

University of Warwick institutional repository: <http://go.warwick.ac.uk/wrap>

A Thesis Submitted for the Degree of PhD at the University of Warwick

<http://go.warwick.ac.uk/wrap/36420>

This thesis is made available online and is protected by original copyright.

Please scroll down to view the document itself.

Please refer to the repository record for this item for information to help you to cite it. Our policy information is available from the repository home page.

**REPRODUCERS REPRODUCED:
SOCIO-LEGAL REGULATION
OF
SEXUALITY AND FERTILITY
AMONG ADOLESCENT GIRLS IN KENYA**

**Janet Wahito Kabeberi-Macharia
School of Law
University of Warwick**

**A Dissertation submitted in Fulfilment of the Degree of Doctor of Philosophy in
Law, University of Warwick, September 1995.**

Dedication

For

my parents Kamau and Wamaitha

and

my loving husband Macaria

ABSTRACT

This study analyses socio-legal issues pertaining to sexuality and reproduction within the context of the realities and lives of Kenyan women and in particular, Kenyan adolescent girls. The study explores the regulatory mechanisms relating to adolescent sexuality and fertility, and examines how these have been historically constructed both to limit and to open up the knowledge and choices of adolescent girls regarding their sexuality and reproduction. It examines the historical nature of the actors and the regulatory mechanisms (within the specific contexts), how these define the status of women within their families and communities, and their ability to regulate their sexuality and fertility. It unearths the intricate nature of the inter-relationship between the actors and regulatory mechanisms, and develops a framework of analysis for this task.

The study argues that regulation of adolescent sexuality and fertility is complex and multi-dimensional. Thus efforts at regulation must consider the nature of sexuality, its construction, the gender relationships, and the power relationships between the social actors. The study concludes that more qualitative studies that focus on the regulation of adolescent sexuality and fertility, the plural nature of law and its relationship with other non-legal forms of social regulation are crucial, if the complexity of this process is to be better understood.

Acknowledgements

The decision to undertake doctoral studies was made with encouragement from Prof. Tove Stang Dahl whom I thank posthumously, for encouraging me to pursue further my general interest in women and law issues, and specifically in matters concerning women and reproduction. Tove was particularly encouraging, even where in the early stages issues on feminist jurisprudence seemed so complicated and unclear to me.

This study could not have been carried out without the assistance of a number of people who have through time assisted, criticised, and advised on the work done. Firstly, I am greatly indebted to the Women's Law Institute in Oslo, Norway and NORAD for providing the scholarship to carry out this study. In particular I wish to thank Anne Hellum for negotiating the scholarship and also for all the assistance she gave me both on an academic and a personal level. In addition, I thank the Legal Research Institute of the University of Warwick for the financial assistance towards the collection of data in 1992 and 1993. Secondly, my supervisor Ann Stewart has been a constant source of encouragement along the way. I thank her for the discussions, advice and criticism towards this work, and for seeing me through to the end.

The research for this thesis was carried out with the assistance of a number of people who unselfishly gave of their time. Firstly, I thank the informants, namely, Mariamu, Mumbi, Joan, Wamaitha, Sarah, Mwangi, Akinyi, Njenga, Agnes and Karimi for the information they provided. In addition, the fifteen students from the Faculty of Law, University of Nairobi who willingly assisted in the collection of court cases in 1992 and 1993. I also wish to thank Mwangi, the Librarian from the Family Planning Association of Kenya, Murangi Mugo-Muna from the documentation unit of the Centre for African Family Studies, and Emmy Gichinga of the Crisis Pregnancy Ministries who willingly searched for and provided the information I sought. Words cannot express my gratitude.

I especially thank members of my family who participated in different ways in the research process. My mother Wamaitha Kabeberi was a supportive informant and

research assistant. Although faced with heavy demands on her time, she was willing to assist in the collection of data and also took time to collect materials which she knew would assist me. My parents-in-law, Ayub and Margaret Maina, for their constant encouragement, support and prayers throughout the course of this study. I am forever indebted to my sister Wanjiru Githanga (*nyina wa Essie!*) who was a most dedicated research assistant and took time off her busy schedule as a career woman and mother to assist in the collection of materials. My sister Christine for her fortitude through extremely difficult times, which has inspired me never to give up on what I undertake. My brother, Mr. Kiba!, unselfishly provided me with accommodation and practically took care of my subsistence in Nairobi and also gave me unrestricted access to his car and driver throughout the research period. His kindness made the research process much easier.

I also wish to thank the following persons with whom I interacted on both a personal and an academic level. My colleagues from the University of Warwick and in particular Sanyu Semafumu, Lawrence Tshuma, and Beatrice Mwaka, who made life bearable especially when everything seemed so desperate. I am also indebted to all Women and Law in East Africa (WLEA) research group members and in particular the National Coordinators, Patricia Kameri-Mbote, Jennifer Okumu Wengi and Magdalena Rwebangira who gave me the time and space to carry out this study. I also thank Anne Hellum, Agnete Wies Bentzon and Julie Stewart for their comments and advice. In addition, I thank Fatma Maghimbi and Grace Wambui for assisting me in typing parts of the thesis. From the University of Nairobi: Prof. Kivutha Kibwana, for the encouragement throughout my studies and for offering his advice. Dr. Makumi Mwangiru, encouraged me to undertake doctoral studies as far back as 1988 when I first met him, and has since continued to be a source of support. I am eternally grateful to him for tireless reading through my entire thesis, offering very useful and constructive insights, and for his fine linguistic 'tooth-combing'. For that, the '*seize*' in Paris is on me!

I thank three close friends of mine who throughout this study rendered their assistance and were willing to hear me out especially when everything seemed so jumbled up. Mary Maboreke was constantly willing to hear me out as we debated,

deconstructed, and redefined our lives and our work for hours on end. I thank her especially for helping me through times of sorrow when I lost my father and brother-in-law during the course of this study. Patricia Kameri-Mbote assisted in the field research and never complained when called upon at the last minute to help out when I so desperately needed extra information. I thank her especially for taking up most of my official duties and carrying them out so well and with dedication. Angela Wanjiru Kiragu for being there whenever I needed to let out steam and for being a very dear friend.

Last but certainly not least, I thank my loving husband Macaria, who left his job in Nairobi and joined me at Warwick and has continued to be a constant pillar of strength. I especially thank him for staying up and putting up with me, the many hours spent reading and constructively criticising my work which exposed many infelicities of style. Most of all I thank him for the 'total backing' throughout this study. To Macaria I say *'Mwathani arokuraathima miaka na mireere !'*

CONTENTS

	Page
Abstract	ii
Acknowledgements	iii
List of abbreviations	xiii
List of cases	xv
List of statutes	xvii
List of tables	xix
List of figures	xix
List of photographs	xx
List of maps	xx
Map of Kenya	xxi

PART ONE: INTRODUCTION AND THEORETICAL CONSIDERATIONS

CHAPTER ONE: REPRODUCING THE REPRODUCERS: AN INTRODUCTION

1.0 INTRODUCTION	1
1.1 AIMS AND OBJECTIVES OF THE STUDY	2
1.2 ADOLESCENT SEXUALITY AND FERTILITY IN KENYA:	
A REVIEW OF THE LITERATURE	3
1.2.1 Adolescent sexuality	3
1.2.2 Adolescent fertility	5
1.2.2.1 Adolescent fertility and population growth	5
1.2.3 Causes of adolescent sexuality and fertility	7
1.2.3.1 Law and the regulation of adolescent sexuality and fertility ..	7
1.2.3.2 Education and transmission of norms on sexuality and fertility	9
1.2.4 Consequences of adolescent fertility	12
1.2.4.1 Physical and health consequences	12
1.2.4.2 Social and economic consequences	13
1.3 A COMMENT ON THE LITERATURE	15
1.4 HYPOTHESES	16
1.5 DEFINITIONS	17
1.6 STRUCTURE OF THE STUDY	22

CHAPTER TWO: THEORETICAL AND METHODOLOGICAL PERSPECTIVES IN THE COLLECTION AND ANALYSIS OF DATA

2.0 INTRODUCTION	25
2.1 SEXUALITY AND REPRODUCTION: THEORETICAL PERSPECTIVES	25
2.1.1 Sexuality	26
2.1.1.1 Construction of female sexuality	28
2.1.1.2 Law and sexuality	32
2.1.1.3 Feminist challenges to the laws on sexuality	33
2.1.2 Regulation of fertility and construction of motherhood	35
2.1.2.1 Laws on reproduction	39
2.1.2.2 The State and regulation of reproduction	40
2.2 METHODOLOGICAL PERSPECTIVES	41
2.2.1.1 Preliminary observations	41
2.2.1.1 New challenges	42
2.2.2 Perspectives in the research on law	44
2.2.2.1 Legal pluralism	46
2.2.2.2 The semi-autonomous social field	48
2.2.2.3 Feminist legal research perspectives	50
2.2.2.4 Women's law methodological perspectives	51
2.2.3 Perspectives in adolescent sexuality and fertility research ...	52
2.3. RESEARCH APPROACH FOR THE STUDY	53
2.3.1 Data collection methods	55
2.3.1.1 Documentary research	55
2.3.1.2 In-depth interviews and memory work	57
2.4 FRAMEWORK FOR ANALYSING DATA COLLECTED	62
2.4.1 Structuring forces	64
2.4.2 The social actors	66
2.4.3 The regulatory mechanisms	70
2.4.4 Processes of transmission	71
2.4.5 Tools of analysis	72
2.5 PRESENTATION OF DATA	73
2.6 LIMITATIONS OF THE STUDY	74

**PART TWO:
REPRODUCERS REPRODUCED: EMPIRICAL FINDINGS**

CHAPTER THREE: REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY: 1910-1930

3.0 INTRODUCTION	76
3.1 INTRODUCING MARIAMU AND MUMBI	76
3.1.1 Mariamu	76
3.1.2 Mumbi	77
3.2 CONTEXTUAL BACKGROUND	78
3.2.1 Political structure of the indigenous communities	78
3.2.2 The structure of the family	80
3.2.3 Religion	83
3.2.4 The legal structure	84
3.2.4.1 The African normative rule systems	87
3.2.5 Mode of subsistence	88
3.3 CONSTRUCTION OF CHILDHOOD, ADOLESCENCE AND ADULTHOOD	89
3.3.1 Normative rules on sexuality and fertility	93
3.3.1.1 Childhood	95
3.3.1.2 Initiate stage	97
3.4 THE SOCIAL ACTORS AND PROCESSES OF TRANSMITTING NORMS	101
3.4.1 The actors	102
3.4.1.1 Childhood	102
3.4.1.2 Initiate stage	106
3.4.2 Traditional Sex Education	107
3.5 EMERGENCE OF NEW ACTORS, DISCOURSES AND PROCESSES	110
3.5.1 Discourses opposing female circumcision	111
3.5.1.1 Christian missionaries	111
3.5.1.2 Colonial administration and female circumcision	113
3.5.2 Discourses in support of female circumcision	115
3.5.3 Composition of the social actors by 1930	117
3.6 LEGAL REGULATION OF SEXUALITY AND FERTILITY	
3.6.1 Female circumcision	118
3.7 CONCLUSION	121

**CHAPTER FOUR: REGULATION OF SEXUALITY AND FERTILITY:
(1930-1963) New debates, new options**

4.0 INTRODUCTION	122
4.1 CONTEXTUAL BACKGROUND	124
4.1.1 Changes in the family systems	124
4.1.1.1 Christianity and the family	124
4.1.1.2 Economy and the family	125
4.1.1.3 Changes in marriage types	128
4.1.2 Religion and education	129
4.1.2.1 Christian missionaries and female education	129
4.1.2.2 Colonial Education policy	131
4.1.3 The legal system	133
4.1.4 Population policy during colonial area	137
4.2 CONSTRUCTION AND REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY	138
4.2.1 Construction of female sexuality	138
4.2.2 Normative rules on pre-marital sexual relations	142
4.2.3 Normative rules concerning pre-marital pregnancies	143
4.2.3.1 Punishment for pre-marital fertility	145
4.3 THE SOCIAL ACTORS AND PROCESSES	148
4.3.1 Childhood	148
4.3.1.1 The construction of childhood in Christian families	149
4.3.2 Adolescence, Socialisation and Education	151
4.3.2.1 Role of educational institutions	152
4.3.3 Composition of the Social Actors by 1963	155
4.4 LEGISLATIVE REGULATION OF SEXUALITY AND FERTILITY	157
4.4.1 Female circumcision	157
4.4.2 Pre-marital pregnancies and pregnancy compensation	157
4.4.3 Creation of a hybrid family law	158
4.5 CONCLUSION	160

**CHAPTER FIVE: SOCIAL ACTORS AND PROCESSES OF REGULATING
SEXUALITY AND FERTILITY: (1963-1995)**

5.0 INTRODUCTION	162
5.1 THE CONTEXTUAL BACKGROUND	163
5.1.1 Population policy and fertility control in Kenya	163
5.1.1.1 Government policy on adolescent fertility	166
5.1.2 The Family structure	167

5.1.3.1	Family Life Education	172
5.1.4	Religious policies towards sexuality and fertility	173
5.2	SOCIAL REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY . .	175
5.2.1	Construction of sexuality	175
5.2.1.1	Female circumcision	175
5.2.1.2	Sexual activity among adolescents	178
5.2.2.	Construction and regulation of adolescent fertility	181
5.2.2.1	Abortion among adolescent girls	182
5.2.2.2	Knowledge and use of contraception	185
5.3	FAMILY LIFE EDUCATION: SOCIAL ACTORS AND PROCESSES	188
5.3.1	Family and parental roles	190
5.3.1.2	Regulating sexuality and fertility within the family	191
5.3.2	Peers as social actors and educators	194
5.3.3	Family life educators	196
5.3.3.1	Role of Non-Governmental family planning agencies	197
5.3.4	The media as a source of information	198
5.4	EDUCATIONAL INSTITUTIONS AND PROTECTION OF THE SEXUALITY OF SCHOOL GIRLS	200
5.4.1	School teachers as family life educators	200
5.4.2	Teacher and pupil sexual relationships	202
5.4.2.1	Teacher 'power' over pupil	203
5.4.2.2	Teacher 'power' over parents	203
5.4.2.3	The role of the Teachers' Service Commission	206
5.4.3	Rape in schools	208
5.5	OLD DEBATES, NEW DIMENSIONS	209
5.5.1	Controversy over family life education	209
5.5.2	Female circumcision: old debates continue	212
5.5.3	Sexuality and marriage: old processes, new actors	216
5.6	COMPOSITION OF SOCIAL ACTORS: PRESENT DAY	220
5.7	CONCLUSION	222

**CHAPTER SIX: LAWS ON ADOLESCENT
SEXUALITY AND FERTILITY: PRESENT DAY**

6.0	INTRODUCTION	223
6.1	THE NATURE OF THE KENYAN LEGAL SYSTEM	223
6.1.1	Status of customary law in Kenya	224
6.1.2	The legal context of regulating sexuality and fertility	226
6.1.3	Legal status of adolescents	227

6.2	LAW AND REGULATION OF SEXUALITY	229
6.2.1	Legal construction of sexuality	229
6.2.2	Law and adolescent sexuality	232
6.2.2.1	Age of consent to sexual intercourse	232
6.2.2.2	Offences against adolescent sexuality	233
6.2.2.2.1	Sexual assault and defilement	234
6.2.2.2.2	Incest	235
6.2.2.2.3	Female circumcision	236
6.3	LAWS ON ADOLESCENT FERTILITY	239
6.3.1	Laws on contraceptives	239
6.3.1.1	Laws on manufacture and sale of contraceptives	240
6.3.1.2	Laws on dissemination of family planning and contraceptive information	241
6.3.2	Criminal law and fertility	241
6.3.2.1	Abortion	242
6.3.2.1.1	Prosecution for abortions	244
6.3.2.2	Infanticide and concealing birth	245
6.3.3	Seduction and pregnancy compensation	247
6.3.3.1	The claimants	252
6.3.3.2	Out of court claims	254
6.4	CONCLUSION	257

**PART THREE:
EMERGING ISSUES AND CONCLUSION**

CHAPTER SEVEN: EMERGING ISSUES IN THE REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY

7.0	INTRODUCTION	260
7.1	REGULATION OF SEXUALITY AND FERTILITY: FROM FAMILY TO STATE	260
7.1.1	The family	261
7.1.1.1	The family sphere and the 'visibility' of women as social actors	262
7.1.2	State intervention in regulating adolescent sexuality and fertility	263
7.1.2.1	The 'public domain' and invisibility of women as actors	265
7.2	CONSTRUCTION OF FEMALE SEXUALITY AND MOTHERHOOD	267
7.2.1	Female circumcision and value of female sexuality	268
7.2.2	The concept of 'the unfit mother'	271
7.3	LAW AND REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY	274
7.3.1	Plural regulation of adolescent sexuality and fertility	275
7.3.1.1	Law and administrative intervention in reproduction	277

7.4 CONCLUSION	279
CHAPTER EIGHT: IMPLICATIONS OF THE FINDINGS AND DIRECTIONS FOR FUTURE RESEARCH	
8.0 INTRODUCTION	280
8.1 IMPLICATIONS FOR THE ROLE OF LAW	280
8.2 SUGGESTIONS FOR FUTURE RESEARCH	283
NOTES	286
APPENDICES	293
BIBLIOGRAPHY	301

