law and Development Approach. The approach highlights a shift from seeing lawyers as concerned with solely issues of human rights and economists and other social scientists as concerned with development issues.¹²⁵ It is characterised by a linkage to international and national human rights, non discrimination, participation, accountability and empowerment.

Adolescent girls are a legal persona as revealed by human rights conventions. Economic and social rights raise binding obligations, and all stakeholders have a duty to fulfil them. The State should enact programmes, plans and policies in reproductive health which are sensitive to the subjects, in a way that promotes human rights. A central question that ought to be addressed is, how best can the RBAD bring change in Zimbabwe?

¹²⁵ UNDP Report pg 22, 2002.

The Zimbabwean case is complicated because it is man made and the optimal solution in terms of reproductive health of adolescent girls could be the RBAD. International development agencies, non governmental organisations at home and abroad, the civil society and the subjects under discussion can influence policy change. This can be achieved through the “naming and shaming” of the government, as I dwelt on Risse`s “spiral theory” of influencing States which violate international human rights norms, in my chapter on State obligations. I argue that, to a greater extent the RBAD is a viable mechanism for in calculating the human rights norms in Zimbabwe, because it seeks to create a “person centred approach” which is useful in the discourse on rights centred approaches to development.

The International Monetary Fund has employed this tactic as evidenced by its refusal to reinstate Zimbabwe`s voting rights.¹²⁶ The RBAD provides for sanction, enforceability, targeted goals and structure. As seen through out the development of this thesis the RBAD serves as the promising human rights framework for giving adolescent girls their right to access dual information measures, dual control measures, participation and education. Success of this paradigm lies in the active involvement of the civil society, NGOs, development agencies and a government committed to good governance and human rights.

5.3 Importance of human rights education and reproductive rights

Nowadays people agree to the fact that structural development is essential to ensure the well being of both society and the individual. People should take part in this process in order to contribute to development. Creating an awareness of human rights lead to the institutionalisation of human rights and an improved human rights climate. Education is not teaching people skills to read and write, but creating awareness among people of the economic, political, social and religious factors which influence daily life.

Historically in Africa, as elsewhere girls` education was an apprenticeship in subjugation to male power. Girls were taught never to speak in public and never to speak to

¹²⁶ www.newzimbabwe.com, visited 9 March 2006.

a man before being spoken to.¹²⁷ These rules are strictly observed in the Democratic Republic of Congo, Uganda, Tanzania and Southern Africa, where Zimbabwe is geographically located; this is due to “a convergence of traditional female submission and Christian sexual phobia in these countries.”¹²⁸ Human rights education can bring meaningful contribution to Zimbabwe’s adolescent girls in terms of reproductive health. Human rights education implies that they should be aware of their legal entitlements by virtue of belonging to the human family and the State has the duty to ensure that these rights are respected.

The objective of this part is to compare the theories of raising human rights awareness with the practice which has to deal with many obstacles. I defined the term development in chapter 1, what needs to be taken cognisance of is the fact that development includes the rule of law, freedom to express one`s opinions publicly without fear of being persecuted, participation in the decision making process and access to the sources of information and education. It is generally accepted that human rights are an ingredient of the development process and that human rights should be the main subject of development. For adolescent girls to enjoy their reproductive rights they should be structural changes at the local and national levels, this will enable them to determine their own needs, use and develop available resources and shape their future in their own terms. With regards to the structural approach to development, awareness building and participation are prerequisites for a self reliant, sustainable economic, social, political, religious and cultural development. As human rights are an integral part of this approach, the creation of human rights awareness is seen as a component of awareness building in general and a stimulus for development.

At the international level the organisation concerned with human rights education is the United Nations Educational Scientific and Cultural Organisation (herein referred to as UNESCO.) UNESCO supports human rights programmes, provides teaching materials and organises debates and conferences on issues affecting the youth and human rights awareness in their process of maturation and social development. The reasons for teaching

¹²⁷ C Packer, pg 144, 2002.

¹²⁸ Ibid, pg 144, 2002.

and learning about human rights are described in the UDHR; article 26(2) provides that “education should be directed at the strengthening of respect for human rights and fundamental freedoms. Education should promote understanding, tolerance and friendship among all nations and racial or religious groups and further the maintenance of peace.”

