

# Expanding The Close-in-Age Defence to Criminal Charges for Consensual Sexual Activity between Adolescents in Rwanda

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## *ABSTRACT*

*This paper interrogates the criminalization of adolescents with a difference of, at most, three years in age who had a consensual sexual relationship vis-a-vis the protection of the best interests of the child and victim. It argues that punishing an 18-, 19-, or 20-year-old who has been in a consensual sexual relationship with a partner who is three years younger (15, 16, 17, respectively) cannot be justified as necessary to protect that young juvenile from the harm and risks of sexual relationship and cause harm to suspect, victim and child born in that relationship. It argues that the close-in-age defence should entail that Rwandan law avoids criminalizing consensual sexual activity between young persons with a gap between them of, at most, three years. To ascertain what should be done to improve the situation, it employs a doctrinal approach and a comparative study to find out how other countries have dealt with the issue at hand.*

## **1. INTRODUCTION**

Over the past 20 years, Rwanda's criminal justice system has effected a major transformation to sexual offences, including sexual violence against children. More recently, there have been several developments concerning provisions in the law relating to sexual offences involving children. Child defilement is a crime and an outright violation of a child's rights. It is a multidimensional problem with far-reaching consequences. It inflicts trauma and pain to innocent children who in return, even with future investments, will be affected and have health, educational, economic, and social negative implications.<sup>1</sup> Child defilement is a serious problem in Rwandan society. The National Public Prosecution Authority reported that the child defilement cases have increased from 1,819 cases in 2013 up to 3,793 cases in June 2020.<sup>2</sup>

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<sup>1</sup> X, Voice - My rights against sexual abuse, available at <https://rwanda.unfpa.org/en/news/my-voice-my-rights-against-sexual-abuse>, accessed on 30 March 2021.

<sup>2</sup> NPPA, National public prosecution authority annual report 2019 - 2020, p. 23.

Articles 33 of the law n° 27/2001 of 2001 relating to rights and protection of child<sup>3</sup> against violence defines rape as any sexual relations with a child, whatever the means or methods used. Article 34 of the same law indicates that anybody who rapes a child who is between fourteen years and eighteen years of age shall be sentenced to imprisonment between twenty years and twenty-five years and be fined between one hundred thousand and five hundred thousand francs. The age of consent<sup>4</sup> in Rwanda is eighteen years old.<sup>5</sup> A child under the age of eighteen years old cannot have consensual sexual intercourse.

Contrary to the child law of 2001, which uses “child rape”, the 2012 Penal code used “child defilement” and increased the punishment for child defilement. Article 191 of the 2012 Penal Code indicates that any person who commits child defilement shall be liable to life imprisonment with special provisions.<sup>6</sup> That code did not give any special considerations when child defilement is committed between children aged at least fourteen years without violence or threats. It was not easy to determine who is the victim and the perpetrator in case children had consensual sexual intercourse.

To remedy the situation, the law n° 68/2018 of 30/08/2018 determining offences and penalties decriminalizes consensual sex among juveniles.<sup>7</sup> This legislation decriminalized underage consensual sexual activity between persons aged fourteen and -eighteen years old. This law aims at the protection of young persons from predatory sex with adults but inadvertently does not consider the consensual sexual activity between young persons where one partner is aged eighteen years and in close age with the victim especially when their relationship

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<sup>3</sup> Law No. 27/2001 of 2001 Relating to Rights and Protection of the Child Against Violence, Official Gazette 25/06/2012.

<sup>4</sup> The age of consent is the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity.

<sup>5</sup> Article 2,80of of the law n°68/2018 of 30/08/2018 determining offences and penalties in general, defines child as a person under the age of eighteen (18).

<sup>6</sup> Article 4 of the Organic Law Relating to the Abolition of the death penalty 31/2007 of 25 July 2007, Official Gazette n° Special of 25 July 2007 defines life imprisonment with special provisions to mean ‘(1) a sentenced person is not entitled to any kind of mercy, conditional release or rehabilitation, unless he or she has served at least twenty (20) years of imprisonment; (2) a sentenced person is kept in prison in an individual cell ...’ reserved for people convicted of serious crimes such as genocide and crimes against humanity.

<sup>7</sup> Article 133 al.6 of the law n°68/2018 of 30/08/2018 determining offences and penalties in general, Official Gazette no. Special of 27/09/2018. This law has been amended by the Law n° 69/2019 of 08/11/2019 amending law n° 68/2018 of 30/08/2018 determining offences and penalties in general, Official Gazette n° Special of 29/11/2019.

started while both were under the age of eighteen years.

This paper interrogates the criminalization of adolescents with a difference of, at most, three years in age who had a consensual sexual relationship vis-a-vis the protection of the best interests of the child and the victim. It examines the consequences of punishment of an 18-, 19-, or 20-year-old who has been in a consensual sexual relationship with a partner who is three years younger (15, 16, 17, respectively) to suspect, victim, and child born in their relationship.

The paper intends to propose that the Rwandan criminal justice system provides a solution that balances the protection of juveniles against the sexual abuse of the old adult and protects the young adult who had consensual sexual intercourse with a juvenile at a close age. This paper is structured into three sections. After the introduction, the first section discusses the decriminalization of consensual sexual activity between adolescent in Rwanda, while the second highlight the issues related to child defilement sentences. The third section focuses on close- in-age defense in child defilement from some foreign jurisdictions. The paper ends with a conclusion made of a summary and key recommendations.

## 2. DECRIMINALIZATION OF CONSENSUAL SEXUAL ACTIVITY BETWEEN JUVENILES IN RWANDA

The Rwandan Penal Code decriminalizes consensual sexual activity among juveniles.<sup>8</sup> Article 133 of that code indicates that *“if child defilement is committed between children aged at least fourteen years without violence or threats, no penalty is pronounced”*.<sup>9</sup> This means that it is no longer a criminal offence for a juvenile to engage in consensual sexual activity with other juveniles when both are aged between fourteen and eighteen years. The decriminalization of consensual sexual activity between juveniles aged at least fourteen years means that consensual sexual activity between a fourteen-year-old young girl for example with a seventeen-year-old young boy is not punishable at all because those juveniles are in the same range of age. This decriminalization of consensual sexual activity between

<sup>8</sup> Law n°68/2018 of 30/08/2018 determining offences and penalties in general, Official Gazette no. Special of 27/09/2018.

