

22 DOMESTIC VIOLENCE LEGISLATION IN ZIMBABWE: PROBING INTO THE SECURITY OF WOMEN IN RURAL COMMUNITIES

Elias G. Konyana¹

INTRODUCTION

Domestic violence is violence that happens between family members in the home. In most cases, domestic violence is understood as violence against women and girls, although men and boys may also be victims. Where women and girls are victims, domestic violence is also referred to as gender-based violence (GBV) because of the gender stereotypes that subordinate women and girls to men and boys. The United Nations, through the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), defines GBV as “violence that is directed against a woman because she is a woman or that affects women disproportionately”.² This definition suggests that, generally, women are victims of male violence. However, even when it is the focus of CEDAW to protect women from male violence, domestic violence also affects men and boys in the home.

Domestic violence can be defined differently. Feminists define it as “violence which is a consequence of patriarchy and is part of a systematic attempt to maintain male dominance in the home and in society.”³ Although there are other causes, this definition focuses on patriarchy as the major cause and bastion of domestic violence. Samuel Maruta, a behavioural psychologist, maintains that domestic violence can broadly be defined as a pattern of abusive behaviours by one or both partners in an intimate relationship.⁴ His definition suggests that domestic violence can be a pattern of coercive and assaultive behaviour that a partner wields to effect control over his or her intimate partner. Furthermore, some social scientists⁵ also define domestic violence as “household-based violence or sexual partner violence”,

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- 1 Lecturer, Department of Philosophy and Religious Studies, School of Arts, Culture and Heritage Studies, Great Zimbabwe University.
 - 2 Zimbabwe Women Lawyers Association. 2011. “Gender-Based Violence in Zimbabwe”, *The Human Rights Bulletin* 18:1.
 - 3 Knickmeyer N, Levitt HM, Horne SG et al. 2003. “Responding to Mixed Messages and Double Binds: Religious Oriented Coping Strategies of Christian Battered Women”, *Journal of Religion and Abuse* 5:30.
 - 4 Maruta S. 2011. *Understanding the Impact of Domestic Violence on the Work of Organisations and Institutions in Ruwa, Zimbabwe*. Harare: Southern Institute of Peace-Building and Development, 3.
 - 5 See Burrill E, Roberts R and Thornberry E (eds). 2010. *Domestic Violence and the Law in Colonial and Post-colonial Africa*. Athens: Ohio University Press, 231.

while one feminist and family violence researcher⁶ refers to domestic violence as “intimate partner violence which disproportionately affects married women”.

The definitions given above show that domestic violence is a global existential problem that affects intimate couples.⁷ The definitions also indicate that domestic violence is a household or family-related problem, which usually affects everyone in the home. This implies that domestic violence is a threat to the existence and stability of the family as an institution. Realising the threat domestic violence poses to families, many countries are fighting to end domestic violence and they use different strategies ranging from counselling of both victim and villain to incarceration of perpetrators. The latter approach falls under the criminal justice system. This approach has seen many countries across the world crafting and implementing criminal laws aimed to end violence in homes.⁸ However, the effectiveness of the criminal justice system approach has remained suspicious in light of the pervasiveness of the problem.

In line with the global legal responses to the domestic violence quandary, Zimbabwe promulgated the Domestic Violence Act (DVA) on 26 February 2007 to protect victims and punish perpetrators.⁹ Prior to the enactment of the DVA, domestic violence issues used to be dealt with under the Criminal Law (Codification and Reform) Act of the Zimbabwe Constitution.¹⁰ Chapter 5, Part III of the Criminal Law (Codification and Reform) Act bunched domestic violence as part of the sexual crimes such as rape, aggravated indecent assault or simply indecent assault.¹¹ This means that there was no specific penal law governing cases of violence within the

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- 6 Cusack J. 2013. “A Feminist Inquiry into Intimate Partner Violence Law, Policy, Policing Possible Prejudices in Alaska”, *Journal of Law and Conflict Resolution* 5(2):24.
 - 7 While domestic violence also occurs in same-sex relationships, this chapter is limited to domestic violence in heterosexual relationships. See Cruz JM. 1996. *Domestic Violence in Same-Sex Relationships*. Texas: Denton Publishers, ii.
 - 8 See Bassadien SR and Hochfield T. 2013. “Across the Public/Private Boundary: Contextualising Domestic Violence in South Africa”, *Agenda* 66(1):4-15; Moulton K. 2005. “Providing a Sense of Justice: Informal Mechanisms for Dealing with Domestic Violence”, *South African Crime Quarterly* 12:18-22; Venganai H. 2015. “(Re)constructing Positive Cultures to Protect Girls and Women Against Sexual Violence”, *Agenda* 29(3):145-154.
 - 9 Mutandwa C. 2012. *How Can Criminal Justice Work Constructively with Shona Justice to provide Effective Remedies to Child Sexual Abuse Survivors?* Strandgade: The Danish Institute for Human Rights, 18.
 - 10 The Constitution of Zimbabwe is divided into several Chapters. The Domestic Violence Act (ch 5:16) is a law specifically crafted to deal with issues of all forms of violence in the home. It is an Act of Parliament (Act No. 14 of 2006) which became effective in February 2007. Before 2007, domestic violence issues used to be dealt with under Division B (Sexual Crimes) of ch 5, pt III (Sexual Crimes and Crimes Against Morality) of the broader Criminal Law (Codification and Reform) [ch 9:23]. Online at: https://www.constituteproject.org/constitution/zimbabwe_2013.pdf
 - 11 Konyana E. 2016. *When culture and the Law meet: An ethical analysis of the interplay between the Domestic Violence Act and the traditional beliefs and cultural practices of the Ndaue people in Zimbabwe*, PhD Diss, University of KwaZulu-Natal, 37.