Human rights education which is “essential for the formation of public opinion and the generation of public pressure for compliance with human rights is thus a sine qua non for the observance and advancement of human rights.”¹²⁹ The creation of a human rights culture requires a structural transformation in which all levels of society become involved. Action for human rights education has to be adopted and supplemented by governments, all mass media and all forms of associative life. A structural transformation must involve the girls as they form part of the grass roots of society, who have hitherto, been excluded from full participation in society, thereby kept in a situation where they have been dependent, lacking autonomy and without rights.

Participation in human rights education is an essential step in empowering people to become the protectors and promoters of human rights. By facilitating “awareness and understanding, by arousing in everyone the will to become involved, by mobilising public opinion and preparing people to face up to their problems, human rights education can contribute to a better human rights climate.”¹³⁰ The obstacles for human rights education range from lack of political commitment by the incumbent government, lack of human and financial resources and religious barriers.

Reproductive rights and human rights education have an interdependent relationship because most of the adolescent girls in Zimbabwe living in rural areas are illiterate.¹³¹ They lack knowledge about reproduction and human rights education. “These illiterates face huge difficulties on their way to being legal literates, to participating in society and to controlling their lives and environment.”¹³² In short illiteracy is an obstacle to the progress and development of both the individual and the society. I do not argue that illiterate

¹²⁹ Marina d` Englelronner-Kolff, *The Problems of Illiteracy and Underdevelopment*, pg 152, 1993.

¹³⁰ *Ibid* pg 152, 1993.

¹³¹ *Reproductive health of Adolescence in Zimbabwe*, pg 25, 1999.

¹³² *Ibid* pg 154, 1993.

adolescent girls are not aware of their rights. Being able to read and write is just a condition, which facilitates the process of growing awareness of human rights. Literacy is an enabling factor in this process. People have managed to survive without being literate throughout history. In the long run, illiteracy can be a serious obstacle to human rights awareness and structural development. Adolescent girls not only have different barriers to cross, but their experience of the world, daily routine and learning needs are different.

I argue that an adolescent girl with human rights awareness skills is armed to fight against political, cultural, religious and economic enslavement in order to enjoy her reproductive rights. It has been observed that;

“The difficulty with human rights awareness is that extremely delicate considerations, relating to power and roles within the family, have to be faced. Very sensitive issues springing from certain cultural and religious traditions are involved. Enormously complicated relationships between sex based differences in access to various social and economic resources and benefits must also be taken into account. Deeply embedded and fatalistic attitudes are ingrained by a particular history of male- female relationships that militate against change.”¹³³

I argue that adolescent girls fail to access dual protection methods, education and dual information services in Zimbabwe, because “reproductive rights” are viewed as a private matter and the public sphere cannot usurp the family and the church which are considered as the custodian of moral values. Education in localities on international human rights norms will go a long way toward acclimatizing African society to the idea that females have a right to reproductive choice. These problems taken together require an acceptance of a broadly based philosophy of human rights. The application of this philosophy to life and society should take into consideration legal, political, cultural, economic, social and religious factors that appear in practice. Daily practise requires a multi disciplinary approach.

¹³³ Ibid pg 156, 193.

5.4 Recommendations to the Government of Zimbabwe

1. Draft and adopt new laws, policies and guidelines that uphold international standards for ensuring adolescent girl's access to dual protection methods, education and information.

In particular:

- Parliament should pass implementing legislation to harmonise national laws with international treaties that have been ratified by government, with a view to improving adolescent girls' access to dual protection methods, information, education and participation.
- Take steps to address the gap in adequate legal protections for discrimination on certain specified grounds such as gender, age, socioeconomic status and marital status.
- Incorporate specific language into the National Reproductive Health Guidelines, now being drafted, to provide adolescent girls with free access to dual protection methods, education and information.
- There is a need for the amending of the constitution which meets the realities of adolescent girls in Zimbabwe. The National Constitutional Assembly (herein referred to as NCA) has been pushing for the crafting for a new constitution but this has not yielded much fruits after the rejection of the ZANU PF draft constitution in 2000.
- Adopt measures to reform religious and cultural views of adolescent girls' needs for contraception and sexually transmissible infections (STI) prevention and address religious and cultural taboos surrounding female adolescent's sexuality. Such government action should be consistent with CEDAW.
- Provide guidelines, particularly to public health care providers, for interpreting ambiguous laws and policies to ensure uniform interpretation.
- Ensure that the current Youth Policy currently being developed encourages adolescent girls' access to dual protection methods, education, participation and information free from parental consent requirements.

