



Interrogating the Contestations in Zimbabwe's New Marriage Law and Arbitration in Family Disputes

Bernard Pindukai Humbe¹  & Fortune Sibanda² 

¹ Department of Religion Studies, University of the Free State, Bloemfontein, South Africa; Department of Ethics, Philosophy, Religion and Theology Studies, Great Zimbabwe University, Masvingo, Zimbabwe.

² Department of Theology and Religious Studies, University of Eswatini, Eswatini; Research Institute for Theology and Religion, College of Human Sciences, University of South Africa.

ABSTRACT

This study focuses on the new Marriages Act and arbitration in family disputes among the Shona people of Zimbabwe, who happen to be the largest ethnic group constituting about 75% of the Zimbabwean population. The problem identified by this study was that the new Act has been received with mixed emotions especially by religious communities with the majority complaining that it promotes promiscuity and marriage breakups. Using Alternative Dispute Resolution as a conceptual framework and in-depth interviews, observation and documentary analysis of print and electronic media to gather data, the study established that the new Act promotes paradoxes over marriage dispute resolution because the customary law and decisions have been submerged. The research concludes that the new Marriages Act is an ambivalent legal framework that requires continual interrogation among different stakeholders for sustainable marriage unions in Zimbabwe. The study recommends the harmonisation between the law and societal culture on marriage to ensure an effective and contextual family arbitration mechanism. The research bridges the knowledge gaps in scholarship on the impact of Zimbabwe's legal reforms on gender relations catapulted by the tensions between statutory law and customary law encountered in the process of harmonising traditional and modern views on marriage and family structures in post-colonial contexts, which were historically influenced by patriarchy.

Correspondence

Bernard Pindukai Humbe
Email: pinhumbe@gmail.com /
bhumbe@gzu.ac.zw

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INTRODUCTION

Marriage is a local and universal institution that offers a window to introspect into local and global processes. On this basis, the social and cultural anthropologists, Julia Pauli and Rijk van Dijk, refer to the manifestation of change and continuity in southern African marriages.¹ This is because marriage is not only a very central institution in the region and thereby a 'fundamental social building block',

¹ Julia Pauli and Rijk Van Dijk, "Marriage as an End or the End of Marriage? Change and Continuity in Southern African Marriages," *Anthropology Southern Africa* (Taylor & Francis, 2016).

but a significant driver of change, innovation and even (dis)order in society.² Among the important changes in the marriage institution are the elements of the value in terms of its material dimension and the emergence of new legal frameworks, which are endowed with the changing meanings and practices of it in Africa, and Zimbabwe in particular. To this end, this study focuses on the new Marriages Act Chapter 5:15 and arbitration in family disputes among the Shona people of Zimbabwe, who happen to be the largest ethnic group constituting about 75% of the Zimbabwean population. This new Marriage Act was gazetted in August 2022. This Act puts all marriage laws under one umbrella, thereby making it possible to transform a registered customary union into a civil marriage. Among other things, it gives power to traditional leaders, who can now solemnise marriages, in that way making it localised for everyone intending to register their marriage of choice. However, the problem associated with the new Act is that it is not in tandem with the traditional cultural marriage beliefs and practices, historically influenced by patriarchy.

This study sought to interrogate the contestations in Zimbabwe's new marriage law and arbitration in family disputes. The problem identified by this study was that the new Act has been received with mixed emotions especially by religious communities with the majority complaining that it promotes promiscuity and marriage breakups. In order to provide the legal and socio-cultural dynamics of Zimbabwe's marriage and family law reform, the study is guided by three objectives, which are to: (a) examine the main provisions constituting Zimbabwe's new marriage law reforms; (b) analyse the nature and magnitude of contestations emanating from the new marriage law, particularly in relation to clashes between customary and statutory legal frameworks; (c) evaluate the effects of the new marriage law on gender relations and power dynamics in Zimbabwean family milieu, particularly how law shapes the roles and rights of women in marriage processes of dispute resolution.

Methodologically, this qualitative study employed in-depth interviews, observation and documentary analysis of print and electronic media to gather data on Zimbabwe's marriage and family law reform. From the introduction, the study proceeds by presenting a brief review of related literature to foreground the strategies employed in dispute resolution. Building up on this, the next section provides an overview of the Shona marriage and family system whereby the two institutions are significant social and spiritual realities. The subsequent section tackles the gestalt of the new marriage law, which explores the key provisions of Zimbabwe's new marriage law reforms. The conceptual framework adopted for this study, Alternative Dispute Resolution, is covered next before delving into matters of the research methodology. Findings and discussions on the new marriage law and arbitration in family disputes in Zimbabwe occupy the next section, whilst the subsequent section focuses on the critical reflections of the study before suggesting recommendations and concluding the study.

