

# ZANU PF PATRIOTS GROUP



## PRIME TIME

**THEME:** THE CONSTITUTIONAL COURT JUDGEMENT ON CHILD MARRIAGES

**GUEST:** *BLESSING MUSHOHWE (Child Rights Activist and Consultant)*

**DATE:** 26<sup>TH</sup> JANUARY 2016

**TIME:** 1900HRS CAT

**MODERATOR:** CDE ELIAS SIBANDA (ZANU PF PATRIOTS GROUP ADMINISTRATOR)

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### THE GODFATHER:

Good Evening Patriots

Welcome to yet another edition of PRIME TIME. To our guests, Adv Magaya (Technical Consultant), Cde Takesure Tarungana, Mai Banks and Senator Chief Siansali, I welcome you all to this august forum called Zanu Pf Patriots. Our special guest tonight is Cde Blessing Mushohwe who is a Child Rights Advocate and Consultant.

Tonight we are going to be talking about the Constitutional Court judgement which effectively outlawed any marriage for persons below the age of 18. Cde Blessing will try and make us understand what this judgement means in very simple terms and we will ask and exhaust all questions pertaining to that judgement.

Our lead moderator is Admin Elias and he will be assisted by our own resident attorney, the vivacious Adv Roeze.

Without wasting much of your time lemme hand over the proceedings to our moderators.

Admin Elias and Adv Roeze, lets get started....

### ADMIN ELIAS:

My name is cde Elias Sibanda. I will be leading with the questioning in today's session

To help me is cde Roeze.

Apologies. Just had a temporary network black out

Because of my network challenges, I will skip all the preliminaries and get to the business of the day. Cde Blessing may u kindly step forward

Briefly, who is cde Blessing. Personal, professional and social information

**CDE BLESSING:**

Blessing Mushohwe is a lawyer and a child rights professional who is passionate about child rights. Am married with 2 kids. Am currently a law lecturer at UZ but also a consultant in Child rights.

**ADMIN ELIAS:**

Noted. Now to the business of the day

Cde Blessing

The 2014 Multiple Indicator Cluster Survey Report states that of people aged between 20 and 49 years, one of the three women was married or got in a union before the age of 18. When the Constitutional Court last week banned under 18 marriages, the ruling was hailed all over the world as a positive development and a land mark judgment in Zimbabwe.

Does this ruling touch the bone marrow of the problem or it simply scraps through? Does it address the real problem?

**CDE BLESSING:**

Let's start by saying this is indeed a great step in the right direction especially with our very young Constitution. Without talking of scratching the surface, it's safer to say child marriages is but just one aspect of the real issue which is child sexual abuse. Child marriages do contribute to sexual abuse of children but is not the end. There are much broader issues that will still remain even if with this judgement we manage to have 0% child marriages. So the real bone marrow as you put it is child sexual abuse and child marriage is just but one factor, though crucial. As such while we celebrate this 1st step, let's not lose sight of the real elephant in the room...child sexual abuse. But ss far the issues the issues that the court had been called upon to deal with in this case, the 54 page judgement did justice to it and for that we applaud our Constitutional Court Judges

**ADMIN ELIAS:**

The statistics from the Multiple indicator survey report says 1/3 of.the.women married below the age of 18. Is this an alarming statistic in it self and why would marriage of someone above the age of sexual consent be regarded as abuse

**CDE BLESSING:**

Yes it is 1 in 3 or 33% to be specific. While not alarming when we compare to other countries such as Niger with 76%, Chad 68%, Zambia 42%, Malawi 50% etc, for us any percentage that infringes on a child's fundamental rights to education, health, freedom of choice etc is worrying. And so it is concerning that we are at 33%, why not be at 0%

for this our progressive nation. On yo 2nd question, it is abuse because our supreme law says a child is 18 years and below. Meaning that below 18 they are not yet an adult yet marriage bring it adult responsibilities such as child bearing etc. But also that below 18 we are saying we want you to finish school for your better future life and you can't do it when married. If we can't allow them to vote before 18, then how do we expect them to raise families and bear marriage burdens. So it is abuse.

**ADMIN ELIAS:**

Noted. We will touch on the issue of age again as we move on

**CDE BLESSING:**

The abuse is especially so when we consider the power dynamics in such a marriage where normally the husband is much older. The child becomes vulnerable to all sorts of risks such as domestic violence, forced sex, health problem when pregnant n giving birth etc. And due to their immaturity, they cannot negotiate for anything. In other words it's more like enslavement in this modern day. So it is abuse

**ADMIN ELIAS:**

Does it cease to be abuse if the marriage is between 2 people who are both under 18 years

While u address that cde Blessing, I will direct u to another aspect

Cde Blessing

The traditional jurisprudence accommodates and accepts that in life conflicts are inevitable parts of all human association. The system recognizes that if conflict is suppressed, it can result in stagnation and erode the bond of group solidarity because of an accumulation of hostility.

