SAGE Open
October-December 2018: 1–12

DOI: 10.1177/2158244018806036
journals.sagepub.com/home/sgo
SAGE

(De)Criminalizing Adolescent Sex: A Rights-Based Assessment of Age of Consent Laws in Eastern and Southern Africa

Godfrey Dalitso Kangaude[1] **and Ann Skelton**[1]

Abstract

Age of consent criminal laws imposed on African states during colonialism were inherently patriarchal and gender-stereotypic, and continue to influence country approaches toward adolescent consensual sexual conduct. There are two major policy positions: a punitive and a nonpunitive approach. Most countries adopt the punitive approach. Mostly, legislation does not explicitly criminalize consensual sexual conduct between adolescents, and this leaves a gray area to be filled in by social and cultural norms that perceive adolescent sexual conduct negatively. Punitive approaches have been justified as necessary to curb harms to adolescents resulting from sexual conduct, including teenage pregnancies and sexual abuse. Age of consent laws, especially in their original colonial formulation deny adolescents, especially girls, sexual autonomy and agency. States focus more on punishment than on taking measures to address the structural antecedents of harms associated with sexual intercourse. States should reform age of consent laws to decriminalize consensual sex between adolescents in accordance with recognized rights of the child.

Keywords

age of consent, adolescent sexuality, sexual agency, colonialism, Committee on the Rights of the Child

Introduction

The Committee on the Rights of the Child (CRC), in its General Comment 20 on the implementation of the rights of the child during adolescence (CRC General Comment 20),[1] enjoined states parties to balance protection and evolving capacities when defining an acceptable minimum legal age for sexual consent. The CRC clearly stated that "States should avoid criminalizing adolescents of similar ages for factually consensual and nonexploitative sexual activity" (para 40). Many African states retain punitive laws in their statute books inherited from colonialism. Even modern sexual offences laws that presumably ought to be informed by human rights norms continue to criminalize adolescents for engaging in consensual sexual activity. This article considers age of consent laws and their interpretation by the courts in Eastern and Southern Africa, from a rights-based perspective. It starts from the premise, also articulated by the CRC in General Comment 20, that "adolescence is a unique defining stage of human development characterized by rapid brain development and physical growth, enhanced cognitive ability, the onset of puberty and sexual awareness and newly emerging abilities, strengths and skills" (para 10).

The issue of criminalization of adolescent consensual sexual conduct in age of consent laws has arisen in several courts in Eastern and Southern Africa, and the opinions have been divided. Two court decisions set the stage for a discussion on the development of age of consent laws and how they measure up to the rights of the child. In *Teddy Bear Clinic v. Minister of Justice and Constitutional Development*,[2] the issue before the Constitutional Court of South Africa was whether Sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act of South Africa were unconstitutional for criminalizing consensual sexual conduct between adolescents in the age group 12 to 16 years. The Court held that imposing criminal liability on adolescent sexual conduct that is otherwise normative has the effect of harming the adolescents they intend to protect, in a manner that constitutes a deep encroachment into the rights of the child, including, dignity and privacy, and is

[1]University of Pretoria, South Africa

Corresponding Author:
Godfrey Dalitso Kangaude, Department of Private Law, University of Pretoria, Lynnwood Road, Private Bag X20, Hatfield, Pretoria 0028, South Africa.
Email: kangaude2013@lawnet.ucla.edu

against the best interests of the child principle. The Court found the law to be unconstitutional, and directed Parliament to decriminalize consensual sexual activity between adolescents. The law was amended and subsequently passed in 2015.[3]

In *CKW v. Attorney General & Director of Public Prosecutions*,[4] the High Court of Kenya considered a challenge to defilement provisions of the Sexual Offences Act, 2006.[5] Section 8 of the Sexual Offences Act defines defilement as an act of sexual penetration with a child (defined as a person below the age of 18 years under Kenyan law). A 16-year-old boy who was being prosecuted in the magistrate's court for committing the offense of defilement, for having consensual sex with a girl of 16 years, petitioned the High Court to declare Sections 8(1) and 11(1) of the Sexual Offences Act invalid to the extent that they are inconsistent with the rights of children as protected under the Constitution of Kenya, for criminalizing consensual sexual conduct between adolescents below the age of 18 years. The High Court of Kenya decided that criminalization of consensual sexual conduct between adolescents was in the best interests of the child, to protect children from harmful acts of sexual activity. In making its determination, it considered the decision of the South African Constitutional Court in the *Teddy Bear Clinic* case.

In arriving at these diametrically opposed positions, both the South African and Kenyan courts claimed to be advancing the best interests of the child. These two decisions are representative of the policy approaches that African states have adopted toward adolescent consensual sexual conduct: a punitive and a nonpunitive approach. These approaches are not necessarily always explicitly stated in policy documents but are evident in legal arguments and court judgments that seek to defend or reject laws that criminalize adolescent sexual conduct.

The two policy positions have a dissimilar impact on the sexual well-being of adolescents, and this raises the question of which approach is in the best interests of the child. The Kenya–South Africa impasse on the question could begin to be broken with the help of the opinion of a third court in the region. In *State v. B Masuku*,[6] the High Court of Zimbabwe reviewed the case of a boy of 17 years, who had consensual sexual intercourse with his girlfriend of 15 years, and was consequently convicted of the offense of having sexual intercourse with a young person. In her decision, Justice Amy Tsanga commented on the question of criminalization of adolescent consensual sexual conduct. She was cognizant of the intention of criminal law to protect adolescents from sexual predation, discourage early sexual debut between adolescents, and to protect them from the risks and harms of sexual intercourse including sexually transmitted infections (STIs) and teenage pregnancies. However, she observed that an unintended consequence of the criminal law was the punishment of young people in romantic relationships, because the law did not distinguish between the predatory adult and the lover-boy or girl. In her judgment, she noted as follows:

> Ignoring the reality of consensual sex among teenagers and adopting an overly formalistic approach to the crime can result not only in an unnecessarily punitive sentence, but also a criminal record and stigmatisation as a sex offender.

She further noted as follows:

> Sex among peers is a reality of adolescent sexuality. It does not justify a suspended imprisonment term for the teen male offender who has had sex as part of a romantic relationship with a peer.

Justice Tsanga expressed the view that criminalizing minors for having consensual sexual conduct was probably not the best way to achieve the intention of protecting adolescents, especially girls, from harms of sexual conduct. In her words,

> To stem the dangers that arise for girls in particular from teenage sex, part of the answer would appear to lie in policy makers and society accepting the prevalence of youth sex and fashioning appropriate interventions. Availing contraceptive protection is one such intervention. A more rigorous and open approach to what is actually taught as sexual education in schools is another.

The aim of this article is to interrogate criminalization of adolescent consensual sexual conduct, and its implications on the sexual agency of adolescents, especially girls. It argues—in line with the reasoning of the South African Constitutional Court and the High Court of Zimbabwe—that punishing adolescents who engage in consensual sexual activity cannot be justified as necessary to protect adolescents from harms and risks of sexual activity. A punitive approach impacts negatively on the rights of adolescents.