LITERATURE REVIEW

This study is mainly focused on arbitration in solving family disputes in Shona communities. Birhanu and Serkalem understand arbitration as a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. Acknowledging its centrality, Jong thinks although family arbitration should not be seen as a panacea, cure, or substitute for other methods of resolving family disputes, there is strong public policy favouring arbitration today. It explains why Kisthardt avers that the use of alternative methods for resolving family conflict has increased significantly in the past few years.³ According to Birhanu Midakso and Serkalem Eshetie, the indigenous people in Africa have some dispute resolution strategies anchored on arbitration to manage these disputes in maintaining the marriage bonds intact or dissolution of the marriage unions and enactment of order in the society.⁴ The basis for trusting arbitration is given by Fortune Sibanda and Bernard Humbe, who suggest that African societies fall back on their social capital affixed to African culture and indigenous ways of knowing and experiencing the world in order to resolve

² Pauli and Van Dijk, "Marriage as an End or the End of Marriage? Change and Continuity in Southern African Marriages." 258.

³ Mary Kay Kisthardt, "The Use of Mediation and Arbitration for Resolving Family Conflicts: What Lawyers Think About Them," n.d., <https://www.aaml.org/wp-content/uploads/TheUseofMediationandArbitrationforResolvingFamilyConflicts-1.pdf>.

⁴ Birhanu Midakso and Serkalem Eshetie, "The Roles of Family Arbitrators in the Settlement of Disputes Arising out of Marriage and the Constraints Thereof: The Law and the Practice in Oromia National Regional State," *East African Journal of Social Sciences and Humanities* 3, no. 1 (2018): 87–104.

conflicts.⁵ This is contrary to Temitayo Bello's view which says that arbitration is rarely used for settlement disputes outside commercial disputes in many countries, Nigeria included.⁶

Shona Marriage and Family

It is important to categorically stress that in Zimbabwe, the Shona people are a broad ethnic group constituting the following five dialects: *Karanga, Manyika, Ndau, Korekore* and *Zezeru*. In the context of this study on marriage disputes and arbitration, a specification of differences between these dialects is not done. Rather the Shona are treated as one group based on some common features which characterize them as largely exogamous, patrilineal and patriarchal. One common cultural trait which binds the Shona together is their perception of marriage and family. Traditionally, family refers to an expansive kinship network which largely consists of a nuclear family and an extended family. Apparently, for the Shona, a family is a large, closely knit community of blood relatives that is constitutive of the life and destiny of each of its members in this world and after death. So, a family constitutes the paramount social and spiritual reality.⁷

On a social level, a family is born out of marriage which enables and strengthens relationships by organising the relations between individuals, couples and their families, as well as the means of production and exchange, rights over children and inheritance, among other things.⁸ In view of this, among the Shona people, the institution of marriage becomes an arrangement which enables persons to live together and cooperate with one another in an orderly social life.⁹ It is the soteriological belief among the Shona people that one would have achieved salvation if he/she got married. So, marriage ensures that family names do not enter into oblivion.¹⁰ This explains why marriage can be an avenue to "social prestige, authority and distinction."¹¹

The cog of a recognised marriage is the payment of the bride wealth. Any marriage which does not consist of this key component is informal and invalid among the Shona. When a person gets married, they start receiving a dignified societal recognition premised on certain societal injunctions. This is supported by Michael Gelfand, an ethnographer who has done extensive research on the Shona people when he avers that, so important is the institution of marriage that man formulated a whole systematised order of marriage laws which aimed not only at the happiness of the couple but the establishment of peace between the families united in the marriage.¹²

Gestalt of the New Marriage Law

As has been alluded to in the foregoing section, marriage is one of the universally recognized social institutions. Yet it is obvious that disputes are universal social phenomena and marriage is not an exception to this very fact.¹³ Disputes in a marriage could be settled either in a formal court or customarily. This study interrogates how the New Marriage Law (Chapter 5:15) which was enacted in September 2022 by the Zimbabwean government correlates or clashes with the customary approaches to solving family disputes. This law has brought a radical change to the Marriage laws in Zimbabwe with the Marriage Act (Chapter 5:11) and Customary Marriages Act (Chapter 5:07) being repealed.

⁵ Fortune Sibanda and Bernard Pindukai Humbe, "Rethinking Indigenous Knowledge Systems in Systematic Problem-Solving and Decision-Making: A Case of Shona Indigenous Families," in *Re-Imagining Indigenous Knowledge and Practices in 21st Century Africa: Debunking Myths & Misconceptions for Conviviality and Sustainability*, ed. Tenson Muyambo, Anniegrace M. Hlatywayo, Pindai M. Sithole and Munyaradzi Mawere (Mankon, Bamenda: LangaaResearch & Publishing CIG, 2022), 343.

⁶ Temitayo Bello, "Arbitration Stencil As a Pathfinder for Resolving Family Disputes," Available at SSRN 3055677, 2017.

⁷ Bernard Pindukai Humbe, "The Clash of Indigenous Practices and Zimbabwean Law on Children and Youth amongst the Shona People," in *Law, Religion and the Family in Africa*, ed. Christian M. Green and Faith Kabata (Stellenbosch: African Sun Media, 2021), 205–15.