The traditional jurisprudence's strengths are that it is open and promotes reconciliation between disputants. It discourages fighting, tension and suspicion.

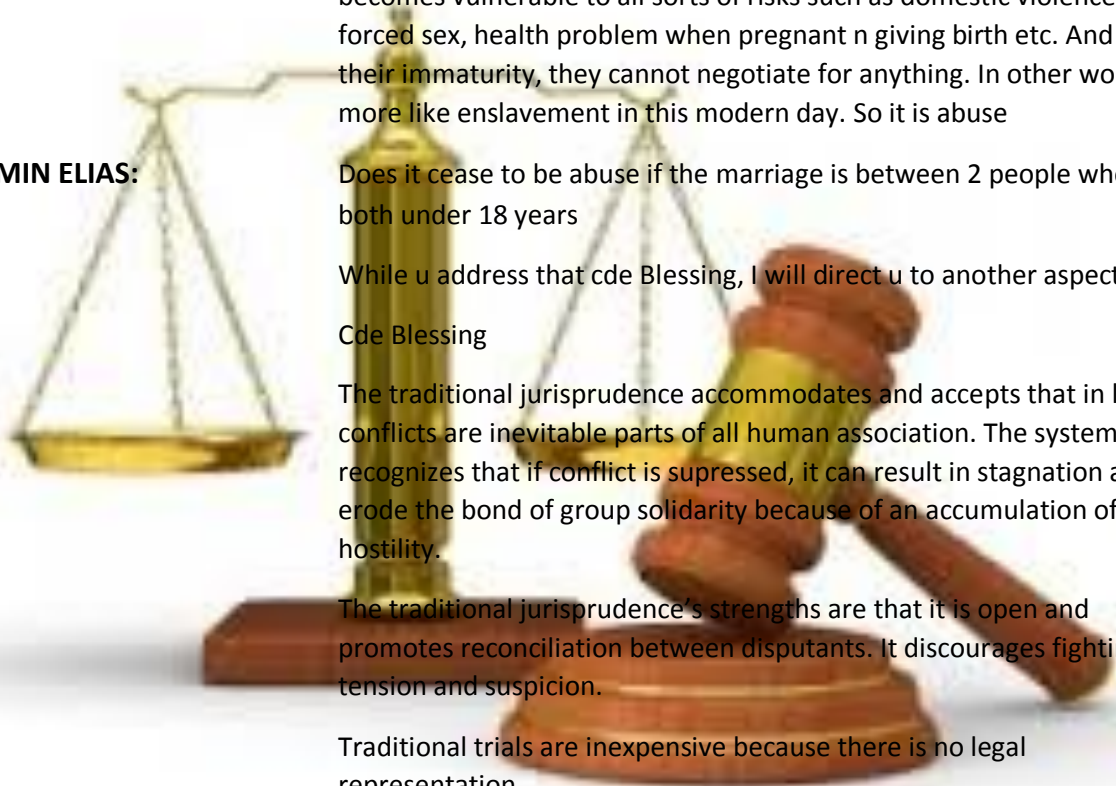
Traditional trials are inexpensive because there is no legal representation.

Chiefs discourage people from breaking the law. Since there is no custodial sentence traditional court system helps to decongest the formal courts. It is the kind of law they are used to and people are familiar to the customary judicial language and proceedings.

Now Cde Blessing, what will be the impact of the ConCourt ruling on the courts' raster as opposed to traditional jurisprudence which most people will likely dump, a case in point being the Vapostori Church?

**CDE BLESSING:**

Those are some of the issues that we now need to look into which have come to the fore as a result of the judgement. Indeed it remains child marriage when the two 17 year old get married. The problem is of the



two who would have committed the offence especially where there is consent to it by both. The review of the Marriage Act, the Criminal Code, the Children's Act etc to accommodate this new constitutional order will need to take care of such gaps. Let me however also rush to say the challenges that are there with child marriages do not normally come from the scenario you gave. They majority come from much older men in their 50s, 60s preying on and marrying children as young as 12 under religious or traditional guises. That is the real problem.

