



MINISTRY OF GENDER,
CHILDREN AND SOCIAL
PROTECTION

Position paper on position harmonizing the age of
sexual consent and the age of marriage in Ghana

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July 2018

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Published by:

Department of Children, Ministry of Gender Children
and Social Protection and UNICEF Ghana

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This paper has been put together by Law and Development Associate (LADA) Group on behalf of UNICEF Ghana and the Ministry of Gender, Children and Social Protection with Financial support from Global Affairs Canada and the Global Partnership to End violence Against Children. The contents of this documents are the sole responsibility of LADA and don't reflect the views of Department of Children, UNICEF Ghana and Global Affairs Canada.

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Acknowledgments

This position paper has been put together to look at the issue of the age of sexual consent and marriage in Ghana and generate some debate and consensus to address some of the core issues affecting girls and boys in Ghana with regards to sexual consent and marriage. This position paper has been put together by Law and Development Associates (LADA) Group as part of a contract between LADA, UNICEF and Government of Ghana. The completion of this paper could not be possible without the express participation of Enam Korkor Antonio and Prof. Robin Walker Sterling. This position paper is part of the efforts led by the Department of Children, Ministry of Gender, Children and Social Protection to conduct a comprehensive review of the existing legislation in Ghana and to propose changes to bring it in line with the Convention on the Rights of the Child.

This program was undertaken with financial support from the Government of Canada through Global Affairs Canada and the Global Partnership to End Violence Against Children.

Executive Summary

The minimum age of sexual consent is defined as the age at which a young person is deemed capable of consenting to sexual activity. The goal of establishing a minimum age of sexual consent is to protect adolescents from abuse and from consequences they may not be fully aware of when engaging in sexual activity. Sexual activity with a person younger than the age of sexual consent is non-consensual and illegal.

The Criminal Offences Act, 1960 (Act 29) pegs the age of sexual consent at 16 years old. The Children's Act 1998 (Act 560), provides in section 14(2) that the minimum age for marriage is 18. It also provides that children (defined as boys and girls below the age of 18) have a right to refuse betrothal and marriage under section 14(1). Accordingly, the Children's Act prohibits marriage involving boys and girls below the age of 18. This applies to both boys and girls. The combined effect of the above-mentioned provisions in the law and in practice, is that while it is illegal to marry a person below the age of 18 years old, it is completely legal for persons above the age of 16 years old to have sex consensually. And so, while a 16-year-old boy is too young to get married, he is not too young to consent to sex. And similarly, a 17-year-old girl cannot be married, she can have sex legally. She is too young to be married, but old enough to consent to sex.

In consultations with juvenile justice and child welfare judges and advocates, educators, social workers, and other

stakeholders around the country, the question arose whether these two ages should be harmonized, such that the age of sexual consent is raised to 18 years old. The disparity between the age of sexual consent in the Criminal Offences Act and the age of marital consent in the Children's Act presents a social and legal conundrum. On one hand, the law on child protection and criminal law aim to protect children from predators who exploit children's vulnerabilities. The establishment of minimum ages in legislation is an obligation under the Convention on the Rights of the Child. Article 4 of the Convention requires States Parties to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized" therein. The CRC Committee has emphasized that, legal minimum ages should reflect the recognition of the status of persons under 18 years of age as rights holders and their evolving capacity, age and maturity. Generally, the age of majority for other social and legal arrangements (such as drinking alcohol, contractual arrangements and adult suffrage) is pegged at 18 years old. Logically therefore, it is appropriate to prohibit marriages involving children. In fact, Ghana has launched an extensive social campaign to end child marriages across the country by 2030. Marriage carries with it such weighty issues that no person who is considered a child should agree or be made to marry. Since sex is an integral part of married life, and also has potentially life-changing effects on young people, it would seem appropriate that we ensure that only persons who are not considered children

are allowed to legally consent to sex and also marry. However, an adoption of the same age for sexual consent as the age of adulthood carries with it the possibility that many experimenting adolescents would have sex willingly before the age of 18, but still be liable to suffer severe punishment, including lengthy jail sentences.