family setup. Another setback was that domestic violence was not clearly defined and understood as a crime worth taking to the public domain for prosecution. It was treated as a “private” family matter that could be dealt with by family members at the family level. Hence forward, the major thrust of the government and non-governmental organisations (NGOs) was to mobilise social institutions to increase the range of formal laws to curtail domestic violence occurrences in homes. This approach is rooted in Occidental theories of deterrence and control mechanisms which emphasise the application of legal processes that involve arrest and prosecution of assailants, or the threat of prohibitions and legal remedies that attract penalties when violated.¹² However, the effectiveness of this approach in Africa remains a cause for concern, particularly in rural communities where culture and patriarchal control are strong.

In Zimbabwe, the DVA is a deterrent legal instrument whose effect is under scrutiny. While the law criminalises various forms of violence that take place in the home such as physical, psychological, economic and sexual assault, Section 3(1) of the same law further states that, within the ambit of domestic violence, “cultural or customary rites or practices that discriminate against or degrade women” are also acts of domestic violence.¹³ It can be noted, however, that the definitions of domestic violence so far given are not comprehensive enough to include cultural or customary practices in the domestic violence framework. This shows that there is a difference in approach between the criminal law and customary laws. It is therefore justified to conclude that the criminal law was designed to exert retributive penalties on perpetrators of domestic violence, and not necessarily on actions and practices that are often culturally permissible, which were dealt with under customary laws. However, ten years after the law became effective, domestic violence has remained as a real threat to family peace. There is little evidence to demonstrate the efficacy of the law as a deterrent to perpetrators of domestic violence in Zimbabwe, particularly in rural communities.¹⁴ This is largely because the use of the DVA by ethnic rural people has presented dilemmas for victims, who usually have to make difficult decisions about reporting domestic abuses to criminal law-enforcement agents.

Given the background outlined above, this chapter argues that implementing the DVA in rural communities needs to be re-investigated, so as to address cultural practices that foment domestic violence.¹⁵ This chapter focuses on cultural practices

12 Stewart A. 2001. “Policing Domestic Violence: An Overview of Emerging Issues”, *International Journal of Police Practice and Research* 2:455.

13 Constitution of Zimbabwe, The Domestic Violence Act [DVA] (ch 5:16), sec 3(1), (2006), (a-l).

14 This is based on media reports and research which show that cases of domestic violence are on the rise, notwithstanding the DVA. See Matinkinye R. 2005. “Domestic Violence Act stirs fiery debate”, *The Zimbabwe Independent*, 18 February; Nyamundanda CF. 2016. “Dilemma of domestic violence victims”, *The Sunday Mail*, 28 February; Chuma M and Chazovachii B. 2012. “Domestic Violence Act: Opportunities and Challenges for women in rural areas: The case of Ward 3, Mwenezi District, Zimbabwe”, *International Journal of Politics and Good Governance* 3:1-18.

15 For detailed data on women’s apprehensive use or non-use of the provisions of the legislation on domestic violence see Artz L. 2011. “Fear or Failure? Why Victims of Domestic

in Zimbabwe and how they make it difficult for the DVA to work effectively to end domestic violence in rural areas. Women¹⁶ in rural areas suffer the double tragedy of being illiterate about civil legal remedies to domestic violence and being far away from legal facilities such as courts and counselling services which are found in towns and cities. Above it all, they also suffer the overbearing pressure of ingrained cultural practices that make it difficult to break the silence and report abuse by close family members such as husbands. In the final analysis, the chapter provides insight into how the DVA can be improved, so that it effectively protects rural women from domestic violence.

THE DOMESTIC VIOLENCE ACT (DVA) OF ZIMBABWE

The Constitution is underpinned by the values and principles of gender equality, which focus on the removal of all forms of violence, be it public or private, from society. To this extent, Section 80(3) states, "All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement."¹⁷ This is in recognition of the fact that, despite the existence of good laws and policies, harmful cultural practices and gender inequalities still persist in Zimbabwean society.

A number of legal provisions seek to implement the progressive principles enshrined in the Constitution by outlawing any cultural practices that are regarded as harmful to women and men. However, in practice, most of the cultural practices have religious dimensions which make them difficult to eradicate. Some of the practices include virginity testing, female genital mutilation, arranged and child marriages, initiation rites that culminate in male circumcision, and the pledging of women and girls for purposes of appeasing spirits or as compensation for a family debt or obligation.¹⁸ In this chapter, focus is on the ethical impact of the rural people's compliance with the DVA as a criminal justice approach to end violence between intimate partners.

Violence Retract from the Criminal Justice Process", *South African Crime Quarterly* 37:3-10; Chireshe E. 2015. "Barriers to the Utilisation of Provisions of the Zimbabwean Domestic Violence Act among Abused Christian Women in Zimbabwe", *Journal of International Women's Studies* 16(2):259-273; Stewart A. 2001. "Policing Domestic Violence: An Overview of Emerging Issues", *International Journal of Police Practice and Research* 2:455; Mapuranga TP. 2010. *A Phenomenological Investigation into the Effects of Traditional Beliefs and Practices on Women and HIV & AIDS, with Special Reference to Chipinge District, Zimbabwe*. Harare: University of Zimbabwe; Venganai, "(Re)constructing Positive Cultures to Protect Girls and Women Against Sexual Violence".