This article also draws on some of the findings of a study commissioned by the United Nations Population Fund (UNFPA) and carried out by the Center for Child Law of the University of Pretoria, to assess laws policies and related frameworks in 23 countries in East and Southern Africa (ESA) that have an impact on adolescent sexual and reproductive health and rights (UNFPA, 2017). Among other aspects, the study examined age of consent laws. "Age of consent" as used in this article is not a legal term but a convenient expression for describing the minimum age below which certain sexual acts are prohibited, usually by criminal law (Waites, 1999).

The study found that most of the countries do not expressly stipulate the age of consent. A few countries state explicitly whether consensual sexual conduct between adolescents is criminalized. Lack of transparency about age of consent creates uncertainty regarding what behavior is proscribed. Another challenge arising from the lack of transparency is that negative sociocultural norms about adolescent sexuality fill in the lacunae, so that policies on sexual health are interpreted restrictively for adolescents, for example, adolescents' access to contraceptives (Savage-Oyekunle & Nienaber, 2017).

Most of the ESA countries whose policies were assessed in the UNFPA study have enacted constitutions that recognize the rights of the child and have ratified the United Nations Convention on the Rights of the Child (UNCRC), and the African Charter on the Rights and Welfare of the Child (ACRWC). They are cognizant of their obligations to respect, promote, and fulfill the rights of the child. States have the obligation to ensure that age of consent laws do not violate the rights of adolescents for being sexually active.

A Child-Centered Perspective

This article employs a child-centered perspective that recognizes and addresses adult bias in creating knowledge about children, as the guiding theoretical framework for the discussion of age of consent laws and criminalization of adolescent consensual sexual conduct. Barrie Thorne (1987) observed that though in the feminist tradition, theorists had engaged in complex critiques to unmask patterns of domination that produced biased knowledge against women, feminist theorizing remained uncritically adult-centric and continued to position children as nonautonomous and non-agentic. Knowledge about children in various fields tended to reflect, not the interests of children themselves, but the interests and perspectives of adults about children (Thorne, 2009). Prout and James (1997) made a similar observation that in the history of social science research, children (and women) had been "muted" groups. They observed that children did not have a say in issues that affected them. Even the process of lawmaking about children, including the making of the UNCRC, has not been spared the criticism that its creation reflected the voice of adults and not of children (Gadda, 2008). Adults' conceptualization of children has often disregarded the sexual agency of children despite the reality that children, from a young age, actively engage in gendered relations of power, express sexual desire, and invest in sexual activities including for sexual pleasure (Bhana, 2017; Talavera, 2007).

Although the call for a more critical theorization of childhood has refreshed scholarship with child-centered research and knowledge about childhood gender and sexuality, contemporary state laws and practice are still dominated by adult-centric discourses of childhood as innocence, that sustain a cultural imaginary of children as nongendered and asexual (Nyanzi, 2011). Such discourses inflect adult/child power relations that disempower children by relegating them to an asexual world, and justify the penalization of children for engaging in sexual conduct that is supposedly reserved for adults. Knowledge generated from the field of interdisciplinary childhood studies has exposed these discourses, and revealed that from an early age, children actively draw on gendered and sexual meanings in their social relationships to construct their social worlds (Bhana, 2016; Kane, 2012; Robinson, 2013; Thorne & Luria, 1986). It is from this knowledge that this article draws its arguments against laws and practices that criminally punish adolescents for engaging in consensual sexual activity with their peers.

Concepts of Childhood and Adolescence

Phillipe Ariès (1962) is credited as the first theorist to raise questions, in his work *Centuries of Childhood*, that suggested that the concept of childhood carries multiple and varying meanings dependent on the historical and cultural context. During colonialism, Western notions of childhood were exported to African colonies through laws including age of consent laws. These notions of childhood took shape in the period of modernity in Europe (Forth, 2007), characterized by modernizing forces that came to dominate material life in 19th century, including the development of global capitalist economic system, technological advancement and industrialization, and the rise of the modern nation-states (Smith, 2014). The period of modernity saw the proliferation of scientific theories including evolutionary developmental theories explaining human development such as biology and psychology. One well-known and influential developmental psychologist was Jean Piaget. "Within Piagetian developmentalist theory, children are perceived to proceed through a biologically predetermined set of linear cognitive developments, which correlate with chronological age, to reach the ultimate goal of adulthood" (Robinson, 2008, p. 115). Children are understood to be incomplete persons and in the process of becoming adults: the ideal end of the human development process (Archard, 2015). Archard contrasts the Western understanding of adulthood as a finalized state of "being" and distinguished from childhood as a state of "becoming," with the Eastern understanding of adulthood as a continual process of becoming that does not terminate at some designated stage. In the Eastern world-view, "childhood is construed not so much as an actual period of one's life, but more as a metaphorical immaturity which can be present to some extent throughout a lifetime" (p. 48). In Western culture, childhood is conceptualized as an inferior state that is left behind once adulthood is attained.

In *Act your age! A cultural construction of adolescence*, Nancy Lesko (2012) describes conventional discourses of adolescence that originated in Europe's modernity. Adolescence is assumed to be a natural phenomenon reductively explained by the physiology of hormones and their psychological effects. Adolescence is defined in opposition to adulthood as a period described by Stanley Granville Hall as "storm and stress," and characterized as emotional, unpredictable, and unstable. Western discourses of adolescence are infused with modernist and evolutionist assumptions of human development as a linear progress from non-rationality to rationality, inferiority to superiority, primitive to civilized, asexual to sexual, feminine-like to masculine, and from child to adult. Adolescence is therefore conceptualized as a state of

becoming, a stage toward adulthood, which is the stable state of being. It is this conceptualization of adolescents as asexual, irrational, and unstable that has been influential in shaping responses to challenges perceived to be a result of their engaging in sexual conduct such as teenage pregnancies and HIV/AIDS (Macleod, 2009).

Regulation of Sex Between Adolescents: A Cultural and Historical Perspective

Traditional Africa

Inquiry into historical and contemporary social practices elicits expected variations but also similarities about how cultures conceptualize childhood sexuality in Africa. Although this article relies on examples of specific cultural practices for a general discussion on childhood sexuality practices in Africa, it does not in any way construe cultural homogeneity in the region.

Among the Ovaherero and Ovahimba cultural groups in Namibia, pre-pubescent children play sexual games that might include sexual penetration and sexual pleasure. However, young children are nevertheless constructed as asexual (Talavera, 2007). Similarly among the Luo, young children are observed to show curiosity about sex and sexuality and to engage in games that are sexual in nature (Nyakwaka, 2005). As boys and girls grow toward adolescence, Luo parents start to intervene by restricting girls from playing with boys and vice versa.

