

# Protection of Children from Harmful Practices through the Law in Africa

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# The objective of the presentation

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- To provide an overview of the status of legal protection of children from harmful practices in Africa
- Focus on three practices – FGM, corporal punishment and early marriage



# Obligations to take legislative and other measures....

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Article 4 – The United Nations Convention on the Rights of the Child (CRC), 1989

- Mandates states parties to “take all appropriate legislative and administrative and other measures” for the implementation of the rights contained therein.

Article 1 - The African Charter on the Rights and Welfare of the Child (ACRWC), 1990

- Obliges states to recognise the rights, freedoms and duties enshrined in the Charter and undertake the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the provisions of the Charter.

# Child Law Reform in Africa

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- Many African states have embarked on a process of aligning their national laws with international human rights provisions and standards to ensure that they reflect their commitments under the treaties which they have ratified.



# Ratification of African instruments related to children

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Treaty	Ratifications in Africa	Signatures	No action	Global ratifications
<b>African Charter on the Rights and welfare of the Child (ACRWC), 1990</b>	46	7	1	-
<b>Protocol to the African Charter on Human and People's Rights On the Rights of Women in Africa 2003</b>	21	25	8	-

# Ratification of the CRC, the CRPD, the Optional Protocols, by African States

Treaty	Ratifications in Africa	Signatures	No action	Global ratifications
<b>Convention on the Rights of the Child (CRC), 1989</b>	<b>52</b>	<b>1</b>	<b>1</b>	193
<b>Optional Protocol on the Involvement of Children in Armed Conflict, 2000</b>	37	6	11	<b>144</b>
<b>Optional Protocol on Child Sale, Child Prostitution and Child Pornography, 2000</b>	<b>39</b>	<b>7</b>	<b>8</b>	<b>154</b>
<b>Optional Protocol to the CRC on a Communications Procedure, 2011</b>	-	2	52	-
<b>Convention on the Rights of Persons with Disabilities (CRPD), 2006</b>	27	13	14	<b>106</b>
<b>Optional Protocol to the CRPD, 2006</b>	15	15	24	<b>63</b>

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# ACRWC reporting guidelines (2003)

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- General measures of implementation: Article 1**
- Definition of the child: Article 2**
- General principles: Articles 3, 4, 5, 7, 12 and 26**
- Civil rights and freedoms: Articles 6-10, and 16**
- Family environment and alternative care: Articles 16, 18(3), 19(2-3), 2 and, 25**
- Health and welfare: Articles 5, 13, 14, 20(2a-c), and 26**
- Education, leisure and cultural activities: Articles 11 and 12**
- Special protection measures: Articles 5(3), 15-17, 21-23, 25, 26-30,**
- Responsibilities of the child: Article 31**



# CRC reporting guidelines (2010)

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- **General measures of implementation: Articles 4, 42 and 44(6)**
- **Definition of a child: Article 1**
- **General principles: Articles 2, 3, 6 and 12**
- **Civil rights and freedoms: Articles 7, 8, 13-17, 28(2), 37(a) and 39**
- **Family environment and alternative care: Articles 5, 9-11, 18(1-2), 19-21, 25, 27(4), 39**
- **Disability, basic health and welfare: Articles 6, 18(3), 23, 24, 26 and 27 (1-3) and 33**
- **Education, leisure and cultural activities: Articles 28-31**
- **Special protection measures: Articles 22, 30, 32-36, 37 (b)-(d), 38, 39**



# The Status of Child Law Reform

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- 32 countries have consolidated/comprehensive children's statutes and a further 5 countries have Bills on children which are yet to be passed.
- However, consolidation does not necessarily mean full harmonisation hence the need to look at the substantive nature of the laws



# Minimum Age of Marriage

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## □ Article 21 (2) : African Charter on the Rights and Welfare of the Child

Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be **18 years** and make registration of all marriages in an official registry compulsory.

## □ Art 6: African Women's Protocol

The minimum age of marriage for women shall be 18 years

# Early marriage

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- Two approaches
  1. Merely invalidating marriages below the legal minimum age
    - 7 countries (Angola, Burundi, Cote D'Ivoire, Djibouti, Egypt, Lesotho, Tunisia and Zambia)
  2. Criminalisation of early marriage
    - 25 States criminalise child marriage in their respective penal laws.
    - 4 countries have set the minimum age **above** 18 for both girls & boys
    - In 24 countries the minimum age of marriage is 18 for both girls & boys
    - 5 countries have the minimum age of marriage above 18 for boys only
    - 6 Countries have the minimum age of marriage below 18 for both boys and girls
    - 14 countries have the minimum age below 18 for girls only (discriminatory approach)

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# Early Marriage ... cont'd

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- In Lesotho, The Child Protection Act provides for the right of the child to refuse marriage or betrothal but does not provide a minimum age of marriage. While in Ghana and Sierra Leone the law provides for both the right to refuse to marry and the minimum age of marriage.
- Federal states such as Ethiopia (the family law of the regional state of Tigray) provide for a different minimum age for girls and boys that is 18 and 21 respectively) and Nigeria (legislation domesticating the Child Rights Act at state level sets the age at 16 years (Akwa-Ibom state) or defines the child not by age but by “puberty” (Jigwa state) on the other hand have regional laws of the constituent states that provide different minimum ages.