**ADMIN ELIAS:**

Noted. Let's move to the new aspect I have introduced and note it also touches on the religious aspect that you have pointed above

**CDE BLESSING:**



Your points about traditional courts' role are quite correct. However the role which traditional courts used to play in this area was to actually entrench child marriages as they would sit to force the responsible man to accept his pregnancy and marry even if the girl was 16 years only. Now that will not be possible with this judgement unless if the parties are both above 18. On impact on the court roaster, it probably will be very insignificant. Why, because this was not purely an issue of inadequate laws but rather a community structural issue which is deeply entrenched and subscribed to by many in certain traditional and religious sectors. It an issue that even the young girls themselves will actually be subscribing to due to years of indoctrination in the church. And so they will not change over night and start seeing it as a crime. In the contrary, they will start seeing the law as trying to lead them astray. Hence they are not going to be reporting this. Also note that this is not like rape where the parents would rush to report because they didn't know. In the case of child marriages, they often involve the parents persuading or coercing the child somehow to do it. So noone then remains to report it to Police. The child already is limited by immaturity and won't report. In short, yes there will be new cases reported but not many until we have dealt with raising awareness and changing attitudes among communities that ascribe to such practices

**ADMIN ELIAS:**

Will this law handicap the traditional courts in their previous role of enforcing marriages

**CDE BLESSING:**

But also note that while the role of traditional leaders in coercing someone to marry the hire has been removed, there now remains a gap as to what then happens to the girl who is pregnant but still under 18 so can't marry. This potentially creates a number of its own problems

Yes as far as under 18 are concerned. But instead of seeing it as handicapping them, let's see it as empowering them to stand up for child rights

**ADMIN ELIAS:**

Cde Blessing

I will give u my 3rd question so that we tackle the 2 questions simultaneously since they are related

The judgment created a grey area where a girl who is 17, can lawfully have sex, since she is above the current age of consent, which is 16. The problem however, is that she cannot lawfully marry her partner, since the Court has now confirmed that the marriage age is 18.

In the traditional rural set-up, this girl might elope to her male partner (kutiza mukumbo) and when this happens, he must take responsibility.

However, this facility will no longer work for girls like her as she is under the age of 18, and cannot therefore legally marry or enter into an unregistered customary union. It would be unlawful.

Cde Blessing, The question is:

Might this encourage males to behave more irresponsibly, since there is no legal sanction for having sex with a 17 year old?

**CDE BLESSING:**

Indeed as I mentioned earlier, the judgement may have also raised other problems that we my now need to tackle and soon. Age of sexual consent remains 16 and am not sure if there is desire to change it. What it means is have sex but don't get married. This may begin to breed social ills such as promiscuity that our parents may have to grapple with. But it will also allow boys and men to take advantage of this, persuade and confuse young girls over 16 into consensual sex, even unprotected knowing fully that if the girl gets pregnant no1 will force him to marry her because it's unlawful. By do doing it encourages irresponsibility. But also burdening the pregnant girl who now has to go through this pregnancy and child rearing alone because she is not allowed to be with the man...the man remains free and goes for the next such girl. The Judge tried to rest fears on this by saying there is still maintenance claims and also that parental roles continue. Surely that is nt enough. In fact it massages the problem but does not solve it. What if there are no parents and the man can't pay the maintenance. This area needs to be worked on by our laws as we realign. But it also creates a situation where a 50 year old man can use his financial muscle to get into some sexual arrangements with some poor orphaned girl on a regular basis without any responsibility as long as she is over 16 and consenting. Provided it's not seen as a marriage or union, then it's ok before the law. So we do have work to do in refining other associated laws such as age of consent so that it all makes sense with this judgement

**ADMIN ELIAS:**

In your opinion, at 16, is a girl old enough consent to sex

Traditionally, at the age 16, a child would have completed her O'levels. And not all of them will proceed to Alevel or tertiary.

Now, if this girl had a chance to be married then and live a decent life and the law prevents that for the next 2 years.

In your opinion isn't the law further burdening the girl's parents in these harsh economic conditions

**CDE BLESSING:**

That's a difficult question I may want to seek leave not to answer directly. As a parent I would want to say a big NO. But as a child rights advocate, it's hard because we have to accept that children at a certain age have sexual hormones. We may also want to be realistic and accept that children are indeed having sexual debut early. The problem may not be among 16 year olds consenting to sex but rather the 50 year olds preying arguing that the 16 year old consented. But I have position yet your direct question.

**ADMIN ELIAS:**

Meant '16 year olds consenting to sex among themselves...'