⁸ Molly Manyonganise and Lillian Mhuru, "A Bill from the Pit of Hell of Civil Partnerships, Marriage and Religion in Zimbabwe," in *Law, Religion and the Family in Africa*, ed. Christian M. Green and Faith Kabata (Stellenbosch: African Sun Media, 2021), 2–11.

⁹ Manyonganise and Mhuru, "A Bill from the Pit of Hell of Civil Partnerships, Marriage and Religion in Zimbabwe."

¹⁰ Manyonganise and Mhuru, "A Bill from the Pit of Hell of Civil Partnerships, Marriage and Religion in Zimbabwe."

¹¹ Pauli and Van Dijk, "Marriage as an End or the End of Marriage? Change and Continuity in Southern African Marriages." 261.

¹² Michael Gelfand, *The Genuine Shona: Survival Values of an African Culture* (Gweru: Mambo Press, 1992).

¹³ Midakso and Eshetic, "The Roles of Family Arbitrators in the Settlement of Disputes Arising out of Marriage and the Constraints Thereof: The Law and the Practice in Oromia National Regional State."

New concepts were introduced and of interest is the Civil Partnerships concept dimension for the interpretation of marriage relationships in society¹⁴. The new Marriages Act Chapter 5:15, defines Civil Partnership as a relationship between a man and a woman who—(a) are both over the age of eighteen years; and b) have lived together without legally being married to each other; and (c) are not within the degrees of affinity or consanguinity as provided in section 7; and (d) having regard to all the circumstances of their relationship, have a relationship as a couple living together on a genuine domestic basis; shall be regarded as being in a civil partnership for the purposes of determining the rights and obligations of the parties on dissolution of the relationship.¹⁵

The law recognizes two types of marriage: a monogamous union and a customary marriage, which is potentially polygamous. The inclusion of this civil partnership concept has sparked debate, especially in religious communities on who stands to benefit from them. Supporters of the superseded monogamous marriage (Chapter 5:07) view the Act as empowering people who are involved in extramarital affairs while the other camp regards the new law as being progressive but only that there is a serious misunderstanding of this new law coupled with many misconceptions of what the law entails. The contestations over civil partnerships emerged among gender rights groups when the law was enacted in September 2022. Furthermore, the new Act gives power to traditional leaders, who can now solemnise marriages making it localised for everyone intending to register their marriage of choice. The Act also abolishes the legal requirement for a groom to pay a bride price,¹⁶ which becomes one of the discontinuities of the Zimbabwe marriage institution.

CONCEPTUAL FRAMEWORK

This study adopted Alternative Dispute Resolution (ADR) as its conceptual framework. It is a method of settling disputes outside of the courtrooms where parties are able to do so with or without the assistance of an unbiased third party.¹⁷ Negotiation, arbitration, and conciliation are the three basic types of ADR.¹⁸ According to Fungai Chimwaurombe and Stacey Watungwa, people can benefit from ADR in the following ways: First of all, ADR grants parties a level of privacy that courts cannot provide since courts are open to the public. Secondly, ADR helps maintain good relationships between the wrangling parties.¹⁹ Additionally, the Canadian Department of Justice cites understanding children's needs, where children are able to see parents cooperating and some family dispute resolution processes can help improve the divorcing partners' ability to communicate with each other.²⁰

RESEARCH METHODOLOGY

Fieldwork for this study was carried out among the Shona²¹ communities of Manicaland and Masvingo Provinces in Zimbabwe. The research was done after the introduction of the New Marriage Law, that is, from October 2022 to August 2023. Twenty participants who were recruited voluntarily agreed to participate in the study. Data was collected using in-depth interviews with information-rich and experienced community elders and divorcees who consented to be available for interviews and observations of arbitration processes during *kuroora guva* rituals (paying bride price for a dead woman). Additionally, Focus Group Discussions (FGDs) with selected Manicaland and Masvingo communities were held. There was also a documentary analysis of print and electronic media to gather data on the responses of people to the new marriage law. In particular, document analysis encompassed

¹⁴ Fungai Chimwamuroombe and Stacey Watungwa, "Zimbabwe: Alternative Dispute Resolution- Part 1," 2022, <https://www.mondaq.com/arbitration--dispute-resolution/1253732/alternative-dispute-resolution--part-1>.

¹⁵ See Marriages Act [CHAPTER 5:15], Cap. 5:15 No. 1/2022

¹⁶ See Marriages Act [CHAPTER 5:15], Cap. 5:15 No. 1/2022

¹⁷ Chimwamuroombe and Watungwa, "Zimbabwe: Alternative Dispute Resolution- Part 1."

¹⁸ Chimwamuroombe and Watungwa, "Zimbabwe: Alternative Dispute Resolution- Part 1."