In Ghana, sex is not a topic that is easily discussed in the open. The socio-cultural dynamics between parents and their children make it difficult for children to discuss their sexuality freely with older members of their family. Exacerbated by the ubiquity of social media, the result is that many young children and adolescents learn about sex from peers, internet sources and experimentation.

In the same way that children experience physical changes at the onset of puberty, children should also be supported to develop the emotional and intellectual sensibilities necessary to make informed sexual choices. And, the same way that children learn to make good decisions in other areas through social guidance and information, children can learn to make good sexual decisions through honest and comprehensive sexual and relationship education. But instead of encouraging a free exchange of useful and informative sexual education, raising the age of sexual consent and criminalizing sex between minors at ages where sexual exploration is a normal part of normal human development would impede access to

adolescent sexual and reproductive health information and services to young people. The Profile of Reproductive Health Situation in Ghana published in 2003 provides for an adolescent reproductive health policy that seeks to inculcate in the youth the idea of responsible sexual behaviour, the small family size norm, pursuit of career, values of responsible adulthood and mutual respect for people of the opposite sex. Ghana has adopted a new Adolescent Health Service Policy and Strategy for the period 2016-2020 which will provide for comprehensive sexuality education programmes, accurate information about human sexuality; providing an opportunity for young people to develop and understand their values, attitudes, and beliefs about sexuality; helping young people develop relationships and interpersonal skills; and exercising responsibility regarding sexual relationships, including addressing abstinence, pressures to become prematurely involved in sexual intercourse, and the use of contraception and other sexual health measures. Where sexual health information is provided, such criminalization would encourage poor sexual education and stigmatization in delivery and access to services; and criminalization would stigmatize healthy sexual relationships between youths. In addition, inadequate sexual education has been shown to lead to increased cases of STIs, HIV/AIDS and youth pregnancies.

Structure and Goals of The Paper

In this paper, we explore this conundrum arising from the varying ages of consent for sexual activities and marriage in Ghana. Essentially, we seek to probe the following questions:

- ⊙ *If a child is too young to marry before the age of 18, is he/she old enough to have sex at 16 years?*
- ⊙ *Considering that children are becoming sexually active early in their lives, is it prudent to keep the age of consent at 16 or even reduce it?*
- ⊙ *How can we modify the law in a way that safeguards children's rights both in terms of Adolescent Sexual and Reproductive Health Rights (ASRHR) and rights to protection from abuse and violence but also avoids over punishment for experimenting with sex?*

A situational analysis of the age of sexual consent in Ghana reveals that sexual exploitation of people below 18 years has attracted the state's attention and concern. In addition to criminalizing sexual conduct involving children, other state institutions (such as the Ministry of Gender and Social Protection (MoGSP) and the Domestic Violence and Victims Support Unit of the Ghana Police (DOVSU)) have been strengthened to ensure adequate protection for children (UNICEF Ghana 2008). However, socio-cultural norms have also impacted considerations on the age of sexual consent. In most social, cultural and religious settings in Ghana there is no identifiable and approved age of consent. Sexual conduct is generally prohibited

before marriage (Gyeke 2003). It follows that as long as a person is married (regardless of their age) sexual conduct is generally allowed. Despite the concerns arising from the disparity in age of sexual consent and age of marriage, it is noted that there have been limited legal interventions. So far, the attention has been on the campaign to end child marriages. Much consideration has not been given to the age of sexual consent in Ghana.

The effects of changing or maintaining the status quo regarding the age of sexual consent in Ghana has far reaching implications. If an increase in the age of sexual consent to match up with the age of consent to marriage (18 years) is supported, the outcome would be that more young adolescents would be guilty of serious sexual offences like defilement, which have serious consequences. Thus, 17-year-old boys and girls who have consensual sex will be guilty of defilement. This outcome would appear rather harsh, considering that the object of the law on defilement is targeted mainly at sexual deviants and paedophiles, not adolescents who are merely experimenting with sex (Thomson 2005). On the other hand, maintaining the age of sexual consent at 16 years or decreasing it, with the age of consent to marriage remaining at 18 years, with appropriate action, may provide an opportunity for parents and educators to teach children about sex and related activities (Oberman 2000).