LIST OF ABBREVIATIONS

AIDS	Acquired Immunity Deficiency Syndrome
AMREF	African Medical Research Foundation
ASD	Actor-Systems Dynamics
AFY	Advocates For Youth
C.C.	Civil Case
CA	Court of Appeal
CAFS	Centre for African Family Studies
CAR	Colonial Annual Reports
CMS	Church Missionary Society
CO	Colonial Office
CPM	Crisis Pregnancy Ministries
CPO	Centre for Population Options
Cr. C.	Criminal Case
C.R.R.	Court of Review Reports
DHS	Demographic Health Survey
DC	District Commissioner
DO	District Officer
EALR	East Africa Law Reports
FGM	Female Genital Mutilation
FLE	Family Life Education
FLEs	Family Life Educators
FPAK	Family Planning Association of Kenya
GOK	Government of Kenya
HC	House of Commons (British)
HCCA	High Court Civil Appeal
HIV	Human Immuno-deficiency virus
IAS	Institute of African Studies
ICAF	International Centre for Adolescent Fertility
IPPF	International Planned Parenthood Foundation
IUD	Inter-uterine Device
KAP	Knowledge, Attitudes and Practice
KCA	Kikuyu Central Association
KCPS	Kenya Contraceptive Prevalence Survey
KDHS	Kenya Demographic Health Survey
KFS	Kenya Fertility Survey
KLR	Kenya Law Reports
MYWO	Maendeleo Ya Wanawake
NACP	National Aids Control Programme
NCKK	National Christian Council of Kenya
NCPD	National Council for Population Development
ODA	Overseas Development Agency
PATH	Program for Appropriate Technology in Health
PRB	Population Research Bureau
RMCCA	Resident Magistrates Court Civil Appeal

SASF	Semi-autonomous Social Fields
STD	Sexually Transmitted Disease
T.L.R.	Tanganyika Law Reports
TSC	Teachers Service Commission
TSE	Traditional Sex Education
UNDP	United Nations Development Programme
UNFPA	United Nations Fund for Population Activities
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
WHO	World Health Organisation

LIST OF CASES

- Beth Mutare and Olive Muthoni v. Kanyiri Ngure (Murang'a c.c. 34, 1981)
- Edith Wanjiku and Maritha Wangu v. John Irungu (Thika, 1975)
- Eliud Mamati v. Milia Makaya d/o Daruna (Kisumu Hcca no. 47, 1977)
- Esther Wamaitha Njuki and Jane Wanjiku v. Philip Mugo (Murang'a c.c. no. 24, 1982)
- Gabriel Wanyoike & Margaret Wambui Wanyoike v. Peter Mburu Njuguna (Murang'a c.c. no. 269, 1993)
- Gwao bin Kilimo v. Kisunda bin Ifuti (1938 1 T.L.R., 403)
- Hilary Murathi and Mary Wairimu v. Festus Mutegi Kiathe (Thika c.c. no. 52, 1976)
- Karanja v. Karanja (1975 KLR, 307)
- Momanyi Nyaberi v. Omwonga Nyaboga (1953, vol.1 C.R.R., 5)
- Murichu Ichurua v. Sammy Kuria s/o Chege Githinji (Thika Rmcca no. 7, 1980)
- Omwoyo Mairura v. Bosire Anginde (1958 , C.R.R. vol. 6, 4)
- Peter Waiyu and Grace Njeri v. Joseph Njuguna Kinuthia (Kiambu c.c. no. 815, 1993)
- R. v. Mary Auma d/o Alfred Odedo (Kisii cr. c. no. 2533, 1987)
- R. v. Josephine Kemunto Nyamamba (Kisii cr. c. no. 3750, 1988)
- R. v. Ruth Chepkoech Misik (Kericho cr. c. no. 2116, 1989)
- R. v. Magdalene Gature (Bungoma cr. c. no. 2052, 1989)
- R. v. Dorcas Njeri Kamenya (Kiambu cr. c. no. 3973, 1989)
- R. v. Selly Chepkoch (Kericho cr. c. no. 1684, 1989)
- R. v. Samwel Mbai, Samson Kaune, Naomi Mukwanjeru, Mary Mbiro, Mariam M'ribo (Meru cr. c. no.1305, 1989),
- R. v. Eunice Seroney (Nakuru cr. c. no. 1526, 1990)
- R. v. Hellen Wanjiru (Nakuru cr.c. no. 1965, 1990)
- R. v. Mwatete Mwangome (Mombasa cr. c. no. 330, 1990)
- R. v. Agnes Butachi (Bungoma cr. c no. 1655, 1990)
- R. v. Mary Wanjiku (Kiambu cr. c. no. 8, 1990)
- R. v. Joan Njoki Mugo (Kiambu cr. c. no. 683, 1991)
- R. v. Duncan Mwangi (Narok, cr.c. no. 218, 1991)
- R. v. Daniel Kiplagat (cr. c. no. 33, 1991)
- R. v. Koptumuri arap Tesoti (Narok cr.c. no. 76, 1991)

R. v. Benedict Wandera (Mombasa, unreported)

Rex v. Amkeyo (1917, EALR, 14)

Singh Bansel v. R. (1959, EALR 813)

Timina Olenja v. Elam Keya (1961, C.R.R. vol. 10, 8).

Virginia Edith Wambui Otieno v. Joash Ochieng Ougo and another (1987, Court of Appeal, civil appeal no 31)

LIST OF STATUTES

Colonial

African Christian Marriage and Divorce Ordinance, 1931
Foreign Jurisdiction Act, 1890
East Africa Order-in-Council, 1897
East Africa Order-in-Council, 1902
Hut Tax Regulations, 1901
Kenya Order-in-Council, 1920
Marriage Ordinance (no. 30), 1902
Native Christian Marriage and Divorce Ordinance (no. 9), 1904
Native Courts Regulations, 1897
Native Courts Ordinance, 1920
Native Tribunals Ordinance, 1930
Native Passes Ordinance (no. 12), 1900
Preservation of Order by Night Regulations (no 15), 1901
Vagrancy Regulations (no. 2), 1898
Vagrancy Regulations (no. 3), 1900
Village Headman Ordinance (no. 22), 1902

Kenya

Age of Majority Act, (Chapter 17, Laws of Kenya*)
Book and Newspapers Act (Chapter 111, Laws of Kenya)
Chiefs Authority Act (Chapter 128, Laws of Kenya)
Children and Young Persons Act (Chapter 143, Laws of Kenya)
Constitution of Kenya (1983)
Criminal Procedure Code (Chapter 75, Laws of Kenya)
Film and Stage Plays Act (Chapter 210, Laws of Kenya)
Food, Drug and Chemical Substances Act (Chapter 243, Laws of Kenya)
Judicature Act (Chapter 8, Laws of Kenya)
Khadis Court Act (Chapter 11, Laws of Kenya)

Magistrates Court Act (Chapter 10, Laws of Kenya)
Marriage Act (Chapter 150, Laws of Kenya)
Medical Practitioners and Dentists Act (Chapter 253, Laws of Kenya)
Nurses Act (Chapter 257, Laws of Kenya)
Penal Code (Chapter 63, Laws of Kenya)
Pharmacy and Poisons Act (Chapter 244, Laws of Kenya)
Public Health Act (Chapter 242, Laws of Kenya)
Standards Act (Chapter 250, Laws of Kenya)
Teachers Service Commission Act (Chapter 212, Laws of Kenya)
Vagrancy Act (Chapter 58, Laws of Kenya)
* The current Acts of Parliament are cited in this manner

England

Criminal Law Amendment Act, 1885
Infanticide Acts of 1922 and 1938
Offences Against the Person Act, 1861

Catholic Church

Charter of the Right of the Family Presented by the Holy See to All Persons, Institutions and Authorities Concerned with the Mission of the Family in Today's World, 22nd October, 1983

LIST OF TABLES

Table 2.1	Framework for analysing the regulation of Adolescent Sexuality and Fertility
Table 3.1	Composition of Internal and External Social Actors by 1930
Table 4.1	Composition of Internal and External Social Actors between 1930 - 1963
Table 5.1	Age at circumcision in selected districts in Kenya
Table 5.2	Choices made by clients concerning their pregnancy before and after counselling at the Crisis Pregnancy Ministries Centre (Nairobi) between 1989 - 1992
Table 5.3	Use of contraceptives among clients attending the Crisis Pregnancy Ministries Centre (Nairobi) aged between 14-25 years: 1989 - 1992
Table 5.4	Sources of guidance on sexuality issues and place of residence
Table 5.5	Media as a source of sex education by area of residence
Table 6.1	Offences relating to sexuality and fertility between 1985 - 1991
Table 6.2	Offences related to fertility between 1985 - 1991
Table 6.3	Choice of abortion performer and place of residence
Table 6.4	Number of cases on pregnancy compensation in Kiambu, Thika and Murang'a District Courts between 1975 - 1993
Table 6.5	Value of awards for pregnancy compensation: Selected districts
Table 7.1	Construction of female sexuality among circumcising communities

LIST OF FIGURES

Figure 3.1	The Interaction between Social Actors and the Girl in Childhood Stage
Figure 3.2	Degree of interaction between the social actors and the girl (post circumcision/puberty stage)
Figure 4.1	Degree of relationship between the Adolescent girl and the Social Actors in a typical Christian family
Figure 5.1	Degree of interaction between the Adolescent girl and the Social Actors: Present day

LIST OF PHOTOGRAPHS

Kikuyu girls in initiation robes - around 1900

Samburu Woman Circumciser: 'Who are the custodians of community laws - men or women?'

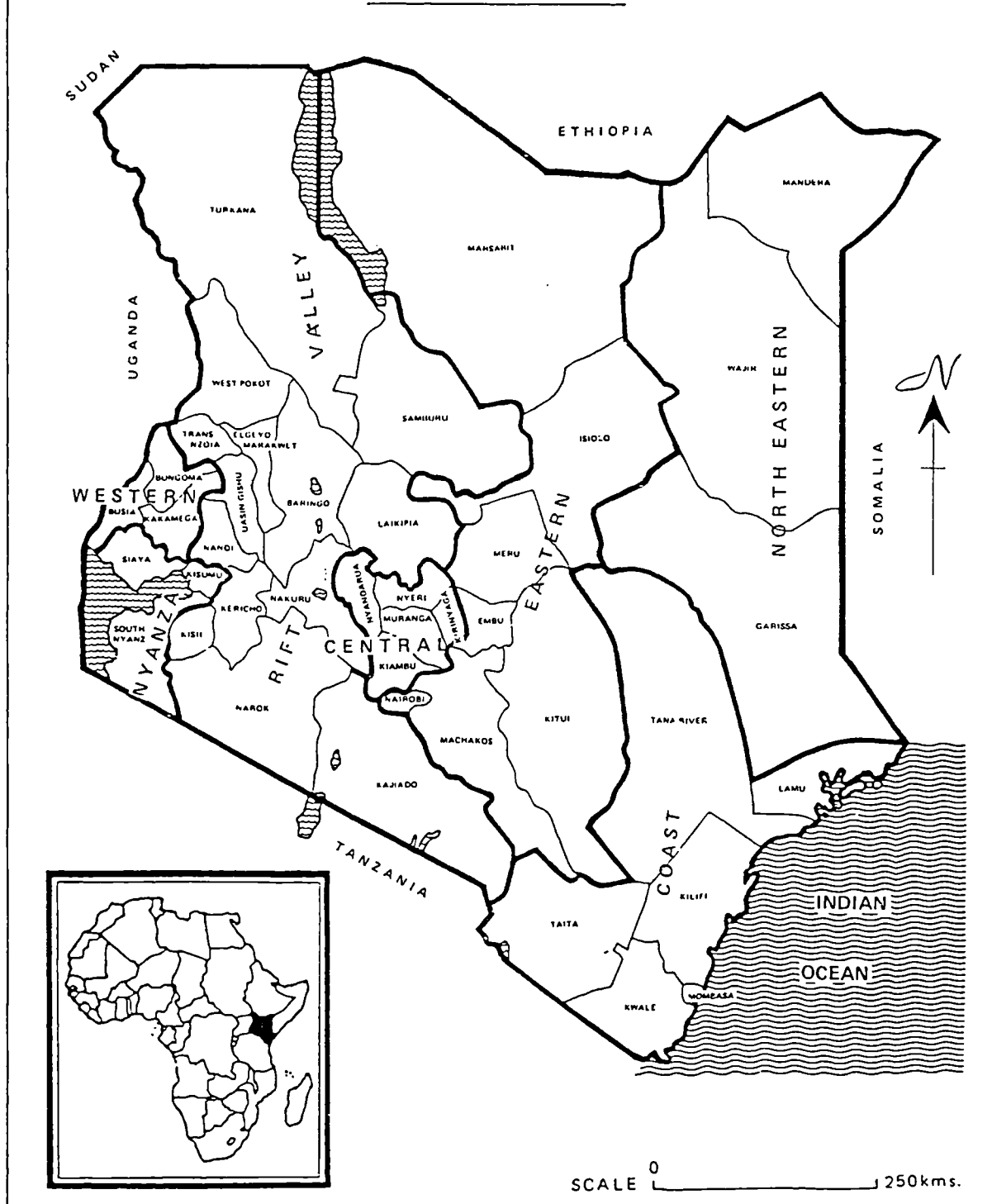
LIST OF MAPS

Map of Kenya- Political and Administrative boundaries

KENYA

POLITICAL AND ADMINISTRATIVE BOUNDARIES:

Provinces and Districts



SOURCE: UNICEF/GOK - 1989 Situational Analysis of Women and Children in Kenya

PART ONE

INTRODUCTION AND THEORETICAL CONSIDERATIONS

CHAPTER ONE

REPRODUCING THE REPRODUCERS: AN INTRODUCTION

1.0 INTRODUCTION

The discourses on adolescent sexuality and fertility have been fuelled by concerns over 'children having children', which for the last twenty years have occupied the minds of those involved in improving the overall health of adolescents worldwide. Recent statistics indicate that annually fifteen (15) million adolescent girls give birth, which accounts for one-fifth of the total number of births worldwide (AFY(CPO), 1994:1); in this respect, female adolescent sexual and reproductive behaviour has negative demographic, economic and social implications. Furthermore, adolescent mothers face various health risks as a consequence of "early childbearing and consequences of induced, often illegal abortions" (Perl, 1979:1; Ferguson, 1987; Oucho, 1987; Sadiq, 1990).

Adolescent fertility has been attributed to the rapid socio-economic and cultural changes that society is undergoing which is altering the social, cultural, legal and economic context within which reproduction is taking place (CPO/ICAF, 1992; Perl, 1979). In Africa for example, motherhood for girls in their adolescent years continues to be "firmly rooted in long-standing African traditions of early marriage and high rates of childbearing...[with]...one leg stepping into a rapidly modernizing and urbanising world" (CPO/ICAF, 1992:4). The high rates of adolescent fertility in Africa have been attributed to two main factors. The first is rural-urban migration in sub-Saharan Africa. According to United Nations estimates by the year 2000, 47% of youth aged between 15 and 24 years will be living in an urban area (CPO/ICAF, 1992). As a consequence of urbanisation, the traditional values, practices and norms which prepared unmarried adolescent girls for their new roles as wives and mothers have been eroded (Kabagame, 1980:5). However, although some of these values have weakened, others have either remained resilient or have been modified to keep up with on-going socio-economic changes in society (CPO/ICAF, 1992:9).

Secondly, the increase in women's education has meant that the age at marriage is

rising as more women delay marriage in pursuit of higher education. The combination of education and late marriage has in turn led to the creation of a bio-social gap "[which] is the lengthening of time between menarche, when childbearing often started in many African traditional settings and the age at marriage" (CPO/ICAF, 1992:6). This has paradoxically resulted in an increase of single mothers and in the use of unsafe methods to terminate unwanted pregnancies among girls in schools or higher educational institutions. One reason given for this trend is the lack of information concerning sexuality, family life, child spacing and family planning (Senanayake, 1990:27). Consequently, it is further argued that girls are ill prepared for the challenges of adolescence especially due to the emergence of "new environments which pose new problems requiring new knowledge and skills in order to adapt and cope" (Perl, 1979:4). The above issues are the concern of this chapter which provides an overview of pertinent issues surrounding adolescent sexuality and reproduction in Kenya. In addition this chapter presents the aims, objectives and hypotheses of the study, and discusses legal issues in the regulation of adolescent sexuality and reproduction.

1.1 AIMS AND OBJECTIVES OF THE STUDY

This study examines the processes through which the sexuality and reproductive choices of unmarried adolescent Kenyan girls aged between 12-19 years are shaped and defined by regulatory mechanisms in place during their adolescent years. This entails an analysis of the legal and non-legal regulation of sexuality and fertility amongst this age group and the historical construction of the regulatory process within the multi-cultural and heterogenous Kenyan society. In particular the study aims to do the following:

- (i) To identify the norms surrounding adolescent sexuality and fertility and the role of law in enforcing these norms
- (ii) To analyse the historical nature of the social and legal processes by which the sexuality of adolescent girls is regulated .
- (iii) To identify the actors involved and analyse the different roles they play or have played in the process of regulating adolescent sexuality and fertility.

- (iv) To identify the social and legal mechanisms aimed at regulating adolescent sexuality and fertility.
- (v) To examine the inter-relationship that may exist between the actors and the legal and social forms of intervention, in the process of regulating sexuality and fertility among adolescent girls, and their points of divergence and convergence.

