



Legal and human rights dilemma relating to sexuality education in Africa

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Abstract:

This article examines the benefits of sexuality education in schools in Africa and then considers the legal and human rights issues relating to the objection to its introduction. In doing this, the article discusses some cases that have shed light on the conflict between the exercise of the right to religion and other rights, particularly the right of young people to sexuality education. It concludes by noting that while parents do have the duty and responsibility to provide direction to their wards and children, including instruction on exercise of religion, such powers must be consistent with human rights norms and standards. More importantly, the exercise of the right to religion must be tempered with other rights, especially where harm will result to the public in strict adherence to this right.

1 Introduction

In the age of HIV pandemic, high teenage pregnancy and maternal mortality in many African countries, the need for sexuality education has become more imperative than ever. Sexual and reproductive ill health remains a major contributor to the burden of disease among young people.¹ HIV and other sexually transmitted infections, unintended pregnancy and unsafe abortion, all place huge burdens on families and communities in many African countries.² In addition, they impose an undue burden on scarce resources of governments in the region. Yet, this situation is avoidable and reducible. Although there is no universally accepted definition of adolescence and youth, the United Nations has described adolescents to include persons aged 10–19 years and youth as those between 15–24 years for statistical purposes without prejudice to other definitions by Member States.³ Young people are often exposed to sexual and reproductive ill health due to lack of information and deep-rooted cultural practices in many parts of Africa.⁴ It is believed that early introduction of sexuality education in schools will go a long way in addressing some of the sexual and reproductive health challenges facing young people in the region. However, the introduction of sexuality education in schools remains a contentious issue. One of the major objections to the teaching of sexuality education in African schools has to do with the insistence by parents that they have the responsibility of providing direction to their children and that their right to religion must be respected.

Against this background, this article examines the benefits of sexuality education in schools and then considers the legal and human rights issues relating to the objection to its introduction. In doing this, the article discusses some cases that have shed light on the conflict between the exercise of the right to religion and other rights, particularly the right of young people to sexuality education. It concludes by noting that while parents do have the duty and responsibility to provide direction to their wards and children, including direction on exercise of religion, such powers must be consistent with human rights norms and standards. More importantly, the exercise of the right to religion must be tempered with other rights, especially where harm will result to the public in strict adherence to this right.

2 Meaning and relevance of sexuality education

Comprehensive sexuality education (CSE) is an age-appropriate, culturally relevant approach to teaching about sex and relationships by providing scientifically accurate, realistic, and non-judgemental information.⁵ It provides opportunities to explore one's own values and attitudes and to build decision-making, communication and risk reduction skills about many aspects of sexuality.⁶ The term 'comprehensive' emphasises an approach to sexuality education that encompasses the full range of information, skills and values to enable young people exercise their sexual and reproductive rights and to make decisions about their health and sexuality.⁷ CSE should not be conflated with sex education which merely lays emphasis on issues relating to sex. CSE includes, but not limited, to the following:

- the human sexual anatomy
- sexual reproduction
- reproductive health
- reproductive rights and responsibilities
- emotional relations
- abstinence
- contraception
- other aspects of human sexual and non-sexual behaviour.

Furthermore, CSE must be based on core universal value of human rights; must have integrated focus on gender; must be based on thorough and scientifically accurate information; must make a link to sexual and reproductive health initiatives; must create an enabling environment where learners and teachers can air their views and must adopt a participatory teaching approach.⁸

It should be noted that CSE delivered within a safe and enabling learning environment and alongside access to health services has a positive and life-long effect on the health and well-being of young people. CSE is important to children and young people because it provides accurate information on topics that they are curious about and which they have a need to know.⁹ Also, it provides children and young people with opportunities to explore

values, attitudes and norms concerning sexual and social relationships. CSE promotes the acquisition of skills; and encourages children and young people to assume responsibility for their own behaviour and to respect the rights of others.¹⁰ It further promotes the realisation of the right to health because it contributes to the reduction of maternal mortality, unsafe abortion, unwanted pregnancies and sexually transmitted infections, including HIV.¹¹