¹⁹ Chimwamuroombe and Watungwa, "Zimbabwe: Alternative Dispute Resolution- Part 1."

²⁰ Canada Department of Justice, "Family Dispute Resolution: Resolving Family Law Issues out of Court," n.d., <https://www.justice.gc.ca/eng/fl-df/pdf/fsfdr-firdf-eng.pdf>.

²¹ In Zimbabwe, the Shona people are a broad ethnic group made up of the *Karanga*, *Manyika*, *Ndau*, *Korekore* and *Zezuru*. However, in the context of this study on marriage disputes and arbitration, a specification on differences of these dialects is not done such that the Shona are treated as one group.

a review and analysis of the provisions of the Marriages Act Chapter 5:15, as well as related legal documents, policies, and reports.

FINDINGS AND DISCUSSIONS

New Marriage Law and Arbitration in Family Disputes in Zimbabwe

This section presents the research findings and discussion on the new Marriage Law and its implications on arbitration in family disputes among the Shona communities in Zimbabwe. During the fieldwork, it was discovered that the majority of family dispute cases are centred on marriage issues. These are usually solved at the family court level presided over by family arbitrators who include a nephew, father, mother, grandfather, grandmother, aunt, village head, headman and Chief. Notably, this set of traditional religious functionaries goes beyond the immediate and extended blood family members to encompass some of the communal elders.²²

An informant declared that since time immemorial, arbitrators have been formidable in all family problems among the Shona people especially in marriage disputes. They are not trained professionals but rely on indigenous knowledge systems especially from traditional religion²³ to deal with marital conflicts. Sibanda and Humbe, in a related study on problem-solving and decision-making in families, add that in some exceptional cases of conflict resolution, the expertise of traditional healers is utilised in Shona communities.²⁴

In this study's Focus Group Discussions (FGDs) it was noted that the majority of families in indigenous communities resort to the customary procedures in divorce mediation processes. In support of this view, an in-depth interviewee stated "They deal with all stages of the case from start (presentation of a *gupuro*²⁵ (divorce token)) up to the end, where damage compensation and returning of the wife to her paternal family are executed." In all the study areas, participants were in agreement that the age, sex, experience, and marital status of the arbitrators dealing with marital problems was very important as shall be seen in the proceeding paragraphs.

Small houses: a recipe for marriage disputes

From the FGDs held during the research, it was established that one of the biggest problems that has caused unending disputes in marriage among the Shona is the small house²⁶ phenomenon. One elderly woman believed that family marriage disputes explode when women in monogamous marriages suspect and or discover that their husbands have small houses. She further elaborated that when the alleged small house exists in reality, women feel challenged, disrespected and demeaned and that is why some violently fight both their husbands and their small houses.

Five male participants who had been involved in family disputes claimed that their involvement with small houses was based on some of the following reasons associated with their wives: having bad relations with their relatives, especially their mothers, laziness, filthiness, gossiping, poor performance in bed, bad cooking and the anticipation of having a male child. Notably, the disputes were solved at the family level and presided over by more than one arbitrator who included some of the following: nephew, father, aunt, and offender's brothers, with the nephew being the chief arbitrator. The stray men had to pay a fine of *makuku* (a cock) to their wives as a sign of admission of guilty, known as *matatenda ndava* in Shona. Once this fine is paid, the offender is expected not to commit the same crime again. The basis for dismissing their civil partnerships was the non-payment of *roora* as well as the failure of these men to initiate their small houses into the extended family through proper traditional marriage ceremonies. One elderly traditional leader reasoned that marriage is a communal institution

²²Sibanda and Humbe, "Rethinking Indigenous Knowledge Systems in Systematic Problem-Solving and Decision-Making: A Case of Shona Indigenous Families."

²³ This indigenous knowledge system transfer from generation to generation is achieved mainly through family socialization.

²⁴ Sibanda and Humbe, "Rethinking Indigenous Knowledge Systems in Systematic Problem-Solving and Decision-Making: A Case of Shona Indigenous Families," 369.

²⁵ *Gupuro* is a cultural token signifying dissolution of the bond of marriage. The token is produced accompanied by the following words "I cannot stay with you anymore as my spouse. Therefore I officially terminate our marriage union".

²⁶ In most cases, a married man is involved with another single woman secretly who is described as a 'small house', especially when she becomes a long-time partner outside a civil or customary marriage.

so a proper marriage is never done secretly. The arbitrators regarded it as *chihure* (prostitution) or extra-marital relations. Most of the women in monogamous marriages who were interviewed appreciated the family arbitration procedures, which culminated in dissolving the small houses partnerships and saving marriages from collapsing. Being aware of their detested status in the society, the alleged small house participants confirmed that they had not yet demanded any share of their civil partners' property for fear of societal ridicule though the new law empowered them to do so.

