

# LOBOLA (BRIDE PRICE) CULTURE AND THE EQUALITY OF WOMEN IN ZIMBABWE

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## 1 Introduction

Human rights are pillars that are essential for the sustainable development of individuals and communities.<sup>1</sup> They allow people to live with dignity, freedom, equality, justice and peace. In light of this, the customary law practice of the bride price *vis à vis* the right to equality is under scrutiny in this study. Although the custom of paying the bride price is practised in many African countries, this article focuses on Zimbabwe, where it is referred to as *lobola* or *roora*.<sup>2</sup> This paper seeks to examine the effects of *lobola* custom on the status of women and their right to equality. It argues that *lobola* creates a hierarchy in the marriage institution which forms the basis for unequal power relations between husbands and wives. In its form and procedure, *lobola* perpetuates the subjugation of women to men.

\* LLD candidate at the University of Pretoria. Adopting a radical, non-conformist and courageous stance, this author discusses *lobola* and its impact on women's equality especially in light of the fact that Zimbabwe is a member state to a number of regional and international instruments that enjoins it to observe equality between men and women and it also enacted a women's rights friendly Constitution. This paper argues that the payment of *lobola* infringes the rights of women from two dimensions. Firstly, women are discriminated against as a category because they get little from *lobola* payment as compared to their male counterparts. Secondly the bride is discriminated against for she is not treated equally to her husband during the *lobola* negotiations.

1 [www.un.org](http://www.un.org). (accessed on 27 August 2018).

2 Other African countries practising the bride price are South Africa, Lesotho, Sierra Leone and Kenya.

Women are subjected to control by men. This violates equal rights enshrined in Section 56 of the Constitution of Zimbabwe, Amendment (No 20) Act, 2013 (hereinafter referred to as 2013 Zimbabwean Constitution).

In Section 2 the definition of *lobola* and a background of the practice are outlined. From its definition and background it is apparently clear that women are put in a position of a commodity whereby their payment is negotiated by the father (or any other male figure representing the father) and the husband. Its background is hinged on the patriarchal society which undermines the status of women. The nature of *lobola* which has been evolving to suit the market demands is discussed in Section 3. Women's economic value has been consistently revalued to suit the economic situation of the day. Section 4 discusses the position of *lobola* in Zimbabwean marriages with the assessment of various court decisions. While courts have considered women to be at liberty to choose whether their fathers can receive *lobola*, it is a choice which is not readily available to women since customs are not individualistic. However courts have always been guided by the payment of *lobola* to establish the existence of African union, which is a sign that *lobola* is a customary requirement of a marriage.

By upholding the custom of *lobola* Zimbabwe is not only infringing its own Constitution but several legal frameworks which enjoins Zimbabwe to observe the principle of equality and women's rights. Such legal frameworks are discussed in Section 5. In the penultimate section the inequalities posed by *lobola* are explored followed by the conclusion. In conclusion and as a way forward it is suggested that *lobola* must be abolished. It is acknowledged that those who support *lobola* suggests its regulation instead of abolition. Regulation does not solve the problem being posed by the inequalities of *lobola*. In any case *lobola* is already being regulated by customary law yet inequalities against women persists. Payment for women category need to be removed in totality so that all human beings are treated with dignity on equal basis upon entering into, and during the subsistence of marriages.

## 2 Definition and background of *lobola*

*Lobola* is a Zulu term which refers to an ancient marriage custom.<sup>3</sup> In Shona and Sesotho languages it is called *roora* and *muhandi* respectively. *Lobola* denotes the payment of the bride prize by the

3 B Scheidler 'What the Bible says about Lobola' 2010 [www.churchleadershipresources.com/HotTopics/Lobola\\_A4.pdf](http://www.churchleadershipresources.com/HotTopics/Lobola_A4.pdf). 2 (accessed on 25 August 2018).

groom to the bride's family.<sup>4</sup> Ansell defines it as a provision of gifts to the parents of a bride usually in the form of cash, livestock, clothing and groceries.<sup>5</sup> It consists of a series of payments, which are made by the prospective groom and his family to the family of a prospective bride.<sup>6</sup>

This custom is closely related to dowry in the European and Asian cultures with the difference being the fact that dowry is normally paid by a woman to the family of a man yet *lobola* is paid by a man to the family of a woman.<sup>7</sup>

The practice is common in most patrilineal societies in sub-Saharan Africa. It has been practiced in Zimbabwe since the pre-colonial era and the practice still exists in Zimbabwe.<sup>8</sup> In Zimbabwe's pre-colonial past, *lobola* generally took the form of a hoe, which was worth little materially, but was a symbol of marriage and work.<sup>9</sup> In some instance the man was supposed to pay it in labour to the in laws.<sup>10</sup>

According to Schmidt, prior to colonisation marriage payments included four to five head of cattle supplemented by other gifts such as hoes, blankets, and baskets of grain but with European occupation payments began to be paid in cash as every aspect of *lobola* became monetised.<sup>11</sup> Colonisation introduced cash in *lobola* transactions. Chigwedere commented that because of colonisation every aspect of *lobola* came to revolve around cash.<sup>12</sup> *Lobola* eventually became market conditions shaped, for instance cash was demanded as a result of falling wage incomes and crop prices and later due to shortages of cattle in the 1920s.<sup>13</sup> Ploughs and the scotch carts were also once used in the *lobola* transaction during the time when they were attracting a higher economic value.<sup>14</sup>

4 Customary Marriage Divorce <http://www.bregman.co.za/customary-marriage-divorce-work-> (accessed on 26 March 2017).

5 N Ansell 'Because its our culture! (Re) negotiating the meaning of *lobola* in Southern African Secondary Schools' (2001) 27 *Journal of Southern African Studies* 697.

6 A Shenje-Peyton 'Balancing gender, equality and cultural identity: Marriage payments in post-colonial Zimbabwe' (1996) 9 *Harvard Human Rights Journal* 105.

7 Scheidler (n 3) 2.

8 Shenje-Peyton (n 6) 106.

9 Ansell (n 5) 700.

10 E Schmidt *Peasants, traders and wives: Shona women in the history of Zimbabwe, 1870- 1939* (1992) 110.

11 Schmidt (n 10) 110.

12 A Chigwedere *Lobola: The Pros and Cons, Books for Africa* (1982) 4.

13 MK Chiweshe 'Wives at the market place: Commercialization of *lobola* and communication of women's bodies in Zimbabwe' (2016) 16 *Oriental Anthropologist Journal* 229-243.