16 Admittedly, domestic violence affects all – women, children and men. However, women continue to bear the brunt of domestic violence. In this chapter, focus is on the vulnerability of women in rural communities, where cultural adherence is still strong.

17 Chirawu S. 2013. "Challenges to Outlawing Harmful Cultural Practices for Zimbabwean Women", *Perspectives in Africa* 3:15.

18 Zimbabwe National Gender-Based Strategy, 2012–2015, 2.

The DVA is a criminal law which belongs to the Criminal Law (Codification and Reform) Act (Chapter 9:23) of the criminal justice system in Zimbabwe. This law can be described as a coercive criminal justice strategy that has been promulgated as the appropriate legal response to control and deter perpetrators of domestic violence. It demands that any perpetrator of domestic violence should be reported to the law-enforcement agents for arrest and “prosecution aimed at punishment upon conviction”.¹⁹ However, victims are often unwilling to report their abusers who, in some cases, are their close relatives. The Act also stipulates that no survivor of domestic violence can get legal protection or medical treatment until a *prima facie* case of domestic violence has been reported directly by the abused or by the complainant’s representative.²⁰ This means that the law makes it obligatory for the offended partner to initiate the justice process by approaching the police either in person or through a proxy, as is required for all criminal cases. The implication is that, without the survivor of domestic abuse or the survivor’s proxy making incriminating reports of abuse, no arrests and prosecutions can take place. Thus, the survivor’s or proxy’s initiative to seek legal justice and the ability to last the entire prosecution process until conviction of the offender is key to the effectiveness of the DVA.

MARRIAGE LAWS IN ZIMBABWE

Zimbabwe has a dual legal system made up of the general law (Roman-Dutch Common Law and Statutes) and the African Customary Law, which exist and run simultaneously.²¹ The general law takes care of all civil public cases, as specified in the Constitution, while the customary law, which is founded on the indigenous people’s culture and traditions, is mainly used to deal with cases that happen in rural communities. In some instances, however, the general law overrides the customary law, leading to clashes and complications. With regard to marriage, Zimbabwe is an African country with a wide range of marriage types from which citizens may choose. As Rumbidzai Dube, a senior research and advocacy officer in Zimbabwe, puts it, “one can choose to co-habit, to get married in an unregistered customary law union, to be in a registered customary marriage or to be in a civil marriage.”²² Interestingly though, the two legal systems of are complementary and they recognise each other’s judgments.

All of these unions are permissible in Zimbabwe and couples are affected differently depending on the union they are in. The rights and duties accruing to partners in each marriage union differ with the type of marriage chosen. For example, the civil marriage law stipulates that couples are equal before the law and share ownership

19 Mutandwa, *How Can Criminal Justice Work Constructively with Shona Justice?*, 18.

20 Constitution of Zimbabwe, The Domestic Violence Act (ch 5:16), sec 2(1 & 2).

21 Mutandwa, *How Can Criminal Justice Work Constructively with Shona Justice?*, 18.

22 Dube R. 2013. “Till Death Do Us Part? Marriage in Zimbabwe”, *Research and Advocacy Unit*, 1.

of everything they have, from movable to immovable properties. In the event of death, there is no legal discrimination against women with respect to inheritance rights.²³ However, customary marriages in Zimbabwe are usually facilitated and controlled by patriarchal tribal leaders, who seldom subscribe to the notion of equality between husband and wife in a marriage.

Customary or traditional marriages are governed by customary laws, while civil marriages are superintended by general laws.²⁴ In the majority of marriages, the choice of the type of marriage union is often made by the male partner. Consequently, the advantages of being in one type of marriage union as compared to another are enjoyed by the male partner, while the negative consequences mainly affect the female partner or partners.²⁵ This dual legal system in the country has produced a pluralistic marriage system, such that Zimbabweans from different cultural backgrounds have a wide range of customary marriages under which they can marry. Naturally, therefore, customary marriages provide a platform for different ethnic groups to engage in their cultural marriage practices, some of which are proscribed by the general laws. The next section focuses on how Ndaus²⁶ customary marriage practices foment violence against women.

CUSTOMARY MARRIAGE PRACTICES THAT FOMENT DOMESTIC VIOLENCE

Marriage among the Ndaus follows marriage patterns in other parts of Zimbabwe and Africa. Marriage in Sub-Saharan Africa has commonly been described as coming early in the lives of the marrying parties.²⁷ He further argues that marriage patterns vary across and within African countries among different ethnic groups. The variations are attributed to cultural and socio-economic factors. As has been pointed out in the preceding section, the dual legal system in Zimbabwe also contributes to the existence of different marriage patterns and practices.

The customary marriages available to the Ndaus and other Shona-speaking people in Zimbabwe expose married women to various forms of domestic violence. Elsewhere in Africa, social anthropologists such as Fontes and McCleskey claim that "certain forms of violence against women are deeply embedded in specific cultural contexts".²⁸ Indeed, among the Ndaus and other Shona-speaking people, customary

23 Dube, "Till Death Do Us Part?", 6.

24 Mutandwa, *How Can Criminal Justice Work Constructively with Shona Justice?*, 18.

25 Dube, "Till Death Do Us Part?", 1.

26 Zimbabwe has several ethnic Shona-speaking groups. The Ndaus are one of them. Others are the Zezuru, Karanga, Manyika and Korekore. This chapter focuses on the Ndaus as a case study, but also makes reference to women in rural Shona communities from across these groups.