Arbitrator participants maintained that solving marital disputes of this nature relying on the New Marriage Law would be tantamount to promoting promiscuity in the society. This is because this new law barred the aggrieved wives from suing their husbands' small houses since civil partnerships were permitted to exist side by side with any other type of marriage such as Civil Marriage Chapter 5.11, Registered Customary Law Union 5.07, and Unregistered Customary Law Union. Under the new law, it is legally permissible for a man to have more than one family. However, in the event of dissolution of the partnership with the small houses, or the death of the husband, the small house is also entitled to property registered in the husband's name giving all women to be on the same status. The implication is that the small house cannot only benefit from the property which is proved beyond reasonable doubt that it is for the first wife. This partly explains why before it became law when the initial bill was announced in 2019, Molly Manyonganise and Lillian Mhuru described it as "A bill from the pit of hell"²⁷ showing its negative implications.

Due to the patriarchal cultural system, there is serious feminization of property entrenched in civil partnerships. Judith Kavu, a member of the Zimbabwe Widows, Widowers and Orphans Association said "We have been dealing with widows who are losing properties, vehicles and even savings just because they are considered girlfriends in the absence of *lobola*."²⁸ At this stage, it shows that family customary arbitration processes are not in harmony with the new law, which is disempowering the legitimate wife at the same time empowering small houses. However, lawyer Miriam Tose Majome of Veritas, a nongovernmental organization that acts as a legal and parliamentary watchdog, argues that "This must not be seen at all as a law that is out there to promote small houses."²⁹ The law is only there to make all people equal and not discriminate based on marriage status. In her submission, "The recognition of civil partnerships does not put any parties involved at a disadvantage."³⁰

In view of the above, the law is bringing complications and uncertainty in marriage disputes among the indigenous Shona people. By allowing people in marriage to have civil partners, it implies that the new law is fuelling family disputes and the resultant effect is that more deaths, injuries and destruction of property will be rife in the Shona contemporary world. This might be due to serious competition over the claims to inherited property, witchcraft practices and physical fighting. Participants opined that small houses are well known for using *mupfuhwira* (love potions) which have the effect of making men abandon their wives and children. Another problem associated with civil partnerships is Gender Based Violence (GBV), as was said by one participant.

In most cases which involved men with small houses, female participants confirmed that they were told that quitting marriage was not a solution since that is what men do. The above submission points to a dilemma that the women found themselves in. They were torn between personal feelings and societal expectations. Marriage obligations tie them and they had to sacrifice their feelings and rights on the altar of religio-cultural beliefs and gender. This resonates with the power dimension observed in existing literature in which marriage is a crisis or shaped by a social crisis characterised by unequal relations between genders that privilege the power, authority and interests of men.³¹ Moreover, as was also established in Birhanu and Serkalem's study findings, submitting family

²⁷ Manyonganise and Mhuru, "A Bill from the Pit of Hell of Civil Partnerships, Marriage and Religion in Zimbabwe."

²⁸ John Cassim, "Zimbabwe's New Marriage Law Give 'Girlfriends' Inheritance Rights," 2022, <https://www.aa.com.tr/en/africa/zimbabwe-s-new-marriage-law-give-girlfriends-inheritance-rights/2681788#>.

²⁹ Gamuchirai Masiwa, "New Law's Recognition of Civil Partnerships Stirs Controversy," Global Press Journal, 2023, <https://globalpressjournal.com/africa/zimbabwe/new-laws-recognition-civil-partnerships-stirs-controversy/>.

³⁰ Masiwa, "New Law's Recognition of Civil Partnerships Stirs Controversy."

³¹ Pauli and Van Dijk, "Marriage as an End or the End of Marriage? Change and Continuity in Southern African Marriages." 263.

disputes to family arbitration would help spouses avoid a sense of animosity by focusing on truth rather than entertaining false evidence.³²

Kuchaya mapoto (Cohabitation)

During an FGD in Manicaland, participants concurred that marriage has lost its sacredness among the Shona people because of the introduction of civil partnership which in essence recognises cohabitation. They maintained that cohabitation is another form of prostitution since the wife is not formally initiated into the husband's family through payment of the bridewealth. One participant clearly said that her husband does not make any effort to regularise the union through payment of bride wealth or at least to register but they have been staying together for the past fifteen years. She argued that her partner's failure to pay the bridewealth disempowered her socially for she had no entitlements accorded to married women. The fears of this participant have been addressed by the New Marriage Law. This is clarified by John Kavu who deliberates that the "unregistered unions have always been there but there were no laws to empower widows and even orphans from such unions."³³ The absence of these laws made the Shona society lack respect for the couple which is believed to be taking one another for a ride.