While the right to sexuality education is not explicitly recognised in any human rights instruments, it can be inferred from a number of rights already recognised in international and regional human rights instruments. These include the international Covenant on Economic Social and Cultural Rights,¹² the Convention on Elimination of All forms of Discrimination against Women,¹³ the Convention on the Rights of the Child,¹⁴ the African Charter on Human and Peoples' Rights,¹⁵ the African Charter on the Rights and Welfare of the Child¹⁶ and the Protocol to the African Charter on the Rights of Women.¹⁷ These instruments guarantee various rights such as the right to health, dignity, non-discrimination, privacy, life and information/education all relevant for CSE. Thus, a denial of sexuality education to young people solely based on their age will undermine their rights to dignity, life and non-discrimination. However, reliance has often been placed on the right to the highest attainable standard of health to secure the right to sexuality education. Treaty monitoring bodies such as the Committee on the Rights of the Child¹⁸ and the Committee on Economic, Social and Cultural Rights¹⁹ in some of their general comments have affirmed the right to sexuality education for young people. Also, it has been affirmed that states have the obligations to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health, including sexual and reproductive health.²⁰ Similarly, the African Commission on Human and Peoples' Right has enjoined states to ensure access to sexual and reproductive health information and services, including sexuality education, to adolescents in order to prevent HIV and other sexually transmitted infections.²¹

Despite the importance of sexuality education discussed above, parents and guardians have expressed concerns about its teaching in some African countries.²² Some of the concerns expressed relate to the fact that it encourages young people to experiment with sex, undermines moral values of children and conflicts with the religious beliefs of parents.²³ For instance, some parents in Zambia were very critical of the introduction of sexuality education in primary schools. One of the parents lamented that "It is not right for children to learn about issues of sex in schools. This can easily corrupt their morals and promote promiscuity".²⁴ Another parent noted that "In our days, information on sexuality was taboo and only taught to us during initiation ceremonies in song, dance, riddles and proverbs-the information was not direct as it is being done in schools today".²⁵ These concerns are not peculiar to Zambia and have been echoed in other countries in

the region.²⁶ Most of these concerns were unfounded but rather studies have proved that sexuality education empowers young people to make informed decisions about sex and delay the debut of sexual relations, reduce frequency of sexual activity and reduce the number of sexual partners.²⁷

3 The scope and limit of the right to religion

Parents have often invoked the right to religion as the major objection to the teaching of sexuality education to their wards and children in schools. The right to religion is recognised in a number of international human rights instruments. The term 'religion' in the African context has a fluid meaning that is capable of different interpretations. Sometimes it is difficult to differentiate between culture and religion in Africa. Some commentators have argued that culture is more encompassing than religion in the sense that while one can leave without religion, it is almost impossible to live without culture.²⁸ Indeed, in many parts of Africa, religion is deeply rooted in culture. In an attempt to explain the difference between the two, the South African Constitutional Court in *MEC for Education: KwaZulu-Natal & Others v Pillay & Others* noted as follows:²⁹

“religion is ordinarily concerned with personal faith and belief, while culture generally relates to traditions and beliefs developed by a community...cultural convictions or practices may be as strongly held and as important to those who hold them as religious beliefs are to those more inclined to find meaning in a higher power than in a community of people.”

However, it is generally believed that the protection of religious beliefs should be taken more seriously than cultural practices.³⁰ Although in many African countries, Islam and Christianity are the dominating religions, there exist other African traditional religions. Religion is a very powerful means of promoting moral values and enhancing humane conditions within a political society.³¹ Sometimes due to its influence, religion has often been invoked to limit access to sexual and reproductive health information and services for young people in African countries.³² For instance, many African countries have continued to retain restrictive legislation on abortion due to strong religious views on this issue. As at 2015, abortion is outlawed in 12 of the 54 African countries while only five countries have liberal abortion laws.³³

Article 18 of the International Covenant on Civil and Political Rights recognises the right to freedom of thought, conscience and religion of every individual.³⁴ This allows individuals, including parents, to determine the nature and types of religious or moral instructions they or their wards and children wish to access. Parents have often argued that as the primary educators of children, they have the final say on the type of instructions their children should receive in schools. Consequently, some parents have argued that where the nature of instructions being imparted on their children conflicts with their religious

and moral beliefs, then they have the right to object to such instructions. This, they contend, is consistent with their duty of ensuring the spiritual and moral growth of their children.³⁵ Some parents even argue that, as the primary moral instructors of children, they are accountable to God in ensuring that they live up to this important role. Hence, no individual or institution can interfere with this God-given responsibility.