- The adolescent girls should be active participants in programmes on reproductive health so as to empower them as full legal beings. The current policies being drafted should have clear provisions dealing with components of the RBAD.

2. Identify where existing laws and policies are inconsistent with international standards and amend the relevant provisions so that they conform to international reproductive rights standards.

- Amend all policies, in particular the National Gender policy, the National Population Policy and the National HIV and AIDS Policy, so that health care professionals can provide all adolescent girls with services and information about contraception, HIV and AIDS and STI prevention without parental consent.

3 Harmonise all domestic laws and policies to eliminate contradictions with respect to adolescent girls` access to dual protection methods, education and information.

Specifically:

- Clarify that laws that set the age of sexual consent do not prohibit public health care workers from providing services and information on contraception and STI prevention to adolescents under 16.
- Reform all laws which deal with the right to information so that the government will not deny information to citizens in line with international human rights law.

5.5 The Christian Movements

- The politics of nation building and development can never ignore the transcendent and spiritual dimension of the human experience in Zimbabwe; it is high time that these actors should frame policies with other stakeholders to avoid hurting other parts of the population. Reproductive rights exist and so the Zimbabwean government and the churches mentioned should move from denial to acceptance in line with international human rights obligations in the framing of policies, programmes and laws of the country.

- There is a need to arrange human rights forums with all stakeholders in the country through the Ecumenical Evangelical Forum of Zimbabwe. This will help to find alternatives of improving the communication strategies that can enhance adolescent girls' reproductive rights.
- The churches should realise the change in doctrines particularly the Catholic Church and Johani Marange Mapositori which should note that an indispensable instrument for a feminist reformation of Christianity is also gaining influence in Catholic traditions, and so there is a need to liberalise their doctrine in line with the global changes currently taking place.
- Deep dialogue and Critical thinking models should be applied by the churches together with the government, NGOs, health sector and educational officials so that they can reach a common consensus on improving adolescent girls' access to information, education and dual protection methods.
- All Christian movements should organise a conference which will address this issue and "respect, change and tolerance" should be the guiding framework to lead to the realisation of adolescent girl's reproductive rights.

5.6 The Educational Sector

- The Ministry of Education should pay more attention to sex education of adolescent girls. Education authorities should adopt the national policy programme to suit the reality of the rural areas, keeping in mind the special characteristics of such communities who are different in their appreciation of sexuality, behaviours, attitudes and practises from urban areas.
- More teachers should be trained in the area of sexual and reproductive rights because most of the time they are unprepared to discuss sexuality with adolescents and sometimes feel uncomfortable or disapprove of students who express interest in sexuality.
- The education curriculum should be reviewed to encompass human rights education and reproductive rights as independent subjects which are useful in the development of the girl child.

- Skills Building Modules which consist of at least (7) training modules should be developed to foster understanding of “self” of adolescent girls and to increase the girl’s capacities and life skills to enable them to deal effectively with real challenges of transition to adulthood.
- Programmes should be developed to educate parents and religious authorities through the Parent Teachers Associations, about a primary role they play in sex education of their children rather than relying on schools to provide the appropriate orientation.

5.7 Health Care Providers and Associations

- Provide reproductive rights training courses in the curriculum of doctors, nurses and pharmacists by the Zimbabwe National Family Planning Council and other Medical Staff associations.
- Create forums where health care providers who support adolescent girls` access to dual protection methods, education and information on contraception can speak out publicly on lack of access to information, services and education as a problem warranting immediate attention by public officials.
- Provide dual protection methods and information to adolescent girls in rural areas and those from minority groups such as the Tonga.
- There is a need for interdisciplinary research between public health personnel, lawyers and social scientists, this helps create sustainable policy law guidelines that are effective and meet the demand of the targeted group.