The examination of these processes situates issues on adolescent sexuality and fertility within the overall framework of women's sexuality and reproductive rights discourse. Although the study is primarily concerned with exploring the regulation of sexuality and fertility among Kenyan adolescent girls, it broadly locates itself within the African feminist discourses on women and law.

1.2 ADOLESCENT SEXUALITY AND FERTILITY IN KENYA: A REVIEW OF THE LITERATURE

The available literature on adolescent sexuality and fertility in Kenya is dominated by medical, sociological and demographic studies. These highlight the negative social, economic, demographic and health consequences of adolescent sexual activity and fertility, and provide statistical information on the status of adolescent sexuality and fertility in Kenya. Although there is the danger that reliance on statistical information may highlight negative images of adolescent mothers (Phoenix, 1991:28), the review of such information in this section is not intended to perpetuate moral panic, but rather as a platform from which pertinent issues on the regulation of adolescent sexuality and fertility can be examined. In addition, a review of the literature on the role of law in regulating adolescent sexuality and fertility in Kenya is undertaken. The following analysis of issues raised in the literature on adolescent sexuality and fertility in Kenya, is divided for structural convenience into two parts, namely adolescent sexuality and adolescent fertility.

1.2.1 Adolescent sexuality

Sexuality among adolescents is often not considered on its own, but rather within the context of the associated problems which are either health, social or moral (Lema, 1990b:191). The literature on female adolescent sexuality in Kenya focuses mainly on actual adolescent sexual activity and the potential outcomes of unprotected sexual

intercourse, for example infection and transmission of STDs, and conception. Emerging from this literature is the implication that the sexual and reproductive behaviour of female adolescents is "of demographic and public health significance" (Kumah, *et al* 1992:iv), which necessitates immediate measures aimed at dealing with adolescent sexual and reproductive health.

This focus is informed by statistics which show that adolescents are sexually active and that fertility among adolescent girls is high. For example, the 1992 Demographic Health Survey (DHS) indicated that 46% of girls aged between 15-19 years had had sexual intercourse at least once (Wamahiu, 1993:35) while about 11% of the same age group give birth each year (CPO, 1994). Focus on actual sexual activity has been used to construct adolescents as persons who are potentially sexually active from an early age which, according to current studies is between 7 and 12 years for both boys and girls (Kiragu, 1991; Lema, 1990a; DFH, 1988; Mati 1989; Balmer, 1992).

The literature also indicates that rural youth are generally more active than urban youth, and that the older youth are more active than the younger (Kiragu, 1991; Ferguson 1988; Njau 1992). In addressing these disparities, the literature calls for effective strategies aimed at helping adolescents (in their different contexts) to understand the consequences of unsafe sex, such as transmission of STDs or unwanted pregnancies.

Concern about adolescent sexuality has been proliferated by the increasing numbers of young persons aged between 15 - 24 years who are already infected with an STD and lately with the HIV virus. Statistics have shown high prevalence of STDs amongst Kenyan adolescent females. For example, a country-wide survey undertaken in 1987 provided results showing that "45% of women found with venereal diseases in Kenya were aged between 15 to 24 years" (Sunday Nation, 2/8/87:38; Lema *et al* 1991; Mati 1989). This group included adolescents in or out of school. However a 1992 study carried out on primary and secondary school girls, revealed that 4.8% of these girls were reported as having an STD (Kumah *et al*, 1992:18). A comparison of the statistics implies that a majority of infected girls in this age group are most likely not enrolled in school. However such deductions are not conclusive and the results themselves are not strictly comparable, since neither the definitions of the age-groups

nor the methodologies used were identical.

The AIDS pandemic has given impetus for open discussions on adolescent sexuality especially because a number of adolescents are at risk of infection from the HIV virus. Statistics from the Kenyan National AIDS Control Program (NACP) show that the number of persons aged between 15-24 years who are HIV positive has risen from 44,000 in 1985, to 151,000 in 1990, and it is estimated that by the year 2000 the numbers will have risen to 515,000. Furthermore, twice as many boys as girls are likely to be infected with the HIV virus (NACP, 1992), which requires different interventions concerning AIDS education for girls and boys.

The NACP statistics also indicate that by 1985, 2,365 young persons aged between 15-24 years were estimated to have contracted 'full blown' AIDS. This figure increased to 9,776 in 1990 and is projected to increase to 25,426 in 1995 and 40,938 by the year 2000 (NACP, 1992). However, these figures could be only the tip of the iceberg since "[b]ased on a latency period of 7.5 years (which is the accepted norm in Kenya) it is likely that many AIDS patients in the 25 to 35 age category may have been infected in their youthful years" (Kumah *et al*, 1992:19).

1.2.2. Adolescent fertility

The context within which adolescent fertility takes place in Kenya is characterised by social disapproval, interruption of education, less income earning opportunities, and inaccessibility to pre-natal health care (Youri, 1993:9). Medical studies highlight the health risks emanating from early motherhood for both the mother and her child, and the consequences of unsafe methods of pregnancy termination. Demographers further illustrate the demographic implications of adolescent fertility whilst sociological studies illustrate the social and economic consequences of early motherhood, especially for the adolescent mother. These different perspectives are discussed further in the following sections.

1.2.2.1 Adolescent fertility and population growth

The status of adolescent fertility in Kenya is often discussed within the context of its contribution towards the overall population growth. The population of Kenya has been rapidly growing since the 1940s, having risen from 5.2 million in 1948 (EARC: 1955: 10) to 10.9 million in 1969, to 24 million in 1989 (UNICEF/GOK, 1989). The

population of adolescents aged between 15-19 years rose from 1.8 million in 1969 to 3.9 million in 1985 (KDHS, 1989). The rapid overall population growth has been linked to reduced mortality rates, particularly infant mortality rates which stood at sixty (60) per thousand in 1989 (KDHS: 1989), and better health facilities especially in maternal and child health (see Appendix B). The last census carried out in 1989, indicated that by that year, 34% of the population was aged between 10-24 years with 25% being within the 10-19 years age group (Kumah *et al* , 1992:5).

Demographic statistics from censuses and reproductive health surveys reveal that fertility among women in the age bracket of 15-19 years has over the last thirty years made considerable contribution towards the overall population growth in the country. The fertility rate among adolescent girls aged between 15-19 years has risen from 141 live births per thousand in 1962, to 168 per thousand in 1977 but dropped slightly to 158 per thousand in 1989. However, despite the drop in overall fertility rates, the contribution to total fertility by adolescents has risen from 11% in 1977 to nearly 20% in 1989 (Youri, 1993:11; Kumah *et al* , 1992:iii; KDHS, 1989). Further, a significant decline in overall fertility among Kenyan women was recorded by the KDHS, but this rate of decline was not matched by the 15 - 19 year old age group. For example among the 20 - 34 years age group, fertility declined by 28% over a period of fifteen years prior to the survey, whilst among the 15 - 19 years age group, fertility declined by 15% over the same period (DHS/PRB, 1992; Kabagame, 1980:15; Lema *et al* , 1991; Kekovole, 1991).

The potentiality of sexually active adolescents girls having an unplanned and unwanted pregnancy before the age of 19 years is considerably high (UNICEF/GOK, 1990). For example the 1989 Kenya Demographic Health Survey (KDHS) revealed that 77% of unmarried pregnant 15-19 year olds in the survey had unplanned and unwanted pregnancies (Kumah, *et al* , 1992:16). Further according to some analysts, for most adolescent mothers pregnancy is a side effect of sexuality and not a goal in itself (Katigo, 1992:7). Thus it should follow that efforts aimed at regulating fertility among adolescent women should be included in the overall population control policy. Similarly, it would be expected that family planning programmes which were introduced in the 1940s would also target sexually active adolescents irrespective of

their marital status. This aspect is examined further in Chapter Five of this study.

1.2.3 Causes of adolescent sexuality and fertility

The literature suggests that the causes for the increase in early sexual activity among adolescents and early motherhood in Kenya are numerous. These are the early age at puberty, peer influence, drug abuse, family break-down, weak traditional controls and lack of parental guidance on sexuality related matters (Kumah *et al*, 1992; Kiragu 1991; Lema 1990b; Ocholla-Ayayo, 1992). A further reason given is the commodification of sexual services, whereby mature men such as teachers or 'sugar daddies'¹ use material things or money to lure adolescent girls into sexual relationships (Lema 1990b:196; Akong'a, 1988). The literature further points out that during their formative years, some girls are socialised into using their sexuality to satisfy men in order to gain access to economic resources and acquire material things (Lema, 1990b:192; Akuffo, 1987). Thus as was noted earlier, a pregnancy resulting from this is a side effect rather than a goal (Katigo, 1992).

The lack of strict laws to enforce norms on sexuality, and an effective education system of transmitting information on human sexuality and reproduction, have been cited in the literature as major causes for uncontrolled adolescent sexual activity and fertility. These are discussed in the following sections.

1.2.3.1 Law and the regulation of adolescent sexuality and fertility

One of the reasons advanced for the increase in pregnancies and sexual freedom among adolescents is the "transfer of traditional authority from the elders to central or local government and erosion of norms and values on such issues as virginity at marriage" (Ocholla-Ayayo, 1992:14). In traditional African societies, girls entered motherhood during their adolescent years because of early marriage. In those societies patrilocal marriage was used as a means of controlling women's sexuality "through control of time of marriage, initiation of age groups, prohibitions against adultery, against adolescent fertility etc" (Mbilinyi, 1985:114; Amadiume, 1987:70). The prevailing norms and beliefs conditioned sexuality and fertility, and signified the importance of female virginity at marriage. These control mechanisms ensured that the husband's family acquired the right to the sexuality, productive and reproductive

functions of the wife. Men were further assured of the paternity of children born within marriage. The construction of the sexuality of unmarried pubescent girls was therefore within the context of their status in their natal and future husband's family and in the community as a whole. In the contemporary Kenyan society, control of the sexuality of unmarried girls in the family is still aimed at preventing pre-marital fertility although for reasons different from those of traditional communities. Where a pre-marital pregnancy occurs, the pregnant girl and the women who were supposed to control her sexuality are blamed; this may explain why mothers are increasingly taking care of their unmarried daughters' children (Ocholla-Ayayo, 1992:15).

It is argued in the literature that contemporary statutory law has failed to provide alternatives to already eroded traditional norms, beliefs and values that controlled sexuality and fertility in general, and those that governed family life education in particular (Gachuhi, 1980:4; Akong'a, 1988). Whereas Akong'a, for example, posits that adolescent fertility today signals a moral crisis and reveals the existence of loopholes in statutory laws (Akong'a 1988:20), these inadequacies are not explored further.

An example of the lack of strict laws to enforce norms is seen in Acholla's study of adolescent fertility in Masana village (South Maragoli), which revealed that between 1970 and 1988 only girls from two families completed their education without becoming pregnant (Acholla, 1989). In these two families, the girls were literally locked up by their fathers who prohibited them from attending youth cultural gatherings such as dances, and from socialising with boys. In one of these families, the father faced considerable pressure from his peers to allow his daughters to attend the youth cultural gatherings because his peers argued that educating girls was useless, since they were likely to get pregnant while at school (Acholla, 1989:20).

The literature however suggests that current legal regulation of adolescent sexuality and fertility is situated within the overall framework of reproductive health law, whose objective is not to "control human sexuality but to provide an environment for safety and dignity" (Okoth-Ogendo, 1992:9). The role of law is seen in this context as providing adolescents with access to information and contraception services as a means of regulating their sexuality and fertility. However law may have a dual role,

in that it can either inhibit or facilitate "the provision of information education and fertility regulation services to adolescents" (Perl, 1979:6; Gachuhi, 1980:12). This dual role often leans towards restricting the provision of these services usually under the guise of protecting the adolescent's health from exploitation. This has thus contributed to the negative consequences of uncontrolled adolescent sexuality and fertility (Perl, 1979; Gachuhi, 1980). One solution often suggested is a review of existing legislation with the aim of sealing the extant loopholes, and ensuring that present realities and future trends/developments are catered for. This pre-supposes that statutory rather than customary law, has a role in regulating both sexuality and fertility.

1.2.3.2 Education and transmission of norms on sexuality and fertility

The literature indicates that in pre-colonial and early colonial Kenyan societies, traditional education was intended to prepare the youth for the tasks expected of them as adult members of the community (Njau, 1992; Wamahiu, 1992; Kenyatta, 1978). For example, prior to circumcision a Kikuyu girl was educated on her role as both wife and mother and that she would "bear many children, bring honour to her family and to the tribe." (Kenyatta, 1978:111). Traditional education began at childhood and was carried through to adulthood. During childhood, the child was "simply made to understand that the technical motions already familiar to him have still another dimension" (Erny, 1981:143, quoted in Wamahiu, 1992:22).

In traditional communities, norms on expected sexual and reproductive behaviour were transmitted through songs, stories, and myths and were part of traditional sex education which was a component of traditional education. Once initiated into adulthood, more knowledge was transmitted to the initiates by traditional educators. This was a process that was similar to that which, according to Foucault, existed in oriental societies in which 'sex-truth' comes through an initiation into secret knowledge from the master to the initiate (Foucault, 1978:59).

By 1970, studies had established that traditional education systems were rapidly being eroded, and that there was a need to fill in the 'gap' by developing new ways of transmitting information to adolescents. In addition, these studies revealed that "adolescents have a low level of knowledge about the facts of human reproduction, of demographic concepts and of populations trends" (Gyepi-Gabrah, 1992:15). One

reason given for this was that as a consequence of the shift of responsibility from the family to teachers and the state in family life education, it became increasingly impossible to identify who was responsible for the socialisation of adolescents into adulthood (Ocholla-Ayayo, 1992:1-2).

The main issues thus centred on whether Family Life Education (FLE) should be taught separately or integrated into the existing subjects. Thus according to Horsley,

"such an educational process will include many issues besides population, local, national and international economies; the changing roles women play in society; and traditional versus modern culture" (Horsley 1976, quoted in Gyepi-Gabrah 1992:16).

Accordingly, the educational system as a conduit of transmitting norms concerning sexuality and fertility ought to reflect the dynamic socio-cultural and economic structure of society (Gachuhi, 1980:14). However, due to wrangles between the church, the Government, and parents over the content of FLE, efforts at introducing it in the education syllabus have been slow (Gyepi-Gabrah, 1992:17-21). Educational institutions continue to have responsibility over the education of children whose school education starts at an early age² and is prolonged "well beyond the end of the major biological changes of puberty", into the tertiary levels of education (Gachuhi 1980:15).

The major criticism today lies in the fact that whereas Kenya has adapted to major socio-economic changes, the Government has failed to provide in its education system a substitution for the old traditional education systems which prepared the youth for their roles as future reproducers. Thus contemporary adolescents continue to be ill prepared for the challenges and realities of development and modernization, and are increasingly being forced to make choices pertaining to their sexuality which their parents never made (Gachuhi, 1980).

Due to this gap in family life education, adolescents have turned to other sources of information such as peers, popular music, pornography or romantic fictions and films, which often give them conflicting messages about their sexuality. For example, while the media (through songs, novels and films) and peers urge adolescents to promote their sexuality, medical doctors, parents, teachers and religious leaders urge

otherwise, even though adolescents are at a "stage [where] their sexuality is developing most rapidly and their minds and bodies are fine-tuned to sexual matters"(Weekly Review, 12/16/94:6; see also Ocholla-Ayayo, 1992:4; Barker & Rich, 1992:202; Katigo, 1992:6). Therefore on the one hand adolescents are portrayed as persons who are mature enough to express their sexuality and sexual feelings, yet on the other they are portrayed as immature persons who have no control over their sexuality.

According to Kumah *et al*, because adolescents are recipients of mixed messages, they remain ignorant of sexuality related matters and risks of unwanted pregnancy (Kumah *et al*, 1992:15). Moreover, cultural and religious factors make it difficult for them to discuss sexuality with their parents or elders especially due to a "deep-seated adult discomfort with discussing sexuality" with the youth (CPO/ICAF, 1992a:9; Barker & Rich, 1992:208). This makes modes of communication of information concerning sexuality and family planning to the youth almost non-existent.

Peers are an important source of information for most adolescents and studies have shown that "youths are turning to each other and developing a common set of beliefs regarding sexuality, family planning and abortion" (Barker & Rich, 1992:208). Thus, Knowledge, Attitudes and Practice (KAP) studies reveal that for female adolescents peers are a source of information although sometimes the information received is distorted (Kumah *et al*, 1992; Lema, 1990a & 1990b; Youri, 1993). Lema further found that part of the information received from peers by some of the school girls in his survey was that early sexual activity for girls was necessary to open up the 'birth canal', and for boys frequent sexual activity was necessary to cure 'wet dreams' (Lema 1990b:196).

There is a tendency in the available literature to glorify the 'good old days', without realising that traditional norms operated within a context that is different from the present one. This glorification also often explains other problems, for example the weakening control by elders over the sexuality and reproductive capacity of unmarried young women. Adolescent fertility therefore implies that a father has lost control over his daughter's sexuality, and in some communities this may mean loss of bride-wealth.