In its General Comment 22, the Human Rights Committee³⁶ has clarified the scope and nature of the right to freedom of thought, conscience and religion guaranteed in the ICCPR. According to the Committee, this right is one of the far-reaching and profound rights of every individual. It encompasses the right of an individual to “freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others”.³⁷ In explaining the scope and extent of this right, the Committee notes as follows:

“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.”³⁸

The Committee makes a distinction between the freedom of thought, conscience or religion guaranteed in article 18 (1) and the freedom to manifest religion or beliefs guaranteed in article 18 (2). In the Committee’s view, while the former is non-derogable, the latter can be limited in certain circumstances.³⁹ Limitation of the exercise of the right to manifest religion or beliefs is provided in article 18 (3) of the ICCPR. Like other limitations of rights, they are only permissible if they are prescribed by law and, are necessary to protect public safety, order, health or morals. In essence, the right to manifest one’s religion or beliefs is never absolute and can be limited in certain circumstances. Thus, the state may sometimes intervene where strict adherence to religious beliefs by a parent may undermine the health and well-being of a child.⁴⁰ For instance, an opposition on religious grounds, to Section 5 of the South African Choice on Termination of Pregnancy Act by Christian Lawyers Association, was rejected by the Court since this may undermine the right to reproductive autonomy guaranteed in Section 12 of the South African Constitution. Section 5 of the Act permits a girl under 18 to consent to termination of pregnancy without the need to consult with her parents. It was contended by Christian Lawyers Association that this provision should be construed strictly to imply that parental consent is a condition precedent to abortion services for young girls.⁴¹ Although not clearly stated, it would also seem that where the exercise of the right to religion is in conflict with other important rights such as the right to life or dignity, the right would need to be curtailed. One example of when a state may intervene in the exercise of the right to religion is the US case of *Prince v Massachusetts*.⁴² In that case, a state statute provided that no minor (boy under 12 or girl under 18) shall sell, or offer for sale, upon the streets or in other public places, any

newspapers, magazines, periodicals, or other articles of merchandise. The statute makes it unlawful for any person to furnish to a minor any article which he/she knows the minor intends to sell in violation of the law, and for any parent or guardian to permit a minor to work in violation of the law. The US Supreme Court was asked to determine whether a guardian who acted in breach of this law can be exonerated on the basis of the exercise of the right to religion and to control the child. Also, the Court was to determine whether the provision of the law was in violation of the right to religious beliefs or equal protection of the law. The Court held that the provision of the law was not in violation of the right to religion nor was it inconsistent with the equal protection of the law. In addressing the ever contentious issue of balancing parental rights to religion and control of children and the state's duty to intervene in certain circumstances, the Court noted as follows:

“On one side is the obviously earnest claim for freedom of conscience and religious practice. With it is allied the parent's claim to authority in her own household and in the rearing of her children. The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on.”⁴³

This statement of the Court is a clear admission of the need for balancing of interests when it relates to parental right to exercise control over a child and the role of the state to intervene in certain situations. It is always difficult to determine where to draw the line when the line is blurred. Thus, courts have the duty to critically and carefully review the situation before arriving at a decision. One of the important guiding principles the court should consider is the overall best interests of the child. The principle of the best interests of the child has been recognised as an important underlying principles in advancing children's rights in all situations.⁴⁴ The Committee on the CRC has explained that this principle should be given primary consideration in all matters, including sexual and reproductive health, affecting children.⁴⁵

As will be discussed below, some of the judicial pronouncements on this issue would seem to favour this approach. The need to limit the exercise of the right to religion in certain circumstances has also found support in the reasoning of utilitarianism.