We turn then to examine selected best practice to help in reshaping the discussion on age of sexual consent in Ghana. Some countries have enacted so-called “Romeo and Juliet” provisions which seek to decriminalize sexual conduct involving minors, but under certain conditions. Romeo and Juliet provisions require that the age difference between the persons engaging in consensual sex should be close – not exceeding two to three years. In such

situations, children under the legal age of consent who have consensual sex would not suffer criminal liability. In addition, many countries now include globally recognized definition of age appropriate comprehensive sexuality and relationship education in schools from as early as 4 and 5 years.

International Standards

International standards for the age of sexual consent, the age of matrimonial consent, child marriage, and child sexual abuse are interrelated, because sex is often linked with marriage, and in many places child marriage is condoned by local or traditional norms.

International standards set the minimum age of marriage at 18 years old. Evidence for this cut-off in the Convention on Rights of the Child, which Ghana signed onto in 1990, can be found in discussions of other rights that intersect with marriage, including the right to free expression, the right to freedom from abuse, the right to bodily integrity, and the right to be protected from harmful traditional practices. This age cut-off applies equally to girls and boys, although gender discrimination in this area is widely accepted. Teenaged boys who have sex are not nearly as vilified as girls who do. We found, in our consultations, that people were far more willing to accept teenaged boys’ interest in sex as natural, than teenaged girls’ interest in sex, which

was regarded as wayward, symptomatic of some deficiency in a girl’s upbringing or in the girl herself. In particular, respondents were very concerned about teen pregnancy and, more specifically how teen pregnancy affects the girl. It was a foregone conclusion that teen pregnancy meant an interruption to the girl’s studies and diminishment of the girl’s chances for future marriage – especially since, if the girl is 16 or 17 years old, the father of the child cannot legally marry her. Respondents repeatedly expressed the concern that the man would lose interest in the pregnant teen and leave her. Concern for the life prospects of teenaged fathers were not expressed nearly as often.

The Convention on the Elimination of All Forms of Discrimination against Women, to which Ghana is a signatory, takes a strong position on child marriage. It states:

- © *The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify*

a minimum age for marriage and to make the registration of marriages in an official registry compulsory. (CEDAW, Article 16.2)

Committees for both the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women discuss the issue of child marriage in their General Comments or Recommendations and Concluding Observations. In fact, the first General Comment/Recommendations issued jointly by the two Committees in November 2014 on harmful practices includes extensive discussion of child marriage.

With respect to the minimum age for marriage, the Committees state:

- ⊙ *A minimum legal age of marriage for girls and boys is established, with or without parental consent, at 18 years. When exceptions to marriage at an earlier age are allowed in exceptional circumstances, the absolute minimum age is not below 16 years, grounds for obtaining permission are legitimate and strictly defined by law and marriage is permitted only by a court of law upon full, free and informed consent of the child or both children who appear in person before the court.*

Previous pronouncements had endorsed an absolute prohibition against child marriage in all circumstances. The change might be explained by “pragmatism in light of the sometimes difficult situations in which adolescents may find themselves, for example when expecting or having a child, given the high rates of adolescent motherhood in various countries.” In 2017, 14% of adolescent women age 15-19 had begun childbearing: 12% had already had

a live birth and 3% were pregnant with their first child. The proportion of teenagers who have begun childbearing increases dramatically with age, from 3% of those age 15 to nearly one-third (32%) of those age 19. Teenage women in urban areas are less likely (11%) to have begun childbearing than those in rural places (18%). Teenage childbearing varies by region; Greater Accra (7%) and Upper West (8%) regions have the lowest proportion of teenagers who have begun childbearing, and the other regions range from 13% to a high of 19% in Western region. Teenage childbearing declines sharply with education: from 35% of teenagers with no education to 4% of those with some secondary education. There is a similar although less steep decline as household wealth increase.