27 Arnaldo C. 2004. "Ethnicity and Marriage Patterns in Mozambique", *Population Studies* 19(1):143.

28 Fontes LA and McCleskey KA. 2011. "Cultural Issues in Violence Against Women", in Renzetti CM, Edleson JK and Bergen RK (eds). *Sourcebook on Violence Against Women*.

marriages such as girl-child pledging (*kuputsa/kuzvarira*), levirate marriages (*nhaka*) and appeasement of avenging spirits using a girl child (*kuripa ngozi*) are still being practised and expose women to violence. Above all, the customary practice of paying bride price (*roora/lobola*) also contributes to the pervasiveness of the domestic violence problem. These marriage practices set forth below have continued to exist and they pose challenges for the effective implementation of the DVA in the rural communities where they are practised.

Girl-child pledging

Girl-child pledging (*kuputsa/kuzvarira*) is a customary marriage practice which is usually initiated by a poor family during drought or when the head of the family has a heavy fine or debt to settle.²⁹ The head of the poor family approaches the head of a rich family and pledges to offer his daughter, sometimes as young as eight years old or even at birth, as a wife in exchange for food or other items such as money or cattle. Usually, the girl's father enters into this kind of arrangement either to avert hunger affecting the entire family or to settle a crime committed for which a heavy fine would be needed.³⁰ Once the agreement has been concluded between the two heads of families, the young girl can remain in her father's home until she is grown up enough to leave for her husband's home. In this customary marriage arrangement, the girl's age and consent are of no consequence to the agreement, making the practice the basis upon which other forms of domestic violence arise. However, although the Constitution proscribes and criminalises underage marriages, such marriages continue especially in rural areas and no arrests are made. This presents a clear case of the conflict between custom and constitution.

While the customary marriage practice of girl-child pledging has the noble intention of saving the entire family from either family starvation or being in perpetual debt, it exposes the girl child to at least three forms of domestic violence. First, that the girl's consent is not sought after is a gross violation of her right to choose a marriage partner for herself. The girl is emotionally abused when she is forced to stay for the rest of her life with someone she never chose as a partner. Second, due to her young age, the girl is sexually violated when she is made a wife at below the age of eighteen years. The girl is sexually abused, because apparently customary law marriages do not specify the marriageable age for the girl as does the civil law.³¹ Third, the girl's hopes for a brighter future are shattered. As soon as she becomes

Second Edition. Thousand Oaks, CA: Sage, 151.

29 Mawere M. 2012. "Violation and Abuse of Women's Human Rights in the Customary Practice of *Kuzvarira* among the Ndaou people of Mozambique", *International Journal Politics and Good Governance* 3(3):6-8.

30 Mawere, "Violation and Abuse of Women's Human Rights in the Customary Practice of *Kuzvarira*".

31 The DVA prohibits marriage for girls aged below sixteen years and boys below eighteen years. However, recently the Constitutional Court of Zimbabwe ruled that the marriageable age is now eighteen years for both boys and girls in line with the new constitution. "ConCourt Ruling Commendable", *NewsDay*, 22 January 2016.

a mother, she misses out on education and all the good prospects that come with it. The Ndaou word for this aspect of the girl's life experience when pledged is *kuputsa*, which literally means "to break". Thus, *kuputsa* (to break) implies a form of economic or success dispossession or withdrawal for the girl child. This is a serious form of domestic violence which comes from the practice and it has a life-time negative impact on the girl child.

The levirate marriage

Levirate marriage (*kugar(w)a nhaka*) is another customary marriage union which has the potential to cause domestic violence between partners. When a woman's husband dies, she is expected to continue living in her late husband's home and family so that she can be inherited together with the deceased's children and property. It is usually the deceased's brother (*munin'ina*) or sister's son (*muzukuru*) who is tasked with the responsibility to become the new husband to the widow.³² The idea behind this arrangement is that the deceased's family members need a father-figure (*sara pavana*) to look after them.

However, sometimes the new husband becomes reckless with the property inherited and may end up neglecting his responsibilities. He may even decide to sell the deceased man's property against the wishes of the inherited wife. When this happens, quarrels and fights may ensue between them. Cases of violence emanating from troubled levirate marriages are often reported and heard at village head's and chief's traditional courts for reconciliation.³³ Though the main concern of levirate marriages is the welfare of the widow and her children, this marriage arrangement often leads to domestic violence around property management and sex. In this era of HIV/AIDS, the inherited woman, whether she is HIV positive or not, may not want to engage in sexual intercourse with her new husband for fear of either spreading or contracting the virus. Consequently, the man is denied conjugal rights, which is a form of domestic violence difficult to report to the police for redress.

Appeasement of avenging spirits

Another customary marriage arrangement that breeds domestic violence is the handing-over of a girl child as a wife for the appeasement of an avenging spirit (*kuripa ngozi*). The Ndaou, along with the rest of Shona-speaking people, believe in the influence of spirits in their lives.³⁴ An avenging spirit (*ngozi*) is believed to be

32 Konyana S and Konyana EG. 2014. "Cultural Dynamism: Interrogating the Source of Conflict on Death and Post-burial Practices among the Ndaou People of Chipinge district in Zimbabwe", in Oguntola-Laguda D (ed). *Death and Life After Death in African Philosophy and Religion: A Multidisciplinary Engagement*. Harare: Africa Institute for Culture, Peace, Dialogue and Tolerance Studies, 217.