However, in a similar case in the study area of Masvingo Province, the findings revealed that customarily, women in cohabitation marriages were also empowered. This became clear when a man decided to divorce his wife he had cohabited with for ten years. Dissolution of the civil partnership was marred with serious disputes when the man refused to produce a token of divorce to his wife. In response, arbitrators from the wife's family advised their female relative to leave all her belongings which included clothes, kitchen utensils, grain and livestock. The move meant that culturally, the estranged woman was still married to her husband. In eventualities like death, the son-in-law would be expected to pay up all the bridewealth before the burial of his deceased wife. The other implication was that staying with an alien's belongings would attract vengeance from the spirits in the family. Through advice from the mediator in matters of marriage, after a few weeks, the man swiftly engaged arbitrators of the two disputing families for the sole purpose of making sure that relatives of his former wife collected her belongings. During the arbitration procedures, the first step was that the husband handed over a token of divorce to the wife to officially end their marriage. The second stage was compensation to the in-laws through payment of money and cattle. The figure of the money and the number of beasts paid were reached by considering the number of years the two had spent together cohabiting, the number of children born out of this partnership, and the GBV cases the divorced woman experienced.

In cohabitation unions, it can be noted that the New Marriage Law helps in protecting women from toxic masculinities. In addition to the compensation, the law prescribes that the woman should get a share of the property which is in the man's name. This is supported by legal analyst Zoro who thinks that most women in Zimbabwe have not had their *lobola*, or bride price paid, yet they have built homes and acquired properties with their husbands and often the wives and even children sired out of these unions are left out of the inheritance.³⁴ So in this case, the rights of women in cohabitation marriages are being recognised.

From another angle, one participant responded by saying the new Act has also disadvantaged men in civil partnerships. She argued that husbands no longer have exclusive sexual rights over their wives, likewise, a woman can have a civil partner while she is in a civil marriage or customary marriage. The participant cited sexual dysfunction as one of the causes for married women to have civil partners. Given this scenario, some male informants complained about illegitimate children in families. This is because way before the promulgation of this New Marriage Law, a lot of families have been having disputes regarding children's paternity. So, participants opposed to the new law

³² Midakso and Eshetie, "The Roles of Family Arbitrators in the Settlement of Disputes Arising out of Marriage and the Constraints Thereof: The Law and the Practice in Oromia National Regional State."

³³ Cassim, "Zimbabwe's New Marriage Law Give 'Girlfriends' Inheritance Rights."

³⁴ Cassim, "Zimbabwe's New Marriage Law Give 'Girlfriends' Inheritance Rights."

emphasized that it was not in sync with the values of the indigenous Shona people. They charged that their culture was now being violated by solemnizing promiscuity.

Vana vemusango (Children born out of wedlock)

Another issue which require arbitration in family disputes concerns children born out of wedlock popularly known as *vana vemusango*. The disputes are usually witnessed when the children come to join their father's family. In the context of this study, *vana vemusango* is derogatorily applied to children whose mother is not known by the relatives of their father. The children are illegitimate till they are initiated into their father's family through arbitration. Participants averred that as long as they remain secret, they have nothing to inherit after the death of their father or the dissolution of their parents' partnership. In a case witnessed by researchers, the integration of the children with their paternal relatives involved arbitration coordinated by a go-between and nephew. Maternal relatives were compensated with *mombe dzechiredzwa*, which are cattle beasts paid for the upbringing of the children during the absence of the paternal father. The arbitrators went on to convince the stepmother to take care of the stepchildren who had just joined their paternal family. According to one elderly participant, this is the reason why in some cases, playing a motherly role to stepchildren results in rewards as big as getting cattle when the stepchildren get married. Bringing the children born out of wedlock to their father's family has some traditional religious significance. It appeases the ancestral spirits who are the guardians of the family. This is supported by Midakso and Eshetie who opine that family arbitration has a significant role in keeping children safe and protecting them from multiple problems.³⁵ The arbitration guarantees socio-economic security for the children born out of wedlock.

The Supremacy of Indigenous Custom in Family Disputes and Arbitration: Insistence or Resistance? Critical Reflections

From the findings of the study, family arbitration is a way of resolving disputes between separating couples, whether or not they are formerly married. Since the promulgation of the New Marriage Law, some family disputes have been witnessed which point to either the insistence of the customary proceedings backed by the New Marriage Law or resistance of New Marriage Law in approach to managing the disputes. There is a way in which the new law is very sincere to the Shona people's cultural values especially if guided by the Alternative Dispute Resolution framework. For example, in Manicaland, there is a practice known as *kuroora guva* (marrying the grave of a dead wife). This is done to men who do not pay bridewealth for their wives though they were in a civil registered partnership. Relatives of the deceased woman do not cooperate in burial proceedings till their son-in-law pays the bridewealth understood to be live cattle beasts by this study's participants. Traditional leaders and community elders are also among the arbiters in this family dispute. It is against this backdrop that the arbitration procedure derives its power from the woman's dead body, which makes the husband accept his mistake of not paying the bridewealth when his wife was still alive. So the *kuroora guva* in this way dismisses the New Marriage Law dispensation. If the corpse is buried without performing this crucial rite, both marital and paternal families would be troubled by the spirit of the dead woman, which is marital *ngozi*.³⁶ Thus, in accordance with the Alternative Dispute Resolution framework, traditional institutions, sites and objects play "a quasi-religious role" in the arbitration, mediation, conciliation and reconciliation of conflicts. This to the reality of the Shona proverb which says "*Mushonga wengozi kuiripa*" (Restitution or compensation is the best solution to pacify an aggrieved spirit).³⁷ It also goes on to show the African belief that death is not the end of life. The Kenyan African theologian, John Mbiti, asserted that the dead are the "living dead"³⁸ and still influential in the life of the living.