14 Chiweshe (n 13) 235.

### 3 Nature of *lobola*

Chigwedere recognises two prominent components of *lobola* in most parts of Zimbabwe.<sup>15</sup> These are the small items and the main marriage deal. Small item payments are made to introduce the groom's family to the bride family and serve the purpose of engaging the two families in preparation for a structured *lobola* process.<sup>16</sup> Main marriage deal has two separate components of beads or *rusambo* and a herd of cattle or *danga*. This involves the presentation of beads by the prospective groom to his would be father -in-law and this gesture is meant as a form of appreciation for all the services to be rendered to the son-in-law and his relatives by the bride.<sup>17</sup> Such services include cooking, cleaning, working in the fields and generally serving the husband and his community as needed.<sup>18</sup> This leaves the wife at the groom and his family's disposal. However due to the fact that *lobola* payment has been converted into a business transaction in this modern society *rusambo* is no longer being paid with traditional beads. The father-in-law can now charge any amount of money he desires.

A second part of the *lobola* payment are cattle (*danga*). In the modern society where people no longer need cattle, the equivalent value of the number of cattle may be paid in cash. Significantly cattle payment is for the prospective groom to secure legal rights over the children of the marriage.<sup>19</sup> This is probably the reason why children born in marriage take the surname of the father and not the mother.

In both beads and cattle payment it is the father of the bride who decides on the amount of money he need and the number of cattle or their value. The number of cattle to be delivered by the groom differs from society to society, from family to family and even within the family, depending on the achievements and status of the woman in question. However, whatever the number of cattle demanded by the father of the bride, the mother of the bride is entitled to only one cow and the rest of the herd as well as beads accrues to the bride's father. In a nutshell the father walks away with the bigger chunk while the mother retains a small share of *lobola*.

Chiweshe quoted Sekai Nzenza who narrated in the Herald<sup>20</sup> an experience with *lobola* ceremony:<sup>21</sup>

15 Chigwedere (n 12) 5. See also Shenje-Peyton (n 6).

16 Chigwedere (n 12) 5.

17 Chigwedere (n 12) 9.

18 Ansell (n 5) 699.

19 Shenje-Peyton (n 6) 106.

20 'Lobola and the meaning of marriage' *The Herald* 6 November 2013 6.

21 Chiweshe (n 13) 232.

Apart from the small introductory payments, Philemon paid *mapfukidzadumbu*, the symbol to thank the mother for carrying Shamiso inside her uterus and stretching her abdomen the way she did. Then the *mombe yehumai*, the cow to thank the mother for giving birth to Shamiso. He could not afford the eight cattle, *danga* or *rusambo*, the bulk of the lobola ... Later on, if Philemon found Shamiso to be a virgin, we will politely remind Philemon that we need *mombe yechimanda*, the cow that will be slaughtered and enjoyed by both families to celebrate Shamiso's virginity. When the payments had been paid to the tune of a borrowed US\$1000, Philemon and his people asked to meet the family. They came in crouching and clapping in humility.

In pegging the amount required for *lobola* and the number of cattle required, Scheilder argues that the following factors, with regards to the bride comes into play:<sup>22</sup>

- Her perceived beauty and desirability
- Her age or youthfulness
- Her virginity
- Her fertility
- Her family's status in their society
- Her education and the cost of her education
- Her career and earning capacity
- Wealth and status of the family of the groom.

If a bride has all of the above listed qualities, she would attract a higher *lobola* value. Resultantly this has led to a situation where daughters from the same family being charged different price.

## 4 *Lobola* as a requirement for marriages in Zimbabwe

### 4.1 *Lobola* is not a statutory requirement

When I instigated a court application at the Constitutional Court of Zimbabwe to have *lobola* abolished, the most prominent criticism I got was based on the fact that *lobola* is not a prerequisite to a marriage.<sup>23</sup> It became the basis upon which the Chief Justice of the Constitutional Court requested me to withdraw the matter and do a factual investigation to prove the legal position of *lobola* in Zimbabwean marriages and allow the involvement of other women in the process. My contention was that it is a customary requirement

22 Scheidler (n 3) 2.

23 *Pricilar Vengesai v Minister of Justice Legal and Parliamentary Affairs & Others* Case Number CCZ 67/17.

which women who belong to a society in which *lobola* is practiced cannot easily avoid.

What is candidly acknowledged in this paper is that under the two Zimbabwean legislations which govern marriages being the Customary Marriages Act and the Marriages Act, *lobola* is not a statutory requirement for marriages.<sup>24</sup> Both of these legislations do not require *lobola* to be a legal requirement for the registration of either customary or civil marriage. This is so because *lobola* is a customary practice which, by virtue of being a custom, cannot be written in statutes.

#### 4.2 *Lobola* as a customary requirement for marriage

While the practice of *lobola* custom, cannot be found in any Zimbabwean statute, it is a way of life of those who practice it. Hence it is a customary law requirement. Customary law depends, among other things, on the existing custom of the society. Customary law refers to the legal principles and judicial practices of a particular tribe.<sup>25</sup> According to Bennet customary law emerges from what people believe they ought to do rather than from what a class of legal specialists considers that they should do or believe.<sup>26</sup> It is basically a set of norms of what people do in a social situation and which rules they regard as binding. The positive content of customary law is not derived from lawyers and their reasoning but rather the dominant role of social actors determines its content.<sup>27</sup> *Lobola* payment has been practiced for a long time that it now qualifies to be customary law. Its existence predates the colonial era.<sup>28</sup> It therefore becomes trite that *lobola* forms part of the customary law in Zimbabwe.

The position of *lobola* with regards to marriages in Zimbabwe has been evolving since 1984. A very prominent judgement on *lobola* was handed down in 1984 by the Zimbabwean Supreme Court (then it was the highest court in the land) in *Katekwe v Muchabaiwa*.<sup>29</sup> In this matter the guardian of a woman was claiming seduction damages from a man who had sexual intercourse with her daughter before paying *lobola*. The community court applied customary law and ruled that indeed the father was entitled to the seduction damages. An appeal was made to the Magistrate court which upheld the community court's position. The Magistrate, in upholding the awarding of damages to the women's guardian held that<sup>30</sup>

24 Customary Marriages Act 6 of 1997 [Chapter 5:07]; Marriages Act 18 Of 1989 [Chapter 5:11].

25 African Law and Tribunal Courts Act {Chapter 237} since repealed.

26 TW Bennet *Source book of African customary law for Southern Africa* (1991) 6.

27 Bennet (n 27 above) 7.

28 Shenje-Peyton (n 6) 109.

29 1984 (2) ZLR 112 (SC).