The change also seeks to recognize the evolving developmental capacities of children to be autonomous and make decisions about their lives. The lowest age of marital consent in Africa can be found in Sudan, where the marital age of consent is defined as puberty for girls and 10 years old for boys for Islamic marriages, and 13 years old for girls and 15 years old for boys for non-Islamic marriages. Sudan’s law is not typical, however. With respect to the countries immediately surrounding Ghana, the age of marital consent in Burkina Faso is 17 years old for girls, and 20 years old for boys; the age of marital consent in Benin is 18 years old; in Togo, 18 years old; and in Cote d’Ivoire, 18 years old for girls and 20 years old for boys.

There is no clear international standard for a minimum age for sexual consent. However, in Ghana the median age at first sexual intercourse is 18.3 years.

There are several goals animating establishment of a minimum age of sexual consent. The establishment of a minimum age of sexual consent helps to safeguard youths from coerced sexual activity without having the power either to refuse or to give fully informed consent. The age cannot be so low that it invites exploitation of young children. But it cannot be so high that it invites over-criminalization of behaviour flowing naturally from normal adolescent development or discourages access to services on pain of criminal punishment. Instead, the age should result from a compromise between the evolving capacities of the child, the age difference between the partners involved – which is a proxy for assessing any potential power imbalance between the participants – and expression of society’s normative values concerning sexual relations.

The lowest age of sexual consent in Africa is open-ended, due to matrimonial consent laws, and the highest age of sexual consent is 18 years old. Angola’s age of sexual consent is 12 years old. As for the countries geographically closest to Ghana: Burkina Faso’s age of sexual consent is 13 years old; Togo’s is 16 years old; Benin’s is 18 years old; and Cote d’Ivoire’s is 18 years old. While the Convention on the Rights of the Child Committee has indicated that it considers 13 years to be “very low,” the Committee has not expressed as clear an opinion of the older ages.

The international standards’ position on a minimum age of sexual consent is also closely connected to the policing of child sexual abuse. Child sexual abuse is broadly defined as any situation in which sexual activity with a person under 18 is illegal when it is without consent, forced and involves a dynamic of power imbalance. But in instances of sexual activity between children who are both under the age of sexual consent, the CRC substitutes the idea of equal power for genuine consent. The Committee has described its position as follows:

- © *Sexual abuse comprises any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law. Sexual activities are also considered as abuse when committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threat or other means of pressure. Consensual sexual activities between children are not considered as sexual abuse if the children are older than the age limit defined by the State party for consensual sexual activities.*

There are several trends to glean from international standards. First, the age of marital consent generally tracks the age of majority. Second, the age of sexual consent is generally younger than the age of majority. In other words, Ghana is not the only country in the world that has this difference. This discrepancy is, perhaps, because unlike marriage, which results from a deliberate choice that many people are free to eschew, sexual interest is a physical and emotional developmental stage, like puberty, that is common to almost everyone. As much as traditional

societal norms bind sex with marriage because of the possibility of pregnancy, evolving social norms have decoupled the two, such that sex and marriage do not necessarily coincide. Third, with respect to sex between two children who are under the age of consent, the international trend is to scrutinize the encounter for any indication of consent. Rather than automatically

charge the older of the two, or to charge the boy in a heterosexual interaction. In these instances, the default position is that both of the children involved are part of the protected class of children under the age of consent, and as such, they are equally deserving of protection. This protection only applies when the sex is consensual.