³⁵ Midakso and Eshetie, "The Roles of Family Arbitrators in the Settlement of Disputes Arising out of Marriage and the Constraints Thereof: The Law and the Practice in Oromia National Regional State."

³⁶ Fortune Sibanda, "Avenging Spirits and the Vitality of African Traditional Law, Customs and Religion in Contemporary Zimbabwe," *Religious Freedom and Religious Pluralism in Africa: Prospects and Limitations* (Stellenbosch: African SUN Media, 2016) 347.

³⁷ Sibanda, "Avenging Spirits and the Vitality of African Traditional Law, Customs and Religion in Contemporary Zimbabwe."

³⁸ John S. Mbiti, *African Religions & Philosophy* (Oxford: Heinemann, 1990).

Despite the full use of the new law, the Shona society still continues to regard an affair with a married wife as adultery and illegal. Barely two months after the promulgation of this new law, a man and a woman who had a civil partnership got laminated after having sexual intercourse. In Shona, it is called *runyoka*. So they kept laminated to each other and later both died. The new law allowed the partnership but for the Shona, it is a taboo. So, in line with the Alternative Dispute Resolution framework, *runyoka* has been widely used especially to establish truth in extramarital sexual relationships, and guilt and to discourage dishonest attitudes and evil actions.

However, there also exist other practical challenges that affect the fairness and effectiveness of family arbitration in the study areas. The legal knowledge of the arbitrators, which did not enable them to decide according to the laws, is a challenge associated with the system of family arbitration.³⁹ In some cases, the values and beliefs of the communities in which the arbitrators live affect the fairness of their decisions. In such cases, it may be naïve to expect arbitrators to decide against commonly accepted norms and values. It was noted that traditional leaders have just lost their value of being custodians of culture, for example, by recognizing promiscuous relationships as legitimate yet most of the arbitrations in family marriage disputes are presided over by family elders and traditional chiefs. The thrust of arbitration in marriage disputes in line with the Alternative Dispute Resolution framework is not wholly centred on property sharing but on discouraging these civil partnerships to maintain sexual moral values in communities.

RECOMMENDATIONS

To ensure the compatibility between the law and the culture, and make family arbitration effective, equitable and context-sensitive, the study recommends the need for proper harmonization between the law and the culture of the society by concerned stakeholders.⁴⁰ This is because the ADR in African mechanisms of conflict prevention, management and resolution are largely effective and respected, and their decisions are binding on all parties, mainly because “the identity of an individual is linked to that of his or her family and these families are formed by the acceptance of marriage alliances.”⁴¹

CONCLUSION

The research has demonstrated that the New Marriages Act (Chapter 5:15) resulted in a number of intricate legal provisions and societal changes in gender dynamics and power relations in Zimbabwe’s Second Republic. Put differently, the Act unraveled the status quo with regard to gender equality, especially in a context where patriarchal customs and values were historically prevalent in marriage practices. However, this Act raises some eyebrows on the issue of civil partnerships. Having utilised Alternative Dispute Resolution as a conceptual framework in the context of the Shona indigenous communities, one would view civil partnerships with a married partner as attacking the sanctity of marriage or civil unions. Besides, the study uncovered that the new marriage law lacked a strong Afrocentric socio-cultural base during its enactment, which in turn has led to its unsatisfactory implementation as evidenced by the uproar it caused in the Zimbabwean society. Because traditions are hard to change, clashes between customary and statutory legal frameworks were inevitable in the Zimbabwean context, showing the challenges of harmonising modern and indigenous views on marriage and family. Essentially, the march on changing meanings and practices of the new marriage law, disputes, and arbitration has not ended in Zimbabwe as it continues unabated. The study can be a basis for evaluating future legal reforms, the role of arbitration in family disputes and policy-making in Zimbabwe. Therefore, the study concludes that the New Marriages Act (Chapter 5:15) is an ambivalent legal framework that requires continual interrogation among different stakeholders for the promotion of sustainable marriage unions and family law that is responsive, fair and culturally compatible in post-colonial Zimbabwe.

³⁹ Midakso and Eshetie, “The Roles of Family Arbitrators in the Settlement of Disputes Arising out of Marriage and the Constraints Thereof: The Law and the Practice in Oromia National Regional State.”

⁴⁰ Midakso and Eshetie, “The Roles of Family Arbitrators in the Settlement of Disputes Arising out of Marriage and the Constraints Thereof: The Law and the Practice in Oromia National Regional State.”