30 *Katekwe v Muchabaiwa* 1984 (2) ZLR 117 (SC).

One is constrained in arriving at this decision to ask if the defendant's submissions are upheld before this court, would that not be eradicating the whole fabric of our society's customs. Was it the intention of Parliament in enacting section 3(3) (of the Legal Age of Majority that the levels of custom should be done away with? The court is of the strongest opinion that at no time was it the intention of the law giver.

What the court was simply saying is that by giving women the majority status it does not mean that their parents cannot claim seduction damages, where *lobola* has not been paid and sexual intercourse has been taking place.

This position was overthrown by the Supreme Court on the basis that:

An African woman who has been seduced can make an election as to which law she wants to be applied. If she elects the general law of Zimbabwe then she herself because she is now a major can bring an action for damages for seduction.

This interpretation, according to the court, directed itself to healing the pains inflicted on African women by legal encumbrances brought about by customary law. It was further held that African women were now emancipated and can sue, in their own right, without the assistance of their guardians. It was concluded that an African woman with majority status can, if she so desires, allow her father to ask for *lobola* from the man who wants to marry her. She is the only one who can make that choice. If she does agree to the payment of *lobola*, her father can go through the contractual procedure required before an African marriage is effected.<sup>31</sup> The father's entitlement to *lobola* would then depend upon his daughter's discretion. Once the choice of *lobola* payment has been made, the father can now enter into a *lobola* payment contract with his prospective son in law.

Barely ten years later, the same court that had ruled that *lobola* is a woman's choice, took a somewhat different stance. In 1992 in the case of *Mujawo v Chogugudza*<sup>32</sup> the Supreme Court in clear unambiguous terms acknowledged *lobola*, as a customary marriage requirement with the following words:<sup>33</sup>

Traditionally all that a man is required to do to have any unmarried woman as his wife is to agree to any amount of *lobola* payable for the woman with her father or guardian and she becomes his spouse.

The court then went on to recognise the validity of the defendant's marriage on the basis of *lobola* payment. In this case there was no compliance with statutory requirements. A profound observation was

31 *Katekwe v Muchabaiwa* 1984 (2) ZLR 126 (SC).

32 1992 (2) LLR 32 (SC) at 327.

33 *Mujawo v Chogugudza* 1992 (2) LLR 32 (SC) at 327.

made by the court in the matter with regards to customary union, customary marriage and civil marriage. It held that<sup>34</sup>

It is more accurate to refer to an unregistered customary union simply as a customary union and to the parties as customary spouses to distinguish such a union, from a customary marriage which has been registered.

Otherwise all of them are marriages under different legal regimes and no form of marriage is superior than the other. They are just different. A customary union becomes a valid marriage because of *lobola*. Customary and civil marriages derive their validity from their respective statutes.<sup>35</sup>

Furthermore *lobola* contracts are enforceable in the courts of law as was held in *Kuvedzimwe v Musariri*.<sup>36</sup> In this matter the father-in-law sued the son-in-law for outstanding *lobola* and the High Court concurred with the court *a quo* that the defendant was to deliver to the plaintiff seven heads of cattle which were outstanding items of *lobola*. This position was also upheld in *Mutaisi v Muzondo*<sup>37</sup> whereby the father-in-law was regarded to have a right to sue the son-in-law for the outstanding *lobola*. In *Mutaisi v Muzondo*, the appellant was married to the respondent's daughter in terms of customary law. Respondent's daughter died after only part of the *lobola* had been paid by the appellant. Father to the deceased woman refused to take possession of and distribute the deceased's clothing, claiming that the outstanding *lobola* had to be paid off first. Appellant's application to the Magistrate Court for the respondent to take and distribute the deceased clothing was dismissed.

The above cases are important judicial precedencies on *lobola* which seem to be building up on each other yet. In actual fact, they are conflicting. In *Katewe v Muchabaiwa*, it was held that *lobola* was not a legal requirement for marriage, yet in *Mujawo v Chogugudza* the court regarded the need to pay *lobola* for there to be a marriage. Furthermore in *Mutaisi v Muzondo* *lobola* was regarded as a legally enforceable contract.

*Katewe v Muchabaiwa* precedent left a lot of issues unaddressed and a lot of questions about *lobola* unanswered. This could be so probably because, as the court rightly stated in *dicta*, the appeal was not concerned with *lobola*.<sup>38</sup> The case was dealing with the claiming of seduction damages by the father on behalf of his daughter. In *Katewe v Muchabaiwa* the court could have simply established that *lobola* is not a statutory requirement and the father in law could have been required to prove the existence of *lobola* practice as their

34 As above.

35 TW Bennet (n 27) 6.

36 1999 (2) ZLR 20 (HC).

37 1999 ZLR 435 (HC).

38 *Katewe v Muchabaiwa* 1984 (2) ZLR 127 (SC).

customary requirement for marriages. By nature and by operation, customs are ascertained through practice as opposed to legal rules which are written down in the form of statutes. This position does not give *lobola* a lesser status compared to statutory requirements but it is simply a customary requirement. A custom by its nature cannot be a written law. A customary norm in every society is established through continuous practice yet it is binding.

In 2000 the Zimbabwean High Court in *Gwatidzo v Masukusa*<sup>39</sup> acknowledged *lobola* to be a customary requirement in marriages. In this matter the defendant got married to Mr Gwatidzo under customary law after *lobola* was paid for the defendant. Mr Gwatidzo and the defendant had a child who was born in their union. Mr Gwatidzo then married the plaintiff under the Marriage Act at the Magistrate court. Mr Gwatidzo continued to have sexual relations with both wives. Defendant had a second child with Mr Gwatidzo after the civil marriage had been concluded. The plaintiff then claimed damages from the defendant for alleged adultery. Plaintiff was alleging that the defendant (who was the first wife under customary marriage) should have not slept with her husband after she had entered into a civil marriage with him.