In most African countries, puberty signifies that the child is now potentially an adult. A child is deemed to have become an adult in Africa when she or he has attained the physical capacity to take on adult roles (Ncube, 1998). This is a gendered process. At menarche, girls are recognized as having attained the capacity to take on the role of child-bearing, a role reserved for adults. On the other hand, for boys, semenarche is not as significant because further to having attained reproductive maturity, the boy is expected to demonstrate that he can take on the role of raising a family. Passage rites as observed in some cultures, which include the formal process of indoctrination of sexual and cultural values, complete the transition to adulthood. The concept of adolescence as an interim period between childhood and adulthood demarcated by age was therefore nonexistent in the worldview of African cultures, until the globalization of Western notions of childhood. In traditional Africa, the end of childhood was marked by puberty accompanied by rites of passage rather than attainment of a specified age (Mwangi, 2005).

Most African cultures regulated and still regulate sexual conduct between and with adolescents. With some exceptions, sexual intercourse was an activity reserved for adults in stable unions. In some cultures, circumscribed forms of sexual activity were acceptable between unmarried girls and boys. Among the Kikuyu of Kenya, girls and boys could engage in non-penetrative sexual activity called *ngwiko* or *ngweko*,[7] but this was only for initiated boys and girls. Full sexual intercourse was discouraged (Khamasi, 2005; Kiragu, 2013). A similar practice called *ukumetsha* existed among the Xhosa in Southern Africa (Erlank, 2001). Among the Luo of Kenya, limited sexual activity was permitted among initiated young people (Nyakwaka, 2005). Among the Maasai, circumcised boys had the freedom to have sexual intercourse with uncircumcised girls or young married girls as long as they were from within their age group and not from their mother's or father's peers (Karei, 2005).

Norms regulating young people's sexual conduct were gendered. Unmarried girls were not supposed to become pregnant before marriage because virginity was highly valued. Among the Xhosa and Kikuyu, even if sexual activity between young people was allowed, pregnancy was avoided by discouraging penetrative vaginal sexual activity. In most cultures, the burden to maintain virginity and avoid pregnancy fell upon the girls who were supposed to exercise restraint. Those who failed to control themselves, or indeed, control their sexual partners, and became pregnant before marriage, were shamed and chastised (Yebei, 2005). On the other hand, boys were relatively free to engage in sexual intercourse with girls. Nevertheless, boys in some cultural settings still had to be careful because being responsible for pre-marital pregnancy could mean paying damages to the family of the girl (Preston-Whyte, Zondi, Mavundla, & Gumede, 1990). Sometimes, the boy responsible for the pregnancy would be asked or required to marry the girl.

Colonial Age of Consent Laws in Africa

European colonization of Africa involved the violent subduing of peoples and the imposition of foreign cultural forms including laws such as sex laws that altered how colonized peoples understood themselves as sexual (Coetzee & du Toit, 2018). Africa received penal and criminal codes containing age of consent provisions that in some cases have survived to contemporary times (Kerr, 1958; Morris, 1974). Colonial age of consent laws were in their conceptualization inherently patriarchal and class-based in their countries of origin, and inflected gender-stereotypical views about sexuality (Mead & Bodkin, 1885; Waites, 2005). The interest of colonial governments in introducing age of consent laws was not to protect African adolescents from sexual harm, but to advance imperial interests of colonial governments. This is why, for example, the consent of women and girls never featured in official documents discussing the age of consent law or in the law itself (Bannerji, 2001). Girls were constructed as nonautonomous and sexually passive, and age of consent laws were enacted to restrain male sexual desire that was constructed as aggressive and dangerous. The law therefore deferred control of sexual access to girls to the legal guardian, usually an adult male, who would determine the right of sexual access to his female ward. The consent of the girl did

not matter because the power to grant sexual access resided in the male legal guardian (Bannerji, 2001).

The introduction of colonial laws and the influence of Abrahamic religions created a pluralistic normative environment in which multiple regulatory frameworks consisting of formal Western-derived laws, African traditional norms and Abrahamic religious norms compete and coexist (Tamale, 2014). Among the regulatory frameworks, formal laws that criminalize adolescent consensual sexual conduct potentially have the most drastic consequences for adolescents.

Although the cultural systems of the colonizer and the colonized differed in respect of how they addressed adolescent sexuality, there were also some similarities. First, they were both patriarchal in nature and involved largely men as the regulators of the sexual conduct of adolescents, especially girls. Both cultures also valued female chastity and virginity, so that the girl was under stricter surveillance and control than the boy. A girl who was found to have had sex before marriage was considered as less pure and less desirable for a good marriage. In both cultural systems, the responsibility was on the girl to remain chaste rather than on the boy.

The cultural systems differed in the way they constructed and regulated adolescent sexuality. Colonial age of consent laws prohibited sexual conduct based on age, and the prohibition was couched in absolutist terms. African cultural systems restricted sexual conduct among post-pubescents, but in some contexts, young people were relatively free to engage in sexual activity with each other. Furthermore, in the African system, young people would undergo comprehensive sexuality education and counsel as part of initiation rites. A crucial difference, however, and the central concern of this article, is that colonial age of consent laws criminalized consensual sexual conduct between adolescents. As Justice Amy Tsanga lamented in the *B Masuku* case, this punishes adolescents involved in romantic relationships. Furthermore, it ignores the sexual agency and autonomy of adolescents, and most especially girls, and contributes to their social disempowerment.

Age of Consent Laws in Postcolonial Africa

Upon attaining independence, most postcolonial states adopted the legislation received under colonialism. Some countries maintain the colonial versions of age of consent laws. Others have modified the colonial versions, whereas yet others have undertaken more substantive reforms, repealed the colonial versions and replaced them with new laws. Table 1 shows how age of consent laws regulate adolescent sexual conduct in selected ESA countries.

The reforms in age of consent laws on the African continent have been motivated by a variety of reasons including the unsuitability and inadequacy of colonial laws in regulating sexual conduct, and the growing consensus that laws ought to be aligned with human rights norms. This has resulted in a remarkable variation of age of consent laws in Africa. As described at the beginning of this article, underlying the permutations of age of consent laws are two fundamental policy orientations regarding adolescent consensual sexual conduct: punitive or nonpunitive. The important question is whether these laws are aligned with the rights of adolescents.

Most laws do not expressly criminalize consensual sexual conduct between adolescents. Rather, they prohibit, in some cases without exception, sexual conduct with persons below a specified age. In most countries, of which Comoros, Kenya, and Swaziland are examples, the age of consent is determined as a single cut-off age, below which a person is considered incapable of consent to sexual activity, and above which the person is capable of consent. A few countries have differentiated ages of consent based on gender, such as Angola and the Democratic Republic of Congo. Other countries such as South Africa have a two-tier age of consent framework that will be a subject of further discussion below.

The ages of consent vary from the lowest, 13 years, in Comoros, to the highest, 18 years, which includes Kenya, Uganda, Swaziland, and Tanzania. In most any countries age of consent is between 18 and 13, including 14 years in Namibia, and 16 years for countries such as Zambia, Zimbabwe, Malawi, and South Africa.

In some countries, the age of consent is gender specific. Zambia and Malawi, for example, criminalize defilement, defined as sexual intercourse with a girl below the age of consent. In Zambia and Malawi, defilement provisions do not therefore apply to boys below the age of consent. Other countries have reviewed or reformed their laws and adopted gender-neutral provisions such as Uganda and Kenya. On the other hand, Angola has different ages of consent, for girls it is 16 years, and for boys, 18 years.