<sup>9</sup> Article 4 al.7 of law n° 69/2019 of 08/11/2019 amending law n° 68/2018 of 30/08/2018 determining offences and penalties in general, Official Gazette n° Special of 29/11/2019 indicated that “If a child aged at least fourteen (14) years commits child defilement on a child aged at least fourteen (14) years by use of force, threats, trickery or who does so on grounds of vulnerability of the victim, he/she is punished in accordance with the provisions of Article 54 of this Law.”

juveniles in Rwanda is in line with the recommendations of the Committee on the Rights of the Child (CRC). The CRC clearly stated that “States parties should take into account the need to balance protection and evolving capacities and define an acceptable minimum age when determining the legal age for sexual consent. States should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.”<sup>10</sup>

However, the Rwandan penal code does not consider the age gaps or close-in-age provisions to protect an adult who engages in consensual sexual activity with a juvenile, although the age difference is the same as those prescribed between juveniles. A fourteen-year-old young girl and a fifteen-year-old young boy can have consensual sexual activities for three years without being prosecuted and punished before one partner turns eighteen. Once one of these partners turns eighteen, he or she can be prosecuted and punished for at least twenty years of imprisonment for defiling a child he has been having consensual sexual acts for the last three years. The 3-years maximum difference in age that has been considered in decriminalizing the child defilement between children aged at least fourteen has not been expanded to include consensual sexual activity between young persons who are in the same range of age when the targeted person for prosecution is eighteen years or older.

As a general principle, a juvenile offender aged between fourteen (14) years and eighteen (18) years can be prosecuted for the alleged offenses.<sup>11</sup> The lawmaker has found no victim and no offender between adolescents aged between 14 and 18 years old in case they had a consensual sexual activity. The complete defence in child defilement in case of consensual sexual activity between juveniles is an exception in the Rwandan Criminal law.

However, once someone is 18 years old, under the Rwandan criminal law, she/he has become an adult who should rather take care of those underage. It is argued that you cannot become an adult and continue to behave as if you are a child. That is why the current law n° 68/2018 of 30/08/2018 determining offences and penalties, in general, does not take into account the previous relationship and

<sup>10</sup> Paragraph 40 of General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, UN Committee on the Rights of the Child (CRC), 6 December 2016.

<sup>11</sup> Article 148 of the law n° 027/2019 of 19/09/2019 relating to the criminal procedure, Official Gazette n° Special of 08/11/2019.

close in age between victim and suspect in child defilement in case there is a consensual sexual activity between adult and juvenile.

### **3. CHILD DEFILEMENT PENALTIES IN RWANDA**

While a sexual relationship between a fourteen-year-old and a person below eighteen years of age carries no criminal sanction, if the couple continues their relationship until the older of the two turns eighteen, this relationship would be considered a criminal offence, resulting in the suspect being liable to a sentence of imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years upon conviction. A hypothetical example of two students at secondary school who are friends can illustrate the issue. In 2018, Ms. Yvonne was a fourteen-year-old girl and Patrick was a sixteen-year-old boy, they were known to be lovers and sometimes have consensual sexual intercourse during that year. The Rwandan penal code does not punish any of them for sexual activity as they were in the age zone and the difference in age was covered by the defence provided for under Article 133 of the Penal Code.

Nevertheless, this year 2021, Ms. Yvonne turned seventeen and Patrick nineteen. Both continue to enjoy the consensual sexual activity and don't cohabit as wife and husband. Patrick is subject to prosecution for child defilement. Upon conviction, Patrick is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years.<sup>12</sup>

This provision ignores the range of age between the victim and the suspect when a suspect is aged over eighteen. The provision ignores the fact that many young persons voluntarily engage in sexual activity before the age of consent with others with whom they are in the same range of age.<sup>13</sup> It is worth indicating that these young persons will not know the exact time when their consensual sexual activity that was decriminalized turns criminal that may render one of them to be sentenced to at least twenty years imprisonment.

Since the beginning of the twentieth century, the general assumption about decision-making by children and early adolescents regarding the intent to offend

<sup>12</sup> Article 133 al4 of law n°68/2018 of 30/08/2018 determining offences and penalties in general, Official Gazette no. Special of 27/09/2018.

<sup>13</sup> Brittany Logino Smith & Glen A. Kercher, adolescent sexual behavior and the law 7 (2011), available at [http://www.crimevictimsinstitute.org/documents/Adolescent\\_Behavior\\_3.1.11.pdf](http://www.crimevictimsinstitute.org/documents/Adolescent_Behavior_3.1.11.pdf).

has been that they lack the maturity to fully understand the consequences of their harmful acts. In other words, the youth typically have been viewed as impulsive, inexperienced, emotionally volatile or vulnerable, and more easily influenced by negative family members, peers, negative cultural values, and poverty than older adolescents and young adults.<sup>14</sup>

It is submitted that as adolescents become sexually active, they should be protected from predatory adults who might take advantage of their vulnerability.<sup>15</sup> Criminal law intends to protect adolescents from sexual predation, discourage early sexual debut between adolescents, and protect them from the risks and harms of sexual intercourse including sexually transmitted infections (STIs) and teenage pregnancies.

Nevertheless, an unintended consequence of the Rwandan criminal law is the punishment of young people in sexual relationships because the law does not distinguish between predatory adults and infatuated young persons. It is argued that ignoring the reality of consensual sex among close-in-age adolescents and adopting an overly formalistic approach to the crime can result in an unnecessarily punitive regime.

Sex among peers is a reality of adolescent sexuality.<sup>16</sup> This reality also applies to Rwandan adolescents.<sup>17</sup> The sexual desire of adolescents must be recognized and validated as part of normative development.<sup>18</sup> Sexual desire in adolescents, and sexual experimentation, are a normal part of their development.<sup>19</sup> It is

<sup>14</sup> Raymond R. Corrado, & others, should deterrence be a sentencing principle under the *youth criminal justice act*? *La Revue Du Barreau Canadian*, [Vol.85, 2006], p. 548.

<sup>15</sup> Godfrey Dalitso Kangaude and Ann Skelton, (De) Criminalizing Adolescent Sex: A Rights-Based Assessment of Age of Consent Laws in Eastern and Southern Africa, *Reproductive Health in Sub-Saharan Africa-Original Research*, SAGE Open October-December 2018, p.8.