Essentially this matter was about the conflict between a customary union and civil marriage. It would be easy to ascertain the existence of a civil marriage because there would always be a marriage certificate issued by the marriage officer and civil marriages are registered with the country's registrar. An unregistered customary union would be ascertained through compliance with certain marriage customs. In this case the court was guided by the payment of *lobola* to establish the existence of a registered customary union. It held that 'Gwatidzo paid *roora* to the defendant's parents and Gwatidzo and the defendant became husband and wife at customary law.'<sup>40</sup>

In *Gwatidzo v Masukusa* the court, in determining whether there was a customary union existing between the defendant and the plaintiff's husband, held that: Our courts must recognise customary law, that is, a law which our people believe in and accept as binding on them.<sup>41</sup>

It then accepted the existence of a customary union between the defendant and the Plaintiff's husband (Mr Gwatidzo) on the basis that Mr Gwatidzo had paid *lobola* to the defendant's parents. The validity and strength of the customary union between the defendant and Mr Gwatidzo was on the basis of the payment of *lobola*. Even in *Mujawo v Chogugudza*<sup>42</sup> where the court was grappling with which law to

39 2000 (2) ZLR 410 (HC).

40 *Gwatidzo v Masukusa* 2000 (2) ZLR 410 (HC).

41 As above.

42 *Mujawo v Chogugudza* 1992 (2) LLR 32 (SC) at 327.

apply to the deceased's estate, it was guided by compliance to customary formalities.<sup>43</sup> In this regard it said that:<sup>44</sup>

The record revealed that whilst the deceased married the appellant in terms of the Marriage Act, the customary formalities were nevertheless complied with in that:

- (a) A go-between was appointed.
- (b) *Lobola* was paid.

Clearly if *lobola* was not a requirement for marriage at all there could have been no consideration for it by the courts at any stage. By practice, the payment of *lobola* is an essential requirement in concluding a customary union between a husband and a wife.<sup>45</sup> In some cases, couples first enter into a customary marriage through the payment of *lobola* and then later on conclude a civil marriage.<sup>46</sup>

Disregarding *lobola* as a requirement amounts to relegating customary law to a lower status than state law. It means that only those requirements written in statutes are important and customary requirements are not. Generally, in Zimbabwe customary law has been given a secondary status and is usually applied where there is a gap in common law.<sup>47</sup> This poses a danger of disregarding the reality of people's lives.<sup>48</sup> The majority of people's social interactions in Zimbabwe are governed by customary law. State law or state-sanctioned law has no monopoly on legal and social regulations, and this means that it is essential to explore people's legal rights beyond the confines of state law and incorporate social practices which are normally not recognised in the state courts. It is acknowledged in this paper that *lobola* is a very common cultural practice which is so central to the way of life of many Zimbabweans that a couple is not considered married unless and until *lobola* has been paid.<sup>49</sup>

#### 4.3 To what extent is *lobola* a choice

Another point of contestation, which needs to be explored, from the *Katewe v Muchabaiwa* precedent is that it makes it a woman's choice to allow her family to ask for *lobola*.<sup>50</sup> It is necessary to examine

43 This was an appeal which was brought before the Supreme Court following the appointment of an heir of the eldest son from the first customary union of the deceased. The deceased had entered into two marriages. The first one was a customary union and the second one was the civil marriage. Upon his death the trial court applied customary law to the administration of his customary union to be the heir.

44 *Mujawo v Chogugudza* 1992 (2) LLR 32 (SC) at 340.

45 Customary Marriage Divorce <http://www.bregman.co.za/customary-marriage-divorce-work-> (accessed on 26 March 2017).

46 Ansell (n 5) 698.

47 Mutaisi (n 37) 428.

48 W Ncube *Culture and tradition in East and Southern Africa* (1998) 156.

49 Shenje-Peyton (n 6) 106.

50 *Katewe v Muchabaiwa* 1984 (2) ZLR 112 (SC) at 126.

whether or not women enjoy that choice in reality. It is submitted that *lobola* is a choice in the sense that it is a custom. Customs by nature are a matter of choice. However, customs are a choice at a communal or social level and rarely at an individual level. When one is born within a given social framework of a custom, it is not up to the individual to change that custom and it is not easily achievable for one to run away from that custom. A culture or custom, by its nature, is not individualistic but that it is a societal norm which applies to the community as a whole.<sup>51</sup>

Non-individualistic nature of *lobola* is apparent even from the court in *Katewe v Muchabaiwa*'s wording when it says the woman may allow 'her father to receive *lobola* from the husband.' If it was individualistic since a woman was a major, the court could have said a woman can choose to receive *lobola* from her husband. In practice, women's freedom to choose whether to have *lobola* paid for them or not is not unencumbered. When a woman introduces the husband-to-be to her parents and indicates her intention for marriage, it then becomes obvious that the next step is *lobola*, because that's the societal norm. In a situation whereby society requires the payment of *lobola* prior to the registration of a marriage it then becomes a marriage requirement for persons belonging to that society.

In any event even if it was the case that *lobola* is a matter of choice, this does not mean that it can escape judicial or constitutional scrutiny on that basis. If that was the case then there would be no law to regulate anything because in life everything is about choices. Marriages are a matter of choice yet they are regulated, employment is a matter of choice yet it is regulated. Termination of pregnancy and prostitution are matters of choice yet they are forbidden by the laws of Zimbabwe. *Lobola* might be a choice which someone has to make but its constitutionality cannot remain unchallenged when consideration is given to its effects on women's rights.

Buttressing the fact that *lobola* is not an individual choice one has to consider the consequences which follow as punishment for those who chose not to have *lobola* paid for them. If *lobola* is not paid for a woman, she will be disassociated from family and be banished from attending family meetings and gatherings. The son-in law would not be recognised by the father-in-law and his traditional roles will not be acknowledged. He loses some of the privileges of a son-in-law.

## 5 Legal frameworks

*Lobola* as an African culture is not forbidden in any international, regional or domestic laws. However there are provisions which

51 *MEC for Education: KwaZulu-Natal v Pillay* 2008 (2) BCLR 99 (CC).

prohibits cultural practices that infringe the rights of women. Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as CEDAW) which has been regarded as the International Bill of Rights for women, has categorically rejected discrimination of women caused by cultural practices and it provides as follows:<sup>52</sup>

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

Further the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa provides that:<sup>53</sup>

States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

and

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

- (f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women

The SADC Protocol on Gender and Development (SADC Protocol) and Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, in their bid to promote equality between men and women in the region has specific provisions which expressly reject customary practices which undermine women's rights. The SADC Protocol provides that:<sup>54</sup>

States Parties shall take measures including legislation where appropriate to discourage traditional norms, including social, economic, cultural and political practices which legitimize and exacerbate the persistence and tolerance of gender based violence with a view to eliminate them.