In countries that have retained the colonial language describing sexual intercourse as "carnal knowledge" such as Mauritius and Zambia, age of consent provisions specifically apply to heterosexual penile-vaginal intercourse. Other countries have reformed age of consent laws to include other conduct. Malawi, for example, in 2011, introduced new provisions that prohibit sexual activity with persons below 16 years which includes a broad range of sexual conduct. Proscription of a broad range of sexual conduct and activity appears to be the trend of new punitive sex laws.

Criminalization of Adolescents for Engaging in Consensual Sexual Conduct

The laws of most countries do not explicitly state whether adolescents would be prosecuted or not for engaging in consensual sexual conduct. A few countries including Uganda, Kenya, Namibia, and South Africa stipulate expressly the criminalization or non-criminalization of consensual sexual conduct between adolescents of a specified age.

Table 1. Table Showing How Age of Consent Laws Regulate Sexual Intercourse or Conduct Between Adolescents in Selected ESA Countries (as of October 2017).

Country	Age of consent to sexual intercourse or conduct	Criminalization or non-criminalization of consensual sexual intercourse or conduct between adolescents
Angola	Sexual intercourse of a person more than 18 years who takes advantage of the inexperience of a child below 16 years is criminalized. Age of consent is 16 years.	An adolescent below 18 years may not be prosecuted for consensual sex with a partner below 16 years.
Botswana	Unlawful carnal knowledge of a person below 16 years. Age of consent is 16 years.	An adolescent below 18 years may be prosecuted for consensual sex with a partner below 16 years.
Burundi	Sexual intercourse with a person below 18 years is prohibited. Age of consent is 18 years.	Adolescents below 18 years may be prosecuted for consensual sex.
Comoros	Sexual intercourse with a person below 13 years is criminalized.	An adolescent below 18 years may be prosecuted for consensual sex with a person below 13 years.
Democratic Republic of Congo	Age of consent is 14 years for girls and 18 years for boys.	An adolescent below 18 years may be prosecuted for consensual sex with a girl below 14 years, and in case of same sex intercourse, consensual sex with a boy below 18 years.
Ethiopia	Age of consent is 18 years.	Adolescents below 18 years may be prosecuted for consensual sex.
Kenya	Sexual intercourse with a person below 18 years is defilement. Age of consent is 18 years.	Adolescents below 18 years may be prosecuted for consensual sex. Confirmed in *CKW*.
Madagascar	Indecent assault of a girl below 14 years is criminalized, thus it appears that the age of consent is 14 years.	An adolescent may be prosecuted for consensual sexual conduct with a girl below 14 years.
Malawi	Sexual intercourse with a girl below 16 years is prohibited. Sexual activity with a child below 16 years is also prohibited. The age of consent is 16 years.	An adolescent may be prosecuted for consensual sex with a girl below 16 years. Adolescents below 16 years may be prosecuted for consensual sexual activity.
Mozambique	Sexual intercourse with a person below the age of 16 years is criminalized. The age of consent is therefore 16 years.	Adolescents below 16 years may be prosecuted for consensual sex.
Namibia	Sex with a person below the age of 14 years is criminalized. Age of consent is 14 years.	Consensual sex with a person below 14 years is not criminalized if the older party is not more than 3 years older.
Rwanda	Sexual relations with a person below the age of 18 years are criminalized.	Persons below the age of 18 years may be prosecuted for consensual sexual relations.
South Africa	Sexual relations with a person below the age of 16 years are criminalized. The age of consent is 16 years.	Consensual sex between adolescents within 12 to 16 years of age range is not criminalized. Where the older party is between 16 and 18 years, consensual sex is not criminalized if the older partner is not more than 2 years older.
Swaziland	Carnal knowledge of a girl below 16 years is criminalized. The age of consent is 16 years.	An adolescent below 18 years may be prosecuted for having sexual conduct with a girl below 16 years.
Uganda	Age of consent is 18 years.	Adolescents below 18 years will be prosecuted for consensual sex.
Zambia	Defilement of girls below the age of 16 years is criminalized. The age of consent is 16 years for girls.	An adolescent may be prosecuted for consensual sex with a girl below 16 years.
Zimbabwe	Sexual acts with a young person defined as below the age of 16 years are criminalized. Age of consent is therefore 16 years.	An adolescent below 18 years will be prosecuted, but it is a defense if the adolescent is also below the age of 16 years.

Note. ESA = East and Southern Africa.

The country that is most clear about non-criminalization of sexual conduct between adolescents is the South Africa. Following the outcome of the *Teddy Bear Clinic* case, South Africa amended its sexual offences law and decriminalized sexual activity between adolescents who are both between 12 and 16 years. Furthermore, the law decriminalized consensual sexual activity where the older adolescent is above 16 years but below 18 years, provided the age difference between the partners is not more than 2 years. Apart from South Africa, Namibia also does not prosecute adolescents in circumstances where the younger adolescent is below the age of 14 years and the older adolescent is no more than 3 years older, as stated in the Combating of Rape Act.[8]

Kenya criminalizes sexual conduct between adolescents below the age of 18 years, as was confirmed in *CKW*. Uganda explicitly criminalizes sex between adolescents, as stipulated by the Penal Code (Amendment) Act, 2007, amending Section 129 of the Penal Code on defilement.[9] It states that child-to-child sex would be dealt with in accordance with relevant sections of the Children Act (Uganda) including being placed under supervision if the child involved is below 12 years, and if above 12 years (and below 18 years), the child would be treated in accordance with the provisions for criminal prosecution of child offenders.

In countries where the law is not transparent, the gray area has sometimes been clarified by court interpretation, or policy practice. In Zimbabwe, the case of *The State v. CF (A Juvenile)*[10] clarified that there is no offense where a young male engages a young female in any act of consensual sexual conduct. However, Justice Kudya lamented that despite this being the position in law, there was a stream of cases involving young people being prosecuted and convicted for engaging in consensual sex, coming for review before the high court. This is one of the challenges of lack of transparency because some law enforcers, ignorant of court interpretation, or knowingly taking advantage of the ambiguity, prosecute adolescents for engaging in consensual sex.

The Gendered Nature of Age of Consent Laws

In most countries where adolescents are criminalized for having sex with peers, it is the boy who tends to be prosecuted and punished, rather than the girl. In fact, all the cases from Kenya and Zimbabwe cited in this article involved the prosecution of boys. The reason is partly historical and partly cultural. Colonial age of consent laws were designed to preserve the purity of the unmarried girl and were based on the conceptualization of girls as sexually passive and non-agentic in the sexual act (Waites, 1999). Boys and men, therefore, bore the brunt of criminal prosecution. The second rationale is that the girl child was considered as the property of the father and could only be given away at marriage to a man who he permits to sexually access his daughter (Waites, 2005). A person who sexually accessed the girl without permission of the father polluted her and committed an act of defilement. Girls were sometimes subjected to virginity testing to prove that they were undefiled property. Historically, age of consent criminal law served to preserve female chastity by keeping boys and men away from girls.