<sup>16</sup> Crockett, Lisa J.; Raffaelli, Marcela; and Moilanen, Kristin L., "Adolescent Sexuality: Behavior and Meaning" (2003). Faculty Publications, Department of Psychology. 245., <https://digitalcommons.unl.edu/psychfacpub/245>.

<sup>17</sup> Kristien Michielsen, Pieter Remes, John Rugabo, Ronan Van Rossem & Marleen Temmerman (2014) Rwandan young people's perceptions on sexuality and relationships: Results from a qualitative study using the 'mailbox technique', *SAHARA-J.*, 11:1, 51-60, , available at <https://www.tandfonline.com/doi/pdf/10.1080/17290376.2014.927950?needAccess=true>

<sup>18</sup> Godfrey Dalitso Kangaude and Ann Skelton, (De)Criminalizing Adolescent Sex: A Rights-Based Assessment of Age of Consent Laws in Eastern and Southern Africa, *Reproductive Health in Sub-Saharan Africa-Original Research*, SAGE Open October-December 2018: 1–12, P.8.

<sup>19</sup> Sujita Kumar Kar, Ananya Choudhury,<sup>1</sup> and Abhishek Pratap Singh<sup>1</sup> Understanding normal development of adolescent sexuality: A bumpy ride, *J Hum Reprod Sci.* 2015 Apr-Jun; 8(2): 70–74.

not proportionate to punish a nineteen-year-old boy with twenty-five years of imprisonment for having consensual sexual activity with a young girl of seventeen as part of their relationship.

#### **A. Juvenile consensual sexual activity and cohabitation as husband and wife**

Child defilement followed by cohabitation as husband and wife is punishable with life imprisonment that cannot be mitigated by any circumstances.<sup>20</sup> As a general principle, from 18 years old, the person has become an adult who is completely responsible.

However, the punishment of an adult who has a consensual sexual activity with a juvenile at close age does not deem the three-years age gap granted in the decriminalization of child defilement committed between children aged between 14 and 18 years old. It does not consider whether the adult and juvenile in close age have built their strong relationship during the teenagers. That provision does not consider the social context of the victim and offender where adolescent relationships often begin during high school, for instance, where the ages of teens vary by 3 to 4 years.<sup>21</sup>

The situation of youths in the same range of age between the perpetrator and the victim, where one of the partners has been sentenced to life imprisonment despite having consensual sexual activity is a reality in the Rwandan criminal justice system. For instance, the judgment RP 00062/2019/TGI/HYE that was rendered on 18/02/2019 by the Intermediate Court of Huye,<sup>22</sup> whereby the Prosecution accused Barakagwira Gilbert of nineteen years of age of the offence of defiling a child of sixteen years old and impregnated her, and they mutually decided to cohabit as husband and wife, nevertheless, the girl's parents went and brought her back after spending there one night. In that particular case, the accused pleaded guilty and revealed that he is in a relationship with the impregnated girl, in the same way, the girl confessed that she was in love with the person

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<sup>20</sup> Article 133, paragraph 5, of law n°68/2018 of 30/08/2018 determining offences and penalties in general, Official Gazette no. Special of 27/09/2018.

<sup>21</sup> Z Essack, Unpacking the 2-year age-gap provision in relation to the decriminalisation of underage consensual sex in South Africa, *S Afr J Bioethics Law* 2018;11(2):85-88. DOI:10.7196/SAJBL. 2018.v11i2.657, p. 1. <sup>22</sup> RP 00062/2019/TGI/HYE, Prosecution v Barakagwira Gilbert rendered by the Intermediate Court of Huye on 18/02/2019.

who impregnated her and that they consented to cohabit after impregnating her. The court convicted Barakagwira Gilbert of the offence of child defilement and sentenced him to life imprisonment, given that after defiling her, they cohabited as husband and wife for one day as the defendant admitted.

The supreme court decided in *Re. KABASINGA*,<sup>23</sup> that article 133 particularly paragraph five of the Law N°68/2018 of 30/08/2018 determining offences and penalties in general, which states that: “if child defilement is followed by cohabitation as husband and wife, the penalty is life imprisonment that cannot be mitigated by any circumstances” is inconsistent with article 29 and 151 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.<sup>24</sup> Based on that decision, the High court has reduced the sentence Barakagwira Gilbert (on appeal) from life imprisonment to 20 years of imprisonment.<sup>25</sup>

If the child defilement is followed by cohabitation as husband and wife, after *Re. KABASINGA*, the judge applies the penalties provided for in article 133, para 2 that indicated that upon conviction, he/she is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years.

In the Barakagwira Gilbert case, it is obvious that both adolescents had a consensual sexual activity and there is a child born from that relationship. Despite the consensual sexual activity between adolescents and the close age between the perpetrator and the victim, the perpetrator has been sentenced to life imprisonment that has been reduced to twenty years of imprisonment at the appeal level. Although intercourse cannot be called consensual if the victim was under 18, the close in age between the victim and the suspect should be taken into consideration while assessing whether the sexual relationship between adult and juvenile took place without the use of force, threats, trickery, or on grounds of the vulnerability of the victim, especially when the relationship between the suspect and the victim has started when both were juvenile.

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<sup>23</sup> RS/INCONST/SPEC 00003/2019/SC, *Re. KABASINGA*, Supreme Court, RLR - V.2 - 2020.

<sup>24</sup> Article 29 & 151 of the Constitution of the republic of Rwanda of 2003 revised in 2015 provides that the right to due process of law and the principles of the judicial system.

<sup>25</sup> Prosecution v BARAKAGWIRA Gilbert, RPA 00216/2019/HC/NYZ, 31/01/2020, para13.

As it has been highlighted by the Committee on the Rights of the Child, mandatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period. Courts sentencing children should start with a clean slate; even discretionary minimum sentence regimes impede the proper application of international standards.<sup>26</sup>

## **B. The consequences of ignoring the proximity in age between victim and suspect**

The Rwandan criminal law gives no special consideration for the child defilement resulting from consensual sexual activity with close age adolescents when one partner is 18-year-old or above. Sentencing the older adolescent who has a consensual activity for at least twenty years of imprisonment or life imprisonment if their consensual sexual activity followed by cohabitation as a husband and wife causes more harm than good.

