

# Child Marriages: No more!

## *Urgent need to align all laws that affect children to the Constitution*

It is commendable that the Constitutional Court has finally outlawed child marriage and struck down section 22(1) of the Marriage Act, which for years had allowed children under the age of 18 years to marry. The landmark ruling should be seen as a major victory in the fight against child brides and poverty. A UNICEF report (2015) estimated that 31% of girls in Zimbabwe are married before their 18<sup>th</sup> birthday, putting the country among four Southern African countries with the highest rates of girl child marriages. Prior to the judgment, laws pertaining to marriage in Zimbabwe discriminated against girls: the Marriage Act allowed girls to marry at the age of 16 while the minimum age for boys was 18.

It is largely agreed that child marriage predominantly affects children living in poverty in rural areas. The less education the girl has, the more she is likely to marry during her childhood. The Constitutional Court ruled on 20<sup>th</sup> January that Section 78(1) of the Constitution of the Republic of Zimbabwe Amendment (No. 20) 2013 sets 18 years as the minimum age of marriage in Zimbabwe. The court further declared that section 22(1) of the Marriage Act (Chapter 5:11) was unconstitutional, adding no person, male or female in Zimbabwe may enter into any marriage, including an unregistered customary law union or any other union, including one arising out of religion or a religious rite, before attaining the age of 18. The judgment stated that Section 78(1) of the Constitution was enacted for the purpose of complying with the obligations Zimbabwe had undertaken under Article 21(2) of the African Charter on the Rights and Welfare of the Child to specify by

legislation 18 years as the minimum age for marriage and abolish child marriage. The court pointed out that the effect of the protection under section 78(1) as read with section 81(1) of the constitution is that a girl remains a child regardless of her pregnancy status until she attains the age of 18 years. Whilst she is a child all the fundamental rights of a child protect her from being subjected to any form of marriage. The court emphasized that the pregnant girl is entitled to parental care and schooling just as any other child is entitled, thus the obligation of the parent to care for and control the girl child does not cease because of her pregnancy. The LRF's view is that although progressive, this judgment is not enough; there is need for a holistic approach, to ensure that there is an end to child marriages:

- i. All laws affecting children must be aligned to the Constitution and their implementation ensured. This includes the laws which provide for the issue of the age of consent.
- ii. Increase initiatives to address the cultural, social, religious and economic factors that drive the practice.
- iii. Empower the girl child to stand up for her rights and report cases of such marriages.
- iv. Ensure that all citizens are aware of this progressive development and also understand the import of the judgment.
- v. Explore innovative strategies for full implementation of the policy on Second Chance Education to make it work for young school dropouts, especially girls.