The cultural reason was less to do with the sexual passivity of the girl, but rather was similar to the second rationale of colonial criminal law, which is that the male guardian "owned" the girl until she was given away in marriage to a person deemed acceptable, who would then be responsible over the girl. A girl who was found to have lost her virginity before she was married caused shame to her parents and herself, and in most cases was humiliated (Lumallas, 2005). It was especially shameful to parents if their daughter got pregnant before marriage, and in some cases, they would demand compensation from the boy responsible for the pregnancy. Parikh's (2012) ethnographic study of the effect of the law of defilement in Uganda revealed that fathers co-opt age of consent criminal laws to selectively prosecute boys whose character they do not desire. One of the motivations for the father to press charges of defilement is when the boy does not have financial means to take care of his daughter. It is not coincidental, therefore, that both *Masuku* and *CF (A Juvenile)* involved boys who had impregnated their girlfriends. The pregnancy and the economic status of the boy would have been, most likely, the motivating factors for pressing charges. Parikh's findings are corroborated by the UNFPA study. In focus group discussions with young people in Uganda, participants raised the point that when a girl became pregnant, parents demanded money from the boy, failing which, they would threaten or press charges (UNFPA, 2017). The patriarchal nature of the colonial law and its resonance with cultural practices that were also patriarchal in nature might explain why some countries still retain the colonial law, despite that it was initially introduced as one of the tools of domination and oppression of Africans.

Interestingly, even countries that have abandoned colonial legislation and have transformed their law to be aligned with human rights norms, such as Kenya, the formulation of the new law or its application reflects gender stereotypical views about sexuality. Boys continue to be regarded as sexually agentic and the initiators of sex, whereas girls are treated as sexually passive and accorded the victim status, as was implicit in *CKW* (see also Muhanguzi, 2011). Age of consent laws are therefore markedly gendered in their formulation or application. The sexuality of girls is more strictly policed because girls are regarded as vulnerable and easily succumb or perish to the sexual desires of boys and men. Unwittingly, this is the very reason age of consent laws disempower girls because they predetermine girls as potential and perpetual victims of male sexual desire, and thereby sustaining discourses that undermine the agency of girls (Allen, 2007).

A Rights-Based Approach to Regulating Sexual Conduct Between Adolescents

Human rights norms recognized in various treaties invite new ways of thinking about adolescents and sexuality. Laws and policies regulating adolescent sexual conduct should conform to child rights principles articulated in the UNCRC and ACRWC, as interpreted and explained by the treaty monitoring bodies (Kangaude & Banda, 2014).

Human rights norms have also been reiterated in global consensus documents such as the International Conference on Population and Development's (ICPD) Program of Action of 1994.[11] The ICPD Program of Action affirms that "Responsible sexual behaviour, sensitivity and equity in gender relations,

particularly when instilled during the formative years, enhance and promote respectful and harmonious partnerships between men and women" (para 7.34). It is important therefore for governments to encourage gender equitable behavior and promote harmonious relationships among the heterogenous group of adolescents from an early age. This would be possible only if governments would appreciate that adolescents are sexual and capable of engaging in sexual conduct in a manner that is respectful of each other, and not use penal law as the primary means of shaping sexual relationships between adolescents. This article therefore draws on the interpretation and application of the rights of the child by the CRC and other treaty monitoring bodies, to suggest how governments could create age of consent laws that would protect adolescents from harm but at the same time respect their sexual agency and autonomy.

The principle of the development of the child requires that the increasing sexual awareness of the child and the evolving capacity of the child to engage in sexual activity should receive positive affirmation rather than a negative appreciation. This entails that adolescents receive the necessary support, and from early in their lives, to develop equitable attitudes to gender and sexual identities. Indeed, it has been shown that gender attitudes among adolescents are set at a very early age (Blum, Mmari, & Moreau, 2017). Sexuality is integral to the development of the child and important not only for the post-pubescent adolescents but pre-pubescents. The state has the obligation to provide support for the sexuality development of the child including through institutions such as schools and health facilities.

It is important therefore that "States, together with non-State actors, through dialogue and engagement with adolescents themselves, should promote environments that acknowledge the intrinsic value of adolescence and introduce measures to help them thrive, explore their emerging identities, beliefs, sexualities . . ." (CRC General Comment 20, para 16). Respect for others and a positive appreciation for difference can only be taken up by adolescents if adults communicate meanings of gender and sexuality that address sexism, homophobia, and misogyny.

It is also important as adolescents develop an autonomous sense of self that they accept and appreciate themselves as sexual beings with sexual desire because failure to positively accept one's sexuality and sexual desire contributes to disempowerment (Tolman, 1994). Sexual desire should not be isolated as special and targeted for control but integrated as part of normal development in adolescence. In this regard, institutions such as schools and health facilities should provide affirmative support through sexuality education and provision of information and services on sexuality to adolescents. Socializing agents, for example, teachers in educational institutions including pre-school, need support to competently address issues of gender and sexuality with children (Robinson, 2013). In the *Teddy Bear Clinic* case, Justice Sisi Kampepe emphasized that the challenge with criminalizing normative adolescent sexual conduct is that it drives adolescent sexual behavior underground and this makes it very difficult for adults to provide affirmative support and guidance on matters of sexuality to the adolescents.

Protection and Self-Protection From Harms of Sexual Activity

As adolescents develop the capacity for sexual desire, they should be protected from predatory adults who might take advantage of their vulnerability. However, it is crucial that the sexual desire of adolescents be recognized and validated as part of normative development. This point was also made in the *Teddy Bear Clinic* case, that sexual desire in adolescents, and sexual experimentation, is a normal part of their development. In contrast, the case of *Martin Charo v. the State*[12] is illustrative of how adults have discredited sexual desire and experience of adolescents. The case was an appeal by an adult male of older than 20 years, who was involved in a sexual relationship with a girl of 14 years, and had been convicted of defilement in a lower court. However, the High Court quashed the conviction on the basis that the girl intentionally went to the man's house and voluntarily engaged in sex with him. In the Court's reasoning, a girl who expresses sexual desire, and willingly participates in sexual intercourse should be treated like a grown woman, so that defilement law could not be applied to protect her from harmful sexual conduct. The Court could not conceptualize the adolescent as both sexually agentic but also as in need of protection from potentially sexually exploitative relationships.

There are several consensus documents developed on the African continent that have expressed the commitment of African states to address adolescent sexual health, and that recognize that adolescents do engage in voluntary sexual conduct. The 2013 *Ministerial Commitment on Comprehensive Sexuality Education and Sexual and Reproductive Health Services for Adolescents and Young People in Eastern and Southern Africa* (hereinafter "*Ministerial Commitment*") is cited here to highlight the aspect of adolescent sexuality. The *Ministerial Commitment* acknowledges that "Young people should be supported to delay sexual debut until they choose to be sexually active and ensure that it is voluntary and protected." It also encourages member countries to provide comprehensive sexuality education because evidence suggests that it promotes the delay of initiation of sex, and safe sex behavior. Encouraging adolescents to delay sexual debut and protecting them from harms of sexual intercourse does not therefore mean disregarding that adolescents can be sexually desirous, and engage in normative sexual conduct.