In some cases, the victim asks the prosecutor and judge for releasing the child defilement suspect. As some victims alleged that they had a consensual sexual activity resulted from their romantic relationship. In one of the Rwandan courts, the victim left her kids to court premises claiming the release of her husband, who has been detained due to child defilement. But the victim has been forced to take her children and went back to his family and her husband has been sentenced to life imprisonment. Both victim and suspect had cohabited for almost three years and had two kids together. Rwanda Investigation Bureau arrested and detained her husband after the discovery that they had cohabited when the wife had 17 and a husband had 19. According to the victim, the suspect is his lover, husband, and the father of her children.<sup>27</sup> In that scenario, the husband has been sentenced to life imprisonment and the victim is taking care of two kids and visits her husband regularly in prison.<sup>28</sup>

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<sup>26</sup> Paragraph 78 of General comment No. 24 (2019) on children's rights in the child justice system, Committee on the Rights of the Child, CRC/C/GC/24, and 18 September 2019.

<sup>27</sup> F.T., President of intermediate court of Rusizi, 06 May 2021.

<sup>28</sup> Ibid.

It is worth indicating that a father who is incarcerated, and who emerges from prison with a criminal record, is not likely to be in a position to make a substantial financial contribution to the child's support. Thus, neither the mother nor the baby is necessarily benefited by punishments for this category of the perpetrator.

It seems that justice for child defilement victims, in general, has become synonymous with punitive state punishment. Taking child defilement seriously is equated with increasing convictions and prison sentences. However, some victims are not satisfied with that approach; they want their voices to be heard in prosecuting the offender especially when there is no use of force, threats, trickery, or who does so on grounds of the vulnerability of the victim.<sup>29</sup>

Bearing in mind that any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing – (a) the punishment of offenders, (b) the reduction of crime (including its reduction by deterrence), (c) the reform and rehabilitation of offenders, (d) the protection of the public, and (e) the making of reparation by offenders to persons affected by their offences.<sup>30</sup> Punishing the older adolescent who is in the same range of age as the victim in case they had consensual sexual activity does not protect the victim. The victim will suffer for the loss of her lover who will spend at least twenty years of his life in prison due to consensual sexual activity they had as lovers. This twenty years of imprisonment of her lover will remain a psychological shock to the victim. In case their consensual sexual activity resulted in a child, the victim will bear the burden of raising a child alone for life and that will affect the victim's future and her child's future.

The care of both parents plays an important role in children's development.<sup>31</sup> Legal frameworks also have promised children a full enjoyment of their rights.<sup>32</sup> As one of the parents, the adult in close age of the victim will spend twenty years

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<sup>29</sup> Ibid.

<sup>30</sup> Andrew Ashworth, *sentencing and criminal justice*, fifth edition, 2012, Cambridge, p.78.

<sup>31</sup> Eleanor E. Maccoby, parenting and its effects on children: on reading and misreading behavior genetics, *Annu. Rev. Psychol.* 2000.51:1-27, p, 4.

<sup>32</sup> Iyakaremye, I., Mukamana, L., Umutoni, J., *Paternity denial and consequences on children in patriarchal society: Situation in consensual couples in Rwanda*, Children and Youth Services Review, Volume 118, November 2020.

of his life in prison, the child will be deprived of the right of being raised by both parents. Punishing an adult for long sentences of imprisonment who had a consensual sexual activity with a juvenile in the same range of age has negative consequences on children's life born in that relationship especially in countries like Rwanda where there is limited social and economic support to those kids.

To consider the victim's voice and interest, one might argue that the victim should be given even more control over the prosecution of their consensual sexual partners and that no prosecution should move forward without their assent.<sup>33</sup> In some cases, the prosecution of offense is initiated only upon complaint of the offended victim. The prosecution of adultery is initiated only upon the complaint of the offended spouse.<sup>34</sup> Similarly, the prosecution of the offence of concubinage and desertion of the marital home is initiated only upon complaint of the offended spouse.<sup>35</sup> The offended spouse may at any stage of the procedure request that the proceedings be terminated when he/she retracts and withdraws the complaint. Similarly, the sexual relationship between an adult and a juvenile at close age should be prosecuted upon complaint of the offending juvenile or his/her representatives. The offended juvenile or her /his representative in case of consensual sexual activity with adult in close age with the victim may at any stage of the procedure request that the proceedings be terminated when he/she retracts and withdraws the complaint.

The non-consideration of close age as defense is contrary to the best-interests principle and has the effect of harming the adolescents they are intended to protect. The best interests of the child principle are the main principle that governs the justice system regarding matters that affect children nationally and globally. Even though there is no standard definition of "best interests of the child", the term generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child with the child's ultimate safety and well-being the paramount concern.<sup>36</sup>

<sup>33</sup> Michelle Oberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 1-1-2000, 48 *Buffalo Law Review*, 48 *Buff. L. Rev.* 2000, p. 779.

<sup>34</sup> Article 136 of law n°68/2018 of 30/08/2018 determining offences and penalties in general, Official Gazette no. Special of 27/09/2018.

<sup>35</sup> Article 140 law n°68/2018 of 30/08/2018 determining offences and penalties in general, Official Gazette no. Special of 27/09/2018.

<sup>36</sup> Child Welfare Information Gateway, *determining the best interests of the child*, p. 2, available

It is worth indicating that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.<sup>37</sup> While prosecuting the child defilement suspect, the voice of child victims of consensual sexual activity of the older adolescent in the same range of years is not heard and considered. The interest of a child born in that consensual sexual activity is not considered while determining the punishment of the adult. This principle provides that in all procedures and justice systems affecting children “the best interests of the child shall be a primary consideration”.<sup>38</sup> Though in case of child defilement between adult and juvenile in close age the juvenile victim is not the offender, the decision of punishing his lovers especially when they had a child together may affect the interest of child victim. That is why the best interests of the child shall be a primary consideration. His interest should be considered by listening to her/his in-child defilement cases especially in case the victim and suspect are of close age.

Additionally, Rwandan law provides for heavy punishment for child defilement offenders. It does not protect young adults as they move from their teenage. Sex for an adolescent is somewhat experimental, it is important to acknowledge that mistakes will occur.<sup>39</sup> Hence less serious first offenders in close age with the victim should be offered a chance either of being given a short time for imprisonment or a suspended sentence. The voice of the victims on the prosecution and punishment of child defilement in case of consensual sex between young adults and juveniles in close age should be heard and considered. Most of older adolescents in close age with the victim who had a consensual activity are not conscient that they are committing offenses. As it has been noted by the legal aid forum, “*Yet literacy levels in relation to laws remain very low. (...) in Rwanda (2017), on average, only 4% of the respondents rate their understanding of the law as high, an overwhelming percentage of 83% were not aware that there are any rights during pre-trial detention, and only 29% knew where*

[https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/interim/160930\\_fcsc\\_01d\\_DetermBestInterestsChild.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/interim/160930_fcsc_01d_DetermBestInterestsChild.pdf), accessed on 02/04/2021.

