

## ADOLESCENTS

Recent Publications by Co-Directors and Scholars of the International Reproductive and Sexual Health Law Programme, Faculty of Law, University of Toronto and Recommended Reading

### ADOLESCENTS:

#### PUBLICATIONS WRITTEN OR EDITED BY CO-DIRECTORS:

**“Enhancing the role of health professionals in the advancement of adolescent sexual health and rights in Africa”** by Godfrey Kangaude, *International Journal of Gynecology and Obstetrics* 132 (2016) 105–108 [online here](#).

**“Moral Authority in English and American Abortion Law”** by Joanna N. Erdman, in S. Williams ed., *Constituting Equality: Gender Equality in Comparative Constitutional Rights* 107-136 (New York: Cambridge University Press, 2009). Online: <http://ssrn.com/abstract=1499324>

**"Respecting adolescents' confidentiality and reproductive and sexual choices"** by R.J. Cook, J.N. Erdman and B.M. Dickens (2007) 98 *International Journal of Gynecology and Obstetrics* 182-187. Online in English & Spanish: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1010442](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1010442)  
<http://www.law.utoronto.ca/documents/reprohealth/SP25-confidencialidad-adolescentes.pdf>

**"Adolescents and Consent to Treatment"** by R.J. Cook and B.M. Dickens (2005) 89 *International Journal of Gynecology and Obstetrics* 179-184. Online <http://papers.ssrn.com/abstract=862384>

**“Adolescents’ Reproductive Health Care”** by R.J. Cook and B.M. Dickens, 58 (2004) *Entre Nous: The World Health Organization/European Regional Magazine for Reproductive and Sexual Health* 13-15. (Scroll down to page 13) [http://www.euro.who.int/\\_data/assets/pdf\\_file/0012/70122/en58.pdf](http://www.euro.who.int/_data/assets/pdf_file/0012/70122/en58.pdf)

**"Recognizing adolescents' 'evolving capacities' to exercise choice in reproductive healthcare,"** by R. J. Cook and B.M. Dickens (2000) 70 *International Journal of Gynecology and Obstetrics* 13-21. English & Spanish: <http://papers.ssrn.com/abstract=946466>  
[http://www.law.utoronto.ca/documents/reprohealth/SP05\\_adolescentess.doc](http://www.law.utoronto.ca/documents/reprohealth/SP05_adolescentess.doc)

**“An Adolescent Girl Seeing Sexual and Reproductive Health Care” (case study)** in Part 2, chapter 3 in *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law* by Rebecca J. Cook, Bernard M. Dickens and Mahmoud F. Fathalla (Oxford University Press, 2003), 554 pp. [http://www.law.utoronto.ca/documents/reprohealth/RH\\_HRcase3-adolescent.pdf](http://www.law.utoronto.ca/documents/reprohealth/RH_HRcase3-adolescent.pdf)

## **ADOLESCENTS: THESES AND RELATED PUBLICATIONS BY PROGRAMME GRADUATES**

**“Rape Law in Chile: For or Against Adolescents?”** by Claudia Ahumada. LL.M., Journal of Politics and Law, Vol 2, No 2 (2009), 94-108.

<http://www.ccsenet.org/journal/index.php/jpl/article/view/2311>

(based on her LL.M. Thesis, Faculty of Law, University of Toronto, 2007)

**“A Critical Analysis of Statutory Rape Law and its Effects on Adolescents: The Chilean case”** by Claudia Ahumada, LL.M. Thesis submitted for the degree of Master of Laws, Graduate Department of the Faculty of Law, University of Toronto, 2007.

Abstract:

This thesis sets forth the interests and conflicts involved in the current Chilean law on statutory rape. Through a thorough investigation of the conceptualization, implementation, and current life of this legislation, the possible effects of the Chilean case on adolescents' rights is investigated and evaluated.

Examining the development of this law and its related policy, and if their consequences conflict with the Chilean Constitution or international and regional human rights conventions allows us to evaluate the merits, utility, and potential problems of such legislation. A detailed investigation of the social, legal, and health data available, as well as the concrete liability implications reveals that the policy which implements the Chilean statutory rape provision is in violation with domestic and international human rights law. In conclusion, recommendations are presented to deal with the effects of the implementation, as well as to modify the legislation to uphold adolescents' human rights.

**“Discrimination and Adolescent Girls’ Reproductive and Sexual Health Rights in Nigeria: A Critical Review”** by Folake Morenike Olaleye Thesis submitted for the degree of Master of Laws, Graduate Department of the Faculty of Law, University of Toronto, 2005. Abstract: This thesis presents an analysis on the role of the courts and how the courts in Nigeria can improve adolescent girls’ access to reproductive and sexual health services. It argues that the present poor state of adolescent girl’s reproductive and sexual health stems from discrimination in access to reproductive and sexual health services. It further argues that courts in Nigeria through national and international legal instruments on adolescent rights can give domestic effect to those laws and international legal norms, guaranteeing adolescent girls' access to reproductive and sexual health services. Finally, it examines how courts in other jurisdictions have achieved this through case law decisions and interpretation and argues that courts in Nigeria can also explore those avenues to improve adolescent girls' reproductive and sexual health in Nigeria.

