

Professor Julie Stewart
SEARCWL, UZ
ZIMBABWE

LEGAL PROHIBITION OF ALL HARMFUL PRACTICES AGAINST CHILDREN

Identifying the relevant HR, 'legal' and normative orders affecting the operationalization of laws

Practice/issues	HR provisions	State Laws or Policy	Customary Laws	Religious norms	Enforcement implementation
1 Definition of child	Under 18	Confused – depends on the issue – marriage, sexual offences for and against,	Variable, but little difference in substance to general law	In some cases ends at puberty – some apostolic groups	
2 Criminalizing early sexual intercourse	Criminalized against a child	14, 16, 18 confusion, statutory rape under 16, indecent assault, 4 criminal liability on the part of a male child	Variable	Unclear, depends on source, interpretations	Poor, especially in the case of the girl child. Gendered understandings – sodomy – Gweru study.
3 Virginity testing	Outlawed	Criminalized	Mutating	No pre-marital sex – so potential authorization for testing	Cultural relativism – Enforcers membership of the group, religion, social approval Not aware of prosecutions Local courts and practices - lottery
4 Early marriage	18 minimum age	Marriage Act -16 or below F, 18 M Customary Marriage Act not defined	Puberty	Depends - puberty	Low registration of marriages, poor identification of violation

INTERNATIONAL AND REGIONAL SIGN UPS :

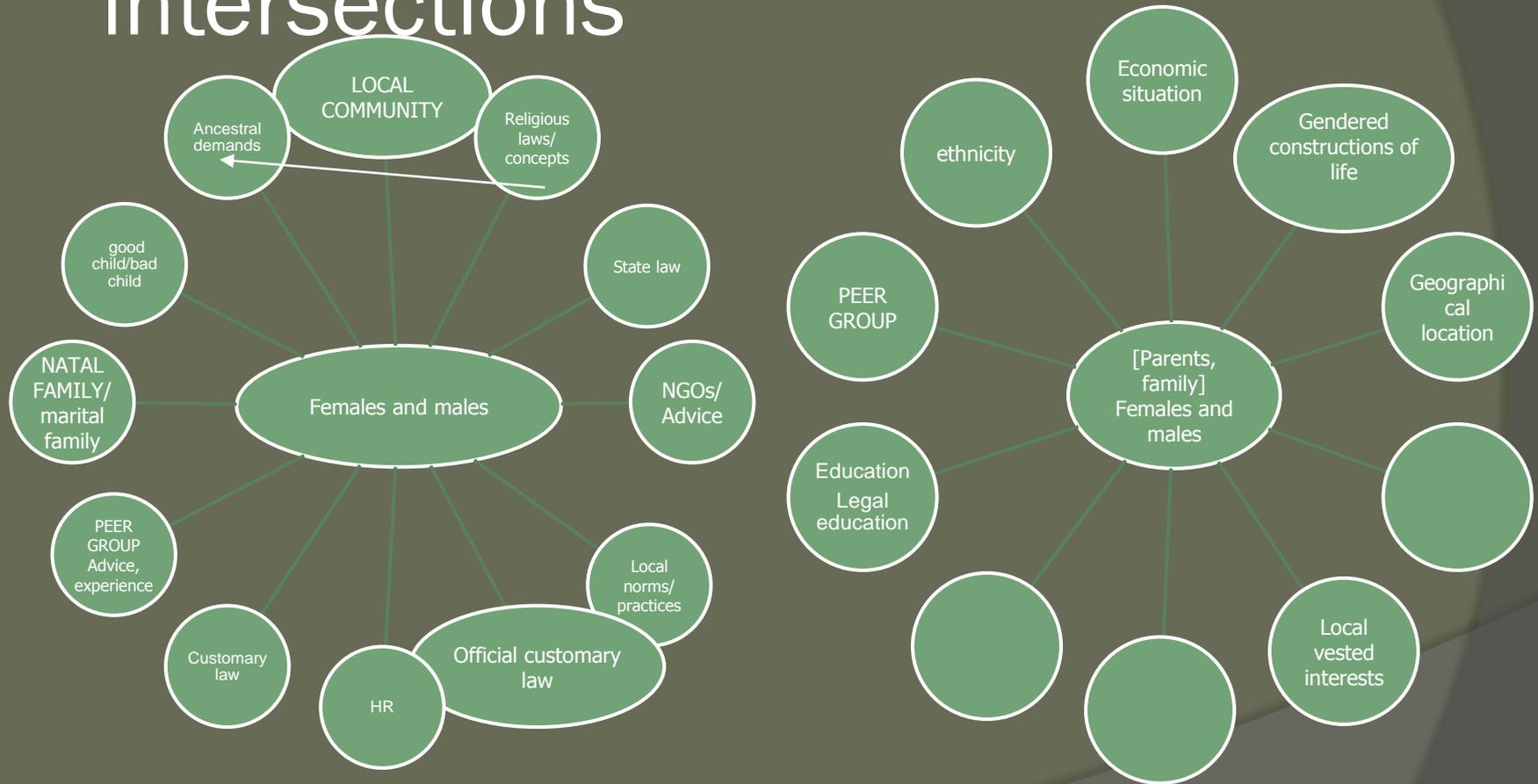
Sign-ophilia – Implement-ophobia

- Zimbabwe is a signatory to and has ratified the CEDAW, the Protocol to the African Charter on Human and People's Rights on the Rights of Women (Women's Protocol), and the CRC. The ACRWC has been signed. But it has not domesticated these instruments in accordance with s111B of the current constitution.
- Zimbabwe has however selectively taken on board some of the principles in most of these instruments including provisions related to identifying, curbing and prosecuting persons who are involved in the perpetration of harmful practices against children
- However, there is a fundamental flaw in the current Zimbabwe constitution and that is s23 (3) which permits discrimination in matters regulated by customary law and personal law. This leaves any law reform or legal determinations open to reversal and retraction either by the legislature or the courts. The spectre of *Magaya v Magaya* remains – although the most recent draft of a new constitution has a dominant equality clause and culture and customary law would have to conform to it.
- Shield against the imperative for change.
- New possible constitutional dispensation – suggested more or less automatic domestication