National Standards: The Intersection of the Age of Sexual Consent and the Age of Matrimonial Consent

The disparity between the age of sexual consent in the Criminal Offences Act and the age of marital consent in the Children's Act presents a social and legal conundrum. On one hand, the law on child protection and criminal law aim to protect children from predators who exploit children's vulnerabilities. Generally, the age of majority for other social and legal arrangements (such as drinking alcohol, contractual arrangements and adult suffrage) is pegged at 18 years old. Logically therefore, it is appropriate to prohibit marriages involving children. In that regard, Ghana has launched an extensive social campaign to end child marriages across the country by 2030. Marriage carries with

it such weighty issues that no person who is considered a child should agree or be made to marry. Since sex is an integral part of married life, and also has potentially life-changing effects on young people, it would seem appropriate that we ensure that only persons who are not considered children are allowed to legally consent to sex and also marry. However, an adoption of the same age for sexual consent as the age of adulthood carries with it the possibility that some experimenting adolescents would have sex willingly before the age of 18, but still be liable to suffer severe punishment, including lengthy jail sentences.

Situational Analysis of age of sexual consent in Ghana.

a. Historical context

In pre-colonial times, the customary law of ethnic communities in Ghana regulated sexual conduct. Generally Ghanaian customary law and practice do not permit sex with a child. However, due to differences in the age of maturity practiced in different Ghanaian communities, there were incidents of children younger than 16 years old who were forced to have sex. (Archampong, 2011). The prevalence of child marriages therefore necessitated the enacting of legislation to curb this problem and prevent the abuse of children. Presently, defilement, defined as sex with a girl younger than sixteen years, is a crime in Ghana. (Criminal Offences Act, 1960). Defilement's definition is gender specific, such that only a girl can be defiled, and a boy cannot be.

In addition to enacting legislation, Ghana also fortified existing state institutions and established new ones to increase capacities in fighting sexual exploitation concerns (UNICEF Ghana, 2008). The establishment of the Domestic Violence and Victim Support Unit (DOVVSU) of the Ghana Police Service, formerly known as Women and Juvenile Unit (WAJU), in 1998 and the progressive expansion of its offices all over the country has made justice more accessible to women and children who are victims of domestic violence or sexual abuse. Another institution leading the charge to keep children safe is the Ministry of Women and Children's Affairs (MOWAC),

created in 2001 and now called the Ministry of Gender, Children and Social Protection (MoGCSP). Also, the Department of Social Welfare (DSW) under the MoGCSP has also gone through significant structural transformations and as a result is more resourced than a decade ago. (UNICEF Ghana, 2008).

In debates leading up to the passage of the Children's Act in 1998, there were calls for the reconsideration of the age of sexual consent. (Child Marriage Unit, 2016). Proponents for raising the age of sexual consent argued that the Children's Act provides that a child is someone below the age of 18 and so sex with a person below 18 should be criminalized as children could not reasonably be expected to understand the full range of possible consequences of having sex. On the other hand, those who supported maintaining the age of sexual consent strongly asserted the prevailing age of sexual consent corresponded with international best practices and was in the interest of the child. Proponents of keeping the age of sexual consent at 16 years old believed that as part of changes children go through during puberty, children tend to want to explore their sexuality regardless of the constraints. (Perrault, 2016). In addition, they say that most children do not even know or care about the age of consent. So, it cannot influence their decision on whether to have sex or not. Simply put, adolescents have sex because they want to and is a normal component of emotional,

physical, mental and sexual development through puberty into adulthood and not because it is legal or even illegal.

b. Prevalence rates

In Ghana, many adolescents aged 15 to 18, whether married or not, have had sexual intercourse. 12% of girls and 9% of boys have had sex before the age of 15 (United Nations Population Fund 2016). Statistics further show that 10% of teens under 15 years are having sex (Lithur 2015). A survey conducted by the Ghana Demographic Health (GDHS) in 2008 revealed that 44 percent of young people have sex before age 18 and most initiate it at age 15. According to the Ghana Statistical Service, between 2008 and 2014, the percentage of men and women between the ages of 25 and 40 who reported having sexual intercourse at age 15 decreased only one point, from 12 to 11 percent (GSS 2015). Furthermore, it has been estimated that four in ten Ghanaian women and two in ten men aged 15–19 have had sex before. (Alan Guttmacher Institute, 2004).