<sup>37</sup> Article 3 Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with Article 49, ratified by Rwanda 24 January 1991.

<sup>38</sup> Eva Manco, Protecting the Child’s Right to Participate in Criminal Justice Proceedings, Amsterdam Law Forum, Vol 8:1 Spring Issue, 2016., p.56.

<sup>39</sup> Michelle Oberman, Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape, 48 Buff. L. Rev. 776 (2000). Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol48/iss3/4>

*they could find books and official gazettes containing laws used in Rwanda. Without doubt, the statistics could be even higher among vulnerable groups specifically, women, children, youth, persons in detention, persons with disabilities, historically marginalized groups.*<sup>40</sup> Due to a lack of awareness and enforcement of legal provisions related to the punishment of the child defilement offense, some older adolescents while having a consensual sexual activity with a juvenile at close age they are not aware that they are committing an offence.

### **C. The need to balance deterrence and rehabilitation for young adult child defilement offenders**

The increase of punishment in Rwanda for defilers has been motivated by the deterrence function. Punitive approaches have been justified as necessary to curb harms to adolescents resulting from sexual conduct, including teenage pregnancies and sexual abuse.<sup>41</sup> Therefore, the only justification for increasing the imprisonment sentence for a perpetrator of child defilement is to deter other men from engaging in intercourse with children.

Furthermore, child defilement is generally committed by youths. The National Commission for Human Rights highlighted that child defilement is generally committed by the people aged between 18 and 30 years, 77.3 %, and people aged between 31 and 40 years, 22.7%.<sup>42</sup> The youths in Rwanda are the most offenders in child defilement. With the current criminal provision, upon conviction, the child defilement offender is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years. This punishment focuses only on deterrence; it does not consider rehabilitation of the offender.

The increase of penalties of child defilement offenders alone does not prevent teenager pregnancy and child defilement cases. Even though heavy imprisonments

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<sup>40</sup> Law And Policy Literacy, available at <https://cerular.org/programs/law-and-policy-literacy/>, accessed on 07/07/2021.

<sup>41</sup> Godfrey Dalitso Kangaude and Ann Skelton, (De) Criminalizing Adolescent Sex: A Rights-Based Assessment of Age of Consent Laws in Eastern and Southern Africa, Reproductive Health in Sub-Saharan Africa-Original Research, SAGE Open October-December 2018: 1–12, P.8.

<sup>42</sup> National Commission for Human Rights, GBV especially the defilement increased in Rwanda, available at [http://www.cndp.org.rw/index.php?id=187&tx\\_news\\_pi1%5Bnews%5D=8&tx\\_news\\_pi1%5Bday%5D=26&tx\\_news\\_pi1%5Bmonth%5D=5&tx\\_news\\_pi1%5Byear%5D=2016&cHash=04c6f967dd2b0f583b9c74750e2bdae4](http://www.cndp.org.rw/index.php?id=187&tx_news_pi1%5Bnews%5D=8&tx_news_pi1%5Bday%5D=26&tx_news_pi1%5Bmonth%5D=5&tx_news_pi1%5Byear%5D=2016&cHash=04c6f967dd2b0f583b9c74750e2bdae4), accessed on 30/03/2021.

are designed to deter and reduce recidivism, custodial sentences do not reduce recidivism any more than non-custodial approaches, which are cheaper and have fewer consequences for offenders' families. Diverting offenders before they enter the system is likely to produce less offending. Harsh prison regimes such as boot camps are not effective.<sup>43</sup> There is a need to balance both deterrence and rehabilitation while considering also the non-custodial sentences for youth sex offenders in Rwanda.

#### **4. CLOSE AGE AS A DEFENSE IN SOME FOREIGN JURISDICTIONS**

The law aiming to protect children against child defilement may cause the prosecution of an adolescent who engages in consensual sexual activity when both partners are significantly close in age to each other, and one partner is below the age of consent.<sup>44</sup> The issue of criminalization of consensual sexual conduct between adolescents in the same range of age has arisen in several countries. To overcome this conflict, some countries have introduced a close in age exemption into their legal framework in addition to the legally defined minimum age for consent to participation in sexual activity. As an example, this paper analyses close in age defense as it has been established in two countries. This paper compares Rwandan legal provisions on the punishment of an adult who had a consensual sexual activity with a juvenile whom they are in close age with the ones of South Africa and Botswana. Both countries have introduced into their legal system the close age defense and belong to one continent with Rwanda. Comparing each of those country's close age defense in child defilement will help to identify the best practices for dealing with an adult who had a consensual sexual activity with a juvenile in close age and, hopefully, provide a basis for improvement of the Rwandan legal system.

##### **a. South Africa**

The close-in-age exemption has been recognized in South Africa. The South African Constitutional Court decided that it is unconstitutional to criminalize

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<sup>43</sup> Campbell collaboration, Campbell Policy Brief No.4 November 2017, the effects of sentencing policy on re-offending a summary of evidence from 12 Campbell systematic review, available at [https://www.campbellcollaboration.org/media/k2/attachments/Campbell\\_Policy\\_Brief\\_4\\_Sentencing\\_EN.pdf](https://www.campbellcollaboration.org/media/k2/attachments/Campbell_Policy_Brief_4_Sentencing_EN.pdf), accessed on 07/04/2021.

<sup>44</sup> Nuray Kanbur, Close-in-age exemption laws: focusing on the best interests of children and adolescents, *International Journal of Adolescent Medicine and Health*, 2019, p.1., available at <https://www.degruyter.com/document/doi/10.1515/ijamh-2018-0143/html>, accessed on 04/04/2021.

consensual sexual conduct between adolescents in the age group twelve to sixteen years. In *Teddy Bear Clinic v. Minister of Justice and Constitutional Development*,<sup>45</sup> 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 twelve to sixteen 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 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.<sup>46</sup>

In response to the *Teddy Bear Clinic* Court Case and Constitutional Court ruling, sexual offences legislation related to underage consensual sex was amended. In this regard, the legislation now decriminalizes underage consensual sexual activity between adolescent peers aged twelve - fifteen-year-olds. Besides, the law provides broader definitions for consensual sexual activity, including decriminalizing consensual sexual activity between older adolescents (above the age of consent for sex, i.e., 16 - 17-year-olds) and younger adolescents (below the age of consent for sex, i.e., 12 - 15-year-olds), granted that there is no more than a two-year age gap between them.<sup>47</sup> Sexual acts among adolescents are decriminalized as long as the age difference is not more than two years.