In contemporary society, young girls are continuously resisting norms and beliefs

that seek to control their sexuality and are getting pregnant "illegally" in the process (Mbilinyi, 1985:115), because they are not socially permitted to be mothers. Due to the erosion of practices where a single mother was married off as a second wife, Ocholla-Ayayo argues that this has contributed to the increase in single motherhood (Ocholla-Ayayo, 1992:4). Moreover, adolescent girls continue to assert their own demands and choices which have been conditioned by their historical material circumstances and this has at times resulted in the commodification of sexual relations (Mbilinyi, 1985:115).

1.2.4 Consequences of adolescent fertility

1.2.4.1 Physical and health consequences

Adolescent mothers constitute a considerable percentage of the total number of deliveries in the various hospitals in Kenya (Mumia, 1986; Oluande, 1986). However medical literature reveals that despite their biological maturity, adolescent mothers are physically immature for motherhood, which may result in illnesses such as toxæmia, anaemia, or in obstructed labour. Consequently, high maternal mortality and morbidity rates are found among girls within the age group between 15 to 24 years. Psychologically, an unwanted pregnancy may also result in mental distress or guilt for the adolescent mother (NCCCK, undated: 6)..

When faced with an unwanted pregnancy, adolescent girls have more often than not resorted to measures such as unsafe abortions, infant abandonment, or infanticide. Maternal deaths from unsafe abortions are common among this age group. For example, Kigundu (1986) points out that between 1973-83, 67.4% of the deaths from abortion reported at the Kenyatta National Hospital (Nairobi) were of women aged 25 years and below, with 24.2% aged below 19 years (Kigundu, 1986; Makhoha, 1980). Despite the unavailability of national statistics, the available data indicate that induced and unsafe abortions are commonly resorted to by young (including school age), single, unemployed women who have no means of support (Baker & Khasiani, 1990). Common methods include ingestion of herbal concoctions, drugs and chemical substances, or the insertion of foreign bodies or chemicals into the uterine cavity.

In addition, over the last twenty years women in the age group below 25 years

were a majority of the admissions into Kenyatta National Hospital for incomplete abortions (Rogo & Nyamu, 1989; Maranga, 1987). Similar findings have been recorded by various studies carried out in other hospitals (Aggarwal & Mati 1982; Lema, 1989; Lema & Kabeberi-Macharia, 1990). Thus bearing in mind the negative health consequences of early motherhood, research has shown that it is either best avoided; where this fails pregnant adolescents opt for childbirth or illegal abortions (Youri, 1993:9).

1.2.4.2 Social and economic consequences

As was noted earlier, medical and demographic statistics imply that adolescent mothers "by their very existence...constitute a moral, and hence a social problem" (Phoenix, 1991:22), especially since adolescence is conceptualised as a stage in childhood: and therefore from social and medical perspectives, adolescent girls should not be mothers. The construction of adolescent fertility is thus based on the widespread belief that adolescent girls are not ready for motherhood, and that adolescents as a group are immature and do not have the capacity to make independent decisions about their sexuality.

Adolescent mothers are often held responsible for the suffering of their children, especially since they are unable to meet the health, economic, social, emotional and spiritual needs of their children. This widespread belief is supported by statistics which show that "teenage pregnancy [is] associated with a variety of ante-natal and perinatal ills and with disadvantages for mothers and their children" (Phoenix, 1991:2). For example Gyepi-Gabrah claims that

"[t]he problems of children born out of wedlock to very young mothers in Africa cannot be over-emphasised. Most are born into extreme poverty and suffer from illiteracy, malnutrition, infections and parasitic diseases with severe consequences on their intellectual and learning capabilities" (Gyepi-Gabrah, 1985:24).

This implies that it is only those children born to unwed, young mothers who are likely to face all these consequences. This has been challenged by the 1992 Demographic Health Survey which noted that infant mortality can occur even where the mother is not an adolescent and therefore

"[t]here is no simple biological explanation for the relationship between infant mortality and age. Births to teenage mothers are often first births; first born infants face a higher risk of death than second or third born babies, regardless of the age of the mother. Moreover, poor living conditions and inadequate access to health and other social services are often the underlying causes of both infant mortality and early childbearing" (DHS, 1992).

Until December 1994, the policy of the Kenya Government was that pregnant school-girls were automatically expelled from the schools they were attending and very few had the opportunity to return to school (Kumah *et al*, 1992). The expulsion of pregnant girls from school has been a very high price for the Kenyan society to pay and "represents a waste of investment and a depreciation of the human capital of the nation" (Kumah *et al*, 1992:18). The punishment of expelling a pregnant school girl clearly illustrates that she is blamed for her actions. Furthermore as there are no affiliation laws or welfare policies in Kenya, this places a further burden of caring for the child on the girl or her family.

By 1988, it was estimated that about 10,000 girls drop out of school annually due to pregnancies (Ferguson, 1988) and by 1994 it was estimated that the numbers had increased to 13,000 (The Standard, 3/5/95:3). According to the Ministry of Education, 80% of all cases of female school drop-outs are pregnancy related (The Standard, 3/5/95:3) which has negative implications for the promotion of female education in the country, and in the long term affects women's integration into the economy. In most cases, the affected girls turn to working either as house-girls, or to prostitution especially where their re-integration into the mainstream of society through education, training or employment, is often constrained by cultural and structural factors. The effect of this alienation is to push them further into "apathy, high fertility and subsequent poverty" (Khasiani, 1985:15).

Within her family, the girl faces blame for bringing dishonour to her parents who feel ashamed for not ensuring her chastity. This creates a rift between the girl and her parents, or between the parents who may wish to marry her off quickly to avoid further embarrassment (Ocholla-Ayayo, 1992:15). However, a few adolescent mothers receive moral support from their families, who allow them to continue with their

education after birth and also care for their children. Although Kenya has few maternity homes, some parents seek the admission of their pregnant daughters into these homes "during the sixth month of pregnancy [and] six weeks after delivery the mother and baby are discharged, or the child is put up for adoption" (Gyepi-Gabrah, 1985:38).

As a consequence of the commercialisation of childhood, the unmarried adolescent mother also emerges as a bad mother. For example, Phoenix observes that the commercialisation of childhood in England (especially over the christmas season) has meant that good parenthood is measured by the number of expensive toys that a parent buys for their child, a luxury that most adolescent mothers cannot afford, as a result of which they are socially labelled as bad mothers (Phoenix, 1991:21-22).

In a developing country like Kenya, toys are a luxury and are not regarded as a necessary component of child rearing; in this respect the commercialisation of childhood is not so obvious. However, it is apparent with respect to education, shelter and health services which constantly pose challenges to parenthood. For example private schools - which charge exorbitant fees and claim to offer better education than the government run schools - have mushroomed all over the country, and parents go to great lengths to have their children attend these schools. Another example is seen in advertisements by insurance companies which often depict good parents to be those who invest in the future, by taking out an education policy for their children. This presupposes that one has a steady income from which to take out the policy and also meet the insurance payments. Where such measures of parenthood are applied, the unmarried adolescent mother emerges as a bad parent.

1.3 A COMMENT ON THE LITERATURE

The discussions presented in the literature reviewed in the above sections raise issues concerning the composition and roles of the actors, the nature of the processes and mechanisms utilised in regulating female adolescent sexuality and fertility. Further, the literature reviewed also suggests that fertility among unmarried female adolescents in Kenya is a relatively recent phenomenon, and that in pre-colonial and colonial societies the sexuality of adolescent girls was regulated in such a way as to

avoid pre-marital sexual activity and fertility.

Although there is abundant literature on the socio-economic and medical consequences emanating from adolescent sexuality and fertility, there is a paucity of literature on the role of law in the regulation of adolescent sexuality and fertility in Kenya. The scant literature however suggests that whereas law may have a role to play in the regulation of adolescent sexuality and fertility, it cannot operate in isolation and other non-legal regulatory mechanisms which come into play in this process should not be ignored. This therefore raises a number of questions namely, what are the rules, who sets them and what is the process of transmitting the said rules to adolescent girls. These issues are further investigated in this study which aims at reducing this paucity in the literature. Furthermore, the study sets the pace in analysing the role of law in this regard, and contributes towards a greater understanding of the plural nature of law and its relationship with other regulatory mechanisms and actors.

1.4 HYPOTHESES

The following hypotheses will be illustrated in the study:

- (i) That the regulation of sexuality and reproduction among unmarried adolescent girls is a function of a conflictual or symbiotic inter-relationship between law (both statutory and customary) and non-legal forms of regulation.
- (ii) That with modernisation and socio-economic transformations, certain aspects of traditional legal and non-legal regulation of sexuality and reproduction of unmarried adolescent Kenyan girls have transformed both in essence and form, thus creating a hybrid regulatory framework comprised of traditional, modern-traditional and modern regulation. Accordingly, sexuality and reproductive behaviour of adolescent girls cannot be effectively regulated solely by traditional mechanisms, but rather by mechanisms developed within the prevailing hybrid regulatory framework.
- (iii) That whereas both legal and non-legal forms of regulation may be dynamic and receptive to change, the dominant norms governing sexuality and reproduction among unmarried adolescent girls are not spontaneously altered.

- (iv) That the dynamic nature of the nuclear and extended family as primary socialising units greatly influences the non-legal forms of regulating sexuality and reproductive behaviour of unmarried adolescent girls.
- (v) That the reproductive choices that women make during their reproductive age are influenced by the regulatory mechanisms which come into play during their adolescence.

1.5 DEFINITIONS

The purpose of this section is to clarify terms commonly used in the study.

1.5.1 Adolescent

In defining who an adolescent is, the age at puberty is commonly used as the standard measure. Medical studies indicate that the age at *menarche* (first menstruation) for Kenyan girls has fallen to below 12 years and therefore it is likely that the period they spend between puberty and adulthood is lengthened (Lema, 1990:87). The World Health Organisation (WHO) applies different age categories, and defines *adolescents* as those persons aged between 10 to 19 years. This definition however overlaps with that of *youth* which refers to those aged between 15 to 24 years (Friedman, 1992).

The above age categories have certain implications for biological reproduction especially where motherhood is tied to social maturity rather than biological maturity. For example, although a person in the *youth* category is biologically capable of procreation, he or she may not be economically and socially ready to care for a family of their own and is therefore socially not an adult (Katigo, 1992: 2). The use of social maturity as a correlate of adult maturity "is an ill-defined social construct which is often described as if it is an inevitable correlate of maturity in years" (Phoenix, 1991:25-26).

In this study adolescent shall refer to that person who has achieved puberty but has not reached adult maturity, within the definitions and constructions of the community he or she is living in. Accordingly, where different categories are used to define adolescents in specific contexts these are pointed out in this study.

1.5.2 Adolescence

The term Adolescence has often been used to denote the transitory stage between puberty and adulthood, which is characterised by changes in the body, mind and in social relationships (Friedman, 1992:2; Koso-Thomas, 1992a:2). Whether this transitory stage should be referred to as adolescence depends on the context in which the term is applied. According to Katigo, the term adolescence is a technical term which is not known to many African languages since the age limits are different and transition from one stage in life to another is dependent on a number of factors and not necessarily age. For example, in some African communities there is no adolescence stage since upon circumcision the initiates become adults, hence moving from childhood to adulthood (Katigo, 1992:2).

However, Shorter (1978) disagrees with this contention, and argues that it is a fantasy to assert that in Africa there is no stage of adolescence, when in reality there exists a transitory stage when an individual passes from childhood to adulthood upon initiation, and this transitory stage no matter how short, is the adolescence stage. For example, in some societies the transitory stage after circumcision is prolonged for male initiates, whilst that of females is shortened due to early marriage hence adult status is achieved earlier. Shorter further postulates that "adolescence is a psychological phenomenon that applies to all human beings during the period of development, and in early physical maturity all human beings tend to react in comparable ways" (Shorter, 1978:188). Hence the goal in all societies is adult status (Gachuhi, 1980:4).

It is contended for purposes of this study, that adolescence as a transitory stage in life, is socially constructed and therefore, it is not possible to come up with a consistent delineable definition especially since it is both "a cultural and individual phenomenon.. a process of adjustment and learning" (Gachuhi, 1980). Bearing this in mind, the general definition of adolescence as applied in this study is that adolescence is that transitory stage between childhood and adulthood. However, as in the use of the term adolescent, parameters of defining this stage in the specific context it is used within the study will be given.

1.5.3 Sexuality

Sexuality has been defined as "the socio-cultural construction of sex, shaped and defined by the physical, language and [socio-economic] character of each society" (McFadden, 1992:168). This definition of sexuality falls within the social construction theory, which postulates that sexual feelings and activities, opinions about sexuality, and sexual identities, are not biologically determined, but are products of social and historical constructions (Richardson, 1993:78). This study adopts the social construction theory in defining sexuality, and posits that this is crucial in understanding the process of regulating sexuality and fertility in the heterogeneous Kenyan society. Further, the social construction theory is useful in determining who the actors are, what norms are applied, and what mechanisms are used in enforcing these norms. It would indeed be erroneous to define sexuality as one entity especially where there are numerous social and cultural practices and values, in matters concerning *inter-alia* sexual behaviour, its social significance, and the sexual significance of various parts of the human body.

1.5.4 Reproduction

In using the term reproduction³, the study refers to two distinct processes, namely biological and social reproduction.

(i) *Biological reproduction* refers to the production of human beings through biological means, i.e. from conception-pregnancy-childbirth. When referring to the biological reproduction process, the terms procreation and fertility are constantly applied in this study.

The term procreation is often used to denote the whole process of biological reproduction, that is from conception to birth. This has generated criticism from western socialist feminists who argue that use of procreation in this manner, fails to take into consideration the fact that human beings reproduce themselves both socially and biologically and both of these processes are a form of procreation (Jaggar, 1988: 156). According to Jaggar, procreation ought to encompass various processes from conception, gestation, birth, physical child care, to the socialisation of children into their respective adult roles. In this process one is able to determine the rules regulating procreation, the sexual division of labour within and outside procreation, and the

relationship between production and procreation within the context of the society within which it takes place (Jaggar, 1988:75). This definition of 'procreation' as encompassing both biological and social reproduction will however not be used in this study. Procreation will be applied in reference to the biological reproduction process from conception to birth.

Fertility refers to the procreative outcome, that is children born to a woman and is different from fecundity which is the ability to conceive.

(ii) *Social reproduction* is the process through which human beings are 'reproduced' through social means. This process which includes child-rearing, socialisation processes and reproduction of labour for the labour market process, ensures the reproduction of the next generation to fit into their productive and reproductive roles. (O'Brien, 1989:8; Barrett, 1988:21). To encompass the entire social reproduction process the term socialisation is used in this study.

1.5.5 Nuclear and extended family

The term *nuclear family* refers to the smallest family unit that is composed of a man and his wife or wives and their children. The intra-family relationships within the nuclear family are often determined by the rules and customs of the wider extended family comprising many nuclear families with a common descendant. The term *extended family* is used to distinguish it from the nuclear family which exists as a separate social unit. The extended family is essentially a non-unilineal group incorporating the unborn, the living and the departed, and is distinct from descent groups. The departed members of the family continue to be remembered by being 'reborn' by their children or close relatives. Hence there is a direct link between the departed and the unborn as the latter are named after the departed to ensure the continuity of the family (Mbiti, 1969).

1.5.7 Customary Law and African normative rules

The term customary law is often used to describe a unified non-state unwritten law. However, a number of researchers have challenged the existence of customary law and claim that "the notion of unchanging custom or even customary law was a myth of colonial era, while customary law itself was a product of colonial encounter" which created a new form of law within the context of the colonial state (Merry, 1988:875).

It is therefore necessary to distinguish between colonial customary law, laws of pre-colonial communities and present day customary law. In so doing this study adopts the contextual definition of customary law as illustrated by Rwezaura (1992), who divides customary law into four categories to dispute its apparent unity.

Firstly there is *customary law proved in evidence* in courts which summon experts on customary law to give evidence where an issue on customary law arises. The second category is *customary law as precedent* which is developed by the courts hearing customary law cases. In Kenya, this process has been facilitated by the Restatements on Customary Law of Marriage and Divorce which have been used by the courts as the authorities on customary law (Cotran, 1987). The third category is *customary law decreed* by state bodies such as Chiefs, Councils and Native Authorities which was a common feature in the colonial era; the fourth category is customary law as *living law*, which is dynamic and develops from daily social and economic interaction and ensures the day-to-day conditioning of members of the community (Rwezaura, 1992). The above categories thus highlight the different perspectives of customary law, and provide a platform from which to contextualise the application of customary law for this study.

However, this study uses the term *normative rules* instead of *living law* in referring to the body of rules that regulate the day to day social conditioning irrespective of the historical period and further distinguishes these rules from the perceived customary law. Normative rules, have the power to coerce behaviour among the specific actors. Further, normative rules may apply to actors in a particular social system for example the family (including the clan) or the school but the interaction with the individual actors may differ.

1.5.8 Patriarchy

The concept of patriarchy has become increasingly controversial and as such the meaning is quite unclear (Smart, 1984). The term patriarchy was coined to "describe a particular form of household organisation in which the father dominated other members of an extended kinship network and controlled the economic production of the household" (Barrett, 1988:10).

Patriarchy has been applied in feminist discourse particularly to illustrate the link

between women's oppression and capitalist production. Thus according to Hartmann, patriarchy is " a set of social relations between men which have a material base" and if the material base rests in men's control, they shall have control over women's labour power, their bodies, sexuality and reproductive capacities (Hartmann, 1981:14). Socialist feminists argue further that there exists an apparent intertwined relationship between patriarchy, racism, imperialism and capitalism which have continued to control women's sexuality and reproductive labour (Jaggar, 1988:127; Tong, 1989:175; see also Mitchell, 1973; Hartmann, 1981; Young, 1981).