33 Bourdillon M. 1991. *The Shona Peoples: An Ethnography of the Contemporary Shona, with Special Reference to their Religion*. Gweru: Mambo Press, 135-136.

34 Moyana HV. 1984. *The Political Economy of Land in Zimbabwe*. Gweru: Mambo Press, 91.

an angry spirit of a person who was killed and comes back to seek revenge. The deceased person could have been killed accidentally or deliberately but was not appeased or compensated afterwards. The Ndaу people believe that an angry spirit can cause illnesses and other misfortunes in the alleged murderer's family until it is appeased.³⁵ If the deceased was an unmarried man, the family suspected of killing him has to give a daughter to the family whose member was killed as compensation.

The practice of appeasing an avenging spirit requires that the murderer's family hands over a young girl as a wife to the deceased's family. According to Pfukwa, the girl will be married off into the deceased man's family and become wife of the angry spirit (*mukadzi wengozi*).³⁶ She is given to a male relative of the deceased so that she bears children for the dead man. The Ndaу believe that through such a marriage, the wishes of the angry spirit to have a family of his own are fulfilled and therefore illnesses and other misfortunes will be prevented.³⁷ Although this type of marriage is forbidden by the government and is regarded as a form of girl-child rights violation, it still occurs extensively among the Ndaу who strongly believe that abandoning the practice altogether may lead to catastrophe for their families.³⁸

The practice of handing-over a girl child as a wife for the appeasement of an avenging spirit (*kuripa ngozi*) foments domestic violence against Ndaу women in a number of ways. In the first place, the young girl is unilaterally picked by the family and sent away to marry into a family hitherto unknown to her. The practice is similar to that of girl-child pledging (*kuputsa/kuzvarira*) in that the girl's wishes are not listened to. Thus, the girl is psychologically tormented, as she is torn between her wishes and saving her family from calamitous misfortunes or even death. At the same time, the girl cannot negotiate her way out, because the decision to hand her over is shrouded with Ndaу belief in the potency of spirits to harm her if she refuses. This means that, once the patriarchy has agreed that an avenging spirit has been causing problems in the family and that it can only be appeased by sending a girl to the deceased's family, the girl cannot object.

Polygyny and bride price

Polygyny (*barika*) and the payment of bride price (*roora/lobola*) are some of the traditional practices that are closely associated with customary marriage unions practised in Zimbabwe. Polygyny refers to a marriage arrangement in which a man has two or more wives. While some women are agreeable to polygyny others

35 Konyana and Konyana, "Cultural Dynamism", 209.

36 Pfukwa C. 2001. "Unwritten ethics and moral values: The human face of Chimurenga II", in Vambe TM (ed). *Orality and Cultural Identities in Zimbabwe*. Gweru: Mambo Press.

37 Interview with Ranga Maphosa, a traditional diviner-healer in Musikavanhu Chieftaincy, Chipinge, Zimbabwe, 25 January 2014.

38 Interview with Majehwe Myambo, a village head in Musikavanhu Chieftaincy, Chipinge, Zimbabwe, 13 October 2013.

would prefer to be the only wife to their husbands.³⁹ However, in cases where wives compete for the love of the husband, jealousy often leads to various forms of domestic violence such as verbal abuse.

Some wives may resort to the use of love potion (*mupfuhwira*), a mixture of herbs and traditional medicines, to endear themselves to the husband. The concoction is meant to secure the husband's love and enhance his desire for sex with the woman who prepared and administered the love potion to him. Many Ndaou women believe that they can keep their partners close to them through the use of love potion.⁴⁰

Polygyny also contributes to the prevalence of domestic violence where a husband can be abused by his wives. Sometimes the wives' competition to be loved gets tough, and some may approach diviner-healers (*n'anga*) for stronger love potion. A diviner-healer (*n'anga*) can be an expert traditional herbalist or healer. Many Ndaou men believe that when a married man refuses to associate and discuss issues with others, preferring to be with one of his wives at home, then he has been psychologically damaged by the strong love portion prepared by an expert traditional herbalist or healer.⁴¹ The damage may be to the extent that the husband fails to perform his manly duties or loses his sexual potency. This is the way in which the struggle for the husband's love and attention can become a form of domestic violence and the man may become a target of community ridicule. Thereafter, the man may be subjected to various forms of domestic violence by his wives, ranging from being denied food and sex to verbal and physical abuse.⁴²

Sociologist Joan May, argues that in Africa, marriage is heavily influenced by traditional practices.⁴³ The payment of bride price is one such traditional practice that still influences marriage unions in Zimbabwe. The main argument for the continued observation of this practice is that bride price payment gives the woman the dignity and respect she is worth.⁴⁴ Thus, the payment of bride price makes the marriage a binding contract between the two marrying parties, their families and the entire communities.

In many customary marriage unions, the processes are witnessed and celebrated not only by the close family members and relatives but by the whole community, as well. This is typical of most indigenous customary marriages in Africa, which are celebrated by a large number of people to "cement the social and communitarian

39 Medzani JM. 2013. *Experiences and Perceptions of Domestic Violence among Male Victims in Kwekwe*. Harare, University of Zimbabwe, 27.