The statistics above show that vast majority of girls and boys get involved in sexual activities even before they turn sixteen.

c. Causal Factors

CULTURAL CONSIDERATIONS

Generally, most cultures in Ghana frown upon pre-marital sex. This is because it is a leading cause of pre-marital pregnancy in the country. Cultural norms are defined as the standards we live by (Lonner, 1994). They are the shared expectations and rules that guide the behaviour of people within social groups. In Ghana, cultural

norms are taken very seriously. In times past, girls had to undergo puberty rites in order to ensure their virginity and dignity were still intact. (Salm and Falola, 2002). An unmarried person in the community who is caught engaging in sexual activities is considered to have brought disgrace to his/her family (Gyeke, 2003). Ghanaian culture is a very patriarchal one. As a result of this, adolescent girls' sexual behaviour is far less accepted than adolescent boys' sexual behaviour. There is also the tendency to blame girls who are victims of sexual offences. It is usually associated with claims that the girls contributed to it by dressing provocatively.

LEGAL CONSIDERATIONS

The Criminal Offences Act, 1960 (Act 29) does not expressly define consent. What it does is provide for circumstances under which consent is void. In the context of sexual consent, it provides that consent is void if the person giving the consent is under sixteen years. Hence, anyone who has sex with a girl who is less than sixteen years (with or without consent) is guilty of defilement. The definition of defilement is gender-specific – an illustration of the gender imbalance that accompanies the societal concern about the age of sexual consent. Girls' virginity must be protected, lest the girl be spoiled; that same concern for boys is not as widely acknowledged or shared.

RELIGIOUS CONSIDERATIONS

Religion is another determinant of the age of sexual consent in Ghana. The three most common religions in Ghana are Christianity, Islam and the African traditional religion.

The beliefs of these religions also impact how the age of consent is viewed. Generally, until marriage, people are not permitted to have sex lest they attract punishment from a supreme deity of their religion (Clarke, 2010). In other words, religious practices encourage abstinence. What these religions encourage is an approved age for marriage after which one can have sex. These religions do not set, either expressly or impliedly, any age which is considered as that at which consent for sex should be given. They prohibit any form of sexual activity before marriage.

SOCIAL CONSIDERATIONS

Social factors also contribute immensely to conceptions of the age of sexual consent in Ghana (Lystad, 1960). Contrary to long-held Ghanaian values, there is a gradual shift towards the sexual emancipation of adolescents. There is a growing belief that at a certain age, a person is mature enough to take the decision to determine when to have sex. Many girls below age 16 and between ages 13 and 15 are involved with boys/men in unprotected sex which often results in adolescent pregnancy are getting pregnant.

CAUSAL RELATIONSHIP BETWEEN SEX AND TEENAGE PREGNANCY.

Teenage pregnancy is the state of being pregnant between the ages of 13 and 19. Abstinence from sex is of course the best way of preventing pregnancy. Most teenagers have sex knowing very well the potential consequences such as an unwanted pregnancy. Although many often try to rely on pregnancy prevention measures (Miller 1995), for varying reasons, some still get pregnant. Prevention of teenage pregnancy is one of the main reasons people advocate for an increase in the age of consent. It is the belief that this step coupled with an increased education of teenagers on the legal implications of having sex prior to reaching the age of consent will help reduce the rate at which teenage girls get pregnant. Most people who advocate for an increase propose that the age of consent is aligned with the age of marriage.

INTERVENTIONS

There is a paucity of attempts aimed at intervening or dealing with issues relating to the age of consent. Most often, the discussion around this area tends to be in respect of how to curb the rise of child marriages and teenage pregnancies in Ghana. Religious leaders have encouraged and promoted abstinence to avoid teenage pregnancy. Child marriage is prohibited by the Children's Act. In that regard, Ghana has launched an extensive social campaign to end child marriages across the country by 2030.

Conclusions and Recommendations

◎ Suggested legal reforms (Romeo and Juliet clause)

Recommendation: For all the reasons discussed above, the age of sexual consent should remain 16 years old, and laws considering the age difference between those involved in a sexual encounter should be enacted.