Patriarchy is also hierarchical and men of different classes, races or ethnic groups have different places in this hierarchy. Despite being in different economic status men are united in their shared relationship of dominance over their women and depend on each other in order to maintain this domination (Hartmann, 1981:14-15). Today patriarchal control over both men and women has assumed different dimensions particularly due to increasing modernisation whereby new actors, new values and laws are being introduced into the society. The use of the term patriarchy in this study is within this context.

1.5.9 Bridewealth

The term bridewealth is used in this study to refer to cattle, cash or crops that are part of the payments made by the family of a groom to the family of a bride during marriage. This creates links between the families of the bride and groom and in some communities this is crucial in the transmission of property. The term bridewealth is different from dowry which is the marriage gift given by a bride to her groom during marriage.

1.6 STRUCTURE OF THE STUDY

The discussions and analysis of findings of this study are presented in three sections and a total of eight chapters.

The first part of the study deals with the theoretical perspectives within which the study is rested. Chapter One introduced the aims and objectives of the study. It also provides a literature review on adolescent sexuality and fertility in Kenya and the hypotheses for the study. The chapter thus sets the platform on which the theoretical

and methodological perspectives on collecting and analysing data for this study are developed.

Chapter Two discusses the theoretical and methodological perspectives that underpin the collection and analysis of the data for this study. This is carried out in four parts. The first part of the chapter provides an overview of contemporary debates on sexuality and reproduction, and reviews the legal issues surrounding regulation of female sexuality and reproduction. The second part addresses theoretical perspectives in research on law and in particular legal pluralism as an approach of understanding the workings of law; perspectives used in researching on adolescent sexuality and fertility; and feminist legal research methodologies. The third part of the chapter addresses the process of data collection and the approach adopted by the study. The final part of the chapter develops an analytical framework to guide the analysis of the data collected in the empirical fieldwork.

Part two of this study presents the empirical findings of the research. Chapter Three examines the processes and forms of regulating female adolescent sexuality and fertility within the family between 1900-1930, through stories of two women who are now aged between 80 - 100 years and were in their adolescent years during this period.

Chapter Four focuses on the stories of two other informants who are now aged between sixty (60) to sixty-five (65) and were adolescents during the colonial period between 1920-1963. The chapter addresses the changes in the processes of regulating sexuality both in the families and communities of the informants and in other communities. It further addresses the efforts made at creating customary law, which began in this era and which were later to have implications for the regulation of sexuality and fertility especially in the post-colonial era.

Chapter Five focuses on the stories of the two youngest informants who are now aged twenty-nine (29) and thirty-two (32) years and were adolescents in the late 1970s and early 1980s. The chapter goes beyond the adolescent stage of the informants, and discusses contemporary issues regarding the actors and processes of regulating adolescent sexuality and fertility. The experiences of the informants in Chapter Three and Four are also examined in their capacities as grandmothers and mothers. Further,

this chapter addresses the role of the state, religious institutions and family planning agencies as dominant actors and the ensuing conflicts between the actors in the different regulatory processes.

Chapter Six specifically highlights the extent to which statutory law interacts with present day customary law in the regulation of sexuality and fertility in Kenya's legal system. This chapter therefore addresses laws on sexuality and fertility in Kenya and the extent to which statutory laws intervene in the regulatory processes.

The third part of the study comprises two chapters. Chapter Seven focuses on the emerging issues surrounding the regulation of adolescent sexuality and fertility based on the analysis of the data collected. In particular the chapter looks at the inter-linkages between law and non-legal mechanisms of regulating sexuality and fertility and the roles of the actors. Chapter Eight discusses the implications of the findings and proposes directions for future research.

CHAPTER TWO

THEORETICAL AND METHODOLOGICAL PERSPECTIVES IN THE COLLECTION AND ANALYSIS OF DATA

2.0 INTRODUCTION

Chapter One carried an overview of the literature on adolescent sexuality and fertility in Kenya, and the role of law in regulating both. It provided insights into the various debates concerning why adolescent female sexuality is regulated, how and in whose interests. The chapter also outlined the objectives of this study which *inter alia* include the investigation of the role of law in regulating social behaviour, and in particular, regulating an intimate aspect of women's lives. It is therefore necessary for the study to develop and apply appropriate theoretical and methodological perspectives, and devise suitable research methods if the objectives are to be achieved.

This chapter discusses the perspectives that guided the data collection and analysis for this study. It provides an overview of contemporary debates on sexuality and reproduction, and reviews the legal issues surrounding regulation of female sexuality and reproduction. Thereafter this chapter addresses theoretical and methodological perspectives in research on law, and those used in researching on adolescent sexuality and fertility. The perspectives that guide research on adolescent sexuality and fertility and feminist legal research methodologies are also discussed. The chapter further examines the data collection process and the approach undertaken for this study is presented. Finally, an analytical framework is developed to guide the analysis of the data collected.

2.1 THEORETICAL PERSPECTIVES IN SEXUALITY AND REPRODUCTION

Discussions surrounding sexuality and reproduction have often been carried out within the context of advocacy for women's sexuality and reproductive rights, and the need for women to be accorded adequate health services to meet their reproductive health needs (Petchetsky, 1990:1). Women's sexuality and reproductive rights are

contextually placed within the call for recognition of women's rights as human rights by women's rights activists "who have begun to reconceptualize human rights from the perspective of women", thus challenging the traditional frameworks of human rights (IWHR, 1994:1)⁴. These rights include the "right to decide whether, when, and how to have children - regardless of nationality, class, race, religion, disability, sexuality or marital status - in the social, economic and political conditions that make such decisions possible" (Petchetsky, 1990:1).

Whereas women are the bearers and carers of children, the extent to which they exercise and enjoy the rights mentioned above and make informed reproductive choices is continuously influenced by political, economic, medical, social and legal factors. Further, despite the different socio-economic, political and cultural contexts within which reproduction takes place, reproduction continues to have both a political and demographic significance. Thus increasingly interested parties (other than women), for example medical doctors, politicians or demographers, acquire a 'legitimate voice' in women's reproductive functions which "has served to suggest that the issue is not one of...women's rights and freedoms but rather one on which the morals or moral discourse of others have a legitimate bearing" (McLean, 1989:228).

This section addresses the major issues concerning sexuality and reproduction within the context of contemporary discourses which are dominated mainly by feminist writers and social scientists.

2.1.1 Sexuality

A general analysis of the discourses surrounding sexuality reveals the creation of new diversified power centres and the power relations emanating therefrom which in turn influence the construction and processes of regulating sexuality (Foucault, 1978:93). These power centres include medicine, psychiatry, criminal justice, "and the complex deployment of the network connecting them" (Foucault, 1978:34). This network is created through interventions by *inter alia* religion, law, culture, psychological theories, medical definitions, social policies, education and media that have historically shaped the construction of sexuality and which may vary from society to society.

By addressing the historical nature of the construction of sexuality, one can

distinguish between the social and self-definitions of sexuality and the struggles in the regulation of sexuality between those who have the power to regulate and those who resist such regulation. The historical construction of sexuality therefore

"brings together a host of different biological and mental possibilities - gender identity, bodily difference, reproductive capacities, needs, desires, fantasies - which need not be linked together and in other cultures have not been" (Weeks, 1986:25).

Therefore sexuality emerges as a product of many influences and social interventions which have occurred throughout history and manifests itself differently in society⁵. Further, there are many sexualities such as class, gender and racial sexualities, and the sexualities of struggle and choice. Thus the invention of sexuality is "a continuing process in which we are simultaneously acted upon and actors, objects of change and its subjects" (Weeks, 1986:40-41).

An example of the resistances and struggles in the construction of sexuality are the discourses that challenge the apparent unity of sexuality and heterosexuality as the dominant norm, and patriarchal dominance over female sexuality. Feminist studies have thus shown that female sexuality is more regulated than male sexuality, and continues to be under scrutiny especially due to intense contests between the "constructed fear of female sexuality as well as the constructed material dependence of girls and women on men" (Tambiah, 1994:1).

Historically, discourses on female sexuality have particularly been dominated by contestations of the western feminist movement. These have politicized reproduction through the call for women's autonomy over their sexuality and bodies. This is especially so in matters concerning free abortion, stringent sexual assault laws, contraception and motherhood, female prostitution, pornography and in the preferred choice of sexual orientation (Tong, 1989:95). Moreover, heterosexuality as the dominant norm is challenged in these movements because of the specific problems faced by those women in either same-sex or heterosexual relationships.

Feminist reproductive rights activists thus argue that all stages of reproduction have been under patriarchal control from time immemorial and that this perpetuates the oppression of women (Stichter & Parpart, 1988:6; Tong, 1992:72). This control is

evidenced by the use of male constructions of female sexuality; this in turn permeates virtually all aspects of women's lives and influences the way women feel about their bodies, appearance, the clothes they wear, their education, work and health (Richardson, 1993:75). Feminists therefore argue that since men have defined female sexuality to suit their own needs and interests, women must find ways of re-conceiving female sexuality in the "image and likeness of women" (Tong, 1992:72).

The pertinent issues in the construction and regulation of female sexuality are explored further below. This discussion is carried out within the socio-economic and cultural contexts that influence the regulation of sexuality (Weeks, 1989). Further it is posited here that within these contexts emerge cultures of resistance.

2.1.1.1 Construction of female sexuality

The need to control women's sexuality may occur for different reasons. For example, Sen (1984) argues that the control of sexuality of Indian women is associated with the appropriation of their tasks as producers and biological reproducers, which guarantees paternity of any offspring. In addition female sexuality becomes closely regulated in marriage so as to ensure paternity as a means of facilitating patriarchal control over the accumulation of property and wealth.

The cultural construction of female sexuality may be reflected in the status of women and the social value accorded to the birth of a female child. For example, Kabira argues that amongst the Kikuyu communities of Kenya the birth of a girl was greeted with four ululations whilst that of a boy was greeted with five ululations because it warranted more celebration (Kabira, 1992:4). Another example which illustrates the value accorded to a female child is the use of amniocentesis (which *inter alia* detects the sex of an unborn child) as a tool of promoting female feticide in India (Sen, 1994).⁶ Thus the status of the mother within her immediate and extended family is devalued when she gives birth to a girl. Yet, paradoxically the honour of the immediate and extended family hinges on the sexuality of the same girl (whose birth was less celebrated); she is nevertheless socialised into the desired sexual behaviour in the hope that she will not compromise family honour through irresponsible sexual behaviour.

Within the Kenyan context culture has been used to control female sexuality and

fit it into the male construction of female sexuality. This is revealed in the discourses about women's dress and physical appearance which illustrate how sexuality is constructed, and by whom. These discourses have more often than not been carried out in the context of retaining cultural values and identity, which allegedly are at risk of elimination by western values and fashions.

Female sexuality and mode of dressing

There are cultural differences concerning *inter-alia* sexual behaviour, its social significance and the sexual significance of various parts of the female body; hence differences in the nature and extent of control of female sexuality. Thus whether or not a woman's breasts, thighs, or hair are considered to be sexually arousing and therefore need to be covered, depends on the cultural or religious context within which this is happening. In most western cultures women's breasts are regarded as sexually arousing and public exposure (even when breast-feeding), is not socially condoned. In contrast, among the Giriama and Digo communities of Kenya, women's breasts are primarily regarded as a source of nourishment for young ones and are therefore left exposed to provide easy access for babies to suckle, and this exposure is not considered morally wrong. However, in some African cultures women's thighs are regarded as sexually arousing and ought to be covered, hence the wearing of mini-skirts is not socially approved. A woman wearing a short dress or trousers is suspected to be a sex-worker, or is generally regarded as a person of loose morals (McFadden, 1992:172)⁷. This is in contrast with many western cultures where the wearing of mini-skirts is not considered delinquent.

The issue of whether women should wear trousers has roots in the colonial era, when trousers were regarded as a symbol of authority and were worn either by male missionaries, administrators or teachers. If a woman wore trousers she was considered to be usurping patriarchal authority and was therefore viewed with circumspection. Since the 1960s, the discourses on women's dress have been dominated by men who argue that Kenyan women ought to dress as 'African' women and not ape western women. This argument is rife with contradictions because the traditional African attire (for men and women) barely covered much of the body and in fact western attire covers what was traditionally left exposed. However, men are not seen to be aping

western men if they adopt the latter's attire, which further highlights the contradictions in the whole debate about retaining cultural values and traditions.

The negative attitude towards women's dress has also been used to demean fashionable career women who have acquired an independent economic status (Obbo, 1980:10-15). However, these criticisms are evidence of other deeper issues: because they have entered and prospered in what is supposed to be a male domain, economically independent women are often criticised, perhaps in a bid to relegate them to a subordinate status within that domain. Obbo further argues that in the East African context, the debates are a clear example of men looking for compensation for their abandonment of cultural practices in favour of western practices, by requiring that women be loyal to the customs that the men have abandoned (Obbo, 1980:11). This reinforces patriarchal control over women's sexuality through insistence that women remain loyal to what are perceived especially by men to be the prevailing cultural values, traditions and practices (Vock, 1985:185).

Religion also plays an important role in controlling female sexuality through strict dress codes, limited movement and activities in public. Christian religious beliefs (based on the old testament) for example, restrict a woman from wearing male attire, and this has been extended to include the wearing of trousers (including jeans). In addition some Muslim women, and women from certain Christian religious sects, have to abide with religious dress codes which require that they cover their hair and most parts of their bodies which should only be seen by the men and women in their households, and not by outsiders.

In the Islamic construction of sexuality, Muslim women are portrayed as being very sexual and their sexuality is more regulated than that of non-Muslim women. The control of female sexuality is also evident in the rigour with which *purdah*⁸ is observed and the strictures against women being seen in public unless they are appropriately covered. A Muslim woman who is not properly covered, is likely to be harassed because of revealing what are construed to be sexually arousing parts of her body (Dahl, 1992; Afshar, 1987).

'Purity' and female sexuality

The belief that sexually transmitted diseases are a woman's disease, perpetuates the

widespread impression in and outside Kenya that women are "sexually unclean and that therefore sexually transmitted diseases are caused by women" (Mcfadden 1992:160). These views have particular implications for the construction of female sexuality, and the link between sexually transmitted diseases (STDs) and the transmission of the HIV virus. Whereas mature women are portrayed as the carriers of STDs, virgin female children and girls are paradoxically envisioned as the holders of the 'magic cure' for the same diseases. This has resulted in the exploitation and abuse of the sexuality of female children and adolescents especially by men who hold the misconception that sexual intercourse with a virgin girl would automatically cure an STD (McFadden, 1992:160; Kabeberi-Macharia, 1994b). In addition the Centre of Population Options (CPO) has noted that,

"[m]any young women in sub-saharan Africa are at a particular risk of contracting STDs due to their involvement with sugar daddies' - older men who often believe that having sexual relations with a young or virgin girl will cure an STD or prevent exposure to HIV/AIDS" (CPO, 1994 2).

The roots of this belief are unknown, but nevertheless it is a grave threat to the health of female children and adolescents and has important implications for the manner in which their sexuality is regulated. However, no studies have been carried out to establish whether there is a link between the prevalence of STDs among adolescent girls and male misconceptions about female sexuality being a remedy for these ailments.

Another link between female sexuality and purity is seen through the taboos that are "associated with femaleness and female sexuality, most of which are very indigenous to African patriarchal society" (Mcfadden, 1994:57). One of the taboos is associated with menstruation which, irrespective of the mode of production, has been used to remove women from the production process (Mcfadden, 1994:57). For example, amongst the pastoral Hima of Uganda, menstruating women are prohibited from milking cows, touching their udders, drinking milk from fertile cows or even going near them, because their fertility⁹ will negatively affect the cows' reproductivity. They are only permitted to drink milk from an old cow which is deemed to be past its reproductive stage (Elam, 1973:60). Accordingly, women's reproductive functions

are regarded as a threat to the survival of the cattle (which belong to the patrilineal line) and hence the survival of the community.

African feminists, social workers and medical doctors have brought the sexuality of African women into the public domain through discussions on the emotional and medical dangers of *rites de passage* such as female circumcision or facial scarring (Koso-Thomas, 1992a; Wamahiu, 1992). Among the practising communities girls who have not undergone these rites are considered to be polluted or impure. These *rites de passage* usher the pubescent girl into womanhood - thus 'making her a woman'- and have since pre-colonial Kenya been used to construct female sexuality (Kenyatta, 1978; Hosken, 1988; Ahlberg, 1992). These practices are often inherent in the customs and beliefs of the practising communities who hold the view that the rites are crucial to the social cohesion of the community. Further, other reasons given for the continuous practice of female circumcision include "[avoidance of] pollution, foul smells, infertility, uncontrollable sexuality and promiscuity" amongst women, and that removal of some female sexual organs is necessary to facilitate childbirth and enhance male sexual satisfaction (CPO/ICAF, 1992b:1).

The health consequences of female circumcision are enormous: women have suffered from various gynaecological, obstetric and genito-urinary complications, and emotional harm. A growing concern today centres on the fact that the surgical instruments used in the circumcision and other *rites de passage* are often unclean and have been known to transmit the HIV virus. Despite risk awareness campaigns, the health consequences of female circumcision are yet to sink into the consciousness of Kenyan communities which continue to carry out the rite (PATH/MYWO, 1993; Koso-Thomas, 1992b; McFadden, 1992).