40 Medzani, *Experiences and Perceptions of Domestic Violence*.

41 Interview with Sekuru Ndunge, a traditional diviner-healer in Tamandayi, Chipinge, Zimbabwe, 21 June 2013.

42 Medzani, *Experiences and Perceptions of Domestic Violence*, 27.

43 May J. 1987. *Changing People Changing Laws*. Gweru, Mambo Press, 37.

44 Chabata T. 2012. "The Commercialisation of Lobola in Contemporary Zimbabwe: A Double-edged Sword for Women", *Open Society Institute for Southern Africa (OSISA)*, 23 October, 12.

character of the community”.⁴⁵ Thus the coming together of the community in celebration of a customary marriage implies that the newly married individuals have been accepted in the society and, as such, even if conflicts, disagreements or violence arise during the tenure of their marriage, the whole family and community is responsible for the restoration of peace and harmony between them.

In view of the centrality of bride price payment in customary marriages, every man must pay it for the woman he marries. If a man stays with a woman for whom he did not pay bride price, then he can be subjected to domestic violence either by the woman's relatives or by the woman he is staying with.⁴⁶ Thus bride price payment is a token of appreciation that a man pays for the love of his wife.

However, the practice of bride price payment has also been responsible for the prevalence of domestic violence among married couples. Some of the problems raised by the practice are male infidelity and marital rape. Many men and women do not believe that there is marital rape in customary marriage as men think that payment of bride price entitles them to have sex with their wives whenever they wish.⁴⁷ At the same time, the payment of bride price is often used by men to justify their infidelity. Men may claim that since they paid for their wives, they can expect them to be faithful to them without the same applying on the part of the men toward their wives. Furthermore, some married women cannot use contraceptives, particularly condoms, if their husbands do not want to do so.⁴⁸ Maureen Kambarami, an equal rights scholar, bemoans this scenario and says, “[A]ll the same, *lobola* (bride price) gives a man all rights whilst the woman is stripped of all freedom and rights.”⁴⁹ This means that the practice of paying bride price inadvertently pushes men to terrorise their wives believing that they are doing the right thing, particularly when infidelity occurs.

The same trend of abuse stemming from bride price payment practice is observed by Joshua Mpofu, a human rights lawyer who says: “... it stands to reason ... that a man who has paid dearly for his wife will expect very high returns from her. This clearly gives him the right and power to be the judge of his wife's performance and productivity, as well as reproductivity.”⁵⁰ This perception of the role of bride price has been reinforced by the commercialisation of the practice itself. Some

45 Okyere-Manu B. 2015. “Cohabitation in Akan Culture of Ghana: An Ethical Challenge to Gatekeepers of Indigenous Knowledge System in the Akan Culture”, *Alternation* (Special Edition) 14:48.

46 Medzani, *Experiences and Perceptions of Domestic Violence*, 27.

47 Kashiri L and Mawire PR. 2013. “Conceptualisation of Gender-Based Violence in Zimbabwe”, *International Journal of Humanities and Social Science* 3(15):98.

48 Chabata, “The Commercialisation of Lobola in Contemporary Zimbabwe”, 12.

49 Kambarami M. 2006. *Femininity, Sexuality and Culture: Patriarchy and Female Subordination in Zimbabwe*. Lagos: Africa Regional Sexuality Resource Centre. Online at: <http://www.arsrc.org/downloads/uhsss/kmabarami.pdf>

50 Mpofu J. 1983. “Some Observable Sources of Women's Subordination in Zimbabwe”, *Fundamental Rights and Personal Law Project*. Harare, University of Zimbabwe, 17.

families place a high amount as bride price for the bride and this becomes similar to “selling” their daughter.

The thinking reflected in Mpofo’s quotation has subjected many rural women to domestic violence from their husbands. For instance, many Ndaou men believe that husbands should never be denied sex by their wives at any time they want it.⁵¹ The belief comes from men’s socialisation, which often includes the rape imperative script, whereby female lack of interest in sex is often misconstrued as a way of encouraging the man to force himself on the woman.⁵² However, apart from subjecting women to domestic violence, this belief also exposes couples to HIV/AIDS when safe sex is not negotiated.

ETHICAL ANALYSIS OF THE CULTURAL MARRIAGE PRACTICES

This chapter is informed by the utilitarian ethical theory in normative ethics. The theory maintains that the best moral action or principle is the one that has maximum utility in meeting or improving the interests of sentient beings.⁵³ A critical look at the effects of implementing the DVA in rural communities requires a utilitarian reflection. The chapter has so far opined that the utility of the DVA is diminished mainly because of the dual legal and marriage systems, which allow for the existence and observance of some cultural practices that foment domestic violence.

Some legal experts such as Jeffrey Fagan note that “... criminalisation policies have proliferated without consideration of the empirical evidence of their effectiveness or their unintended consequences.”⁵⁴ Fagan’s argument comes from the fact that many countries have responded to the domestic violence problem by crafting laws that condemn offenders and subject them to the criminal justice system. This point seeks to question the relevance of the DVA from a utilitarian perspective. Given the current prevalence levels of domestic violence in rural areas⁵⁵ in Zimbabwe, it shows that there is little usefulness of the criminal justice approach to the domestic

51 Interview with Johanne Toronga, an elderly village man from Tamandayi, Chipinge, Zimbabwe, 22 June 2013.

52 Fontes and McCleskey, “Cultural Issues in Violence Against Women”, 156.

53 Beauchamp T and Childress F. 2001. *Principles of Biomedical Ethics*. Fifth Edition. New York: Oxford University Press.

