

Age at first sex and Age of Sexual Consent in Botswana:

*An exploration of the socio, demographic, health, policy and other implications of increasing
age of sexual consent in the context of declining age at first sex*

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1. Introduction

The age of consent is the age below which a minor is considered to be legally incompetent to consent to sexual acts. Consequently, an adult who engages in sexual activity with a minor younger than the age of consent cannot claim that the sexual activity was consensual, and such sexual activity may be considered statutory rape. The person below the minimum age is regarded as the victim and his or her sex partner is regarded as the offender, unless both are underage. The purpose of setting an age of consent is to protect an underage person from sexual advances.

As is the case in many countries, the age at first sexual intercourse in Botswana has been declining, such that quite a significant proportion of young people have sexual intercourse before age 16, which is the legislated age of sexual consent. In response to apparently increasing cases of child sexual abuse, the government has been under pressure to increase the age of sexual consent, as a measure to protect the increasing proportion of young people who seem to fall prey to older sexual partners, often men. So subsequently, in 2018, Botswana's parliament passed into law a motion seeking to raise the minimum age of sexual consent from 16 to 18 years of age. The idea of increasing the age of sexual consent is to protect young people from exploitation through various means, including sexual coercion, kidnapping, exploitation and exposure to risk of infection with STI, including and especially HIV and AIDS.

The Bill, which provides for exceptions in circumstances where the sex takes place between persons who are both under 18; or if the sex is with someone who is not more than two years older than the other, also introduced stiffer fines and penalties for sexual and other offences, as a deterrent against child abuse and molestation. However, the evidence base of such a law was at best shaky and virtually nonexistent. Thus, while it is important for public policy to be grounded on empirical evidence, it is not always possible for the evidence to precede the policy or even inform the process of policy formulation. In many instances, policies such as this one, are enacted on the basis of some perceived good that the policy will bring, not necessarily based on interrogation of sound and robust evidence. However, even without the backing of research evidence, the effect of increasing the age of sexual consent against the background of declining age at first sex is that it could be a serious impediment to an increasing number and proportion of young people, who despite being classified as incapable of consenting to sex, require sexual and reproductive health services because they are already sexually active. Such young people may fail to access these services out of fear; or may feel intimidated to do so, thus increasing their risk of negative sexual and reproductive health outcomes.

Objectives

The main objective of this paper is to stimulate debate and present evidence on the likely impact of increasing age of sexual consent in the context of declining age at first sex. Specifically the paper will seek to provide a profile the sexual practices of young people relative to the age of old age of sexual consent; including the implications of increasing the age of sexual consent; as well as the legal, policy and programmatic implications of implementing the law on increased age of sexual consent

Data & Methods

This paper will use data derived from Botswana AIDS Impact Surveys and the Botswana Population & Housing Census data.