Very well. But shouldn't the law then categorise us according to age groups. For example allow marriage before 18 as long as the older partner is not above say 35 years

Also tell us if this will be gender sensitive. Can a 17 year old boy marry his rich 50 year old sweet mama. At least he will have no child bearing responsibilities

**CDE BLESSING:**

Maybe not your example but indeed sexual offences in general need a certain level of categorisation according to age. Consensual sex between a 17 year old boy and his 15 year old girlfriend surely should not attract the same sentence as a 50 year old man with a 15 year girl consenting. On the earlier question on when she finishes O level shouldn't she use marriage if nothing else to do. The answer is a big NO. Marriage should not be an option to a child at all times despite their circumstances. The idea is that let it be a choice when one is now an adult not to be used as an option to get parents off their parental responsibilities. Even after O level, there are other things that responsible parents should consider and not marriage even if the child has failed O level.

We strongly disapprove of any gender differentiation as this is the one that brought us such problems we have with girls. Let's stick to equality and equal opportunities as well as equal protection before the law. As such even the 17 year old boy with a sugar mama remains a child and should not be allowed to marry

**ADMIN ELIAS:**

Don't u see that this ruling is attacking other institutions of society that are supposed to be protected by the same constitution? Like the institution of marriage and religion? In our bid to champion certain rights, aren't we infringing on other institutions of society

while you address that cde Blessing, I will move on to my next and final aspect

Cde Blessing?

Moving on

The Court followed precedent in taking a liberal and flexible approach to the question of locus standi (right of standing) holding that the right to a constitutional remedy is a “fundamental and essential right” necessary for the effective protection of all other constitutional rights.

Cde Blessing, This broad and flexible approach to issues of locus standi and access to the Court augurs well for the development of progressive human rights jurisprudence in the country. Are we likely to see a lot of constitutional challenges that will help expedite the realignment of laws in the near future?

**CDE BLESSING:**

We may see it differently but from where we stand, it is not attacking any right standing rights of any institution. There cannot be rights to anyone that allows someone to marry and have sex with a child who is not yet mature enough for such responsibilities. If we accepted in our Constitution last year that a child is one below 18, then we should also accept that the best interests of such a child are not best realised in marriage but rather in the loving care of parents in a family environment until the child reaches 18. Remember in our Constitution we have a limitation clause which says the enjoyment of certain rights may not be done at the expense of others. Certain rights are limited like right to freedom of religion is limited by dictates of what is a child and related rights.

**ADMIN ELIAS:**

Noted. I will not dwell much on the impacts on culture, religion or the institution of marriage. We will cover that adequately in tomorrow's session with Mai Banks

Let's move on to the last I aspect I have introduced

**CDE BLESSING:**

Certainly this broad interpretation of locus standi and the elaborate explanation of public interest is very welcome. It indeed gives a voice many who may for various reasons and vulnerabilities may not be able to speak for themselves. Yes we may see an increase in public interest litigation in cases involving vulnerable groups such as children. But also on socio-economic rights which have largely not been tested in our Constitutional Court

**ADMIN ELIAS:**

Will these litigations act as a catalyst to alignment of laws to the new constitution and hence undermine the due process that any law should go through before alignment?

**CDE BLESSING:**

I want to see it as complimentary to each other. For instance if we had not had this court case, the review of the Marriage laws may not have touched on this issue conclusively. What the litigation does is allows opportunity for the court to give meaning to some pronouncements in the Constitution that may not be very clear for example "to found a family" in the child marriages judgement. It should be complimentary

**ADMIN ELIAS:**

Cde Blessing

I will ask you my last question and as u address it, I will open the floor for members' comments or questions

Cde Blessing

The major stumble to this judgement is patriarchy.

With various legislators on this forum and those who will get a copy of this interview and many traditional leaders around, what is your advice to them to make Zimbabwe a girl-child friendly nation when it comes to marriages?

**CDE BLESSING:**

Go ahead

**ADMIN ELIAS:**

As cde Blessing answers that I will invite members ask questions make comments for the next 30 minutes

Floor is now open....

**CDE BLESSING:**

I would say let's pop our champagne in celebration of this victory but not for too long. As we have highlighted above, there is a lot of work ahead to be done to make Zim a girl child friendly nation. With this judgement, let's join hands, take an integrated approach that includes refining of the laws but at the same time using social mobilisation, community awareness and advocacy on the issue of child marriages so that we deal with attitudes and ingrained societal practices that encourage this practice. Legislating alone will not do the trick...lets engage our communities in dialogue. But more importantly let's simultaneously deal with the other issues around child sexual abuse as raised above including involvement of parents, use of financial power to force consent, transactional sex etc. We are moving in the right direction, let us not stop

**THE GODFATHER:**

Cde Blessing

Thank you for coming and patiently answered our questions. Taking you back a bit, I didn't get your answer on a situation where a 17year old boy intends to marry his 50year old rich woman. Does child abuse laws



target girl-child only? In the above scenario, what will be the role of Child Rights Activists?