4 Sexuality education and the exercise of the right to religion vis-à-vis other rights

In recent times, the objection by parents to the teaching of sexuality education in schools has become a subject of litigation.⁴⁶ Regional human rights bodies and courts have been called upon to determine whether a parent may legally object to the teaching of sexuality education in public schools. These cases have further shed light on the nature of the right to religion and when it can be limited. More importantly, the cases have tended to clarify the extent to which the state can override the duty of parents to prevent a child from receiving instruction on sexuality education based on religious convictions. Currently, courts and regional human rights bodies in Africa are yet to expressly address this issue. Therefore, this article will draw on experiences from other jurisdictions where this issue has been addressed by courts and regional human rights bodies.

In the *Prince* case discussed above, the Court reasoned that ‘the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder’.⁴⁷ However, the Court was of the view that this responsibility of the parent is not beyond regulation. Indeed, it noted that neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth’s wellbeing, the state, as *parens patriae* (parent of the nation), may restrict the parent’s control by requiring school attendance, regulating or prohibiting child labour⁴⁸ and in many other ways.⁴⁹ Its authority is not nullified merely because the parent grounds his claim to control the child’s course of conduct on religion or conscience. Thus, he/she cannot claim freedom from compulsory vaccination for the child more than for himself/herself on religious grounds.⁵⁰

It would seem from this decision that the right to religion may be overridden by the overall interest of the public. This would seem to coincide with the utilitarian approach. Mill has noted that if the exercise of the right to religion will lead to serious harm to others or society as a whole, then the exercise of this right should be limited.⁵¹ In conceptualising the harm principle, Mill opines that since all individuals receive the protection of society, then each individual is obliged to observe certain line of actions towards others.⁵² He notes further that an individual must firstly, not perform any act that will cause injury to the interests of others (interests, which ought to be considered as rights), and secondly each individual ought to play his/her part in defending society from injury.⁵³ Furthermore, Mills asserts that where an individual’s actions do not cause any harm to autonomy, security or happiness, and the society is not likely to be injured, the state lacks the authority to restrict those actions.⁵⁴ He explains that these are self-regarding actions that affects the actor directly and thus should not be interfered with. On the other hand, he argues that acts which, without justifiable cause, do harm to others can be limited through appropriate interference of humankind.⁵⁵ Summing up Mills’ argument, an individual can do as he/she wishes as long as he/she does not cause harm to

others.⁵⁶ This would seem to imply that an individual may exercise his/her right to religion as long as this does not cause harm to others or society at large.

The need to balance parental right to religion and control of their children and the need to introduce sexuality education in school is a delicate one. However, decisions from regional human rights bodies, particularly the European Human Rights systems, tend to favour the need to limit the right to religion in the overall best interests of the child. They also reiterate the point that in some situations, the state may limit the right to religion if it serves the overall interest of the public. One of the oldest decisions on this issue is the European Court decision against Denmark in *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (popularly known as the Pedersen case).⁵⁷ In that case, the Danish Government introduced compulsory sexuality education in primary schools with the aim of reducing the increased prevalence of unwanted pregnancies and promoting respect for others. The applicants, who were the parents of State primary school pupils, were dissatisfied that the provision of compulsory sex education was not in conformity with their Christian convictions. They contended that sexuality education raised moral questions and so preferred to instruct their children in this sphere. They petitioned on multiple occasions to get their children exempted from sexuality education but their requests were refused. They thus brought an action against the Danish Government claiming a violation of the right to education in article 2 of Protocol 1 of the European Convention.⁵⁸ It was held by the European Court that no violation of article 2 had occurred by the introduction of sexuality education and that parents had the option to train their wards about consequences of sexuality education. The court upheld the position of the state simply because the teaching of sexuality education was conducted in an objective, practical and pluralistic manner. In essence, the court would seem to reason that the state can, in certain circumstances, limit the right to religion in the overall interest of the public. While the court observed that the introduction of sexuality education in public schools was a moral issue, it however, held that it was done in the public interest. Perhaps the court would have reached a different position if the information contained in the curriculum amounted to indoctrination.

