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Technical note on Romeo and Juliet laws

Background

Children have the right to protection from violence, abuse, exploitation, and harmful practices. The Convention on the Rights of the Child (CRC) Committee in its General Comment No. 20 (2016) reminds States parties of the obligation to recognize that persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse. It reaffirms that the minimum age limit should be 18 years for marriage. Child marriage or where at least one person is under the age of 18 often involves power imbalances, coercion, or lack of informed consent. Child marriage is prohibited under international law as it is a human rights violation.

In the determination of the legal minimum age of sexual consent, the CRC Committee reaffirms that, States parties should take into account the need to balance protection and evolving capacities of children. States should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.



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Similarly, CRC General Comment No.24 (2019) on children's rights in the child justice system provides: 'adolescents who engage with one another in consensual sexual acts are also sometimes criminalized. These acts, also known as status offences, are not considered crimes if committed by adults. The Committee urges States parties to remove status offences from their statutes.'

Criminalizing consensual relationships between children and adolescents harms those the law intends to protect. In light of this, several legal systems have introduced 'Romeo and Juliet' clauses to prevent the criminalization of consensual relationships between adolescents and young people who are close in age (often 2–4 years apart), where one or both may be below the legal age of consent, and the relationship is consensual. It is often used in statutory rape or sexual consent laws.

While “Romeo and Juliet” clauses are one approach to avoid criminalizing adolescents, there are several other legal and policy pathways to address overly punitive laws around adolescent consensual sexual activity.

With this background in mind, the following note:

1. Provides background information on the so-called “Romeo and Juliet” clauses
2. Explains why action is needed
3. Sets out what needs to be done
4. Provides a chart which includes relevant State practices with respect to Romeo and Juliet clauses, and additional resources for further reading

What are Romeo and Juliet clauses

Romeo and Juliet provisions in laws are statutory provisions that aim to protect a consensual sexual relationship between children or between a child and someone near in age (close-in-age) from being considered a criminal offense, particularly when one party is below the age of consent, and the other is slightly older.¹

Romeo and Juliet clauses **do not** in any way legalize child marriage or underage sex. They only address criminal liability in consensual sexual activity when the parties are close in age and does not involve power imbalance or coercion.



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1. Bierie, D. M., & Budd, K. M. (2018). Romeo, Juliet, and Statutory Rape. *Sexual Abuse: A Journal of Research and Treatment*. 30(3), 296-321.

<https://doi.org/10.1177/1079063216658451>.

If one party is significantly older (e.g., an adult marrying a child), Romeo and Juliet generally do not apply. Power imbalance and coercion invalidate the idea of “consent” or “consensual” making Romeo and Juliet clauses inapplicable.

As noted by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in its General Comment No. 7, the Romeo and Juliet defence or close-in-age exception to the age of consent “is usually available as a defence to child sexual assault charges to avoid criminalising genuinely consensual sexual activity between young people who are close in age.” This applies, for example, where one person is 16 years and the other is only a few years older, e.g. 2 to 5 years, provided there is no relationship of trust, authority, or dependency between the two people.²



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Romeo and Juliet clauses are synonymous with close-in-age or age gap provisions, and the terms are often used interchangeably.³ Notably, some scholars suggest there are subtle distinctions between them. One key difference is that any close-in-age or age gap provision can be classified as a Romeo and Juliet clause, but not all Romeo and Juliet clauses include an age gap provision. For instance, a state might not have laws that decriminalise sexual activity within a specific age range. Instead, it could offer an affirmative defense or allow for other mitigating factors to lessen the punishment.

2. See African Committee on the Rights and Welfare of the Child (2021). General Comment No. 7 on Article 27 of the ACRWC: Sexual Exploitation.

https://www.acerwc.africa/sites/default/files/2022-09/General-Comment-on-Article-27-of-the-ACRWC_English_0.pdf

3. Kern, J. L. (2013) at 1613.



Minimum age of sexual consent⁴

“The minimum age of sexual consent is the age from which someone is deemed capable of consenting to sexual activity. The objective of the minimum age of sexual consent is to protect adolescents from sexual abuse and from the consequences of early sexual activity on their rights and development. International standards do not indicate what the minimum age for sexual consent should be. The CRC Committee has considered 13 years to be “very low”. The age should however avoid the over-criminalization of adolescents’ behaviours and prevent access to services. Accordingly, it should respect the evolving capacities of the child and not be set too high. It should also consider as a criterion the age difference between the partners involved as one indication of the balance of power between them and address cases in which two underage adolescents are involved.”