52 Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW) available at [www.un.org/womenwatch/cedaw](http://www.un.org/womenwatch/cedaw) (accessed on 26 September 2018).

53 Protocol on the African Charter on Human and People's Rights on the Rights of Women in Africa 2003 Available at [www.achpr.org/instruments/women-portal](http://www.achpr.org/instruments/women-portal) (accessed on 26 September 2018).

54 Southern African Development Community Protocol on Gender And Development 2008 <https://www.sadc.int/issues/gender>. (accessed on 26 September 2018).

Zimbabwe is not only a signatory of these international and regional instruments. It has also domesticated some of the principles of equality through the 2013 Zimbabwean Constitution. Zimbabwe in its 2013 Zimbabwean Constitution embraced equality between men and women while at the same time condemns customary practices which violate equality or other human rights. Relevant sections are:

Every person has the right –

- (a) to use the language of their choice; and
- (b) to participate in the cultural life of their choice; but no person exercising these rights may do so in a way that is inconsistent with this Chapter.
- (1) Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities.
- (2) Women have the same rights as men regarding the custody and guardianship of children, but an Act of Parliament may regulate how those rights are to be exercised.
- (3) 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.

The 2013 Zimbabwean Constitution has improved the protection of women's rights. Section 80 of the Constitution of Zimbabwe provides that:

Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities.

- (1) Women have the same rights as men regarding the custody and guardianship of children but an Act of Parliament may regulate how those rights are to be exercised.
- (2) All laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of the infringement.

Further Section 56 of the Constitution of Zimbabwe deals with Equality and non-discrimination and provides as follows:

- (1) All persons are equal before the law and have the right to equal protection and benefit of the law.
- (2) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- (3) Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.
- (4) A person is treated in a discriminatory manner for the purpose of subsection (3).
- (a) They are subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected: or

- (b) Other people are accorded directly or indirectly a privilege or advantage which they are not accorded.
- (5) Discrimination on any of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair, reasonable and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.
- (6) The state must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and –
  - (a) Such measures must be taken to redress circumstances of genuine need
  - (b) No such measure is to be regarded as unfair for the purposes of subsection (3).

Section 56 is quite elaborate and far reaching with regards to the protection it offers to women. It accords everyone equal protection and benefit under the law. The word ‘everyone’ includes women and as such the constitutional protection of equality extends even to women. This clearly accords women similar protection of the law with men. Law under which everyone is supposed to benefit and get protection from is again not limited to any form of law. A reasonable conclusion to be derived from this wording is that everyone (men and women) must be protected in equal terms under every law in Zimbabwe be it private, public or customary law.

Both equality before the law and equal protection of the law, are not defined in the 2013 Zimbabwean Constitution. However equality before the law has been taken to mean that persons in similar situations must be treated equally and equal protection before the law implies that the existing law will be applied or enforced equally on all people in similar situations and no person shall be denied the protection or benefit of the law without a legitimate purpose.<sup>55</sup> Fundamentally, equality before the law gives everybody the right to equality yet equal protection of the law forbids unfair discrimination.

A law or conduct may violate constitutional rights to equality and equal protection of the law or either of them. Ackermann links the issue of equality before the law to human dignity.<sup>56</sup> He argues that equality before the law means that ‘all people should be treated equally with respect to their human dignity (human worth) and that the law should not differentiate in its treatment of persons in a way that impacts negatively on their human dignity.’

Section 56(5) makes the presumption that any discrimination on the prohibited grounds is unfair unless that ‘discrimination is fair,

55 L Juma ‘Chieftainship succession and gender equality in Lesotho: Negotiation the right to equality in a jungle of pluralism’ (2013) 22 *Texas Journal of Women and the Law* 174.

56 LWH Ackermann ‘Equality and non-discrimination: Some analytical thoughts’ (2006) 22 *South African Journal for Human Rights* 597.

reasonable, and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom'. Unfair discrimination simply means different treatment to different people attributable wholly or mainly to their respective descriptions based on prohibited grounds.<sup>57</sup> This section has 23 prohibited grounds for discrimination which includes sex, gender, custom, marital status and pregnancy. The prohibited grounds of discrimination if observed may go a long way towards protecting women from unfair discrimination and improving their status. Of relevance to this discussion is the fact that custom and culture constitute as prohibited grounds against which discrimination is prohibited.

## 6 Inequalities of *Lobola*

Having established that *lobola* is a customary requirement of marriage in Zimbabwe what then follows in this section is its scrutiny in terms of women status and equality. *Lobola* custom show the differentiation between men and women. *Lobola* discriminates against women in general because it benefits men and lowly regards women from every viewpoint. It seeks to perpetuate men's undue enrichment. It also discriminates the bride who is viewed firstly as an object and secondly is placed at a lower position than her husband in a marriage setup. Custom of *lobola* puts the bride and the groom on an unequal footing. One is treated as a subject (who is supposed to pay) and the other is treated as an object (who is supposed to be paid for). Payment of one person by the other creates a hierarchy in a union whereby the one who paid is above the one whom is paid for.

### 6.1 *Lobola* discriminates against the bride

One of the traditional reasons for *lobola* that goes to the heart of equality is that once a bride is married she would be expected to offer services to her husband and in laws. Symbolically, the payment of *lobola* signifies a transfer of rights of the wife and her children to the husband.<sup>58</sup> See also Chigwedere<sup>59</sup> and Shenje-Peyton.<sup>60</sup> It is thus in appreciation of these anticipated traditionally bestowed duties that a woman has to perform that *lobola* is paid for her. This recompense entitles the bridegroom to definite rights to the services of the bride. Sithole argues that the aspect of appreciation raises the man's expectation about the benefits which he is to find in the wife and it

57 Juma (n 55) 174.

58 Center for Reproductive Rights: Women of the World, Zimbabwe <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/WOWAA08.PDF>. (accessed on 23 March 2018) 141.