54 Fagan J. 1995. “The Criminalisation of Domestic Violence: Promises and Limits” (Unpublished Conference Paper). Paper presented at the Annual Research Conference on Research and Evaluation entitled “What To Do About Crime”, sponsored by the United States of America’s National Institute of Justice, the Bureau of Justice Assistance, and the Office of Juvenile Justice and Delinquency Prevention held in Washington, DC, on 10 July 1995,

55 See Memo A. 2014. *The efficacy of the Domestic Violence Act in reducing gender based violence in rural communities. A case study of Ward 23, Mberengwa District, Zimbabwe*, BA Thesis, Midlands State University; Mugugunyeki M. 2017. “Sexual and Gender-Based Violence (SGBV) a cause for concern in rural areas”, *The Standard, Life and Style*, 19 February.

violence problem. This suggests that the DVA is under-utilised in rural communities and, therefore, not yielding the intended goal of ending domestic violence in all communities in the country.

The chapter has pointed out customary practices that foment domestic violence against women in rural areas where they marry under customary law. Given their marriage circumstances, rural women look within the family institution for solutions to the domestic violence problem.⁵⁶ This means that most married women find it difficult to report domestic violence to law-enforcement agents, who they view as outsiders. In this regard, Michael Bourdillon, one of the first ethnographers to study the Shona, observes that the Shona generally believe that “family disputes should never come before a public court; they should be solved within the family”.⁵⁷ For most rural women, their socialisation compromises the utility of the DVA as a tool to deal with domestic violence. For example, Ndaou girls, like most Shona girls, are socialised that they should get married and obey their husbands. This is clearly explained by an equal rights scholar, Maureen Kambarami, who observes: “... once a girl reaches puberty all teachings are directed towards pleasing her future husband as well as being a gentle and obedient wife. Her sexuality is further defined for her as she is taught how to use it for the benefit of her husband. Furthermore, these cultural teachings foster a dependence syndrome and this is why most African women depend heavily on their husbands for support.”⁵⁸

The implication of the cultural socialisation is that the responsibility to make a marriage stable remains with women. To achieve this, girls are taken through “marriage rites on how to keep their marriages and observe marital rituals, with the most central teaching being how to please their husbands sexually”.⁵⁹ Thus women are burdened with the obligation to stay in a marriage, even when it is abusive, because that is what their culture prescribes for them. With this kind of social orientation about the woman’s role in a marriage, rural women find it challenging to report domestic violence to the police. The women believe that they have to fulfil their customary marriage obligation, which is to keep family conflicts and secrets within the family, village or community. A popular saying among the Ndaou people is: “*Chakafukidza dzimba matenga*”,⁶⁰ which literally means that every home has a roof on top to cover its secrets. This means that family conflicts and misunderstandings, which revolve around disputes in the home, should never be brought to the attention of outsiders. In this context, the DVA is made less appealing, because it involves more than family members in solving any domestic violence case.

56 Moullet K. 2005. “Providing a Sense of Justice: Informal Mechanisms for dealing with Domestic Violence”, *South African Crime Quarterly* 12:20.

57 Bourdillon, *The Shona Peoples*, 127.

58 Kambarami, *Femininity, Sexuality and Culture*, 3.

59 Maguraushe W and Mukuhlanzi T. 2014. “Kupururudzira Muroora Songs”, *Nokoko* 1(4):46.

60 This is a saying that expresses the secrecy with which domestic violence incidences are treated.

Women are also socialised to be long-suffering and sacrifice their comfort, especially when they have children. It is not expected that a woman should abandon her marriage because of domestic violence. For this reason, many women often say, in Shona language: “*Ndinogarira vana vangu*”⁶¹ (“I will stay [in the marriage] for the sake of my children”). It means that women should endure all kinds of discomfort, including domestic violence, for the sake of their children. It is clear that this social construct, rather than the DVA, makes it difficult for rural women to turn to the criminal justice system to deal with domestic violence. However, sometimes victims of domestic violence approach the police and report certain forms of domestic violence.⁶² The reporting usually happens in instances of severe or repeated physical and sexual abuse. Unfortunately, some of these women withdraw reported cases before prosecution. Most women withdraw cases because they fear suffering further abuse and chastisement by family members for reporting domestic violence, a challenge cited by police officers, prosecutors and magistrates.⁶³ Furthermore, criminal law experts argue that, for the criminal justice system to work, the “... survivor’s support is a necessary pre-condition to the arrest of a perpetrator in both domestic and non-domestic disputes”.⁶⁴ This means that without the victim of domestic violence or the victim’s proxy making an incriminating report and being available as a defendant, no deterrent judgment can take place.⁶⁵ From this aspect therefore, the utilitarian value of DVA in reducing domestic violence becomes compromised.

The cultural expectations that are deeply entrenched in the socialisation processes of rural girls imply that most married women believe that reporting domestic violence to the police is not a safe or a preferred response to the problem. The greatest fear for most survivors, especially women, is retaliation.⁶⁶ Although the DVA provides for the protection of victims, the provision is difficult to implement in reality because of inadequate resources. This means that domestic violence escalates when survivors seek outside help or attempt to separate from their abusers but fail to get protection. For example, most Ndau women victims believe that mandatory reporting exposes them to the risk of further abuse. Their fear comes from the fact that even if they report abuse by their husbands, the courts are far away and the women would

61 Chireshe E. 2015. “Barriers to the Utilisation of Provisions of the Domestic Violence Act”, 265.

62 Chuma M and Chazovachii B. 2012. “Domestic Violence Act: Opportunities and Challenges for Women in Rural Areas: The Case of Ward 3, Mwenezi District, Zimbabwe”, *International Journal of Politics and Good Governance* 3(3):1-18.