Why action is needed

As noted in [UNICEF’s Child Marriage and the Law: Technical Note for the Global Programme to End Child Marriage](#), the criminalisation of consensual sexual acts among adolescents is not appropriate for the following reasons:

- It denies the evolving capacities of adolescents and their normative development as far as adolescent sexual and reproductive rights are concerned;
- It infringes other rights such as dignity and privacy;
- It stigmatizes adolescent sexuality;
- It may result in adolescents not seeking sexual and reproductive health and protection services and information, in fear of prosecution;
- It may result in gender-skewed convictions;
- It unnecessarily brings adolescents into the criminal justice system.

The criminalisation of consensual sexual activities among children is also “at odds with the approach set out in international treaties insofar as the recognition of adolescents’ evolving capacities and the promotion of an educative approach, such as through

4. UNICEF LACRO (n.d.). Legal minimum ages and the realization of adolescents’ rights. <https://www.unicef.org/lac/media/2806/file>

comprehensive sexual education to adolescent sexual and reproductive health.”⁵ At the same time, it is critical to ensure that any amendments are not made with the view to de facto decriminalise child marriages or sexual offences against children.

What needs to be done

Based on UNICEF technical note on child marriage and the law (2020) and UNFPA's note on criminalization of consensual sexual acts among adolescents in East and Southern Africa (2021), when states consider enacting 'Romeo and Juliet clauses', it is recommended that:

1. the age of sexual consent is set lower than the legal age of marriage. As noted in UNICEF's Technical Brief, "setting high minimum ages for both sexual consent and marriage is problematic. If the age of sexual consent coincides with that of marriage and both are set at 18 years, it effectively criminalizes behaviour in which large numbers of young people are engaged in societies throughout the world."
2. adolescents who are both below the age of consent to sexual activity are not charged with crimes arising from their consensual sexual interaction with one another, in line with the age difference as provided by the Romeo and Juliet Clause.
3. where one adolescent is older than the age of consent and the other is younger, there is a 'no prosecution' rule or a legal defence if the age difference between them is no more than two years.
4. statutory rape charges are used where the older person is an adult, not where both are consenting adolescents or are close in age.
5. any sexual act that is not consensual is a crime and punishable in accordance with the relevant laws.
6. differentiates between consensual sexual conduct between children, and adults seeking to engage in sexual activity with children.
7. diversion or community-based sentences, as opposed to imprisonment, are available for those adolescents and young people who are convicted of statutory offences because they fall outside of the two years age difference rule.

5. UNFPA (2021). Criminalization of Consensual Sexual Acts Among Adolescents in East and Southern Africa.

Conclusion

States should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity. One way to not criminalize them is through a 'Romeo and Juliet clause' which is introduced for consensual sexual relationships between adolescents who are close-in-age if there is no evidence of coercion and abuse, or where one party is in a position of power. Hence , in the context of child marriage, States may include in their laws prohibiting child marriage a clause that states

“ Provided that there shall be no criminal liability on the part of two persons having consensual sexual relations if they are both under the minimum age of marriage when the age difference between the parties is not more than (usually 2-4 years) , and the sexual act in question is proven to be consensual, non-abusive and non-exploitative. There shall likewise be no criminal responsibility imposed on a person below the minimum age of marriage who enters into sexual relations with a person above the minimum age of marriage, but the latter may incur criminal responsibility. ”



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5. UNFPA (2021). Criminalization of Consensual Sexual Acts Among Adolescents in East and Southern Africa.

See the [annex](#) on examples of provisions and commentary for various countries and States (United States).

Further reading

- CRC General Comment No. 20 (2016): The rights of the child during adolescence
- CRC General Comment No. 24 (2024): The rights of the child in child justice
- UNGA Resolution on Child, early and forced marriage 79/158 (December 2024)
- Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No 18 of the Committee on the Rights of the Child (2019) on harmful practices

On Romeo and Juliet clauses

- UNICEF (2020). Child marriage and the law: Technical Note for the global programme to end child marriage. <https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf> (see p. 3).
- African Committee on the Rights and Welfare of the Child (2021). General Comment No. 7 on Article 27 of the ACRWC: Sexual Exploitation (see paras 48-55).
- UNFPA (2021). Criminalization of Consensual Sexual Acts Among Adolescents in East and Southern Africa.

On child marriage

- SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage. <https://www.sadcpf.org/index.php/en/documents/model-laws/en-model-law-on-eradicating-child-marriage-and-protecting-children-already-in-marriage/viewdocument/155>.
- UNFPA (2018). A Guide to Using the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage for Parliamentarians, Civil Society Organisations and Youth Advocates. <https://esaro.unfpa.org/sites/default/files/pub-pdf/J7288E%20-%20SADC%20Model%20Law%20Toolkit%20final.pdf>.
- Svanemyr, J, et al. (2013). The contribution of laws to change the practice of child marriage in Africa. https://www.girlsnotbrides.es/documents/863/IPU-WHO-Child-marriage_study-October-2013.pdf.

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