5.8 Non Governmental Organisations

- Make use of the “boomerang” tactic a tenet of the “spiral theory” in naming and shaming the government domestically and internationally in its current violations of civil and political rights as well as economic and social rights.
- Provide training to service providers to teach them to be more adolescent friendly and non judgemental, and to respect their clients. Organise workshops for service

providers to ensure that they do not let their professional values interfere with their professional obligations.

- NGOs working in the area of human rights should join efforts to develop common legal and advocacy strategies to ensure that adolescent girls` right to access dual protection methods, education and information and promote adolescent girls reproductive autonomy.
- Document and investigate the access where these rights are abused and monitor Zimbabwe`s compliance with recommendations of human rights treaty bodies.
- Engage in outreach to parents, the churches and traditional leaders on the need to provide services and information on reproductive health to adolescent girls.

5.9 Overall Conclusion

This thesis documents the legal, educational, health policy, religious and cultural barriers to Zimbabwean adolescent girl`s enjoyment of their international human rights of access to dual protection methods, education, participation and information. This work has demonstrated the tensions that evolve when there is religious and legal pluralism in a State, such that these contradictions as reflected in the church, family, education and health sectors strictly hamper the effective realisation of reproductive rights of the girls. I argue that reproductive rights are an issue of “high level politics” and are important in shaping the economic, social and political capabilities of a State. Reproductive rights are central as they add quality to the right to life, which is fundamental for any human being. I have shown how the current political, economic and social trajectories in Zimbabwe have led to the non observance of the human rights principles as provided for in the international and regional human rights instruments.

This work has emphasised the importance of religion in suppressing reproductive rights. My aim has been to put across the fact that religion as evidenced by the mentioned religions influence and shapes people`s lives, this has been demonstrated by the differences and commonalities shaping the appreciation of reproductive rights of adolescent girls in Zimbabwe. This work raises an issue which is useful for the human rights treaty bodies particularly the CEDAW Committee and the Committee on the Rights of the Child. The

issues I have raised can help the Committee members to understand clearly why reproductive rights still prove to be contested rights in countries with religious and legal pluralism particularly in the African set up as evidenced by the Zimbabwean context.

There is a need to understand the definitions of marriage and reproduction in the African set up which are influenced more by the need to maintain community values that advance that a married wife does not belong to her husband alone, but belongs to the community. She has to prove her woman hood by procreating a recognisable number of children that the family will be proud of. I demonstrated how the existence of a conflict of laws in society jeopardises the quest for the individualisation of human rights.

I argue through out my research that reproductive rights are an important political issue which has been sidelined and given non primacy in public policy and law formulation in Zimbabwe, the time is now ripe to move from non recognition by Zimbabwe to acceptance of this body of rights. This requires the use of the rights based approach and the actors and structures methodology as done by the author; this is because the beneficiaries need to participate in the programmes, to be free from discrimination, officials implementing the programmes should be accountable in the use of financial and non financial resources and they should be equity in the service provision, that will improve their reproductive health. Denial of the girl's access to dual protection methods, education, participation in programmes and information inhibits the girl's participation in economic, political and social life. Adolescent girl's inability to protect themselves from the grave risks associated with early sexual activity-early unwanted pregnancies, unsafe abortions, HIV and AIDS and STIs-may seriously affect their educational, occupational and social opportunities. Considering that this age group constitute a large and growing segment of the population, this pattern of denial may have serious consequences for the Zimbabwean society as a whole.

The government should take immediate steps to rise to the considerable challenge of addressing the reproductive needs of adolescent girls and ensuring their rights. The government should affirm its commitment and bolster its efforts in addressing traditional

cultural and religious barriers. It is interesting to note how far the current policies being drafted thus the Youth Charter and National Reproductive Policy¹³⁴ will bring change.

I want to point out that little research has looked at the role of religion, members of government, kinship, ethnic explanations and post colonial class in Zimbabwe, when it comes to reproductive rights of adolescent girls and reproductive health in general. I have not exhausted all the issues that arise from this angle from a human rights perspective and so I postulate the need for the “next question technique.” Grounded theory research is needed to show the effects of political, economic, and social governance on the policy formulation and the policy implementation process which can be important for human rights educators in their quest to encounter change in reproductive health of adolescent girls.

¹³⁴ www.zimonline.co.za visited 25 October 2005.

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