⁴¹ Chimwamurombe and Watungwa, “Zimbabwe: Alternative Dispute Resolution- Part 1.”

BIBLIOGRAPHY

- Bello, Temitayo. "Arbitration Stencil As a Pathfinder for Resolving Family Disputes." Available at SSRN 3055677, 2017.
- Canada Department of Justice. "Family Dispute Resolution: Resolving Family Law Issues out of Court," n.d. <https://www.justice.gc.ca/eng/fl-df/pdf/fsfdr-firdf-eng.pdf>.
- Cassim, John. "Zimbabwe's New Marriage Law Give 'Girlfriends' Inheritance Rights," 2022. <https://www.aa.com.tr/en/africa/zimbabwe-s-new-marriage-law-give-girlfriends-inheritance-rights/2681788#>.
- Chimwamurombe, Fungai, and Stacey Watungwa. "Zimbabwe: Alternative Dispute Resolution- Part 1," 2022. <https://www.mondaq.com/arbitration--dispute-resolution/1253732/alternative-dispute-resolution--part-1>.
- Gelfand, M. *The Genuine Shona: Survival Values of an African Culture*. Gweru: Mambo Press, 1992.
- Humbe, Bernard Pindukai. "The Clash of Indigenous Practices and Zimbabwean Law on Children and Youth amongst the Shona People." In *Law, Religion and the Family in Africa*, edited by Christian M. Green and Faith Kabata, 205–15. Stellenbosch: African Sun Media, 2021.
- Kisthardt, Mary Kay. "The Use of Mediation and Arbitration for Resolving Family Conflicts: What Lawyers Think About Them," n.d. <https://www.aaml.org/wp-content/uploads/TheUseofMediationandArbitrationforResolvingFamilyConflicts-1.pdf>.
- Manyonganise, Molly, and Lillian Mhuru. "A Bill from the Pit of Hell of Civil Partnerships, Marriage and Religion in Zimbabwe." In *Law, Religion and the Family in Africa*, edited by Christian M. Green and Faith Kabata, 2–11. Stellenbosch: African Sun Media, 2021.
- Masiwa, Gamuchirai. "New Law's Recognition of Civil Partnerships Stirs Controversy." *Global Press Journal*, 2023. <https://globalpressjournal.com/africa/zimbabwe/new-laws-recognition-civil-partnerships-stirs-controversy/>.
- Mbiti, John S. *African Religions & Philosophy*. Oxford: Heinemann, 1990.
- Midakso, Birhanu, and Serkalem Eshetie. "The Roles of Family Arbitrators in the Settlement of Disputes Arising out of Marriage and the Constraints Thereof: The Law and the Practice in Oromia National Regional State." *East African Journal of Social Sciences and Humanities* 3, no. 1 (2018): 87–104.
- Pauli, Julia, and Rijk Van Dijk. "Marriage as an End or the End of Marriage? Change and Continuity in Southern African Marriages." *Anthropology Southern Africa*. Taylor & Francis, 2016.
- Sibanda, Fortune. "Avenging Spirits and the Vitality of African Traditional Law, Customs and Religion in Contemporary Zimbabwe." In *Religious Freedom and Religious Pluralism in Africa: Prospects and Limitations*, edited by Pieter Coertzen, M. Christian Green and Len Hansen, 345-360. Stellenbosch: African Sun Media, 2016.
- Sibanda, Fortune, and Bernard Pindukai Humbe. "Rethinking Indigenous Knowledge Systems in Systematic Problem-Solving and Decision-Making: A Case of Shona Indigenous Families." In *Re-Imagining Indigenous Knowledge and Practices in 21st Century Africa: Debunking Myths & Misconceptions for Conviviality and Sustainability*, edited by Tenson Muyambo, Anniegrace M. Hlatywayo, Pindai M. Sithole and Munyaradzi Mawere, 365-379. 2022.

ABOUT AUTHORS

Bernard Pindukai Humbe (PhD) is a Postdoctoral Fellow in the Department of Religion Studies, University of the Free State, Bloemfontein, South Africa. He is also a Senior Lecturer in the Department of Ethics, Philosophy, Religion and Theology Studies, Great Zimbabwe University, Masvingo, Zimbabwe. His areas of research interest include: African Indigenous Religion, African Christianity, Inter Religious Dialogue, African Indigenous Religious Knowledge Systems and African Traditional Healing Systems.

Fortune Sibanda (DPhil) is a Professor of Religious Studies in the Department of Theology and Religious Studies, University of Eswatini, Eswatini. He is also an Academic Associate/Research

Fellow, Research Institute for Theology and Religion, College of Human Sciences, University of South Africa. His research interests include new religious movements, indigenous knowledge systems, human rights issues, religion and the environment, law and religion, religion and health. Professor Sibanda is a member of a number of academic associations including the American Academy of Religion (AAR) and African Consortium for Law and Religion Studies (ACLARS).