LEGAL PROHIBITION OF ALL HARMFUL PRACTICES AGAINST CHILDREN
### Identifying the relevant HR, ‘legal’ and normative orders affecting the operationalization of laws

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

- **LOCAL COMMUNITY**
  - Ancestral demands
  - Religious laws/concepts
- **NATAL FAMILY**
  - Marital family
  - Peer group advice/experience
- **PEER GROUP**
  - Advice, experience
  - Customary law
- **HR**
- **Official customary law**
- **NGOs/Advice**
- **State law**
- **Local norms/practices**

**Females and males**

**Economic situation**

**[Parents, family]**

**Gendered constructions of life**

**Geographical location**

**Ethnicity**

**Education**

**Legal education**

**Local vested interests**
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
Addressing issues – tackling the processes of investigation, operationalization and dialogue

<table>
<thead>
<tr>
<th>Practice/custom/Belief/activity</th>
<th>Sex based outcomes</th>
<th>Gendered outcomes</th>
<th>Human rights compliance violations</th>
<th>Legal regulation</th>
<th>Source of practice/custom/belief</th>
<th>Status of the source</th>
<th>Nuanced evaluation of the custom/belief</th>
<th>Identifying opportunities for interventions, dialogue, self stimulated local change</th>
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<tbody>
<tr>
<td>Equality Implications</td>
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Definition of child variable

Early sexual intercourse

Early marriage

Virginity testing

Pledging – bridewealth, Ngozi brides,

Rape

Information on sexuality
<table>
<thead>
<tr>
<th>Area of Law</th>
<th>Activities</th>
<th>Targets</th>
<th>Methods</th>
<th>Problems</th>
<th>Potential Outcomes</th>
<th>Corrective Strategies</th>
<th>Progress Assessments</th>
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<tbody>
<tr>
<td>Reform</td>
<td>Devising the reform – content and thrust</td>
<td>Law reformers? Ministry heads &amp; personnel? Ministers? Men? Women? Children?</td>
<td>Research on: comparative provisions Determining human rights standards to be met. Informed dialogue with key players on nature and form of reform needed</td>
<td>Lack of political will Societal, religious resistance, lack of concern on the issue Accommodating cultural and religious biases demanded in the legislation</td>
<td>Opposition to reform Consensus on the need for legislation Might be a compromise on critical content of the legislation</td>
<td>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.</td>
<td>Chart process and spin offs This is when you need to review your strategies and assess what the barriers are.</td>
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<tr>
<td>Lobbying</td>
<td>Getting Parliament to pass reforms</td>
<td>Parliament – women’s caucus Cabinet Ministers Political parties Targeted known supporters and competent debaters</td>
<td>Personal meetings Donor pressure on government where feasible Regional power pressure – signing frenzies Publicity, identifying strategic opportunities</td>
<td>Not seen as critical part of political agendas Political backsliding in favour of other interest groups Splitting the female lobby</td>
<td>Passage of legislation, amendments to legislation Postponements and delays, legislation not passed Unsatisfactory version passed.</td>
<td>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</td>
<td>Ascertain what the barriers are and document for re-strategizing and for future reform exercises.</td>
</tr>
<tr>
<td>Implementing and utilizing</td>
<td>Capacitating staff and institutional development</td>
<td>NGOs, trainers, judicial training institutions, bureaucratic users, strategic personnel – chiefs etc – those who need to act or intervene</td>
<td>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</td>
<td>Absence of professional expertise and understanding of provisions and procedures. Absence of forms, lack of access to service providers, financial constraints</td>
<td>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.</td>
<td>National training programmes if possible – lobby donors Assess barriers to utilization and devise appropriate remedies. It may be a national governance issue!!</td>
<td>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.</td>
</tr>
<tr>
<td>Dissemination</td>
<td>Preparing broad based multi-directional information campaigns</td>
<td>Population at large, community leaders, religious leaders</td>
<td>Radio, popular theatre, TV, cartoons, posters, discussions. Soap operas, basic simple materials for general use</td>
<td>Lack of resources for dissemination Poor, inadequate, comm. strategies Lack of cultural and gender sensitivity . Lack of monitoring and control of materials</td>
<td>Population in general have a basic knowledge of the law. Law in place but not known or understood</td>
<td>Need to mobilize broad based coalitions to spread information. May need to revisit campaign contents and strategies</td>
<td>Determine user rates, both increases and decreases. Assess general levels of user understanding etc</td>
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