Barriers

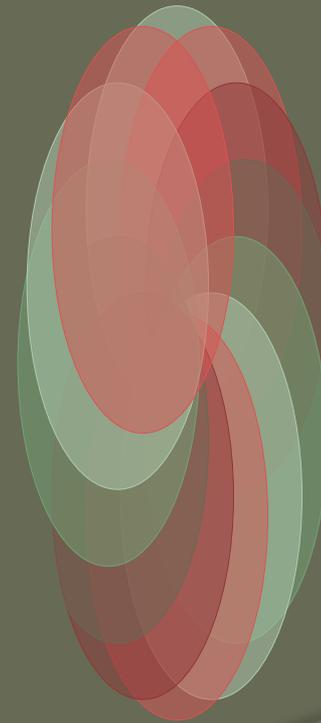
- Selective applications and compliance, inconsistencies – x pages later
- When I started a close analysis of the law I realised that there are huge gaps, contradictions and inconsistencies in legal ‘regulation’:
- Also we tend to focus on one sex, frequently female – what about males?
- Or we focus on issues – corporal punishment – not for girls?
- Child labour - female chores – assumptions that females are worst affected
- FGC – MGC
- Beyond the law even when it is in place there are problems of application, enforcement and implementation :
 - of laws
 - attitudes of personnel at all levels and in all settings
 - creation and functioning of mandated structures
 - lack of adequate resources – national budgeting, dependence on NGOs
 - lack of awareness raising
 - reporting of violations
 - cultural relativism
 - approaches to dialogues

Mapping pluralities meshing pluralities and intersections



A STARTING POINT?

- ◉ Articulating / recognizing the realities of *multiple* pluralisms – what is going on in children's and family lives?
- ◉ Yet reality is far more interactive and complex.
- ◉ Components are rarely isolated or singular in effect



Area of Law; Law Reform ??	Activities	Targets	Methods	Problems	Potential Outcomes	Corrective Strategies	Progress Assessments
Reform	Devising the reform – content and thrust Thorough research, analysis and understanding Discussions and consultations	Law reformers? Ministry heads & personnel? Ministers? Men? Women? Children?	Research on: comparative provisions Determining human rights standards to be met. Informed dialogue with key players on nature and form of reform needed	<u>Lack of political will</u> Societal, religious resistance, lack of concern on the issue Accommodating cultural and religious biases demanded in the legislation	Opposition to reform Consensus on the need for legislation Might be a compromise on critical content of the legislation	If there is opposition then renewed efforts are needed for consensus building. Review what you are prepared to sacrifice to get the minimum standards in place.	Chart process and spin offs This is when you need to review your strategies and assess what the barriers are.
Lobbying	Getting Parliament to pass reforms	Parliament – women’s caucus Cabinet Ministers Political parties Targeted known supporters and competent debaters	Personal meetings Donor pressure on government where feasible Regional power pressure – signing frenzies Publicity, identifying strategic opportunities	Not seen as critical part of political agendas Political backsliding in favour of other interest groups Splitting the female lobby	Passage of legislation, amendments to legislation Postponements and delays, legislation not passed Unsatisfactory version passed.	If there are postponements etc need to determine whether a new lobby is needed and if so what needs to be adjusted. Decide on minimum standards	Ascertain what the barriers are and document for restrategizing and for future reform exercises.
Implementing and utilizing	Capacitating staff and institutional development Publication and provision of the law to the judiciary, implementers	NGOs, trainers, judicial training institutions, bureaucratic users, strategic personnel – chiefs etc – those who need to act or intervene	Preparing materials, training manuals, forms, monitoring mechanisms. Research into appropriate methodologies for implementing and also dealing with the whole organisational structure needed for making the law effective and accessible	Absence of professional expertise and understanding of provisions and procedures. Absence of forms, lack of access to service providers, financial constraints	Staff and courts (in)capable of implementing reforms Capacitation of staff at NGO’s, courts etc to assist the public in using the law. Law passed but no capacitation. People use/don’t use the new law.	National training programmes if possible – lobby donors Assess barriers to utilization and devise appropriate remedies. It may be a national governance issue!!	Ascertain whether staff are able and ready to implement laws. Examine staff retention in justice delivery system has training been ‘lost’. Is there interest in new law from community leaders etc.
Dissemination	Preparing broad based multi-directional information campaigns	Population at large, community leaders, religious leaders	Radio, popular theatre, TV, cartoons, posters, discussions. Soap operas, basic simple materials for general use	Lack of resources for dissemination Poor, inadequate, comm. strategies Lack of cultural and gender sensitivity . Lack of monitoring and control of materials	Population in general have a basic knowledge of the law. Law in place but not known or understood	Need to mobilize broad based coalitions to spread information. May need to revisit campaign contents and strategies	Determine user rates, both increases and decreases. Assess general levels of user understanding etc