**CDE HEISENBERG:**

For those in cities and town let's pop champagne, Cde have you been to Marange or Mafarikwa to be specific in the month of July?

**CDE BLESSING:**

That's were I said the law has no sex of gender, it applies equally. As such the 50 year old woman will be arrested for child marriage. It applies to both girls and boys. Just that in practice the phenomenon affects girls most

**ADMIN ELIAS:**

How do we cover the gap between sex at 16 and marriage at 18. In your opinion, what would be the best remedy

**SENATOR CHIEF SIANSALI:**

The fact that this law discourages marriage but does not discourage sexual activities, aren't this going to promote children with single mothers. Taking into cognisance that consent is at 16?

**CDE BLESSING:**

Am still grappling with this but the most obvious is raising the age of consent to 18. However that will also come with its challenges. Another will be categorisation of sexual activity by age and criminalise where there is huge age difference and apparent manipulation but decriminalise sex between both parties below 18. Still that has its challenges. Will need to think more on this

**ADMIN ELIAS:**

Good question. U may tackle the question on single mothers as well So we need not celebrate yet as we are most likely to create more problems than solve them

**CDE BLESSING:**

In one of my responses above I mentioned that it may leave the girl with burden of caring for the child alone thereby being a single mother. However the solution is not in allowing her to marry whilst still a child but rather for us to now go back to the drawing board and strategies on hw as a nation we are going to deal with this consequent phenomenon.

We celebrate what we have achieved thus far but noting that there is far more work to be done. A journey of a thousand miles begins with one step.

**ADMIN ELIAS:**

We have 5 minutes left

**SENATOR CHIEF SIANSALI:**

More so are we not over burdening the parents, by allowing the child to consent at 16 and most probably fall pregnant, discourage marriage which automatically means the parents should look after their pregnant child and the would be grand child. Are we not promoting a situation were by society will prepare to hide these cases in fear of suffering both

**CDE HEISENBERG:**

Mafarikwa is a place where Mapostori Johane Marange gather every July for what they call munamoto we gore. During this period parents exchange children or offer their children to very older men. If you were to go and make arrests, jails will be full to the brim in a single hour. How do you intend to engage churches?

**CDE BLESSING:**

True. But as the Judge said, let's now turn our attention to the problem of teenage pregnancies which has always been there but may increase. As a country and together we must find a solution with involvement of those parents you mention

**ADMIN ELIAS:**

We have 2 minutes left

**SENATOR CHIEF SIANSALI:**

My intervention has not been attended

**ADMIN ELIAS:**

I think this ruling was made without due consultations and considerations. It is populist and undermines due processes that are carried out before a law is aligned.

What would be your comment to that

**CDE BLESSING:**

Multi sectoral approach...more of engagement on an equal basis highlighting the law but also appealing to their conscience. If it succeeded in domestic violence, then it will in child marriages. It's not a walk in the park indeed not an overnight thing but with time, results will start to show

The issue was taken to court and courts did what they do...they don't consult. They interpreted the Constitution that we all voted for in 2013. I do not think also that there could be anyone seriously arguing that let's allow children to marry. The problems that we now note after the judgement can be dealt with now with the consultation that you are mentioning. All new drugs have potential side effects no matter how useful they will be for now. Let's not throw away the drug, let's deal with lessening the effects of the side effects.

**ADMIN ELIAS:**

Cde Blessing

You have done a splendid job for us

**SABHUKU:**

This law is a plus for married men who move around sleeping with young girls, Chiefs will have a big challenge dealing with such men. They will simply say mambo ndoda kuroora but law forbids me

Vafana ve constitution vakatibhaiza pavakauya kumusha

**ADMIN ELIAS:**

I would like to take this opportunity to deeply thank you for your time, insightful and steadfast advocacy for child rights.

On behalf of Zanu pf Patriots, thank you very much

**CDE BLESSING:**

Thank you for having me here. I also enjoyed it chatting with your group

You are welcome

**ADMIN ELIAS:**

A special thanks also goes to our guests in the VIP bays, Mai Banks, Advocate Magaya, Cde Takesure and Chief Siansali

Tomorrow we do part 2 where we explore the impact of this ruling on culture with mai Banks.

Twalumba

Over to you Chief Admin

**THE GODFATHER:**

A special thanks also goes to our guests in the VIP bays, Mai Banks, Advocate Magaya, Cde Takesure and Chief Siansali

To all Patriots, thank you for being disciplined and for a wonderful session.

This program will be on soft copy tomorrow.

Twalumba loko

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