The African Committee of Experts on the Rights and Welfare of the Child that monitors the implementation of the ACRWC has not yet interpreted the provisions of the ACRWC regarding sexuality. However, an analogy could be drawn with the right to self-protection and the right to be

protected from HIV recognized in Article 14(1)(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in African (Women's Rights Protocol). The right to protection from harms of sexual conduct should be envisaged as having the components of the right to self-protection and the right to be protected from harms of sexual conduct. In interpreting Article 14(1)(d) of the Women's Rights Protocol, the African Commission on Human and Peoples' Rights (African Commission) which monitors the implementation of the Women's Rights Protocol stated that the right to self-protection and to be protected entails obligations of states to create an enabling, supportive, legal, and social environment that empowers women, including provision of information, education, and sexual and reproductive services.[13] Drawing upon the African Commission's interpretation, it could be argued analogously that states should create an enabling, supportive, legal, and social environment that empowers adolescents to enjoy the right to self-protection and to be protected from the harms of sexual conduct. In General Comment 15, the CRC recognizes that children have the right to control their health and body, including sexual and reproductive freedom to make responsible choices, and that to enjoy this right they need access to a range of facilities, goods, services, and enabling conditions (para 24).[14]

The CRC also recognizes that children's capacity for autonomy is an evolving one, and that states ought to balance protection with the evolving capacities of the child. It is in this regard, that the Committee, in General Comment 20, advised States parties not to punish adolescents for engaging in nonexploitative sexual conduct (para 40).

The CRC has also encouraged states to ensure that policies about children involve the voice of children. As noted at the beginning of this article, sometimes what has been articulated in the interests of children reflects the interests of adults and not children themselves. Participation is perhaps the most challenging in terms of sexuality, because parental and institutional interests tend to overshadow the child's interests and voice. There is a common misconception that allowing the adolescent to make decisions about sexuality would inevitably be perilous for the adolescent, especially the girl. Associated with this is the idea that sexuality education and access to contraceptives such as condoms would promote sexual promiscuity among adolescents. Socializing agents including parents, teachers, and health providers therefore hinder the participation of children and adolescents by withholding information, or giving biased information, such as focusing only on the dangers of sex (Macleod, 2009). The case of *CKW* is illustrative of how adults suppress children's voices, because in this case, the child had asked the Court (of adults) why he was being prosecuted for consensual sexual conduct when adults are not prosecuted for similar acts. The Court, reflecting the anxieties of adults, and masquerading under the best interests of the child, affirmed that adolescents engaged in consensual sexual activity would be prosecuted. The Court effectively silenced the voice of the child, and ironically, in the best interests of the child.

The Rationale for Reforming Age of Consent Laws

Colonial age of consent laws are not only sexist and patriarchal in origin, but are in the first place not designed to protect African girls and boys from harms of sexual conduct but were designed to advance the imperialist goals of the colonial masters. Most African countries now have constitutions that recognize human rights and are party to various international and regional treaties including treaties on the rights of the child. Punishing adolescents for engaging in consensual sexual conduct fails to respect their human rights. It is not necessary to prosecute adolescents for engaging in consensual sexual conduct to control teenage pregnancy, address sexual violence, or curb the spread of HIV.

Rather than prescribe a model for states to follow in reviewing their age of consent laws, the authors suggest that states should keep in mind that adolescents can have sexual desire, which is normative, and that adolescents need both protection from harmful sexual conduct and support for development of sexual agency. Age of consent laws should balance support and protection, and to achieve this, the law must recognize the evolving sexual agency of adolescents, and their capacity for sexual desire. The adolescent may express sexual desire and voluntarily seek sexual pleasure, but that does not mean they ought not to be protected from relationships that are potentially exploitative. In the *Charo* case discussed above, the judge had challenges reconciling the law which suggests that children below 18 years were incapable of sexual desire, and the reality of the girl of 14 years who expressed sexual desire. The court decided that a child who was capable of sexual desire be treated like an adult for the purposes of defilement law. Although the decision was technically wrong, it is argued that it is the law that was problematic in the first place for constructing all adolescents below 18 years as incapable of sexual desire.

African traditional systems did not have the concept of sexual consent based on age, but rather, the perceived maturity of the individual. Following puberty, the post-pubescent would be prepared for adult sexual life. An important advantage of this, especially for cultures that also provided the adolescent with comprehensive sexuality education and counseling, is that the sexual agency of the adolescent was recognized, and this affirmation was empowering for the adolescent. This stands in contrast to some of the Western-derived sexuality education programs on the African continent that fail to help adolescents understand their bodies and sexual desire. However, puberty may not necessarily coincide with psychological maturity. The challenge therefore is how to fashion age of consent laws to both nurture the adolescents' developing sexuality and protect the same adolescent from harmful sexual contact.

One approach is to set one age limit above which the person is deemed to have capacity to consent to sexual activity, and below which the person does not have capacity. Many African countries adopted this approach from colonial laws. An alternative approach which is rather novel on the continent, is the two-tier framework adopted by South Africa. Although technically the age of consent in South Africa is 16 years, the law does not criminalize adolescents between 12 and 16 years who engage in consensual sexual conduct, so that 12 years is the lower age limit. Such a law is empowering for its recognition of sexual agency for adolescents of above 12 years.

The challenge with the one-tier age of consent framework is to find the ideal age that demarcates capacity to consent from incapacity. When it is set too high, say 18 years, it is likely to undermine the autonomy of adolescents who by that age are already mature and capable of consenting to sex, and would result in the criminalization and stigmatization of a significant number of sexually active young people. If it is set too low, for example 13 years, there is a greater risk of exposing young people to harm, who though could participate in sexual activity voluntarily are nevertheless vulnerable to predatory adults. The advantage with the two-tier approach employed by South Africa is that it is more flexible at balancing protection and support because young adolescents are protected from sexual relationships with persons much older than them, but at the same time have the freedom to explore their sexuality with peers. However, even the South African position has been challenged for setting the lower limit at 12 years when new evidence shows that adolescents of 11 years can understand issues of sexuality just as well (Strode & Essack, 2017).

Limits of Age of Consent Criminal Law as an Instrument for Social Reform

Criminal law has been championed as a means for promoting gender equality, and freedom from sexism and sexual violence. However, there is a growing recognition that criminal law alone fails to address these challenges, and in fact, criminal law may also inflect discourses of power that disempower those it seeks to protect, for instance, by constructing the "ideal" sexual violence victim as a woman or girl who is innocent, passive and defenseless (Kelly, 2008; Kitzinger, 1988) . An example is the *Charo* case where the adult offender was acquitted because the sexually desirous child was not regarded as an ideal victim. Age of consent laws that are punitive toward adolescents render sex *per se* as the problem. This approach shifts attention away from structural antecedents that create conditions for problems related to sex such as teen pregnancy, including failure to provide quality comprehensive sexuality education, contraceptive services, and an economic environment in which adolescents are able to exercise sexual choices (Gruber, 2012).