59 Chigwedere (n 12) 11.

60 Shenje-Peyton (n 6) 110.

might lead to wife abuse where those expectations are not met.<sup>61</sup> It has to be noted that even when a husband is born his parents goes through some inconveniences yet traditionally they are expected to treat such as their responsibility. Raising a woman becomes an inconvenience because at some stage she would be required to go away and offer services to her husband.

In 2005 BBC News carried out an interview on *lobola* and one man was quoted saying the following:<sup>62</sup>

The purpose of it was to thank the parents of your woman for giving birth and bringing up this beautiful lady whom you are going to spend the rest of your life with. I know men who have paid bride price and they are not complaining because the benefits you get from a wife, her care, help and companionship, far outweigh the cost.

In this regard the scale is tilting in favour of a husband who by one transaction between him and the father in law secures life time services from the wife. The bride is expected to have been trained by her aunties on the services she is supposed to give to the husband. Most services are care giving and domestic work. In other words a wife is expected to work for a husband. There is no equality there when one is expected to serve the other.

Virginity of a bride plays a role in *lobola* as it brings an additional cow to the in-laws. This is a sign that *lobola* is an institution which is highly sexualised because of the payment of an extra cow where the bride is found to be a virgin. In this way girls who lose their virginity before marriage are viewed as damaged goods and no extra cow will be paid to the family.<sup>63</sup> A husband however do not go through the process of being considered a virgin or not. It does not matter whether he is a virgin or not at the time he marries.

*Lobola* payments are not voluntary on the part of the bridegroom. They are obligatory and they are pegged by the father-in-law.<sup>64</sup> During the transaction of *lobola* the bride is relegated to an object upon which her father and her husband to be has to determine her prize. A husband has the right to participate in the *lobola* negotiation yet the bride do not have that right. Marriage is a significant turnaround point in every human being's life, yet a woman is denied an opportunity to give her views and opinions in a matter which determines her future and her life. Further, because of *lobola*, marriage starts on an unequal footing with parties being treated differently. From the onset on *lobola* negotiations the bride is not treated on equal terms with the husband.

61 Unpublished: I Sithole 'An exploration of *lobola* and its impact within the arena of sexual relations and proactive imperatives' unpublished Masters dissertation Women's Law University in Africa 2005 13.

62 Sithole (n 62) 13.

63 Chiweshe (n 13) 235.

64 Shenje-Peyton (n 6) 124.

It has been evident through the evolution of *lobola* that the value of a bride appreciates to suit the economic factors of the country. *Lobola* is now commercialised and as a result girls are being viewed by their fathers as a profit-making enterprise and husbands who are forced to pay large sums in *lobola* tend to look at their wives as property or commodities and hence consider them as inferior. Chireshe and Chireshe argue that *lobola* is also perpetrated by fathers who now see their daughters as money-spinning projects as they tend to charge high values for *lobola*.<sup>65</sup>

In the modern Zimbabwe *lobola* is being paid in:<sup>66</sup>

satellite dishes, cars, furniture and huge amounts of groceries. Modern *lobola* payments include cash, cattle, clothes, shoes and groceries. Anecdotal reports indicate that on average a man is asked to pay US\$4,000 cash plus the cattle, clothes and groceries. The nature of *lobola* has become increasingly materialistic

*Lobola* institution has evolved to become a business venture whereby daughters have become a high priced commodity in Zimbabwe. Husbands are not paid for at all and they are highly regarded as purchasers of wives. This commodification of women in the *lobola* transaction is at the expense of the dignity and equality of women. As a result, *lobola* reinforces perceptions of women as second class citizens.

Furthermore non-payment of *lobola* has led to a scenario in which some parents refuse to bury the bride who would have died before full payment of *lobola*. This serves as surety for *lobola* payment which is in many ways extortion.<sup>67</sup> In the above discussed the case of *Mutaisi v Muzondo* proves this fact.<sup>68</sup> In the contrary it is rare that a man for not paying *lobola*.

## 6.2 Lobola's discrimination against women in general.

Chigwedere contends that *lobola* consists of two components. These being the father-in-law's payment and those of the mother-in-law.<sup>69</sup> The mother of the bride is entitled to *mapfukudza dumbu and mombe yehumai* (money for carrying the bride in her womb and a beast of being a mother). The mother of the bride gets very little while the father gets the biggest portion in the form of beads and any number of cattle he may want to demand. A mother is entitled to a lesser portion of *lobola* simply because she is a woman. It is common cause that where a child grows up with both parents, both parents play a

65 E Chireshe & R Chireshe (2010) 3 'Lobola: The perceptions of Great Zimbabwe University students' (201) *The Journal of Pan African Studies* 1.

66 Chiweshe (n 13) 235.

67 Chiweshe (n 13) 235.

68 *Kuvedzimwe v Musariri* 1999 (2) ZLR 20 (HC) at 428.

69 Chigwedere (n 12) 18.

significant role in his/her up-bringing. Mothers, however, have a bigger responsibility in that regard as they have to carry the pregnancy, breastfeed the child and perform care duties and yet they get a small portion of *lobola*. This is another dimension of women discrimination which is inherent in the substantive nature of *lobola*. In this regard, women are unfairly discriminated against on the basis of gender and sex.

The other point of contestation in the *lobola* payment is apparent where the parents of the girl being married were divorced or never married and the daughter was raised by the mother alone.<sup>70</sup> A father who was absent and did not provide for the children pays a cow known as *mombe yechiredzwa* (a beast for rearing the bride) to the father of the bride's mother. After paying this beast then he will be entitled to *lobola*. The mother who would have raised the bride alone does not get a beast for rearing the bride but gets *mapfukidza dumbu* and *mombe yehumai*.<sup>71</sup>

Furthermore a bride is considered to belong to the father's clan. As such the father or his family representatives need to be present for the marriage to be recognised.<sup>72</sup> Another aspect of *lobola* which violates the principle of equality is the fact that even in a situation whereby a bride was raised by a single mother where the father had died, at *lobola*, some male figure in the paternity line of the bride has to be found and be paid *lobola*. The same principle applies in a situation whereby both parents would have died, the *lobola* payment goes either to the eldest brother or to the uncles without any consideration to the sisters or any role which they might have played in the raising of their sibling being married.

In a nutshell, *lobola* seems to have been created to enrich men and to suppress women. This constitutes a violation of the equal rights of women on the grounds of sex and gender in violation of section 56 (3) which provides that:

- (a) Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, ... tribe, ... sex, gender, marital status, ... economic or social status.