It is argued that the rationale of the age gap provisions relies on the premise that sexual activity between similarly aged peers is more likely to be consensual than predatory.<sup>48</sup> Age differences may arguably be used as a proxy to indicate

<sup>45</sup> *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and another* (CCT 12/13) [2013] ZACC 35; 2013 (12) BCLR 1429 (CC); 2014 (2) SA 168 (CC); 2014 (1) SACR 327 (CC) (3 October 2013), available at <http://www.saflii.org/za/cases/ZACC/2013/35media.pdf>, accessed on 03/04/2021.

<sup>46</sup> Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act No. 5 of 2015 (South Africa).

<sup>47</sup> Z Essack, Op.cit, p.1.

<sup>48</sup> Cooca C. Jailbait: The politics of statutory rape laws in the United States. Albany: SUNY Press, 2004. Koon-Magnin SL. Adolescent sexual activity and statutory rape: A multi-method investigation. MA thesis. Pennsylvania: Pennsylvania State University, 2008.

power differentials between older and younger partners, with smaller differences indicative of more balanced power dynamics.<sup>49</sup> Also, adolescent sexual experimentation is considered developmentally normative,<sup>50</sup> and fairly common. Many adolescents, including in South African, may have sex before age sixteen.<sup>51</sup> The task of legislators, therefore, is to protect adolescents from adult sexual predators, while ensuring adolescents' right to autonomy to participate in self-determined sexual activity.<sup>52</sup> Age-gap provisions transfer criminal sanctions from the moral dilemma of underage sex *per se* to a focus on the ages of the parties involved – capturing the sentiment that adolescent sexual experimentation is not fundamentally wrong.<sup>53</sup> From the above-mentioned case law and provisions, the age of consent in South Africa is sixteen years old.<sup>54</sup> The South African legislation decriminalizes underage consensual sexual activity between adolescent peers aged twelve- fifteen-year-olds. Similarly, Rwandan law decriminalizes consensual sexual activity between adolescent's underage, aged at least fourteen. However, contrary to Rwanda that criminalizes consensual sexual activity between older juveniles and adults in close age, i.e., 17 - 19-year-olds), South Africa law decriminalizes consensual sexual activity between juvenile and adult (above the age of consent for sex, i.e., 16 - 17-year-olds), granted that there is no more than a 2-year age gap between them.<sup>55</sup> In South Africa, consensual sexual acts among adolescents are decriminalized as long as the age difference is not more than two years.

## b. Botswana

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<sup>49</sup> Raiford JL, Wingood GM, DiClemente RJ. Prevalence, incidence, and predictors of dating violence: A longitudinal study of African American female adolescents, *Journal of Women's Health* · July 2007, available at [https://www.researchgate.net/publication/6161818\\_Prevalence\\_Incidence\\_and\\_Predictors\\_of\\_Dating\\_Violence\\_A\\_Longitudinal\\_Study\\_of\\_African\\_American\\_Female\\_Adolescents/link/54aadbfcccf2bce6aa1d7433/download](https://www.researchgate.net/publication/6161818_Prevalence_Incidence_and_Predictors_of_Dating_Violence_A_Longitudinal_Study_of_African_American_Female_Adolescents/link/54aadbfcccf2bce6aa1d7433/download), accessed on 01/04/2021.

<sup>50</sup> Gevers A, Mathews C, Cupp P, Russell M, Jewkes R. Illegal yet developmentally normative: A descriptive analysis of young, urban adolescents' dating and sexual behaviour in Cape Town, South Africa. *BMC Int Health Hum Rights* 2013; 13(1):31. <https://doi.org/10.1186/1472-698X-13-31>

<sup>51</sup> Shisana O, Rehle T, Simbayi LC, et al. South African National HIV Prevalence, Incidence and Behaviour Survey, 2012. Cape Town: HSRC Press, 2014.

<sup>52</sup> Graupner H. Sexuality and human rights in Europe. *J Homosexuality* 2005; 48(3- 4):107-139. [https://doi.org/10.1300/J082v48n03\\_07](https://doi.org/10.1300/J082v48n03_07).

<sup>53</sup> Fischel JJ. *Per se* or power – age and sexual consent. *Yale J Law Feminism* 2010; 22(2):279-341.

<sup>54</sup> South Africa. Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act No. 5 of 2015.

<sup>55</sup>Z Essack, *op.cit*, p. 1.

In Botswana, the age of consent and close age exemption is regulated under the Botswana Penal Code.<sup>56</sup> That code was amended in 2018 and has raised the age of consent from sixteen to eighteen. Thus, having sex, including consensual sex, with a person under the age of eighteen is an offense.

The Penal Code makes provision for two exceptions. Consensual sexual activity is not an offence if:

- It takes place between persons who are both under the age of 18; or
- It takes place between a person who is not more than two years older than the other, e.g., a 17-year-old and a 19-year-old.<sup>57</sup> Thus, consensual sexual acts among adolescents in Botswana even if one partner is beyond eighteen years old are decriminalized as long as the age difference between the victim and defendants is not more than two years.

What is similar to Rwanda is that the age of consent is eighteen years as well. Also, in both countries, having sexual activity with a person below the age of eighteen, with that person's consent or not, is an offence. Both countries decriminalize child defilement in case there is a consensual sexual activity between children aged below the age of consent.

However, contrary to Rwanda that does not recognize the close age defense, Botswana recognizes the close age defense and it indicates that consensual sexual activity is not an offence if it takes place between a person who is not more than two years older than the other, e.g., a 17-year-old and a 19-year-old.<sup>58</sup>

## 5. CONCLUSION

A brief analysis made in this work has shown that Rwandan legislation does not recognise the close-in-age defence in child defilement cases when the adult is involved. The non-consideration of the close age of victim and perpetrator who

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<sup>56</sup> Amendment of the section 146 of the act in penal code (amendment) act, 2018, available at <https://botswanalaws.com/Botswana2018Pdf/21of2018.pdf>,

<sup>57</sup> UNFPA, criminalization of consensual sexual acts among adolescents in east and southern Africa, available at [https://esaro.unfpa.org/sites/default/files/pub-pdf/technical\\_brief\\_criminalization\\_0.pdf](https://esaro.unfpa.org/sites/default/files/pub-pdf/technical_brief_criminalization_0.pdf), accessed on 01 April 2021.