Using criminal law to address social problems associated with sex between adolescents such as teenage pregnancies would most likely operate at the symbolic level, where some few, and most probably impecunious boys, are demonized and punished as scapegoats for the failure of states to address structural causes of teenage pregnancies and sexual abuse (Martin, 1998; Parikh, 2012). Punitive approaches to adolescent sexual conduct might give the impression that states are doing something about protection of adolescents from harms of sexual conduct, but this undermines the support adolescents need to cultivate harmonious, gender equitable and respectful relationships between and among them. Also, gender stereotypical age of consent laws only serve to reproduce sexist and misogynist ideologies.

At best, criminal law can only be a blunt tool for promoting positive sexual behavior among adolescents, or indeed, ensuring their right to self-protection and protection from harms associated with sexual conduct (Archard, 2015). Other measures that are crucially important and would better address teenage pregnancies, gender inequality, and the historical and cultural marginalization of girls, include, sexuality education, information, and provision of sexual health services (Skelton, 2015). It would be greatly beneficial for adolescents if states focused on such measures, rather than on punitive approaches toward adolescent sexuality.

Conclusion

Regulation of sexual conduct between or with children has always existed in Africa, but age of consent criminal laws are a colonial provenance that negatively influenced Africa's attitudes toward adolescent sexual conduct. Colonial age of consent laws are inherently patriarchal, and their imposition on African communities, designed primarily to serve the colonialist's imperialist goals, were appropriated by African males to serve their own patriarchal interests. As a consequence, age of consent laws have tended to marginalize the sexuality of adolescents, and especially erase the sexual autonomy and agency of girls. Human rights commitments obligate states to reform colonial age of consent laws which only serve to perpetuate sexism and misogyny and are harmful to adolescents. After all, despite the overzealous criminalization of adolescent sexual conduct, such laws have failed to robustly protect adolescents, especially girls, from harms of sexual conduct. To advance gender equality and sexual health and rights of adolescents in Africa, states should review age of consent laws and align them with the principles of the rights of the child as the CRC has advised. Caution should be exercised, however, that in drafting new sexual offences laws, patterns of patriarchal control of adolescent sexual expression, particularly girls' sexual expression, do not reinvent themselves in tough new laws that are punitive toward adolescents themselves as has been in the case in Kenya and Uganda. New sexual offences laws should recognize adolescents as having an evolving capacity for

sexual agency, and should, on one hand, protect them from exploitative sexual conduct, and on the other, support their developing sexual agency.

Acknowledgments

The authors are grateful to the peer reviewers for their comments on the manuscript.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. Committee on the Rights of the Child (CRC) General Comment 20: The implementation of the rights of the child during adolescence UN Doc CRC/C/GC/20 (December 6, 2016).
2. 2014 (2) SA 168 (CC).
3. Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act No. 5 of 2015 (South Africa).
4. Petition No. 6 of 2013 (High Court of Kenya).
5. The Sexual Offences Act 3 of 2006 (Kenya).
6. [2015] ZWHHC 106, CRB B467/14 (High Court of Zimbabwe).
7. Khamasi uses the terms "*ngwiko*" whereas Kiragu uses "*ngweko*" to refer to the same sexual practice.
8. Section 2(2)(d) of the Combating of Rape Act 8 of 2000 (Namibia).
9. The Penal Code (Amendment Act) 8 of 2007 (Uganda).
10. HH 143-11, CRB 5,320/10 (July 21, 2011; High Court of Zimbabwe).
11. United Nations, Program of Action (PoA) adopted at the International Conference on Population and Development, Cairo, 5-13 September 1994. Report of the International Conference on Population and Development (ICPD) UN Doc A/CONF.171/13 (1994) para 7.34.
12. *Martin Charo v. Republic* Criminal Appeal No. 32 of 2015; [2016] eKLR (High Court of Kenya).
13. African Commission on Human and Peoples' Rights. General Comments on Article 14 (1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
14. CRC General Comment 15: The right of the child to the enjoyment of the highest attainable standard of health (art. 24) UN Doc CRC/C/GC/15 (April 17, 2013).

ORCID iD


Godfrey Dalitso Kangaude https://orcid.org/0000-0001-9433-8974

References

Allen, L. (2007). Denying the sexual subject: Schools' regulation of student sexuality. *British Educational Research Journal*, *33*, 221-234.

Archard, D. (2015). *Children: Rights and childhood* (3rd ed.). London, England: Routledge.

Ariès, P. (1962). *Centuries of childhood: A social history of family life*. New York, NY: Knopf.

Bannerji, H. (2001). *Inventing subjects: Studies in hegemony, patriarchy and colonialism*. London, England: Anthem Press.

Bhana, D. (2016). *Gender and childhood sexuality in primary school*. Singapore: Springer.

Bhana, D. (2017). Love, sex and gender: Missing in African child and youth studies. *Africa Development*, *42*, 251-264.

Blum, R. W., Mmari, K., & Moreau, C. (2017). It begins at 10: How gender expectations shape early adolescence around the world. *Journal of Adolescent Health*, *61*, S3-S4.

Coetzee, A., & du Toit, L. (2018). Facing the sexual demon of colonial power: Decolonising sexual violence in South Africa. *European Journal of Women's Studies*, *25*, 214-227.

Erlank, N. (2001). Missionary views on sexuality in Xhosaland in the nineteenth century. *Le Fait Missionnaire*, *11*(1), 9-43.

Forth, C. E. (2007). History, modernity. In M. Flood, J. K. Gardiner, B. Pease, & K. Pringle (Eds.), *International encyclopedia of men and masculinities* (pp. 291-294). London, England: Routledge.

Gadda, A. (2008). *Rights, Foucault and power: A critical analysis of the United Nation convention on the rights of the child*. Edinburgh, UK: Sociology Subject Group of Social & Political Studies, University of Edinburgh.

Gruber, A. (2012). A "neo-feminist" assessment of rape and domestic violence law reform. *Journal of Gender, Race & Justice*, *15*, 583-615.

Kane, E. W. (2012). *Rethinking gender and sexuality in childhood*. London, England: Bloomsbury Academic.

Kangaude, G., & Banda, T. (2014). Sexual health and rights of adolescents: A dialogue with sub-Saharan Africa. In C. Ngwena & E. Durojaye (Eds.), *Strengthening the protection of sexual and reproductive health and rights in the African Region through human rights* (pp. 251-277). Pretoria, Africa: Pretoria University Law Press.

Karei, R. (2005). Sexuality as understood by the Maasai of Kenya. In J. W. Khamasi & S. N. Maina-Chinkuyu (Eds.), *Sexuality: An African perspective: The politics of self and cultural beliefs* (pp. 95-113). Eldoret, Kenya: Moi University Press.

Kelly, L. (2008). Paradoxical progress: Responding to sexual violence. *Soundings*, *39*, 128-135.

Kerr, A. (1958). The reception and codification of systems of law in Southern Africa. *Journal of African Law*, *2*, 82-100.