63 Chuma and Chazovachii, “Domestic Violence Act”, 11.

64 Stewart A. 2001. “Policing Domestic Violence: An Overview of Emerging Issues”, *International Journal of Police Practice and Research* 2:455.

65 A magistrate at Chipinge Magistrates Court, Mr Gapara, confirmed this position when he said, in an interview, that he had seen many cases failing to proceed to completion, because victims just abscond court hearings.

66 Artz L. 2011. “Fear or Failure? Why Survivors of Domestic Violence retract from the Criminal Justice Process”, *South African Crime Quarterly* 37:3-10.

depend on their family members for transport and subsistence to attend court sessions. In some cases, abusive men can easily evade arrest by going to work in South Africa, Mozambique or any other countries. They usually come back home once or twice a year during festive periods and, by then, the women would have forgotten about the abuse.⁶⁷ Thus, on account of the complications associated with reporting domestic abuse to the police, many victims find the DVA of no utility value in solving their problems.

As pointed out at the beginning of this section, utilitarianism holds that a principle is useful if it brings about the greatest happiness for the greatest number of people affected by its implementation. From a bioethical point of view, Tom Beauchamp and James Childress claim that the advantage of utilitarianism lies in its intuitive appeal and its apparent scientific approach to ethical reasoning.⁶⁸ Similarly, what counts as a useful principle is one which is hands-on in improving the well-being of those affected by its employment. Since the DVA is a legal principle that seeks to bring happiness in the lives of married women and men by ending domestic violence through arrest and prosecution of offenders, it must be practically useful to those it seeks to protect. However, as described above, victims of domestic violence located in rural communities hardly make use of the criminal justice system.

WHAT OUGHT TO BE DONE

It is commendable that the DVA proscribes most of the cultural practices to protect victims of domestic violence. However, outlawing cultural practices alone does not guarantee that the law will be implementable. Even so, the Zimbabwe legal reform agenda cannot succeed if it just condemns cultural practices that stimulate domestic violence without understanding and interrogating the cultural beliefs that support their practice. What ought to be done therefore is to make deliberate effort to understand, rather than merely condemn, the customary practices in question in the contexts and communities where they are observed. For instance, if the idea behind girl-pledging marriage is to attend to the welfare of a family that is facing starvation, the government must establish sustainable ways to achieve the same aim without putting the well-being of young girls at risk.

Holding extensive pro-active discourses on the cultural practices that are prone to domestic violence with communities will also result in unpacking those cultural practices. This may proceed through government setting up a commission to interrogate customary law practitioners on the significance of the cultural beliefs they hold. Some of the clashes between customary laws and general laws and statutes emanate from the legal distortion of the intentions of cultural practices. For instance, in the eyes of general laws and statutes, some cultural practices are

⁶⁷ Victims in rural areas depend on perpetrators and when the husband comes back after many months of work, the woman focuses on the provisions brought home and forgets about the abuse.

⁶⁸ Beauchamp and Childress, *Principles of Biomedical Ethics*.

“harmful”. This is why the government promulgated the DVA, which falls under the protection from harm principles, to protect society from “harmful” cultural practices. Unfortunately, this general laws perception about cultural practices suggests that they are deliberately upheld to harm members of the society. While it can be conceived that some harm may result from observing certain cultural practices, the same can be said of any practice and principle, including the DVA. Ultimately, it ought to be understood that cultural practices are communal living phenomena, and it is imperative that any efforts to remove the “harm” they cause should go beyond the promulgation of laws that prohibit their observance.

CONCLUSION

The chapter has argued that domestic violence is a global problem and one that Zimbabwe has sought to address through its Domestic Violence Act. The DVA fits well with the country’s legal reformist agenda towards alleviating domestic violence. It aims at creating a civil remedy that is accessible and affordable to the survivors, ensuring that “victims of domestic violence received the maximum protection from domestic abuse that the law could provide”.⁶⁹ States around the world have the responsibility to end domestic violence in line with the international recognition and condemnation of the prevalence and the adverse effects it has on human relations and development.

Achieving the goal of ending domestic violence through the DVA alone is, however, proving difficult in a country that has two justice systems involved in dealing with the same problem. The customary law system uses indigenous institutions, such as the family and community courts, while the criminal justice system relies on civil courts to achieve justice. The major difference between the two systems is that the first emphasises reconciliation and reparation between the disputing parties, while the latter punishes the offender.⁷⁰ Furthermore, the criminal justice system focuses on the arrest and prosecution of offenders, thereby compromising the utility of the DVA within rural communities in Zimbabwe. Women in rural communities view the criminal justice system as alien to their culture and not suitable to deal with domestic violence in their marriages. For this reason, whilst the criminal justice system is necessary and suitable in other criminal cases, it is not effective in dealing with domestic violence among ethnic groups. Its efficacy is diminished because indigenous people do not easily give up on certain cultural beliefs and practices, even when they seem “harmful” to the adherents. What is necessary, is for gender equality activists, feminists and legal experts to reconsider embarking on extensive understanding and interrogation of the cultural beliefs behind rural people’s continued adherence to harmful cultural practices in their contexts before condemning them entirely.

⁶⁹ Artz, “Fear or Failure?”, 3.

⁷⁰ Bourdillon, *The Shona Peoples*, 135.