<sup>58</sup> Ibid.

had consensual sexual activity impacts negatively on the rights of adolescents' suspect, the victim, and the child born in that relationship.

The comparative analysis of the foreign legislation and practices demonstrated that there are some jurisdictions that adopted the close age defense in case of consensual sexual activity between adolescents even if one partner is older than the age of consent. By introducing the close age defense in their legislations, they distinguish between (i) predatory adults who engage in sexual activity with adolescents below the age of consent, and (ii) adolescents (above the age of consent) who engage in consensual sexual activity with adolescents below the age of consent.<sup>59</sup> Those jurisdictions have considered a close in age as a defense in child defilement cases. These are the best practices on how to protect adolescents who had consensual sexual activity. These best practices may be useful to Rwanda.

Finally, the overall recommendation has been that Rwandan legislation should differentiate between consensual sexual conduct between adolescents, and adults seeking to engage in sexual activity with juveniles. Criminalization should be targeted at the latter only. It is recommended that a close-in-age defence should be introduced under Rwandan law. The consensual sexual activity between adolescents at close age as long as the partner with the adolescent below the age of consent is less than three years older should be decriminalized. This consideration will avoid the criminalization of adults of close age with the victim who had consensual sexual activity.

## 6. REFERENCES

### LEGAL TEXTS AND REGULATIONS

1. The Constitution of the Republic of Rwanda of 2003 revised in 2015,
2. *Official Gazette n° Special of 24/12/2015.*
3. law n° 69/2019 of 08/11/2019 amending law n° 68/2018 of 30/08/2018 determining offences and penalties in general, *Official Gazette n° Special of 29/11/2019*
4. Law n°68/2018 of 30/08/2018 determining offences and penalties in general,
5. *Official Gazette n°. Special of 27/09/2018.*
6. Law n°. 27/2001 of 2001 relating to Rights and Protection of the Child against Violence, *Official Gazette 25/06/2012.*
7. Organic Law n° 01/2012/ol of 02/05/2012 instituting the penal code, *Official Gazette n° Special of 14 June 2012.*
8. Organic Law n°. 31/2007 of 2007 Relating to the abolition of the death penalty 31/2007 of 25 July 2007, *Official Gazette n° Special of 25 July 2007*
9. Convention on the Rights of the Child adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.
10. Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act N°. 5 of 2015 (South Africa).

### ARTICLE, REPORT, BOOKS, AND PUBLICATIONS

1. Asaph Glosser, Karen Gardiner, Mike Fishman, Statutory Rape: A Guide to State Laws and Reporting Requirements, <https://aspe.hhs.gov/system/files/pdf/75531/report.pdf>, accessed on 01/04/2021.
  2. ASPE, statutory rape: a guide to state laws and reporting requirements. Sexual intercourse with minors, available at <https://aspe.hhs.gov/report/statutory-rape-guide-state-laws-and-reporting-requirements-summary-current-state-laws/sexual-intercourse-minors>, accessed on 05 04/2021.
  3. Brittany Logino Smith & Glen A. Kercher, Adolescent Sexual Behavior and the Law 7 (2011), available at [http://www.crimevictimsinstitute.org/documents/Adolescent\\_Behavior\\_3.1.11.pdf](http://www.crimevictimsinstitute.org/documents/Adolescent_Behavior_3.1.11.pdf), accessed on 03/04/2021.
  4. Campbell collaboration, Campbell Policy Brief N°.4 November 2017, the effects of sentencing policy on re-offending a summary of evidence from 12 Campbell systematic reviews, available at [https://www.campbellcollaboration.org/media/k2/attachments/Campbell\\_Policy\\_Brief\\_4\\_Sentencing\\_EN.pdf](https://www.campbellcollaboration.org/media/k2/attachments/Campbell_Policy_Brief_4_Sentencing_EN.pdf), accessed on 07/04/2021.
  5. Child Welfare Information Gateway, determining the best interests of the child, p. 2, available [https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/interim/160930\\_fcsc\\_01d\\_DetermBestInterestsChild.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/interim/160930_fcsc_01d_DetermBestInterestsChild.pdf), accessed on 02/04/2021.
  6. Cocca C. Jailbait: The politics of statutory rape laws in the United States. Albany: SUNY Press, 2004.
  7. Crockett, Lisa J.; Raffaelli, Marcela; and Moilanen, Kristin L., "Adolescent
  8. Sexuality: Behavior and Meaning" (2003). Faculty Publications, Department of Psychology. 245, <https://digitalcommons.unl.edu/psychfacpub/245>.
1. David NS, Twombly J, State legislators handbook for statutory rape issues, Washington