More recently, the European Court has examined a similar issue in *Dojan and others v. Germany*.⁵⁹ In that case, five parents of Baptist background complained that the mandatory introduction of sexuality education in schools was in violation of their rights to religious beliefs and to educate their children. They equally contended that the right to respect for private and family life and the right to freedom of thought, conscience and religion – were breached. The Court held that ‘sex-education’ classes at issue are aimed at neutral transmission of knowledge regarding procreation, contraception, pregnancy and child-birth in accordance with the underlying legal provisions and the ensuing guidelines and curriculum, based on current scientific and educational standards. According to the Court, there was no indication that the information or knowledge imparted at any of the events complained of was not conveyed in an objective, critical and pluralistic manner. The Court reasons that in refusing exemption from the compulsory ‘sex-education’ classes, theatre workshop and carnival celebration, the national authorities had not overstepped their

margin of appreciation. It further held that the applicants had remained free to educate their children after school in conformity with their religious beliefs.

The general principle enunciated in these cases is to the effect that interference with the right to religion is permissible provided that the interference is directed at a matter of public interest and is proportionate to the reasonable needs of the state to act in that public interest. This would seem to coincide with General Comment 22 of the Human Rights Committee noted above and the harm approach by utilitarian school of thought.

Although these decisions are from the European Court and may not be binding on African courts, given the different context in which they occurred. Nonetheless, they provide useful guidance on how to approach this contentious issue in African countries. Indeed, the Nigerian Court of Appeal in *Esanubor v Faweya (Esanubor case)*⁶⁰ has been called upon to address the potential conflict between the exercise of the right to religion and the right to life of a child in need of blood transfusion. In that case, a child, a Jehovah's Witness, sued through his mother claiming that he had been ill and admitted to a hospital, where he was diagnosed with a severe infection leading to acute blood shortage for which a blood transfusion was recommended. His mother refused to approve the transfusion on the ground that her faith as a Jehovah's Witness compelled her to do so. The matter was subsequently reported to the Nigerian police, who applied for and obtained an order from a Magistrate's Court authorising the hospital to do everything necessary to save the child's life. Consequently, the child was given a transfusion; his condition improved and he was discharged. The child sought a reversal of the order of the Magistrate's Court on the grounds of fraud, which was rejected. Thereafter he applied to the High Court seeking judicial review of the order as well as damages for the unlawful transfusion of blood (without his own or his mother's consent). After the High Court had dismissed the claim, the child's mother appealed to the Court of Appeal. In dismissing the claim, the Court of Appeal held that it was proper to overrule the refusal of consent to a blood transfusion by the mother on the grounds of her faith since the infant was incapable of giving consent to die on account of the religious belief of the mother. The Court further held that the mother's desire to sacrifice her son's life "is an illegal and despicable act which must be condemned in the strongest terms".⁶¹ In essence, the Court held that the right to life of the child trumped the right to religion of the mother, which the Court conceived gave her the right to determine whether the son should receive a blood transfusion. The Court further relied on the earlier decision of the Supreme Court in *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo (Okonkwo case)*,⁶² by stating that:

"The right of freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The limits of these freedoms in all cases are where they impinge on the right of others or where they put the welfare of society or public health in jeopardy."⁶³

Although this case does not deal with sexuality education, it however, illustrates the reasoning of the Nigerian court with regard to situations under which the right to religion may be limited. It is not clear if the court will reach a similar position if the subject of contention relates to the conflict of the right to religion and the need to teach sexuality education in schools. But one thing is clear, where the exercise of the right to religion will likely undermine the enjoyment of other rights, it may become inevitable for the state to curtail this right.

5 Conclusions

This article has shown that the exercise of the right to religion is not ever absolute. In certain circumstances, especially in the overall public interest, the right to religion may be limited by the state. Regional human rights bodies have tended to invoke public interest or the duty not to do harm as grounds for overriding opposition by parents to the teaching of sexuality education based on religious beliefs. These decisions would seem to reveal that parents and guardians cannot always raise objection to the teaching of sexuality education in schools on the grounds of their right to exercise or manifest religious beliefs. A balance would need always to be struck between the importance and relevance of sexuality education to the overall growth and well-being of the child and parental right to religion and to exercise control of the child. While striking this balance is by no means an easy task, where the benefits of teaching sexuality education to pupils in schools outweigh religious sentiments and beliefs of parents, the courts have often intervened to ensure the best interests of the child.