### 6.3 *Lobola* and the limitation clause

It has been established that *lobola* as a culture poses discrimination against women. However those who support *lobola* justify it as their cultural right which is provided for in the 2013 Zimbabwean Constitution. However it was settled in *Pitty Mpofo and Another v The State* that constitutional rights and freedoms are not absolute. In this

70 Chiweshe (n 13) 235.

71 Chiweshe (n 13) 235.

72 Chiweshe (n 13) 235.

regard when the Constitutional Court held that '[t]hey have boundaries set by the rights of others and by important social concerns such as public order, safety, health and democratic values.'

Such boundaries for the right to culture exists in form of two limiting provisions found in the 2013 Zimbabwean Constitution being the specific limitation and the general limitation clause. In a situation where any custom or cultural practice contradicts equality and other rights it cannot be practiced. Section 63 of the 2013 Constitution provides that '[n]o person exercising these (cultural) rights may do so in a way that is inconsistent with this Chapter (Bill of Rights).'

Furthermore the established discrimination inherent in *lobola* custom, for it to pass the Constitutional muster, need to be justified in terms of the general limitation provisions of Section 86 (2) of the Constitution which provides that:

The fundamental rights and freedoms set out in this Chapter may be limited only in terms of a law of general application and to the extent that the limitations is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors.

The analysis of the limitation clause requires *inter-alia* balancing benefits given by the practice of *lobola* and the harm it causes. If the harm caused outweighs the benefits then it cannot be regarded as a justifiable practice in the democratic society. According to Currie and De Waal the reasons for limiting the rights must be exceptionally strong.<sup>73</sup> It requires the application of rationality in determining whether a conduct or law violates rights thereby striking the balance between the two alleged competing interests. This balance according to Juma should be carefully negotiated bearing in mind the values that the society considers to be important.<sup>74</sup>

Supporters of *lobola* custom argue that it serves many social and economic functions. Most importantly it is believed to be a valuable part of African culture.<sup>75</sup> In some cases, even those who would have married in foreign countries they actually send money back home for *lobola*. *Lobola* is regarded as part of Zimbabwean heritage. Ansell contends that many Africans see *lobola* as linked to their very identity and to their survival as a people.<sup>76</sup> See also Shenje -Peyton.<sup>77</sup>

This traditional way of associating an identity with a cultural practice is misleading. Because one is a Zimbabwean first before one gets married. Even those who are not married through *lobola* are regarded as Zimbabweans. In terms of Section 35 of the 2013

73 I Currie & J De Waal *The Bill Of Rights hand book* (2017) 151.

74 Juma (n 55) 174.

75 Chiweshe (n 13) 233.

76 Ansell (n 5) 708.

77 Shenje-Peyton (n 6) 125.

Zimbabwean Constitution a person is regarded as a Zimbabwean through birth, descent or registration. *Lobola* by its nature is just a culture which serves social purposes. A cultural practice is defined as objects, events, activities, social groupings and language that participants use, produce and reproduce in the context of making meaning in everyday life.<sup>78</sup> To justify the practice of *lobola* as linked to Zimbabwean identity cannot be found to be reasonable considering the harm it causes to women.

Another reason for *lobola* payment is that it is used as a token to tie and deepen the bonds between and within the two families. According to Chigwedere, *lobola* is a bond uniting two families.<sup>79</sup> What needs to be noted is that the bond being referred to in this matter is between the husband's family and wife's family and not between the husband and the wife. The same view was echoed by participants in the BBC debate on bride price (*lobola*) in 2005, one participant commented as follows:<sup>80</sup>

Just as the wedding ring symbolizes unity between two people, the bride price is a symbol of unity between two families. Bride price injects a sense of accountability into a marriage giving both families a stake in it. This helps to create strong marriages.

The example of giving a ring as an equivalence to *lobola* in actual fact exposes the inequalities inherent in the custom. Ring is exchanged between the parties to marriage yet *lobola* is paid for a bride to her father in law. *Lobola* practice disregards the fact that the unity that needs to be considered is the one between husband and a wife and not between two families. If *lobola* was exchanged between a wife and a husband its fairness was not going to be questioned and the example of a ring would have been applicable. In any case the practice has lost its unifying function and serves merely as a business transaction involving ever-growing sums of money.<sup>81</sup>

According to Shenje-Peyton, *lobola* is paid to the parents of the bride as a gesture of gratitude for the inconvenience they went through while they were bringing up the bride.<sup>82</sup> *Lobola* serves as a token of appreciation to the in-laws. It is a way of thanking in-laws for bearing and rearing a wife for them. It is appreciated that when a wife is born and reared, the in-laws had to go through some inconveniences. Since her identity and services and belonging are going to be transferred and enjoyed by the husband and his family, her parents deserve some form of compensation. Marriage is a contract between two parties and there is no reason why one party

78 Urban Informatics <http://www.igi-global.com/dictionary/cultural-practice/6412> (accessed on 25 August 2018).

79 Chigwedere (n 12) 36.

80 Sithole (n 62) 14.

81 Shenje-Peyton (n 6) 127.

82 Shenje-Peyton (n 6) 123.

which has to be appreciated and not both parties.<sup>83</sup> One however wonders why the parents are being compensated for the girl child and not for a boy child. In other words, *lobola* is paid for a woman simply because she is a woman.

It is also argued that *lobola* is seen as a way of giving the wife respect and an insurance in her marriage. In the traditional set up, *lobola* binds the marriage because it involves many members of each family such that each family involved even throughout the subsistence of that marriage. While this may be seen as a positive aspect, it may also work against the woman if she is the one who wants a divorce. In such a situation *lobola* will tie the woman to a marriage which she no longer.

Conversely there is no longer a rational connection between *lobola* and its intended purposes. The reasons put forth to justify *lobola* payment do not satisfactorily vindicate the custom. A custom must be rationally related to its purpose(s) for it to pass the Constitutional muster.<sup>84</sup> *Lobola* custom is rationally related to a patriarchal society which promoted male dominance and female subordination. This patriarchal society cannot be reproduced in its original form in the modern Zimbabwe. Zimbabwe is now building itself in a democratic society which embraces gender equality and constitutionalism. It was a tool for subjugation of women in our society. Clearly with *lobola*, women discriminated against because they are women and there is no real benefit for them in this transaction. The manner in which *lobola* is paid is a direct violation of the rights of women to dignity, equality and non-discrimination on the basis of custom, culture, sex, gender, status and origin.