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# Minimum Age of Sexual Consent

- Important to have a set minimum age of sexual consent to protect children from , among other things, sexual abuse, which may sometimes happen in the context of rites of passage
- The minimum age of sexual consent is 12 in 2 countries (Senegal and Namibia)
- 5 African countries (Angola -16G/17B; Sao Tome -16G/, Senegal - 12G; Sudan-18G; and Tanzania) have discriminatory minimum ages of sexual consent for girls and boys. Angola, Sudan and Tanzania, have consolidated child laws
- In Tanzania the law distinguishes between sexual consent of a married and an unmarried girl (12 for a married girl and 14 for an unmarried girl).
- 12 countries do not define the minimum age of sexual consent under their respective laws. Only Nigeria includes the minimum age of sexual consent in the Child Rights Act of 2003, the rest do so in penal codes and other laws

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# Discrepancy between the age of marriage and sexual consent



Country	Minimum age of marriage	Minimum age of sexual consent
Angola	- 18 - under exceptional cases <u>15</u> for girls and <u>16</u> for boys	16 for girls 17 for boys
Democratic Republic of Congo	18 for boys <u>15</u> for girls.	18 (this is higher than the age of marriage for girls)
Sao Tome & Principe	- 18 - under exceptional cases <u>14</u> for a woman 16 for a man	16(for girls)
Sudan	- Muslim marriage <u>Puberty</u> for girls <u>10</u> for boys - Non Muslim marriage <u>13</u> for girls and <u>15</u> for boys	18 (for girls only)

# Corporal Punishment

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- 5 countries prohibit corporal punishment in all settings including the home and the school (Algeria, Congo Brazaville, Guinea Bissau and Zambia)
- 22 countries prohibit CP in schools only
- 10 countries (Cape Verde, Egypt, Ghana, Kenya, Lesotho, Libya, Malawi, Mali, Mauritius and Togo) specifically prohibit corporal punishment in schools and/or institutions.
- 8 countries prohibit CP in the justice system only
- 6 countries with sharia law (Algeria, Djibouti, Gambia, Kenya, Ethiopia and Mali) prohibit corporal punishment.
- 43 countries ban corporal punishment as a sentence for crime and 23 countries abolish corporal punishment from the penal institutions.

# Prohibition of FGM

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- 30 African countries criminalise FGM as a harmful traditional practice.
  - 20 of these have a comprehensive child law
  - 11 of the 30 countries (Benin, Cameroon, Central African Republic, Chad, Cot Divoir, Eritrea, Kenya, Niger, Nigeria, Senegal and Togo) have separate laws on prohibition of FGM or HTPs - 6 of the 11 countries also have a separate child law.
- 17 countries that have a child law do not criminalise FGM
- 10 countries with no children's statutes prohibit FGM in their respective laws and 7 do not.

# Observations

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- There is commendable effort by African countries to enact comprehensive laws on children but not all law reform amounts to harmonisation with international/regional standards
- Even where laws have been harmonised, implementation is a problem probably because most of the harmful practices are based on deeply embedded societal beliefs
- Most laws focus only on well known harmful practices
- The Four Cardinal Principles may be a good entry point for addressing harmful practices as they have been accepted universally even in countries where harmful practices have not yet received statutory prohibition

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# The Four Cardinal Principles

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Principle	Constitutional incorporation	Legislative incorporation
<b>The best interests of the child</b>	9 countries	39
<b>Non-discrimination</b>	54 (mostly a general prohibition clause, not necessarily focused on children)	37
<b>The right to life, survival and development</b>	53 (except Tunisia and Sarahawi Arab Republic)	39
<b>Respect for the views of the child</b>	54 (mostly freedom of expression in general)	36

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# Recommendations

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-Approach harmful practices from the broader child rights debate because of the interrelated nature of child rights, as opposed to thematic

- Put in place proper legislation and enforce the same
- Raise the awareness of all forms of harmful practices against children (including the least known), amongst the law makers
- When consolidating laws on children focus must also be on protection from HPs and ensure that minimum ages (marriage, sexual consent) are specifically incorporated
- Promote the four cardinal principles as they provide a good legal basis for protecting children from harmful practices even where there is no specific prohibition of HPs.

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# THANK YOU

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