Notes

1. UNESCO et al. (2009) *International Technical Guidance on Sexuality Education: An Evidence Informed Approach for Schools, Teachers and Educators*, UNESCO, New York.
2. UNESCO et al. (2009) *International Technical Guidance on Sexuality Education: An Evidence Informed Approach for Schools, Teachers and Educators*, UNESCO, New York.
3. Report of the Advisory Committee for the International Youth Year (A/36/215 annex).
4. See Stefiszyn, K. (2014) 'Adolescent girls, HIV, and state obligations under the African Women's Protocol', in Ngwena, C. and Durojaye, E. (Eds.): *Strengthening the Protection of Sexual and Reproductive Health and Rights in the African Region Through Human Rights*, pp.155–179, Pretoria University Press, Pretoria.
5. Stefiszyn, K. (2014) 'Adolescent girls, HIV, and state obligations under the African Women's Protocol', in Ngwena, C. and Durojaye, E. (Eds.): *Strengthening the Protection of Sexual and Reproductive Health and Rights in the African Region Through Human Rights*, pp.155–179, Pretoria University Press, Pretoria.
6. Stefiszyn, K. (2014) 'Adolescent girls, HIV, and state obligations under the African Women's Protocol', in Ngwena, C. and Durojaye, E. (Eds.): *Strengthening the Protection of Sexual and Reproductive Health and Rights in the African Region Through Human Rights*, pp.155–179, Pretoria University Press, Pretoria.
7. UNESCO (2009–2014) *HIV and AIDS* [online] <http://www.unesco.org/new/en/hiv-and-aids/our-priorities-in-hiv/sexuality-education/> (accessed 29 June 2016).
8. UNESCO et al. (2009) *International Technical Guidance on Sexuality Education: An Evidence Informed Approach for Schools, Teaches and Educators*, UNESCO, New York.
9. UNESCO et al. (2009) *International Technical Guidance on Sexuality Education: An Evidence Informed Approach for Schools, Teaches and Educators*, UNESCO, New York.
10. UNAIDS et al. (2015) *Sexuality Education Policy Brief No. 2*, UNAIDS, Geneva.
11. UNAIDS et al. (2015) *Sexuality Education Policy Brief No. 2*, UNAIDS, Geneva.
12. International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966; GA Res 2200 (XXI), UN Doc A/6316 (1966) 993 UNTS 3 (entered into force 3 January 1976).
13. Convention on the Elimination of All Forms of Discrimination against Women GA Res 54/180 UN GAOR 34th Session Supp No. 46 UN Doc A/34/46 1980.
14. Convention on the Rights of the Child, Adopted in 1989 UN Doc. A/44/49 entered into force 2 September 1990.
15. African Charter on Human and Peoples' Rights OAU Doc CAB/LEG/67/3/Rev 5, adopted by the Organisation of African Unity, 27 June 1981, entered into force 21 October 1986.
16. African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.0/49 (1990) (entered into force 29 November 1999).

17. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa adopted by the Meeting of Ministers, Addis Ababa, Ethiopia on 28 March 2003 and the Assembly of the African Union, Maputo, Mozambique on 21 July 2003.
18. See, for instance, Committee on the Rights on the Child General Comments No. 3 on HIV/AIDS and the rights of the child 17 March 2003; UN Doc CRC/GC/2003/3; General Comment No. 4 on Adolescence health and development in the context of the convention on the rights of the child 1 July 2003; UN.Doc CRC/GC/2003/4; General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) 17 April 2013; UN Doc CRC/C/GC/15.
19. See in particular Committee on Economic, Social and Cultural Rights General Comment No. 14 on the right to the highest attainable standard of health (Article 12) 11 August 2000; UN Doc E/C.12/2000/4 and CESCR General Comment No. 22 on the right to Sexual and Reproductive Health (Article 12) 2 May 2016; UN Doc. E/C.12/2016/22.
20. General Comment No. 4 on Adolescence health and development in the context of the convention on the rights of the child 1 July 2003; UN Doc CRC/GC/2003/4 para 26.
21. See General Comment 1 on article 14 (1) (d) and (e) of the Maputo Protocol adopted during the 52nd Ordinary Session in October 2012.
22. Bonstra, H. (2011) 'Advancing sexuality education in developing countries: evidence and implications', *Guttmacher Policy Review*, Vol. 14, No. 3, pp.17–24.
23. Zimba, M. (2015) 'Zambia: have parents embraced sexual education?' [online] <http://www.allafrica.com/stories/201507020544.html> (accessed 2 July 2016).
24. Zimba, M. (2015) 'Zambia: have parents embraced sexual education?' [online] <http://allafrica.com/stories/201507020544.html> (accessed on 2 July 2016).
25. UNESCO et al. (2009) *International Technical Guidance on Sexuality Education: An Evidence Informed Approach for Schools, Teachers and Educators*, UNESCO, New York.
26. See, for instance, Ojo, M. (2009) 'Religion and sexuality: individuality, choice and sexual rights in Nigerian christianity', Paper presented at a *Seminar on Understanding Sexuality in Lagos*, 9 June 2009.
28. van dan Veyver, J. and Green, M.C. (2008) 'Law, religion and human rights in Africa: introduction', *African Human Rights Law Journal*, Vol. 8, No. 2, p.338.
29. 28 2008 1 SA 474 (CC); 2008 2 BCLR 99 (CC) paras 47 and 53.
30. van dan Veyver, J. and Green, M.C. (2008) 'Law, religion and human rights in Africa: introduction', *African Human Rights Law Journal*, Vol. 8, No. 2, p.338.
31. van dan Veyver, J. and Green, M.C. (2008) 'Law, religion and human rights in Africa: introduction', *African Human Rights Law Journal*, Vol. 8, No. 2, p.338.
32. See Durojaye, E. (2011) 'Access to contraception for adolescents in Africa: a human rights challenge', *Comparative and International Law Journal of Southern Africa*, Vol. 44, No. 1, pp.1–29.
33. Guttmacher Institute Factsheet (2016) *Abortion in Africa: Incidence and Trends*, Guttmacher Institute: Washington D.C.
34. International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on 19 December 1966.

35. BBC, 'Many parents 'oppose school sex education for children' [online] <http://www.bbc.com/news/education-13292133> (accessed 29 June 2016).
36. UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4 para 1.
37. UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4.
38. UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4 para 2.
39. UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4.
40. 39 321 US 158 (1944).
41. See, for instance, *R on the Application of Axon v The Secretary of State for Health* (2006) English and Wales High Court 37 (Administrative Court) Case No. CO/5307/2004.
42. *Christian Lawyers Association v National Ministers of Health and others* 2004 [10] BCLR 1086.
43. 42 321 US 158 (1944) p.166.
44. *Prince v Massachusetts* 321 US 158 (1944) 166 where the Court cited *State v. Bailey, 157 Ind. 324, 61 N.E. 730* in support of its reasoning.
45. See articles 3 of the CRC and 4 of the African Children's Charter.
46. See General 14 of the CRC on the best interests of the child adopted in 2015.
47. See for instance, cases such as *Kjeldsen, Busk Madsen and Pedersen v. Denmark and Dojan and others v. Germany* discussed below.
48. 47 321 US 158 (1944) 166.
49. 48 *Sturges & Burn Mfg. Co. v. Beauchamp, 231 US 320.* 49 *People v. Ewer, 141 N.Y. 129, 36 N.E. 4.*
50. *Jacobson v. Massachusetts, 197 US 11.*
51. JS Mill On liberty (1859), p.69.
52. JS Mill On liberty (1859), pp.71–72
53. JS Mill On liberty (1859), pp.71–72.
54. JS Mill On liberty (1859), p.52.
55. 55 JS Mill On liberty (1859), p.16,
56. 56 JS Mill On liberty (1859).
57. 57 [1976] 1 EHRR 711.
58. 58 This provides that "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."
59. 59 *Dojan and Others v Germany* (Dec.) App No. 319/08, 2455/08, 7908/10, 8152/10, 8155/10 (13 September 2011).
60. 60 [2009] All FWLR (Pt 478) 380 (CA).
61. 61 [2009] All FWLR (Pt 478) 380 (CA).

62. 62 (2001) 7 NWLR (Pt. 711) 206.
63. 63 (2001) 7 NWLR (Pt. 711) 206.