The thread of discrimination against women emanating from the practice of *lobola* enslaves them throughout their lifetime.<sup>85</sup> Firstly, as women are being raised, this is done in a manner that the parents get something out of them when they get married. Secondly, at marriage, the *lobola* payment is done in a discriminatory manner since they get a lesser share than men. Thirdly, after raising their female children alone, women get little from the *lobola* and the patriarch of the family walks away with a lot. Even when they die they may not be buried when *lobola* is not paid in full. Sisters are discriminated against brothers where both parents are not present. There is naked discriminatory treatment given to women at *lobola*. This violates formal equality which requires all people to be equal bearers of rights.<sup>86</sup> There is no reasonable justification that is in sync with the limitation clause in Section 86 of the 2013 Zimbabwean

83 Sithole (n 62) 13.

84 *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC).

85 Shenje-Peyton (n 6) 136.

86 Currie & De Waal (n 75) 213.

Constitution to render such gross violation of fundamental rights acceptable in a democratic society. African women in Zimbabwe experienced oppression before and after independence under the 1980 Constitution which did not consider custom, sex or gender as a ground of unfair discrimination.<sup>87</sup> There is no more need for this kind of oppression to continue undermining the equality principles in the 2013 Zimbabwean Constitution.

## 7 Conclusion

In essence the above discussion is centred on the custom of *lobola*, its nature and purpose *vis à vis* the equality rights as enshrined in the 2013 Zimbabwean Constitution, Regional and International agreements. Emergent issues from literature highlighted varied contestations on *lobola*. It has been established that whilst *lobola* is a popular customary law requirement for marriages in Zimbabwe, it poses serious challenges in the fight for gender equality. Gender equality is threatened by *lobola* because of the position it places the bride in particular and women in general. At the negotiation a bride is just a commodity of a transaction between the father in law and the son in law. Throughout the marriage she is expected to be submissive and at her death she cannot be buried before it is cleared. When it is being paid for her own daughter a woman gets very little and the father in law gets a bigger share.

An interesting view is postulated in *Zimnat Insurance Co. Ltd v Chawanda* where the court held that:<sup>88</sup>

As our law accepts customary unions it should endeavor to secure equality of the parties and discard the intolerable affection of superior virtue inherited from the colonial past. To continue to exhibit a vestige of condescension and conservatism towards customary law unions will benefit the current and unyielding movement by the state to real disabilities suffered by African women.

Cultural relativism cannot be used to justify human rights abuses and there is no reason why the currently dominant norms and customs such as *lobola* in Zimbabwe should remain unchallenged.

In addition, Ndulo regards it to be an extreme form of legal positivism to tolerate a discriminatory custom on the basis that it has been practiced in that manner for a long time.<sup>89</sup> Apart from its discriminatory nature, *lobola* has also been criticised for perpetuating domestic violence.<sup>90</sup> It can be very difficult for a woman to end an

87 Constitution of Zimbabwe Act 1 of 1980.

88 *Zimnat Insurance Co. Ltd v Chawanda* 1990 (2) ZLR 143 (HC).

89 M Ndulo 'African customary law, customs and women's rights' (2011) 18 *Indiana Journal of Global Legal Studies* 102.

90 Sithole (n 62) 16.

abusive marriage, fearing that her family is unable to repay *lobola*. In *Kanjera v Muchanyuka*, the court in dealing with another conflict between customary union and civil marriage held that it may not be easy for a wife to leave a husband who would have paid *lobola* immediately on the basis that he would have contracted a civil marriage.<sup>91</sup>

Demands for large sums of money for *lobola* can leave newlywed couples financially unstable, which often contributes to the breakdown of marriages. The whole issue of *lobola* has forced some parents to coerce their daughters to remain in abusive marital relationships.<sup>92</sup> *Lobola* also promotes other harmful practices such as domestic violence as some women cannot easily move out of abusive marriages out of fear that their fathers cannot refund *lobola*.

Those who support *lobola* suggest its regulation of *lobola* as a means of dealing with the challenges associates with its practice. This position fails to appreciate the fact that *lobola* is already being regulated under customary law. While statutory law would be amended to suit societal demands customary law revolves. The manner in which *lobola* has been evolving disregards equality between men and women. In any event even if regulation is to be considered it does not help as it is aimed at dealing with the commercialisation of *lobola* and this does not deal with the inequalities associated by it.

Even if *lobola* is to revert to its original non-materialistic value of paying it with a hoe, the fact remains that it is a women who is paid for and the unwarranted hierarchy would still exist. It is not necessarily the value attached to *lobola* payment that threatens gender equality but it is its substantive nature. In simpler terms the abolition of *lobola* means the curtailing of payments for a wives. Regulation means the payment of women in a statutorily controlled manner. Regulation deals with the amount involved yet abolition removes the payment in totality. It cannot be imagined to solve the unequal status which women are subjected to in a marriage by *lobola* through controlling how they are paid instead of doing away with the issue of payment itself.

As a way forward, it is submitted that *lobola* must be abolished. According to Shenje-Preyton the abolition of *lobola* is one of the most effective ways to achieve equality between men and women in the Zimbabwean society.<sup>93</sup> The abolitionist argument links the practice of *lobola* to the unequal power relations between men and women within marriages. As May puts it:<sup>94</sup>

91 *Kanjera v Muchanyuka* S-222-96,

92 Shenje-Peyton (n 6) 128.

93 Shenje-Peyton (n 6) 144.

94 Sithole (n 62) 1.

One thing is certain; as long as the *lobola* system exists (as it is), women will never be free and equal members of society because men will not regard them as such.

This inequality is seen as curtailing the decision-making capacity of women for whom *lobola* has been paid with regard to how resources within the marriage should be used. Abolition of *lobola* must need to be perceived as a way of creating a new culture in which men and women are equal.<sup>95</sup> Conclusively, to uphold gender equality and women status in Zimbabwe there is need to harness concerted efforts towards the abolition of *lobola*. This will provide Zimbabwe with a balanced society where men and women finds themselves on equal footing in a marriage set up. A balanced and equal society is the one that is anticipated by Section 56 of the 2013 Zimbabwean Constitution.

95 Shenje-Peyton (n 6 above) 144.