*Child Marriage in India: Socio-Legal and Human Rights Dimensions* by Jaya Sagade, S.J.D., updated 2<sup>nd</sup> edition, (New Delhi: Oxford University Press, 2012). 328 pp. <https://global.oup.com/academic/product/child-marriage-in-india-9780198079798?cc=ca&lang=en&#> (based on her S.J.D., Thesis, Faculty of Law, University of Toronto, 2002)

**“Socio-Legal and Human Rights Dimensions of Child Marriage in India”.**

by Dr. Jaya Sagade S.J.D., Thesis submitted for the degree of Doctor of Laws Graduate Department of the Faculty of Law, University of Toronto, 2002 [published as a book in 2005 – see above] Abstract: The thesis explores socio-legal and human rights dimensions of the age-old problem of child marriage in India. Using social science data, the thesis documents the problem’s extent in India and critically analyses how the patriarchal social structure supports the practice of marrying off young girls in the name of culture and tradition by suppressing women’s life experiences. Child marriage adversely affects health, particularly the reproductive health of young girls; it denies them the right to education and development, keeping them in a state of servility for life. The law enacted in 1929 to regulate the age of marriage remains largely unimplemented, partly because of its many substantive and procedural lacunae, as well as contradictions between it and religion-based marriage laws, guardianship laws, and the rape law. Moreover, the judiciary has not interpreted these laws dynamically, with the result that millions of girls are married off when they are young.

The thesis argues that the young girls are discriminated against by the law, culture and society versus their counterparts on the basis of sex, gender and age when they are married off before they attain the legal age. The thesis argues that child marriage is a form of slavery. It analyzes how the practice of child marriage violates human rights that the Indian State is obligated to remedy. It suggests several strategies at national and international levels that would help prevent child marriages in future and in turn would provide opportunities for those girls to live in dignity. The human rights approach adopted in this thesis attempts to offer a pragmatic and holistic solution to the severe social problems associated with child marriage in India.

**RECOMMENDED READING**

Ebenezer Durojaye, “**The potential of the Expert Committee of the African Children's Charter in advancing adolescent sexual health and rights in Africa**” (2013) 46:3 The Comparative and International Law Journal of Southern Africa 385. [Online here.](#)

- “This paper examines the role of the African Committee of Experts on the Rights and Welfare of the Child (ACE) in advancing the sexual and reproductive rights of adolescent girls in Africa. The paper focuses on the implications of lack of access to contraceptive services for the enjoyment of the rights of adolescent girls as guaranteed under the African Children's Charter and the Convention on the Rights of the Child. It then considers the potential role of the ACE, through its protective and promotional mandate, in advancing female adolescents sexual and reproductive rights in Africa. The paper draws on experiences of other human rights bodies such as the Committee on the Rights of the Child before finding that ACE is in a unique position to advance the sexual and reproductive health and rights of adolescent girls in the region.

Godwin, J., et al., “**Righting the mismatch between law, policy and the sexual and reproductive health needs of young people in the Asia-Pacific Region**” (2014) 22:44 *Reproductive Health Matters* 137. [Online here.](#)

- The context of sexual relations is changing in the Asia-Pacific. While the age of sexual debut remains the same, young people are generally marrying later and sex outside of marriage is increasing. The first systematic review of how laws and policies govern young people’s access to sexual and reproductive health services was conducted in 2013. The study considered >400 national documents and held focus group discussions with >60 young people across three countries in the region. This paper examines the study findings in light of epidemiological data on young people’s sexual behaviour and health, exposing a critical mismatch between the onset of sexual activity and laws and policies governing consent (to sex and medical treatment), and the restriction and orientation of services to married persons. An enabling legal and policy environment is an essential foundation for efforts to improve young people’s sexual and reproductive health. This paper argues that international guidance and commitments (including the widely ratified Convention on the Rights of the Child) provide a framework for recognising young people’s evolving capacity for independent decision-making, including in the realm of sexual and reproductive health. A number of countries in the region are using these frameworks to expand access to services, providing valuable examples for others to build on.

Godfrey Kangaude and Tiffany Banda, “**Sexual health and rights of adolescents: A dialogue with sub Saharan Africa**” in Charles Ngwena and Ebenezer Durojaye, eds, *Strengthening the protection of sexual and reproductive health through human rights in the African Region through human rights* (Pretoria: University of Pretoria Law Press; 2014) 251.