2.1.1.2 Law and sexuality

In order to identify and analyse the role of law in regulating adolescent sexuality it is crucial from the outset to understand the various issues raised in the literature concerning this role and the different stages in which regulation takes place. Generally the legal regulation of sexuality is carried out within the context of preventing immorality and public indecency. However as Hart points out there is a need to draw a line between the two, for example what is indecent in public is not necessarily

immoral in private (Hart, 1991:44). Thus for example, whereas prostitution in itself is not a crime, law seeks to protect the public from what is considered to be offensive or injurious to public morality by removing the prostitution from the streets (O'Donovan, 1985:100; Hart, 1991:45) .

In discussing the role of law in regulating sexuality, Sheridan posits that this is normally carried out through language which tells the individual what "he desires by forbidding it" (Sheridan, 1980:181). Thus according to Foucault, the deployment of mechanisms in regulating sexuality is

"quite different from the law, even if it is locally dependent on procedures of prohibition, has ensured through a network of inter-connecting mechanisms, the proliferation of specific pleasures and the multiplication of disparate sexualities" (Foucault, 1978:49).

Weeks (1986) further breaks down the laws on sexuality into two: the 'who' and the 'how' restrictions. 'Who' restrictions identify the persons who are permitted to have sexual relations, and may be based on gender, race, age, class, kin, caste etc. 'How' restrictions indicate the rules aimed at regulating sexuality and these are either formal or informal, legal or extra-legal (Weeks, 1986:26). The formal laws within this definition include state laws that regulate bodily autonomy and construction of sexuality. For example laws on age of consent, sexual intercourse, medical examination and procedures, child birth, and those making non-heterosexual activity a criminal act (Lacey *et al*, 1990:305). The greatest challenge on the role of law in regulating sexuality and reproduction has come from feminist writers and these challenges are considered below.

2.1.1.3 Feminist challenges to the laws on sexuality

The role of law in regulating social life has been challenged by feminists¹⁰ who argue that due to the dominant position that men have in society, male views of the world are accepted as normal and a part of the natural order of things, even by those who are in fact subordinated by it (Dahl, 1988a:13). Thus law is part of male cultural hegemony in that it reflects the male view of the world and how society should be regulated (Dahl, 1998a; Smart, 1991; Maboreke, 1990). The continued dominance of male values in law is because law is structured on patriarchy and therefore it "sees and

treats women the way men see and treat women" (Mackinnon, 1983:644). Thus feminists continuously challenge the meanings and visions of law "which can be strategically engaged with or resisted, and which can be seen as an integral part of social organisation" (Dawson, 1993:155). The object of these challenges is primarily to transform the conditions that define women's lives, thus making law a 'site for struggle' for feminists as they continue to reject the sexualisation and hierarchies that exist in law (Smart, 1986:109, 122). Law continues to be a site of struggle, especially due to its non-unitary nature and the diverse ways that women experience it, which makes it important to "distinguish between the law and the effects of the law and legal processes in order to identify the contradictions which allow space for change" (Smart & Brophy, 1985:17)¹¹.

One of the challenges posed by feminism concerns the dualisms existing in law in which women are portrayed as the 'other' of men especially since male experiences are the dominant ones used in the enactment of law, hence the view that 'law is male' (Olsen, 1988). Women are often fitted neatly into these dualisms, which makes the call for equality with men under the law a futile effort, since it legitimises the dominance of male values in the law (Scales, 1986; Smart, 1986:120, Maboreke, 1990:4, Wishik, 1986:68).

In the law of sexuality, a dominant dualism is that of 'reason' which is attached to the male pole, and 'emotion' to the female: hence "reason is valued and emotion is decried" (Duncan, 1994:10). This dichotomy is important in understanding laws of sexuality and

"construct[s] the male speaking subject and the female Other around two binary opposites, using particularly the notions of reason, consent and the logic of desire to construct the power of the subject and to negate the subjectivity of the constructed Other" (Duncan, 1994:6).

Feminists therefore challenge the male construction of sexuality which dominate laws of rape, incest and prostitution, and which are a symbol of the sexist nature of society. For example, it is posited that laws on rape have sought more to protect the "inviolability of a man's property than the integrity of a woman's body" (Tong, 1984:90). This is illustrated in different ways. Firstly, by the non-recognition of rape

in homosexual relationships, or that women can rape men, or that rape within a marriage can happen. Secondly, as Tong argues, the emphasis on penetration is based on male desire to control reproduction, thus a rapist robs a father of his daughter's virginity or a husband of his wife's reproductive capacities. The effect of this is that the rape victim is regarded as 'damaged goods' and therefore no man would want her (Tong, 1984:93).

The way law treats rape victims is illustrated by rules of evidence which place the onus of proving that the rape did actually happen on the victim which in turn may cause her further trauma. Thus Tong argues that in contemporary legal thought the victim is portrayed either as a temptress or a liar especially where issues of consent and resistance by the victim are raised (Tong, 1984:100). This highlights the paradoxes in the law of sexuality which ideally is meant to protect the victim but at the same time reasserts "through its constructions, the power of the speaking male subject" (Duncan, 1994:28). Another criticism is that the laws on prostitution have been used by police in the indiscriminate harassment of women who are suspected of loitering with the intention of prostituting. Whereas these laws have driven prostitution off the streets they have failed to protect sex workers from exploitation in private by call girl agencies which employ them (O'Donovan, 1985:102).

2.1.2 Regulation of fertility and construction of motherhood

In the same way that sexuality is constructed on male terms, western feminists argue that it is male perceptions of the 'good mother' that have been used in constructing motherhood. These arguments are pivoted on the value attached to motherhood and women as mothers, how women's reproductive capacities are regulated, and by whom. Dworkin, for example argues that in both the private and public sphere women are begetters of children, and in both cases motherhood is not valued. In the private sphere the husband reaps children from the woman, whilst in the public sphere reproductive technology is used to do the same, e.g. in surrogate arrangements where poor women lease out their wombs to rich women (Dworkin, 1983:186).

Motherhood and reproductive technologies

By the 1970s, western feminist reproductive rights activists brought issues of reproduction into the public and urged women to seize control over their reproductive capacities through the use of contraceptive technologies. This was considered a means of gaining equality with men and at the same time eliminating male control over women's reproductive capacities. It was argued that by making sexuality an "equal rights issue" (Jeffreys, 1990: 236), women would be able to oppose their subordination. However, as reproductive technology became more and more sophisticated, control passed onto the professional experts, who were mostly men. New arguments thereafter emerged which connected these new technologies with oppression of women and imperialism (O'Brien, 1989; Hanmer, 1993:224). In this respect, activists now urged women to temporarily seize "control of human fertility - the new population biology as well as the social institutions of child bearing and rearing" (Firestone, 1979:19),¹² if they were to regain ownership of their bodies.

The feminist critique in the 1980s began to concentrate on contraceptive technologies (e.g. the Pill or IUD), abortifacients, sterilisation, genetic engineering. Thus

"critical arguments center[ed] on the social experiences of women and the social structures in which gender relations are embedded, contesting the truthfulness of claims of safety for both contraceptives and interventions in conception and, even more basic, of reproductive science as infertility treatment" (Hanmer, 1993: 231-232).

The inter-relationship between reproduction and production is apparent in the increasing interference by reproductive technology in women's reproductive capacities. This interference occurs in western and non-western societies. For example in India technology has interfered with women's bodies through the use of amniocentesis, which as noted earlier, has caused a great outcry especially since women opt for amniocentesis to determine the sex of the foetus and thereafter opt for abortions if the foetus is a female. Female feticide therefore becomes an option for women who are caught up in the cultural desire for male rather than female children (Sen, 1994).

Further criticism of new reproductive technologies by feminists has focused on the

ways in which these are used to perpetuate control of women's bodies by population experts and medical doctors. Thus reproductive rights activists have argued for women's right to bodily integrity, which accords women the right to no interference with their bodies without their consent (Hellum, 1989: 30; Lacey *et al*, 1990:306).

Moreover, it is argued that these new technologies are continuously used to coerce women into or out of motherhood depending on their social and economic contexts. According to Hanmer, the selection of who can or cannot give birth continues in both western and non-western countries. In Britain for example, factors such as race or social class, sexuality, disability and age "weight women's chances of being selected as a 'fit' or 'unfit' reproducer, and a range of techniques are being utilised to ensure the appropriate outcome" (Hanmer, 1993:244).

Motherhood and nature

Due to their dual roles as biological and social reproducers, women's reproductive functions are often linked to nature, especially since they have to sustain the new life they produce and ensure the continuous supply of food for sustenance. Thus as Mies argues, women in the reproduction process cooperate with both their bodies and the earth "to let grow and make grow" (Mies, 1981:11). However, this construction has been used to undermine women's role in biological reproduction and at the same time ensure patriarchal accumulation and control over both material and human resources (Dube, 1989:38). Dube uses a 'seed' and 'earth' analogy used in many parts of India to illustrate the linkages between women, biological reproduction and nature. The man provides the seed which he sows into the earth (woman), and the woman (earth) nurtures the seed (offspring), a process which continues even after childbirth. In this regard, a child has blood relations with its father (the seed giver) but not with the mother (the nurturer), since it is the seed that provides the blood for the offspring.

The seed and earth analogy seeks to distinguish who can and who cannot continue family ties especially for purposes of transmission of property (Dube, 1989:23). Since women are receivers and not givers of the seeds, they cannot transmit blood ties to their children. Men are therefore more integrated than women in the reproduction process. Following O'Brien (1989), women are 'alienated' from the process of reproduction since they are only fields, having no control over their reproductive lab

our power and their offspring (Dube, 1989:44). Yet, paradoxically, women's reproductive capacities are viewed positively in the sense that they ensure the continuation of the husband's family.

Among pastoral communities such as the Hima of Uganda, women's biological and social reproductive functions compete with the sustenance of the herds. Since women have to feed their children or babies, they are inclined to take more milk from the cows, leaving calves with nothing or little to survive on. The eventual result is that the herd and the community's survival is jeopardised. Although they are potential reproducers who ensure the growth of the community, women are also regarded as potential destroyers of the same community and means of livelihood. Thus mothers

" are compelled, in addition to balance their natural interest in their own young with a socially prescribed care for the young of cattle: both offspring are indispensable to the group's survival" (Elam, 1973:52).

Hima girls are brought up with the knowledge that on attainment of puberty, thus becoming potential mothers, they are not permitted to go near the cattle lest they affect the reproductivity of the cows. Likewise, pre-marital pregnancy is specifically guarded against since it is seen as a bad omen which would affect the cattle. A daughter is specifically warned by her father not to bring him and his cattle ill luck. This would also mean that the father would have an extra mouth to feed, thereby competing with the interests of feeding his family and the calves (Elam, 1973:55). The premature use of a daughter's reproductive functions thus entails jeopardising the family's and the herd's survival. The population of pastoral communities is often very low because a small family is easier to handle especially in times of war or in search for new pastureland and therefore a large family would be cumbersome (Kibwana, 1992:39). Again women's fertility is in competition with the interests of the community for survival, even though children are cherished.

Amadiume points out that among the traditional Igbo of Nigeria, "the significance accorded to maidenhood centred on guarding the virginity and fertility of young daughters and preparing them for their future roles as wives and mothers" (Amadiume, 1987:70). The husband's family acquired the right to the sexuality, productive and

reproductive functions of the wife. The portrayal of motherhood as rightly taking place within a marriage institution was often carried out by songs, which glorified motherhood and married Igbo women derived security and power from their ability to give birth and roles as mothers (Amadiume, 1987:77-79). Among the pre-colonial Kikuyu of Kenya, the desire to have children was "deep rooted in the hearts of both man and woman and on entering into matrimonial union, they regard the procreation of children as their first and most sacred duty" (Kenyatta, 1978:164). A person's social status in this community was further enhanced if they had children, although the desire for male children encouraged women into having many children (Kabira, 1992).

2.1.2.1 Laws on reproduction

Reproductive choices are often shaped by restrictions found in policy, laws and religious beliefs, and the interference of medicine in biological reproduction (McLean, 1989: 213). The legal regulation of reproduction is carried out through a complex network of rules which exist in various legislations ranging from family law, education law, insurance law or labour law. These *inter alia* aim at increasing or lowering the age of marriage, restrict or facilitate accessibility to contraception and contraception information and regulate abortion (Dahl, 1988b; Douglas, 1991). Thus in these legislations one finds

" rules relating to contraception, abortion, artificial insemination, sterilisation, health control and working environment during pregnancy, delivery, confinement and the first years of the baby's life" (Dahl, 1988b:15-16).

The analysis of these rules from women's perspectives, which reveals how they continue to define women's reproductive choices, has developed into what Dahl calls birth law. Historically, in the development of birth control in England and the United States of America, state intervention aimed at preventing public discussion of birth control (O'Donovan, 1985:83). Laws were used to interfere with a woman's personal decision to regulate her fertility by denying her access to information on forms of contraception. Thus laws regulating obscene publications were used especially in the last century to prevent circulation of information on contraception, which was considered to be obscene. Today, contraception has been brought into public knowledge especially through population policies (Foucault, 1978), and restriction

focuses on access to birth control information and services for unmarried adolescent girls (O'Donovan, 1985:83-87). Increased state and church intervention in reproduction occurs through the regulation of abortion in state law and church polices. Abortion has become a 'site of struggle' between the pro-life and pro-choice movements especially in the United States of America which has in turn shifted issues that were previously in the private sphere into the public one. Thus legislation on abortion pivots on making abortion illegal or allowing it in circumstances of safeguarding the mother's health or life; making it available on demand especially where it is considered a private matter in which law cannot interfere.

2.1.2.2 The State and regulation of reproduction

Once issues of population control or the AIDS pandemic enter the political arena, the state becomes concerned about the sexuality of its citizens and how they are reproducing and accordingly seeks methods of regulating the sexuality of its population (Douglas, 1991). What emerges are

"intricate methods of administration and management, to a flowering of moral anxieties, medical, hygienic, legal and welfarist interventions, or scientific delving, all designed to understand the self by understanding sex" (Weeks 1986:35).

In population management, polices may urge the use of reproductive technologies as a means of enhancing or controlling fertility, depending on the needs of each country. Inherent in population management policies are the dominant constructions of motherhood, which determine the extent to which and to whom reproductive health services are provided. Thus in medically advanced countries, reproductive technologies are used to enable infertile women to have children. Further, if there is a negative birth rate, the state deliberately attempts to provide incentives to increase the birth rate and, in this case, pays for both biological and social reproduction¹³. One reason for this is that a declining birth rate would result in an ageing population which would in turn affect the labour market and the provision of public services (Douglas, 1991:2); hence a pro-natalist population policy is adopted.

However, in densely populated developing countries, population policies aim at reducing birth rates and therefore women are encouraged to use contraception and sterilisation as a means of regulating their fertility. This is necessary especially where

the national resource base can no longer sustain a growing population. Therefore if costs of maintaining the active and reserve labour force (i.e. through education, medical and welfare service) borne by the state are too high, then efforts at minimising human reproduction through birth control and social mechanisms to regulate sexuality are likely to be introduced. As such, efforts at reducing the number of children per family, as in the case of China's one child policy, would be maximised (Davin, 1987; Douglas, 1991).¹⁴

2.2 METHODOLOGICAL PERSPECTIVES

2.2.1 Preliminary Observations

According to Dahl the origin of knowledge is based on experiences which are shaped and reshaped by the realities of daily life, and "women's and men's description and opinions of reality can be extremely different" (Dahl, 1988a:20). Therefore what we do shapes and constrains what we can know and if human activity is structured in two opposing ways for two different groups, then we can expect that their 'visions' will be different. Feminist scholarship focuses on women's experiences in explaining social relations and the gendered nature of these relations. Further, as Harding points out, feminist researchers are continuously challenging the norms of scientific enquiry in researching on women's issues, hence creating anomalies in traditional scientific enquiry. A major criticism against traditional scientific enquiry by feminist researchers, is that androcentric claims and other male biases in research are introduced into the research process at the stage of designing and identifying the research question. This in turn influences the entire research process and its outcomes, thus failing to bring out the true story about women's lives (Harding, 1987:182; Fraser & Nicholson, 1990:26).¹⁵ In developing new norms of enquiry, feminist scholarship has introduced phenomena which had previously not been considered by social scientists and therefore "what was previously invisible (sometimes not named) has become visible" (Nielsen, 1993:496). Additionally, feminist scholarship provides new 'lenses' through which one can visualize that which was previously invisible. These new lenses enable different "interpretations, reconstructions, and analyses of existing data from the new perspective" (Nielsen, 1993). This development has not escaped

criticism, and is often regarded by critics as an 'unreal' discipline, especially since increasingly, feminist researchers want to become actors rather than being passive non-actors in the process of identifying their problems and seeking solutions (Vickers, 1989:228).

2.2.1.1 New challenges

In the same way that norms of scientific enquiry are dominated by androcentric biases, feminist research has also been dominated by western feminist theories and methodologies. Within western feminist scholarship, one criticism is that the 'Woman's Question' is often seen through lenses founded on biases and experiences of white western women. For example, 'Women of Color' argue that women's experiences differ because of patriarchy, race, colour, class and culture, and that there cannot therefore be "a feminist standpoint as the generator of true stories about social life... [t]here could, presumably, only be feminist oppositions and criticisms of false stories" (Harding, 1987:188; Hooks, 1984). Thus there is no blue-print for analysing the position of women (Jaggar & Rothenburg, 1984:xii).