There may be exceptions in the prosecution of sexual crimes when the older participant is, for instance, only 2 or 3 years older than the adolescent concerned. In these cases, it may be possible to demonstrate that consent was not affected by an imbalance of power. Similarly, underage sexual activity often involves two adolescents under the age of consent and too strict legislation may lead to criminalization rather than protecting adolescents. In Ghana, the age of criminal intent is 12 years (Criminal Offences Act, section 26). It follows that any child who is 12 years or more and commits a crime would be a child in conflict with the law. Such a child would be subjected to the juvenile justice system. Thus, if a boy and a girl, both under 16, have consensual sex, the boy would be considered culpable and would face some form of punishment. Given the realities of adolescent sexual behaviour, as we have outlined above, this situation would likely be unduly harsh on young boys.

Many States have enacted what is now called “Romeo and Juliet” laws to address this issue. Shakespeare’s tale of two young lovers torn apart because of a long-standing

feud between their families is the ultimate tale of young love. Romeo and Juliet were two teenagers madly in love who were forced to choose between their love and the family ties that kept them apart. Modern day laws and norms would present another obstacle to their love since Juliet, at only 13 years old, would be unable to consent to sexual conduct with her love, Romeo, an older teen (Shakespeare 1597). In most countries and in Ghana, Romeo would be subject to prosecution for violating the statute against sexual conduct with minors. Lawmakers are becoming increasingly aware of teen sexuality and the possible ramifications of being charged with a sex offence. Several countries have enacted statutes to protect certain sexual activity from prosecution. These countries seem to recognize that sex between two young people is less punishable than sex between a young person and an adult. These provisions may impose lighter penalties or decriminalize the activity altogether when one or both parties are under the age of consent but their ages are close (Bhamjee, Essack, Estrode, 2016).

In general, there are two main types of laws intended to protect young persons in close-in-age relationships from coming into conflict with the law: Age-gap provisions and Romeo and Juliet clauses (Smith, Kercher 2011). Romeo and Juliet clauses are provisions that legalize sexual relations among young people as long as they are within a certain age frame. The age range varies but is usually no more than five years. If the minor is below the age of consent, a

crime is committed only if the defendant is a specified number of years older. These laws mitigate penalties or exculpate consensual sexual activity between minors when at least one is below the age of consent. (Kern, 2013). Romeo and Juliet clauses attempt to leave space for normal adolescent sexuality and some degree of sexual autonomy and privacy while also safeguarding against age disparity-based power imbalances that may impact young people as they navigate their sexual development (High, 2016).

In so many countries including Ghana, children under the age of 18 have been working professionally in various types of jobs, getting married, having sex, raising their own children and running businesses. We see preteens and teens from age 10 with cell phones and tablets, at stores using credit cards or cash to buy all sorts of items, downloading apps for phones or software for computers, engaging in intelligent communications and thought-processes and doing so much that adults do. With these kinds of experiences and information, children are more in touch with who they are, their place in the world, what they believe, and what they want to accomplish; all the hallmarks of maturity. Also, with the improvement of health and dietary aspects, age of puberty onset and menarche are also decreased in modern times (Ebrahimzadeh, 2015). Therefore, we might ask ourselves, “why do we continue to deny that children under a certain age have the ability to partake in society’s activities in so many ways such as to get a job, to decide when to engage in sexual activity, to decide to be married and have children of their own, or to acquire birth control or have an abortion” (Ebrahimzadeh, 2015).

Romeo and Juliet exceptions can adequately safeguard the most exposed minors while also preserving society’s judgments of maturity. Additionally, there is little research indicating that consensual sexual activity between close-in-age peers is dangerous to the child or society (Troup-Leasure, Snyder, 2005). Ghana could adopt a Romeo and Juliet exception that expands the privacy rights of minors and empowers them to practice informed and consensual sex. Instead of criminalizing normal behaviour among young adults, Ghana could adapt its laws to foster healthy and open sexual relationships among our youth. This change would allow for the desired exception while still respecting the interest in protecting minors.