Khamasi, J. W. (2005). Teachings on sexuality: A case of spilt milk. In J. W. Khamasi & S. N. Maina-Chinkuyu (Eds.), *Sexuality: An African perspective: The politics of self and cultural beliefs* (pp. 51-75). Eldoret, Kenya: Moi University Press.

Kiragu, S. (2013). Conceptualising children as sexual beings: Pre-colonial sexuality education among the Gĩkũyũ of Kenya. *Sex Education*, *13*, 585-596. doi:10.1080/14681811.2013.795888

Kitzinger, J. (1988). Defending innocence: Ideologies of childhood. *Feminist Review*, *28*, 77-87.

Lesko, N. (2012). *Act your age! A cultural construction of adolescence* (2nd ed.). New York, NY: Routledge.

Lumallas, J. (2005). The experience of growing up as a Mvakakamega. In J. W. Khamasi & S. N. Maina-Chinkuyu (Eds.), *Sexuality: An African perspective: The politics of self and cultural beliefs* (pp. 133-140). Eldoret, Kenya: Moi University Press.

Macleod, C. (2009). Danger and disease in sex education: The saturation of "adolescence" with colonialist assumptions. *Journal of Health Management*, *11*, 375-389.

Martin, D. L. (1998). Retribution revisited: A reconsideration of feminist criminal law reform strategies. *Osgoode Hall Law Journal*, *361*, 151-188.

Mead, F., & Bodkin, A. H. (1885). *Criminal Law Amendment Act, 1885: With introduction, notes, and index*. London, England: Shaw & Sons, Fetter Lane and Crane Court.

Morris, H. F. (1974). A history of the adoption of codes of criminal law and procedure in British Colonial Africa, 1876-1935. *Journal of African Law*, *18*(1), 6-23.

Muhanguzi, F. K. (2011). Gender and sexual vulnerability of young women in Africa: Experiences of young girls in secondary schools in Uganda. *Culture, Health & Sexuality*, *13*, 713-725.

Mwangi, P. M. (2005). Children of many worlds: A representation of Agikuyu boys of the 1970s. In J. W. Khamasi & S. N. Maina-Chinkuyu (Eds.), *Sexuality: An African perspective: The politics of self and cultural beliefs* (pp. 37-50). Eldoret, Kenya: Moi University Press.

Ncube, W. (1998). The African cultural fingerprint? The changing concept of childhood. In W. Ncube (Ed.), *Law, culture, tradition, and children's rights in eastern and southern Africa* (pp. 11-27). Aldershot, UK: Ashgate/Dartmouth.

Nyakwaka, D. (2005). Gender and sexuality among the Luo of Kenya: Continuity and change. In J. W. Khamasi & S. N. Maina-Chinkuyu (Eds.), *Sexuality: An African perspective: The politics of self and cultural beliefs* (pp. 77-94). Eldoret, Kenya: Moi University Press.

Nyanzi, S. (2011). Unpacking the [govern]mentality of African sexualities. In S. Tamale (Ed.), *African sexualities: A reader* (pp. 477-501). Cape Town, South Africa: Pambazuka Press.

Parikh, S. A. (2012). "They arrested me for loving a schoolgirl": Ethnography, HIV, and a feminist assessment of the age of consent law as a gender-based structural intervention in Uganda. *Social Science & Medicine*, *74*, 1774-1782.

Preston-Whyte, E., Zondi, M., Mavundla, G., & Gumede, H. (1990). Teenage pregnancy, whose problem? Realities and prospects for action in KwaZulu/Natal. *Southern African Journal*, *3*(1), 11-20.

Prout, A., & James, A. (1997). A new paradigm for the sociology of childhood? Provenance, promise and problems. In A. James & A. Prout (Eds.), *Constructing and reconstructing childhood: Contemporary issues in the sociological study of childhood* (pp. 7-33). London, England: Falmer Press.

Robinson, K. H. (2008). In the name of "childhood innocence": A discursive exploration of the moral panic associated with childhood and sexuality. *Cultural Studies Review*, *14*, 113-129.

Robinson, K. H. (2013). *Innocence, knowledge and the construction of childhood: The contradictory nature of sexuality and censorship in children's contemporary lives*. Oxon, UK: Routledge.

Savage-Oyekunle, O. A., & Nienaber, A. (2017). Adolescents' access to emergency contraception in Africa: An empty promise? *African Human Rights Law Journal*, *17*, 475-526.

Skelton, A. (2015). Balancing autonomy and protection in children's rights: A South African account. *Temple Law Review*, *88*, 887-904.

Smith, T. (2014). Rethinking modernism and modernity now. *Filozofski Vestnik*, *35*, 271-319.

Strode, A., & Essack, Z. (2017). Facilitating access to adolescent sexual and reproductive health services through legislative reform: Lessons from the South African experience. *SAMJ: The South African Medical Journal*, *107*, 741-744.

Talavera, P. (2007). The myth of the asexual child in Namibia. In S. Lafont & D. Hubbard (Eds.), *Unravelling taboos: Gender and sexuality in Namibia* (pp. 58-68). Windhoek, Namibia: Legal Assistance Centre.

Tamale, S. (2014). Exploring the contours of African sexualities: Religion, law and power. *African Human Rights Law Journal*, *14*, 150-177.

Thorne, B. (1987). Re-visioning women and social change: Where are the children? *Gender & Society*, *1*(1), 85-109.

Thorne, B. (2009). "Childhood": Changing and dissonant meanings. *International Journal of Learning and Media*, *1*, 19-27.

Thorne, B., & Luria, Z. (1986). Sexuality and gender in children's daily worlds. *Social Problems*, *33*, 176-190.

Tolman, D. L. (1994). Doing desire: Adolescent girls' struggles for/with sexuality. *Gender & Society*, *8*, 324-342.

United Nations Population Fund. (2017). *Harmonizing the legal environment for adolescent sexual and reproductive health and rights: A review in 23 countries in East and Southern Africa*. Johannesburg, South Africa: Author. Available from https://esaro.unfpa.org/

Waites, M. (1999). The age of consent and sexual citizenship in the United Kingdom: A history. In P. Bagguley & J. Seymour (Eds.), *Relating Intimacies: Power and Resistance* (pp. 91-117). London, England: Palgrave Macmillan.

Waites, M. (2005). *The age of consent: Young people, sexuality and citizenship*. Hampshire, UK: Palgrave Macmillan.

Yebei, V. N. (2005). Position of women among the Maasai. In J. W. Khamasi & S. N. Maina-Chinkuyu (Eds.), *Sexuality: An African perspective: The politics of self and cultural beliefs* (pp. 115-131). Eldoret, Kenya: Moi University Press.

Author Biographies

Godfrey Dalitso Kangaude is a LLD candidate with the Department of Private Law, University of Pretoria. His research interests are the intersection of culture, gender and sexuality, human rights and law and with focus on adolescent and childhood sexualities.

Ann Skelton is director at the Centre for Child Law and a professor of Law at University of Pretoria. She was appointed as a member of the UN Committee on the Rights of the Child in 2017.