- Sub-Saharan Africa has a large population of young people who are transitioning from the pre-reproductive into the reproductive phase. Adolescence is a crucial time for sexuality development and adolescents need firm support to maintain good sexual and reproductive health as they evolve into adults. Societies control sexuality through social norms and practices based on value and belief systems. Adolescent sexual health is therefore determined by socio-cultural factors such as initiation rites, religion, attitudes and beliefs about sexuality. However, social norms do not always ensure positive outcomes for sexual health. In sub-Saharan Africa, adolescents continue to face challenges such as early and unwanted pregnancies, unsafe abortions, and sexually-transmitted infections. Governments party to the Convention on the Rights of the Child and to the African Charter on the Rights and Welfare of the Child are obligated to address such issues based on the underlying principles that these human rights instruments espouse: nondiscrimination, the best interests of the child, life, survival and development, and participation of the child in matters affecting their own lives. In order to ensure that adolescents enjoy and maintain the highest attainable standard of sexual and reproductive health, governments need to apply these principles in the provision of sexual health services that are relevant to, and address lived realities of, adolescents. Adolescents need appropriate education and adequate information on sexuality to enable them to critically engage social norms that affect their

sexual lives. Only through the realisation of sexual and reproductive rights of the adolescent will sub-Saharan Africa curb the negative trend of sexual health outcomes affecting adolescents.

Karen Stefiszyn, “**Adolescent girls, HIV, and state obligations under the African Women’s rights Protocol**” in Charles Ngwena and Ebenezer Durojaye, eds, *Strengthening the protection of sexual and reproductive health through human rights in the African Region through human rights* (Pretoria: University of Pretoria Law Press; 2014) 155.

- The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which defines women to include girls, is the first legally-binding treaty to explicitly provide for rights to protect women from HIV infection. In the light of the high prevalence of HIV among adolescent girls in sub-Saharan Africa, the Women’s Protocol is, therefore, an important tool to guide state action towards alleviating the devastating effect the virus is having on young women. However, the relevant provisions are not clear in terms of the specific obligations placed on states in this respect. The author proposes that the African Commission on Human and Peoples’ Rights should develop interpretive guidance for states which would serve a similar purpose as the General Comments or General Recommendations by the United Nations treaty bodies which have successfully expanded the interpretation of the treaties. This chapter explores the possible contents of such guidance, drawing on existing international guidelines relating to sexuality education, HIV protection methods, and HIV testing and disclosure.

E Yarrow et al., “**Can a restrictive law serve a protective purpose? The impact of age-restrictive laws on young people’s access to sexual and reproductive health services**” (2014) 22:44 *Reproductive Health Matters* 148. [Online here](#).

- This article explores the purpose, function and impact of legal restrictions imposed on children’s and young people’s involvement in sexual activity and their access to sexual and reproductive health services. Whilst there is no consensus on the age at which it is appropriate or acceptable for children and young people to start having sex, the existence of a minimum legal age for sexual consent is almost universal across national jurisdictions, and many states have imposed legal rules that place restrictions on children’s and young people’s independent access to health services, including sexual health services. The article draws on evidence and analysis from a recent study conducted by the International Planned Parenthood Federation in collaboration with the Coram Children’s Legal Centre, UK, which involved a global mapping of laws in relation to sexual and reproductive rights, and exploratory qualitative research in the UK, El Salvador and Senegal amongst young people and health care providers. The article critically examines the social and cultural basis for these rules, arguing that the legal concept of child protection is often founded on gendered ideas about the appropriate boundaries of childhood knowledge and behaviour. It concludes that laws which restrict children’s access to services may function to place children

and young people at risk: denying them the ability to access essential information, advice and treatment.

## **FEMALE GENITAL CUTTING**

**“Ethical Concerns in Female Genital Cutting,”** by R.J. Cook, in (2008) 12.1 *African Journal of Reproductive Health* 7-11. French version pp. 12-16.(PDF)  
<http://ssrn.com/abstract=1665057>

**“Female Genital Cutting (Mutilation/Circumcision): Ethical and Legal Dimensions”**  
by R. J. Cook, B.M. Dickens & M.F.Fathalla, in (2002) 79 *International Journal of Gynecology and Obstetrics* 281-87.  
<http://ssrn.com/abstract=945687>

**Female Genital Cutting (Circumcision/Mutilation) (case study)** Part 2, chapter 2 in:  
*Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law* by  
Rebecca J. Cook, Bernard M. Dickens and Mahmoud F. Fathalla (Oxford University  
Press, 2003)  
[http://www.law.utoronto.ca/documents/reprohealth/RH\\_HRcase2-FGC.pdf](http://www.law.utoronto.ca/documents/reprohealth/RH_HRcase2-FGC.pdf)