◎ **Suggested social interventions
(Mandatory Sexual and Relationship
Education In and Out of Schools)**

Recommendation: A mandatory sexual and relationship education program should be implemented in schools and social settings because teenagers spend most of their time, do most of their learning and meet most of their sexual partners at schools and other social settings. Age-appropriate comprehensive sexual health education would do much to empower young people to protect themselves, appreciate and value the concepts of respect and consent which are the pillars of relationships, including sexual relationships, engage in safer sexual practices, recognize sexual predators and differentiate between love and exploitation (Covell 2010). Sex education would also help promote reproductive health and rights of people and basic health management practices of adolescent.

Sexual education is the process of acquiring information to form attitudes and beliefs about sex, sexual identity, relationships and intimacy (Ismail et al 2015). In 2017, Ghana finalized National Guidelines for age appropriate comprehensive sexuality education in and out of school. Ghana has adopted the integration approach, as opposed to standalone to introduce topics on reproductive health education in the school syllabus. (Population Council in collaboration with Ministry of Education and National Youth Authority 2017). However, this was received with mixed reaction partly because of misconception that teaching young people anything related to sexuality will encourage them to have sex (Awusabo-Asare et al, 2017). Sex educators are not thorough when discussing sexual issues with minors. Most parents shy away from discussing sex with their children. Public discourse on sex with and among minors, although limited, often focuses on their presumed immaturity and inexperience and their vulnerability to sexual manipulation and exploitation. The end result is that these young ones are misguided and rely on misleading information, which often leads to unwanted pregnancies, sexually transmitted diseases and death from illegal abortions.

Children become conscious of their bodies and how they relate to others long before adulthood. Many children are raised without ever being taught the concept of bodily autonomy, or the right that everyone has to single-handedly decide what happens with their body. Recent surveys indicate that children have surprisingly little knowledge about sexual activity, and many

engage in high-risk behaviours without fully understanding the consequences (Covell, 2010).

The Ghana Education Act, 2008 (Act 778) calls for "...the establishment of an educational system intended to produce well balanced individuals with the requisite knowledge, skills, values, aptitudes and attitudes to become functional and productive citizens for the total development and the democratic advancement of the nation, for related matters." This provision is consistent with the global call to address the unique needs of adolescents, nurture their healthy sexual development, and encourage reproductive health through education. Despite this, adolescents are treated to myths and misconceptions pertaining to their sexual health and sexuality.

There have been calls for intensified sex education for teenagers to protect them against pregnancy and sexually transmitted infections. There is no reason or justification, spiritual or traditional, to deny adolescents sex education, as they constitute about 38 percent and remained a significant proportion of the national population (Appiah 2017).

The question of whether or not sex and relationship education programs should be mandatory for students in public schools is a topic of heated debate today. In most countries, sexual education has been implemented as part of curriculum in public school systems in response to concerns about the high rates of teen pregnancy as well as increasing rates of sexually transmitted infections (Awusabo-Asare et al, 2017).

This paper has discussed the issue of sexual consent in Ghana. The discussion took into consideration the international framework and the national legal and policy framework concerning the issue. It also highlighted the historical context of sexual consent, prevalence rate, causal factors and the interventions in Ghana so far. The paper also selected best practices for addressing the issue of sexual consent such as enacting Romeo and Juliet clauses and also making mandatory sexual and relationship education in and out of school a requirement. The discussion so far has shown that the way forward in addressing the issue of sexual consent in Ghana is to

1. Maintain the age of sexual consent and enact laws considering the age difference between those involved in a sexual encounter.
2. Legalize sexual relations among people below the age of sexual consent provided they are within a certain age frame. (2-3 years).
3. Include mandatory sexual and relationship education in school's curriculum and social settings.
4. Intensify the campaign to end child marriages.
5. Provide stiffer punishment for adults who fall out of the required age frame but have sex with children below the age of sexual consent.
6. Amend the gendered definition of defilement, which under the Criminal Offences Act 1960 only applies to girls in Ghana.

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