In challenging western feminist methodologies, feminists from non-western countries, and in particular from the third world, argue that feminist researchers from economically dominant countries, who research on issues affecting women in the third world, enter the process with already-developed biases about women in the third world (Mohanty, 1986:62-65, & 1991; Bujra, 1986:117; Okeyo, 1989). As a consequence of these biases developed from a different context, western researchers risk being alienated from the research process and the actual realities of women in these countries (Armstrong, 1992: 12). The challenge to the domination of feminist scholarship by western feminist perspectives and methodologies, by women from the non-western countries, are healthy and serve to show the dynamism of feminist scholarship. Thus as Harding argues, for a true picture of the world to emerge there is a need for alternative norms of enquiry that "challenge traditional research habits and raise profound questions which are no longer marginalised as deviant" (Harding, 1987: 188).

A dilemma is thus faced by most African feminist researchers who undertake research degrees in universities in western countries which have established disciplines

and research methodologies developed through experiences of women in their own countries. The African feminist researcher is therefore faced with the task of determining the extent to which these methodological perspectives are adequate or appropriate with respect to the proposed research and whether these can bring out the stories about women's lives in the African context. If inadequate or inappropriate there is a need to develop new methodological perspectives in the description and erudition of the realities of African women's lives. However, as Macfadden cautions, African feminist researchers have to be careful not to fall into the trap

" of parochialism and romanticism of a past and/or difference from the `West', which could so easily become an excuse for not facing up to the challenges posed by African patriarchy in the present context. An overemphasis of our Africanness, especially in relation to sexuality, could play easily into the hands of the dominant male sexist ideology" (Macfadden, 1992:163).

There are a number of insights developed by western feminist research which even though developed from different contexts and with different starting points, are useful for African feminist research. The first is that women often relate to their own experiences, which risk being made 'invisible' if de-contextualised by traditional social science methods. Most of these methods, particularly those used in quantitative studies, generalise society as one single unit and women as one homogenous group. This in turn hides the fact of their experiences and the gender dimensions of the roles played by men and women in society (Vickers, 1989:228). Moreover, an analysis of women's problems at the macro, universalistic level runs the risk of generalising results which may in turn be too superficial and might therefore mask the true picture of the African woman and the realities of her life¹⁶. The challenge that faces feminist researchers is therefore that of developing norms that will ensure 'seeing' the world in wider perspectives rather than through restricted views (Harding, 1987: 181-2).

Secondly, the norms of feminist enquiry should enable one to understand the 'normal' and how it is produced and reproduced, hence for example, a fuller comprehension of why patriarchy continues and its different manifestations (Widerberg, 1988:3-4). The use of traditional norms of scientific enquiry does not reveal this because patriarchal language hinders one from seeing other meanings,

hence the need for new methods of understanding and breaking the 'normal'. This will in turn facilitate research into ways in which women can understand and change their circumstances. In refuting the claim that the researcher's own experiences should not be part of the research process, Widerberg argues that there ought not to be any difference "between our [women's] *own* experiences and those of *others* " (Widerberg, 1988:4, original emphasis). This difference creates a hierarchy between the researcher and the researched, whereby the former erroneously emerges as a person who has no experiences or problems worthy of research, and often problems and experiences are seen to belong to 'others'. To avoid this alienation, Widerberg argues that if researchers demand that other women must come publicly with their experiences, they too must do the same. This is an important issue in the collection of data on matters concerning female sexuality because women are appreciably vulnerable in matters regarding sexuality and they must decide whether or not to problematize their experiences privately or publicly, or to make them available to colleagues or superiors (Widerberg, 1988:6).

2.2.2 Perspectives in the research on law

The research methods that are adopted for a legal study will depend on whether one is searching for law, or researching the law and specifically on a problem that has resulted from the application or non-application of the law. In searching for law, the process would be to analyse legislation, relevant legislative history and statutory language. In addition, court cases are analysed to determine the degree of their relevance to the topic and also to examine how courts have dealt with the issues at hand over time and the development, where necessary, of any precedents. In some cases the analysis of related policy issues and experiences with the legal problem is necessary (Dawson, 1993: 237).

However, a broader and more critical enquiry is crucial where the issue at hand emanates from either the application or non-application of the law (and in some cases the lack of it). New tools and approaches therefore become necessary due to the paucity of investigatory methods developed by conventional legal scholarship which, it is argued, are "inadequate alone to generate meaningful hypotheses about the nature of law or the connection between legal relations and social relations" (Dawson, 1993:

237; see also Dahl, 1988b:3). Delgado and Stephanic, argue further that

"relying on [legal tools] exclusively...renders innovation more difficult; innovative jurisprudence may require entirely new tools, tools often left undeveloped or unnoticed because our attention is absorbed with manipulating old ones" (Delgado and Stephanic, 1989: 208).

Legal research perspectives and techniques are therefore inadequate in revealing the way the law works in practice, how people experience the law and how they re-shape or re-define it when it suits them. At times people do not use the law and rely instead on non-legal mechanisms to regulate for example, social behaviour or activities.

A crucial concern for this study is the interplay between law and the rules of social interaction in regulating social behaviour, for example where such rules are regarded as customary and therefore have the power of commanding obedience of the various actors. Bearing in mind that this study is investigating both legal and non-legal regulation of an intimate aspect of women's lives, appropriate conceptual tools are crucial both to elicit the information sought and to analyse it in such a way as to achieve a holistic picture of the phenomenon under investigation. This is significant, especially since studies have shown that generally women have different identities, and that

"the actual lives of women are not based on either/or...customary or general law...but much more on both...having multiple identities women choose both and use a mixture of both in order to meet present needs" (Anfred, 1994:33).

These identities are shaped by class, culture, ethnicity, religion or gender roles as mothers, wives or daughters. Further, due to the multiplicity of culture, customs and laws, women's rights and issues are articulated differently within their cultural, religious, political and economic contexts. Consequently, there is a possibility that women have different perceptions of what constitutes their rights under the law or within their culture and customs. Yet, despite this critical differentiation of women's individualities based on a multiplicity of criteria, women have mistakenly been treated as a homogenous group.

Hence new transitions in legal research perspectives are necessary to illuminate the workings of law and this therefore dictates that this study goes beyond the focus on statutory rules. In order to understand the interplay between legal and non-legal mechanisms of regulating adolescent sexuality and fertility, three perspectives of studying law are adopted in this study; legal pluralism, private/public dichotomy, and women's law perspectives. These are discussed further below.

2.2.2.1 Legal Pluralism

Legal centralism assumes that the only applicable law is state-made law which ought to reflect the views of the society regarding the good life and in so doing assume the role of social engineering (Kuria, 1978). In order to reflect this good life, law regulates certain behaviour and sanctions those who break it. According to Griffiths (1986), "in the legal centralist conception, law is an exclusive, systematic and unified hierarchical ordering of normative propositions, which can be looked at either from the top downwards as depending on the sovereign command...or from the bottom upwards" (Griffiths, 1986:3).

Legal pluralism which has been defined as "a situation in which two or more legal systems co-exist in the same social field" (Merry, 1988:870), challenges the legal centralist conception of law for its failure to give a true picture of reality, that is, that not all law is state law or is administered by state legal institutions (Griffiths, 1986: 4). However, legal pluralism is "an attribute of a social field and not of a 'law' or of a 'legal system'" and for it to develop, there should exist either legal orders with more than one source or more than one legal order in a given social field (Griffiths, 1986:38). Thus in studying plural legal orders in a given social field, the legal pluralist framework shows the competing, contesting and at times contradictory activities, outside state law and systems of normative ordering. This offers a better understanding of the different ways in which social groups conceive of ordering social relationships (Merry, 1988: 888-9). It also shows the resistance and interaction between the weak and strong laws.

There are two types of legal pluralism. The first is the juristic legal pluralism whereby the official legal system recognises plural legal orders and determines which norms of these plural legal orders are to be applied in the state courts or in regulating

social behaviour. However, what are termed plural legal orders are actually not different legal systems but normative systems which operate within one "multi-sourced and multi-tiered" system (Armstrong *et al*, 1993:322) such as the Kenyan legal system. Furthermore, in juristic pluralism the official law provides an enabling environment for the operation of non-state legal rules but at the same time limits the extent to which these operate. An example of juristic legal pluralism is where the Constitution makes specific reference to the application of certain non-state laws such as religious laws or customary laws for specific groups based on ethnicity, religion, nationality or geography (Griffiths, 1986:5). In Kenya, matters of religious laws and procedures peculiar to a particular religion are recognised by the Constitution, Kadhis Courts Act, and Marriage statutes that make specific provision for the celebration of Hindu, Muslim and Christian marriages. The overall effect of this type of pluralism is that state law has ultimate authority and domination over the plural legal orders (Fitzpatrick, 1984a:117) and the relationship between the two tends either to a convergence or divergence.

Fitzpatrick further points out that relations of support between state law and plural legal order tend towards such a convergence. Thus on the one hand, state law may support this non-state legal form or become part of it. On the other hand, the non-state legal form may draw contents and techniques from state law to construct its own legality (Fitzpatrick, 1984a:122). This convergence has both positive and negative aspects. The negative aspects are that state law may be corroded by intrusive social forms and outright rejection of law, while the positive aspects are where state law relates to other social forms in a manner in which a separate and autonomous identity (Fitzpatrick, 1984a:123).

The second type of legal pluralism, which is diffuse, arises where a social group has its own rules which coerce certain behaviour from its members but do not necessarily emanate from state-based law. Thus for example, in pre-colonial acephalous communities, the laws were not centrally sourced and there was in place a multiplicity of normative rules at different levels of the groups or communities. However the fact that there was no central command does not mean that such communities had no law. As Pospisil points out, each "[s]ociety, be it a tribe or a

'modern' nation...[or] sub-group owes its existence in a degree to a legal system that is its own and that regulates the behaviour of its members" (Pospisil, 1971:125)¹⁷.

The concept of legal pluralism has however been criticised for its failure to have a clear definition of law. By referring to legal and non-legal forms as law, legal pluralists create confusion over the concept of law (Tamanaha, 1993:192). Tamanaha further goes on to point out that it is erroneous to append the term law to non-state 'law' in the same way it is appended to state law especially since "state-law norms and non-state law norms are two starkly contrasting phenomena, not at all alike...[s]tated more strongly, they are ontologically distinct" (Tamanaha, 1993:209). The same argument is used in reference to the transplanted legal systems in the ex-colonies especially since the transplanted state norms were invariably different from the indigenous lived norms. Thus it is suggested that in the ex-colonies "state law is best understood by way of contrast with the lived social order, not [its] equivalence" which the legal pluralist have failed to do (Tamanaha, 1993:212). Tamanaha thus suggests the use of 'rule system' instead of 'law' to avoid confusion when the latter term is used: it is also important to show that the concepts of the rules systems differ from those of the transplanted laws. The suggestions given by Tamanaha are useful in understanding juristic legal pluralism which, in Kenya for example, can be traced to the colonial era during which dual legal systems were created as part of colonial expansion. The creation of 'customary law' to fit into the concepts of the transplanted law was a consequence of the administration's "failure to appreciate the nature and sources of law in any community which is not similar to [their] own" (Goodhart, 1951:107; Malinowski, 1926).

To distinguish between state and non-state laws, Woodman uses the term 'folk-law' to define the non-state laws which are often dynamic and subject to change and which once they cease to be socially observed, cease to have effect (Woodman, 1991:34). However, the same cannot be said of state norms which, even though no longer observed, remain static until amendments are made in the legislation.

2.2.2.2 The Semi-autonomous Social field

Griffiths points out that legal pluralism is an attribute of a social field (Griffiths, 1986:38). In this respect Moore proposes the "'semi-autonomous social field'

(hereinafter SASF) as a perspective from which to study law and social change" (Moore, 1978:8). This offers an understanding of the plural nature of law in society through a focus on legislative intervention in social fields which are either autonomous, semi-autonomous or may lack autonomy, although absolute autonomy is rare (Moore, 1978:78). Each phenomenon in the SASFs is seen as a product of interacting factors which have to be de-constructed so as to provide a better understanding of the phenomenon.

The SASF framework is useful in understanding how non-centralised communities regulated themselves. Moore argues that in pre-capitalist and non-centralised communities, rule enforcement operated in the same way that present-day central government rules are enforced. These rules were mandatory and were enforced by sanctions and the need for the threat of use of force was not necessary to coerce obedience (Moore, 1978:18). In accommodating both Government law and non-Government law, Moore uses the term "reglementation" to recognise the rule-making and rule-enforcing capacity of both. Thus, through reglementation, the segregated areas of autonomy and how they impact on each other is revealed (Moore, 1978:30).

Moore further posits that in the SASFs, unwritten or *ad hoc* rules are generated by that sphere and not necessarily by the state made laws. Within the SASF are non-state rules which are binding on the members and facilitate the social conditioning processes that regulate people's lives. However, although the SASF is autonomous from the state and can generate its own norms and values, it may at the same time be influenced by state made law (Moore, 1978:56). For example where legislation seeks to constrain or facilitate the activities of the actors in the SASF, this may in the long run lead to change in the rules of the SASF. Thus there is "much legitimate interpenetration and contact that is an essential part of the structure" (Moore, 1978:21). The extent to which state law will intervene in the workings of the SASF will to a certain extent be determined by its activities (Moore, 1978:29).

The SASF framework thus enables a further understanding of law in practice, how the activities of the actors in the SASF influence the regulatory processes and how legislation intervenes to shape the activities within the SASF. However, this framework uses state law as a point of departure, and therefore "pays little attention

to the relationship between non-state 'semi-autonomous social fields'" (Griffiths, 1986:35) and the inter-play between the norms in the SASF which are developed outside the relationship with state law. In this respect the SASF is a useful framework for understanding juristic legal pluralism, and enables an interpretation of the complex inter-relationship between state law and the autonomy of the SASFs, and can be used to look at the internal workings of any SASF at any level without addressing the society as a whole. The use of the SASF framework for analysing the data collected is discussed further in section 2.4.

2.2.2.3 Feminist legal research perspectives

The development of feminist legal research methodologies is crucial, because without these, the feminist claims in law may not be seen as legitimate (Bartlett, 1990). Feminist legal research therefore seeks to challenge, subvert and transform legal relations, and in so doing relies on sociological data which is grounded on discovering, sharing, and analysing women's concrete experiences (Littleton, 1989:4). Empirical data from women's experiences in their use of law, its effects on them and how it maintains, legitimates and serves the distribution and retention of power in society is crucial to feminist legal research (Wishik, 1986:66-68).

The challenge facing feminist legal research is therefore one of moving beyond the traditional legal research methods and developing new methodologies or adopting and, if necessary, modifying existing ones to inform one's research and at the same time retain the ability to research the law. There are three approaches that the feminist legal researcher may adopt (Dawson, 1993:237). The first is an 'add and stir' methodology, whereby areas in the law where women are treated differently are identified, and thereafter recommendations that the law be made gender-neutral are made. Consequently, law itself is not criticised, and the structures of law and the embedded biases are not considered.

The second approach calls for the inclusion of women where they have been omitted in legislation, but also seeks to accommodate women's differences, for example maternity. This requires the identification of legal issues that affect women's lives, and at times finding analogous legal problems involving men. It may also be necessary to examine laws in legal systems of other countries so as to investigate how

these deal with legal problems facing women (Dawson, 1993: 237).

The third approach is that of questioning the law and practices from the starting point that law does not cater for the woman's experiences. This methodology expands beyond the internal legal 'searching' and seeks the restructuring of the law. This kind of research tends to be interdisciplinary, less focused on case law, and is concerned with those areas that have always been accepted as gender-neutral (Dawson, 1993: 237). Thus by using women's experiences as a starting point, this type of feminist legal inquiry criticises and subverts patriarchal assumptions about women and law.

This study finds favour in the third approach, which is further elaborated in the next section.

2.2.2.4 Women's Law methodological perspectives

The Scandinavian Women's law methodological perspectives which fit within the third approach described above, use women's experiences as a starting point in order to unearth the realities of women's lives. This approach is grounded on the feminist critique that traditional scientific enquiry is dominated by male perspectives, which have also been ingrained into law and legal research. The overall objective of Women's law is thus

"to describe, explain and understand women's legal position especially for the purpose of improving women's position in law and society" (Dahl, 1986b: 240; see also Bentzon, 1986: 250).

Women's law also seeks to overcome the invisibility of women in the law, a situation which is increasingly emerging with the enactment of gender-neutral laws, yet reality continues to be gender specific. Hence gender-neutral legislation may have a gender-specific effect (Dahl, 1988b: 11). Women's law methodology is an open methodology which applies traditional legal theory and empirical data, since it belongs to both feminist and legal science. Being both a "cross-disciplinary and pluralistic" methodology, it enables one to "see both law, reality and morality from women's point of view" (Dahl, 1988b:10; 1986a:3), by analysing women's perspectives from 'below'. However, perspectives from 'above' (i.e. beginning with the law) are also utilised in order to enable a fuller critique of the law. This enables an understanding of the

interplay between law and life and how this influences women's lives and the choices that they make. Thus women's law researchers seek to create

"new law through descriptions and systematization of rules and empiricism in new concepts and legal fields suited to women's conditions of life and life course. In this way we go beyond the problem area of women and law and enter upon the construction of women's law as an independent discipline" (Dahl, 1988b:14).