- American Bar Association Center on children and law 2000, available at <https://ovc.ojp.gov/sites/g/files/xycykuh226/files/publications/infores/statutoryrape/handbook/statrape.pdf>, accessed on 02/04/2021.
2. Eleanor E. Maccoby, parenting and its effects on children: on reading and misreading behavior genetics, *Annu. Rev. Psychol.* 2000.51:1-27.
  3. Fairgrieve, D., *State Liability in Tort: A Comparative Law Study*, Oxford University Press, 2003, p.
  4. Fischel JJ. Per se or power – age and sexual consent. *Yale J Law Feminism* 2010; 22(2):279-341.
  5. General comment N<sup>o</sup>. 24 (2019) on children’s rights in the child justice system, Committee on the Rights of the Child, CRC/C/GC/24, 18 September 2019.
  6. Gevers A, Mathews C, Cupp P, Russell M, Jewkes R. Illegal yet developmentally normative: A descriptive analysis of young, urban adolescents’ dating and sexual behaviour in Cape Town, South Africa. *BMC Int Health Hum Rights* 2013; 13(1):31. <https://doi.org/10.1186/1472-698X-13-31>.
  7. Godfrey Dalitso Kangaude and Ann Skelton, (De) Criminalizing Adolescent Sex: A Rights-Based Assessment of Age of Consent Laws in Eastern and Southern Africa, *Reproductive Health in Sub-Saharan Africa-Original Research*, SAGE Open October-December 2018: 1–12.
  8. Graupner H. Sexuality and human rights in Europe. *J Homosexuality* 2005; 48(3-4):107-139. [https://doi.org/10.1300/J082v48n03\\_07](https://doi.org/10.1300/J082v48n03_07).
  9. Iyakaremye, I., Mukamana, L., Umutoni, J., Paternity denial and consequences on children in a patriarchal society: Situation in consensual couples in Rwanda, *Children and Youth Services Review*, Volume 118, November 2020.
  10. Kern, Jana L. (2013) “Trends in Teen Sex Are Changing, but Are Minnesota’s Romeo and Juliet Laws,” *William Mitchell Law Review*: Vol. 39: Iss. 5, Article
  11. 18 Available at: <http://open.wmitchell.edu/wmlr/vol39/iss5/18>.
  12. Koon-Magnin SL. Adolescent sexual activity and statutory rape: A multi-method investigation. MA thesis. Pennsylvania: Pennsylvania State University, 2008.
  13. Kristien Michielsen, Pieter Remes, John Rugabo, Ronan Van Rossem & Marleen Temmerman (2014) Rwandan young people’s perceptions on sexuality and relationships: Results from a qualitative study using the ‘mailbox technique’, *SAHARA-J*: 11:1, 51-60, available at <https://www.tandfonline.com/doi/pdf/10.1080/17290376.2014.927950?needAccess=true>, accessed on 30/03/2021.
  14. Michelle Oberman, Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape, 1-1-2000, 48 *Buffalo Law Review*, 48 *Buff. L. Rev.* 2000.
  15. National Commission for Human Rights, GBV especially the defilement increased in Rwanda, available at [http://www.cndp.org.rw/index.php?id=187&tx\\_news\\_pi1%5Bnews%5D=8&tx\\_news\\_pi1%5Bday%5D=26&tx\\_news\\_pi1%5Bmonth%5D=5&tx\\_news\\_pi1%5Byear%5D=2016&cHash=04c6f967dd2b0f583b9c74750e2bdae4](http://www.cndp.org.rw/index.php?id=187&tx_news_pi1%5Bnews%5D=8&tx_news_pi1%5Bday%5D=26&tx_news_pi1%5Bmonth%5D=5&tx_news_pi1%5Byear%5D=2016&cHash=04c6f967dd2b0f583b9c74750e2bdae4), accessed on 30/03/2021.
  16. Noy S. Davis & Jennifer Twombly, the handbook for statutory rape issues2 (2000), available at <http://www.mincava.umn.edu/documents/stateleg/stateleg.pdf>.
  17. NPPA, *National public prosecution authority annual report 2019 - 2020*.
  18. Nuray Kanbur, Close-in-age exemption laws: focusing on the best interests of children and adolescents, *International Journal of Adolescent Medicine and Health*, 2019. Available at <https://www.degruyter.com/document/doi/10.1515/ijamh-2018-0143/html>, accessed on 04/04/2021.
  19. Peters, A. & Schwenke, H., “comparative law beyond post modernism”, *International and Comparative Law’ Quarterly* [Vol. 49, October 2000] 800, p.831.
  20. Raiford JL, Wingood GM, DiClemente RJ. Prevalence, incidence, and predictors of dating violence: A longitudinal study of African American female adolescents, *Journal of Women’s Health* · July 2007, available at [https://www.researchgate.net/publication/6161818\\_Prevalence\\_Incidence\\_and\\_Predictors\\_of\\_Dating\\_Violence\\_A\\_Longitudinal\\_Study\\_of\\_](https://www.researchgate.net/publication/6161818_Prevalence_Incidence_and_Predictors_of_Dating_Violence_A_Longitudinal_Study_of_)

African\_American\_Female\_Adolescents/link/54aadbfc0cf2bce6aald7433/ download, accessed on 01/04/2021.

21. Raymond R. Corrado, & others, should deterrence be a sentencing principle under the youth criminal justice act? *La Revue Du Barreau Canadien*, [Vol.85, 2006].

22. Shisana O, Rehle T, Simbayi LC, et al. South African National HIV Prevalence, Incidence, and Behaviour Survey, 2012. Cape Town: HSRC Press, 2014.
23. Sujita Kumar Kar, Ananya Choudhury, and Abhishek Pratap Singh, Understanding normal development of adolescent sexuality: A bumpy ride, J Hum Reprod Sci. 2015 Apr-Jun; 8(2): 70–74.
24. UN Committee on the Rights of the Child (CRC), General comment No. 20(2016) on the implementation of the rights of the child during adolescence, 6 December 2016, CRC/C/GC/20, available at <https://www.refworld.org/docid/589dad3d4.html> [accessed 31 March 2021].
25. UNFPA, criminalization of consensual sexual acts among adolescents in east and southern Africa, available at [https://esaro.unfpa.org/sites/default/files/pub-pdf/technical\\_brief\\_criminalization\\_0.pdf](https://esaro.unfpa.org/sites/default/files/pub-pdf/technical_brief_criminalization_0.pdf), accessed on 01 April 2021.
26. X, Voice - My rights against sexual abuse, available at <https://rwanda.unfpa.org/en/news/my-voice-my-rights-against-sexual-abuse>, accessed on 30 March 2021.
27. Z Essack, Unpacking the 2-year age-gap provision in relation to the decriminalisation of underage consensual sex in South Africa, *S Afr J Bioethics Law* 2018;11(2):85-88. DOI:10.7196/SAJBL.2018.v11i2.657.

## CASE LAWS

1. RP 00062/2019/TGI/HYE, Prosecution v Barakagwira Gilbert rendered by the Intermediate Court of Huye on 18/02/2019.
2. RP 00499/2018/TGI/MUS, Prosecution v Ntahorutaba Wellars rendered by the Intermediate Court of Musanze.
3. RS/INCONST/SPEC 00003/2019/SC, Re. Kabasinga, Supreme Court, RLR - V.2-2020.
4. Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another (CCT 12/13) [2013] ZACC 35; 2013 (12) BCLR 1429 (CC); 2014 (2) SA 168 (CC); 2014 (1) SACR 327 (CC) (3 October 2013), available at <http://www.saflii.org/za/cases/ZACC/2013/35media.pdf>, accessed on 03/04/2021.