The Women's law approach has been adopted in feminist legal research in East and Southern Africa, and in particular the perspective of using the woman as a starting point (Armstrong, 1992:13).

2.2.3 Methodological perspectives in adolescent sexuality and fertility research

The perspectives that inform research in issues pertaining to adolescent sexuality and fertility are diverse, especially since there are many dimensions in adolescent health such as sexuality, fertility, socio-cultural factors, gender communications policies, and ethics (Mbugua, 1992:1).

The predominant starting point of medical researchers, demographers and sociologists who have dominated studies on adolescent health, is that adolescent sexuality and fertility is a social problem. This negative construction of early motherhood and adolescent sexual activity, therefore often influences the perspectives that the researcher adopts in carrying out the research. One reason for this is that these studies target policy makers and thus seek to illuminate the magnitude of the problem, to support their advocacy for change. Accordingly, there is a preference for quantitative approaches such as use of comparison groups, that is, control groups (normal) and experimental groups (adolescent mothers), to show the magnitude of 'the problem' (Phoenix, 1991:29). The experimental group is therefore the 'other' of the control group who are not mothers, and are regarded as the norm. The result of this 'otherness' is that adolescent mothers are always studied on their own and not together with other 'normal mothers' and this perpetuates the negative treatment of adolescent motherhood.

However, for an in-depth analysis of the experiences and circumstances of the adolescent mothers, a qualitative rather than quantitative research methodology is

favoured as the primary approach (Phoenix, 1991:29). This approach allows for the development of positive perspectives rather than viewing the subject under research as a social problem. Thus Kwawu suggests that the first step for the researcher is to 'link with the past', by recalling one's youth and one's experiences whilst growing up. In this way the researcher will be able to identify with the experiences that the present day youth are undergoing, and not view them as social deviants. The use of 'memory work' as a tool of research, is therefore important as an ice-breaker especially with adolescents in focus group discussions (Kwawu, 1992:2).

2.3. RESEARCH APPROACH FOR THIS STUDY

By illuminating the multiplicity of issues involved in the regulation of adolescent sexuality and fertility, the researcher in this study seeks to be an 'outsider within' (Mbilinyi, 1992:56). This in turn enables a 'micro level' analysis of the numerous roles played by the concerned actors, and the interplay between law and non-legal regulatory mechanisms within the specific contexts. Accordingly, this study does not align itself with positivist methodological perspectives that characterise knowledge as hard, real, and objective. It therefore challenges the conventional tendency "to start thinking from 'the view from nowhere', performing what have been called 'the God tricks'" (Anfred, 1994:33). Instead, with the main concern of the study being the regulation of sexual and reproductive behaviour, the basic epistemological stance of the study is that society is an open system of process and change. Although this orientation may be obscured by the subjectivist methodologies employed, the study will nevertheless attempt to reflect reality as it is perceived by the respondents, and in the process, draw attention to conflict, aberration, and the forces of domination and control within society in so far as they are relevant to the issues under consideration.

The study thus adopts a contextual methodological perspective that is characterised by a subjective approach which, as Dawson postulates, focuses "on meaning and self-reflection" (Dawson, 1993:237). This methodology combines the perspective of 'starting from below' and that of the SASF. The SASF framework is adopted because it enables one to go beyond investigating law in the texts and explores the reality of law in practice. In addition, it explores the development of other non-legal regulatory

mechanisms within the social fields. In the perspective of 'starting from below' this study uses the adolescent girl as a starting point, in order to examine the interplay between the regulatory mechanisms and the actors involved in the regulatory processes. In this respect, an exploratory rather than a confirmatory approach is preferred and therefore the qualitative research approach is adopted as the primary method of data collection and analysis.

Qualitative research methodology is adopted as a primary approach for a number of reasons. Firstly, this approach enables the researcher to be actively involved with the researched rather than being far removed as would be the case if quantitative research was used as the primary approach. Qualitative research is particularly useful for a women's law researcher in order to

"unfold...the interpersonal relations in which women participate ...[and therefore] researchers and the objects must cooperate in the collection and analysis of data about the female universe,.. to find out where there is need for change" (Bentzon, 1986:251).

Secondly, qualitative research methodology allows flexibility to the researcher who in the research process may have had initial research questions. However,

"as the research progresses the researcher develops ideas about how the material fits together, and about the relationships it encompasses...what counts as an example of a phenomenon, and indeed what phenomena are worthy of note, changes as the research progresses and the researcher develops a better, fuller understanding of the issues involved" (Allan, 1991 :181).

Third, the approach enables the researcher to adopt a number of research techniques in eliciting the information sought. Thus in this study, legal research techniques are combined with social science techniques to reveal the plural nature of law, the actors and processes of regulating sexuality and fertility.

Qualitative research however has its limitations, particularly as regards the verification of the findings and whether another set of researchers using the same process of collecting information would reach the same results. Another limitation concerns the 'purity' of the research especially where the researcher's perspectives are part of the research process, hence the possibility that these perspectives will influence

the type of information collected and the analysis of such data. This argument holds true in many ways because what a researcher finds out and the theory that one develops is shaped by the 'lenses' one is wearing at the time (Allan, 1991:182).

Wearing different lenses gives different perceptions, hence the possibility that two people knowing the same thing may 'visualize' it differently. This poses problems in the development of theory, because the researcher visualizes the problem through his or her own perceptions and, more often than not, other researchers come up with a different understanding of the same problem. These other researchers may see "other things" which the first researcher did not see, simply because they are wearing different lenses and can therefore legitimately dispute what the first researcher 'sees'. Allan further posits that this psychological element of the researcher may influence the research process and notes that

" while no two qualitative researchers will ask the same questions in the same order or observe exactly the same action, they can both study the same range of phenomena and generate analyses which can each inform the other and of course lead to new studies which themselves may result in further modification to our understanding" (Allan, 1991:183).

Thus if other researchers observe different perspectives of the same phenomenon using a qualitative approach, this will in turn contribute towards the enrichment of knowledge about the multiplicity of issues affecting women.

2.3.1 Data collection methods

2.3.1.1 Documentary research

This study combines both legal research methods and social science research methods of collecting data. Documentary research was heavily utilised especially in unearthing historical materials and documents, and analysing books, articles, and studies which have information relevant to the research problem. Documentary research was carried out at the libraries of the University of Warwick, and The British Library in England; and in Kenya at the University of Nairobi, Kenyatta University, Kenya National Archives, Family Planning Association of Kenya, and the Kenya Institute of Education. In addition relevant materials were collected from the Crisis

Pregnancy Ministry, the Catholic Secretariat, the National Council of Churches of Kenya, the Centre for the Study of Adolescence, the Centre for African Family Studies and Marie Stopes International (Kenya office) all of which are situated in Nairobi, Kenya. The documents collected are divided into two; namely primary and secondary sources.

Primary sources

The primary sources include court cases, legislation, newspaper reports, colonial administration and current Government official documents, parliamentary records of the British House of Commons during the colonial era and colonial annual reports. These are discussed further below:

Court cases

For purposes of investigating the extent to which law regulates adolescent sexuality and fertility, cases were collected from eleven (11) District Courts for the period between 1985-1991. The courts are situated in Mombasa, Meru, Narok, Nakuru, Kakamega, Machakos, Kericho, Kisii, Kirinyaga, Bungoma, and Kiambu Districts. These courts were selected on the basis of accessibility and availability of court records. The collected cases were divided into two categories. The first includes cases regarding sexuality issues such as defilement, female circumcision, indecent assault and incest. The second category includes cases which focused on the actions that girls undertake to terminate an unwanted pregnancy and how the law deals with this. In collecting this second category of cases, the study sought to establish whether the punishments provided by the Penal Code were stringent enough to deter the illegal termination of unwanted pregnancies.

Legislation

Legislation is analysed with the main aim of identifying the rules that either directly or indirectly, regulate sexuality and fertility. Both colonial and post-colonial legislation, parliamentary debates on the formulation of new legislation and the pitfalls in existing legislation are analysed.

Analysis of newspaper reports

In discussing the role of the media in defining and shaping social problems, Cohen comments that

"the media have for long operated as agents of moral indignation in their own right, even if they are not self-consciously engaged in crusading or muckraking, their very reporting of certain 'facts' can be sufficient to generate concern, anxiety, indignation or panic" (Cohen, 1972: 16).

Considering that newspaper coverage is often on topical issues, the role of newspapers in causing 'moral panics' cannot be overlooked especially where newspapers print alarming headlines aimed at catching the attention of the reader. For this study, analysis of newspaper reports and articles was thought to be crucial for two reasons. Firstly, it provides an insight into contemporary discussions and attitudes towards the issues at hand, and what is being done about these issues by those concerned. Secondly, due to the poor court case reporting system in the country, newspapers provided information on certain cases which would otherwise not be readily available to the researcher. For example, cases of male teachers responsible for school-girl pregnancies; child marriages; female circumcision and female genital mutilation; and the process and extent of the enforcement of relevant government policies.

Quantitative information

Although this study adopts qualitative research as the primary approach, data from quantitative studies on adolescent sexuality and fertility in Kenya are analysed in order to obtain a holistic view of the issues under investigation. These studies provide the statistical data on the issues under consideration and are useful in supplementing the arguments arising in the study.

Secondary sources

Secondary sources include academic books, journal articles, and qualitative studies carried out in colonial and post-colonial Kenya. These sources provide the background information on the issues raised in the empirical fieldwork

2.3.1.2 In-depth interviews and Memory Work

In-depth interviews

The interviewing process is always a learning process for the researcher even though insights are gained from the literature on normative methods of conducting interviews. As Oakely (1986) aptly points out that,

"[I]nterviewing is rather like marriage: everybody knows what it is, an awful lot of people do it, and yet behind each closed door there is a world of secrets (Oakely, 1986:231).

Traditional interviewing techniques have been challenged by feminist researchers whose experiences in the field have been at variance with traditional interviewing techniques (Jones, 1991:203). The constraints in following traditional interviewing techniques whilst interviewing women have been well articulated by Oakely (1986), and Finch (1984), who argue that ethics in carrying out research are formulated and conducted within the framework of researching on men. Thus constraints arise in the choice of place of interview, the instruments of research, the mode of interviewing, and the position of the researcher in this process (Finch, 1984:71).

New techniques that shift from the researcher being an outsider to that of being an insider are therefore sought by feminist researchers (Jones, 1991) to overcome the constraints faced whilst interviewing women. Finch for example, argues that based on her research experiences, women were better informants if the research was carried out in an informal place and if the method of interviewing was carried out informally (Finch, 1984:72). This makes the women more relaxed and also removes the apparent dominant position of the researcher whilst the informant is in a subordinate position. Another important aspect is that where the interview is carried out in the informant's home, more often than not the informant makes an effort at making the interviewer feel at home.

In this study, interviewing as a research method was preferred because it enabled access to certain information which would otherwise have been unobtainable through other methods, for example documentary research. Four of the in-depth interviews were carried out in the homes of the informants whilst the other five were carried out in the offices of the respondents. Although an informal place of interviewing was preferred for all interviews, in the latter case the only place that the interviews could be carried out was in offices since the informants were only available for interview during office hours. However, since these informants were persons who were already working on issues concerning adolescent sexuality, the process was not difficult. Nevertheless, wherever the interviews were carried out the informants were welcoming

and in the case of the home interviews the researcher was welcomed to a meal and a cup of tea before the interview was carried out. In the office interview the informants invited the researcher to many cups of tea which was welcoming enough.

Considering that sexuality and reproduction matters are rarely discussed in public due to cultural sensitivity, in this study the respondents were first given a copy of guiding questions. This gave them a feel of the nature of the interview and ensured that they would not be embarrassed by any of the questions. However, in the case of the two elderly women who were aged over 80 years and illiterate, the researcher showed the guiding questions to an elderly woman who could read and write to ensure that the questions to be asked would not be offensive to the two older respondents. Whereas this amounts to a constraint in the research process, it is a necessary one, in that the researcher has to respect the cultures, customs and beliefs of the researched communities and respondents, and ensure that he or she does not offend either the respondents or their communities, with questions which are not ordinarily asked or discussed between persons who are not of the same age.

Another issue that emerged was that due to the age difference between the researcher and the two elderly informants, it would be disrespectful of the researcher to broach the topic of sexuality with them as if they were age-mates. Bearing this in mind, a married woman who is a grand-mother was 'recruited' to assist the researcher in interviewing the two elderly women. Due to her marital status and being a grand-mother, she was considered to be in the league of those women who could openly discuss matters of sexuality with older women within the limits of the prevailing customs and culture. In this case the researcher recruited her mother who was sensitive to the issues being researched, having worked voluntarily for over twenty years with the Family Planning Association of Kenya. In preparation she was given a 1993 study on *Adolescent Sexuality and Fertility in Kenya* to provide her with contemporary background information on the issues under consideration. This made the interviewing process easier in the sense that the questions raised were not embarrassing to any of the parties involved, and further she was able to put the same questions across in a respectful manner to the elderly informants without distorting the content of the questions. All the interviews were carried out in the presence of the researcher and all

informants were informed that the information sought was for academic purposes.

Memory work

'Memory work'¹⁸ is a data collection method that challenges established traditional scientific enquiry methods, which are often masked by patriarchal language and norms (Haug, 1987). Memory work, which is often carried out collectively, relies on the use of one's memory evoked through devices such as pictures, stories or songs, to recollect a number of experiences or events. This method seeks to eliminate theories "by which to sort out what to remember and how to remember" (Widerberg, 1988:3), and uses different techniques to problematize the 'normal'. Memory work has been used to understand the different controls surrounding the female body. For example, by focusing on the female body, Widerberg points out that it is possible to determine how innocent parts of the female body become 'guilty', such that so many complex norms are developed which the girl or woman is stressed to satisfy. Accordingly "*all parts of the female body are objects for norms and for control* of each woman herself and...women collectively" (Widerberg, 1988:3, emphasis added).

In traditional social science research, memory work as a research method is not utilised mainly because positivist methods of research are based on the notion that the researcher should not be involved in the process or theme that is to be studied. Memory work however, allows the researcher to focus on one's own experiences which may in turn influence the knowledge that one gains from the research process. In order for the researcher to be part of the research process, he or she may start with a self-project, so as to make him or her aware of the demands of research. Other benefits of this self-project include the researcher obtaining initial material for the theme under study and for the interpretation of the results. The research process is thus problematized and the investigatory process and the researcher's role in it is made visible (Widerberg, 1988:6).

A major constraint is how to verify the knowledge developed through memory work especially where the researcher has prior knowledge about the theme or where the researcher's own experiences are considered as part of the process. One criticism of memory work is that it does not provide for the validation of knowledge and only renders the experiences of women and interpretations given to these experiences more

visible. Consequently, memory work as a method must be carried out in conjunction with other research methods in order to validate the data. Despite this shortcoming, one major advantage of memory work is that where carried out collectively, 'new knowledge on a theme' is developed through a penetration of 'the natural and taken-for-granted'. This is extremely valuable in illuminating women's experiences, especially where women's lives and realities are often defined by patriarchal language and investigated through male meanings and standards steeped in traditional scientific methods (Widerberg, 1988:9).

Memory work as a research method, was used in this study as a means of enabling the respondents to identify the processes of regulating sexuality and fertility in their adolescent years, the constructions of sexuality for example through language or dress codes, the social actors, and the prevailing rules and norms. In addition, the respondents were able to reflect on the importance of reproduction especially in their youth and why its effective management is necessary today.

Sample group for the in-depth interviews and memory work

For this study, six (6) women of varying ages and education levels, three (3) social workers, and one probation officer were interviewed. The six (6) women respondents were divided into three age categories, namely those who were adolescents in the years between 1900-1930, 1931-1961 and 1962-1992 respectively.

As noted in section 2.6, this is not a representative study, and therefore the number of informants chosen was sufficient enough to illustrate the issues under discussion. The sample was selected randomly. For example, although the oldest respondents are living and have always lived in a rural area, the urban/rural variables were not utilised in selecting this sample. However, the choice of selected respondents was influenced by two factors; access to the respondents by the researcher, and fluent communication between the researcher and the respondents. The two older respondents are grandmothers of the researcher, the other two are the mother of the researcher and a close friend to the family of the researcher, and the two younger women in their thirties are friends of the researcher. The three (3) social workers and one (1) probation officer were selected by virtue of the fact that they carry out work on adolescents and the youth.

The Interview guideline

In Memory Work and in-depth interviews, questions which served as guidelines for the researcher and the respondents were used. These guidelines which were formulated after documentary research, focused on how the respondents were socialised to be reproducers and the social norms that reinforced this process; how sexuality was regulated; the actors involved in this process; the socialisation of female children to be reproducers, and their opinions regarding adolescent fertility.

Consequently, in-depth interviews and memory work were carried out at a later stage of the research. However, in formulating the questions, the researcher also relied on past experiences and knowledge gained whilst carrying out earlier research for the Centre for the Study of Adolescence in Nairobi, Kenya, and discussions often held with other members of the centre on issues surrounding the sexuality of adolescent girls. These experiences and discussions assisted in the formulation of the guidelines for the in-depth interviews and memory work.

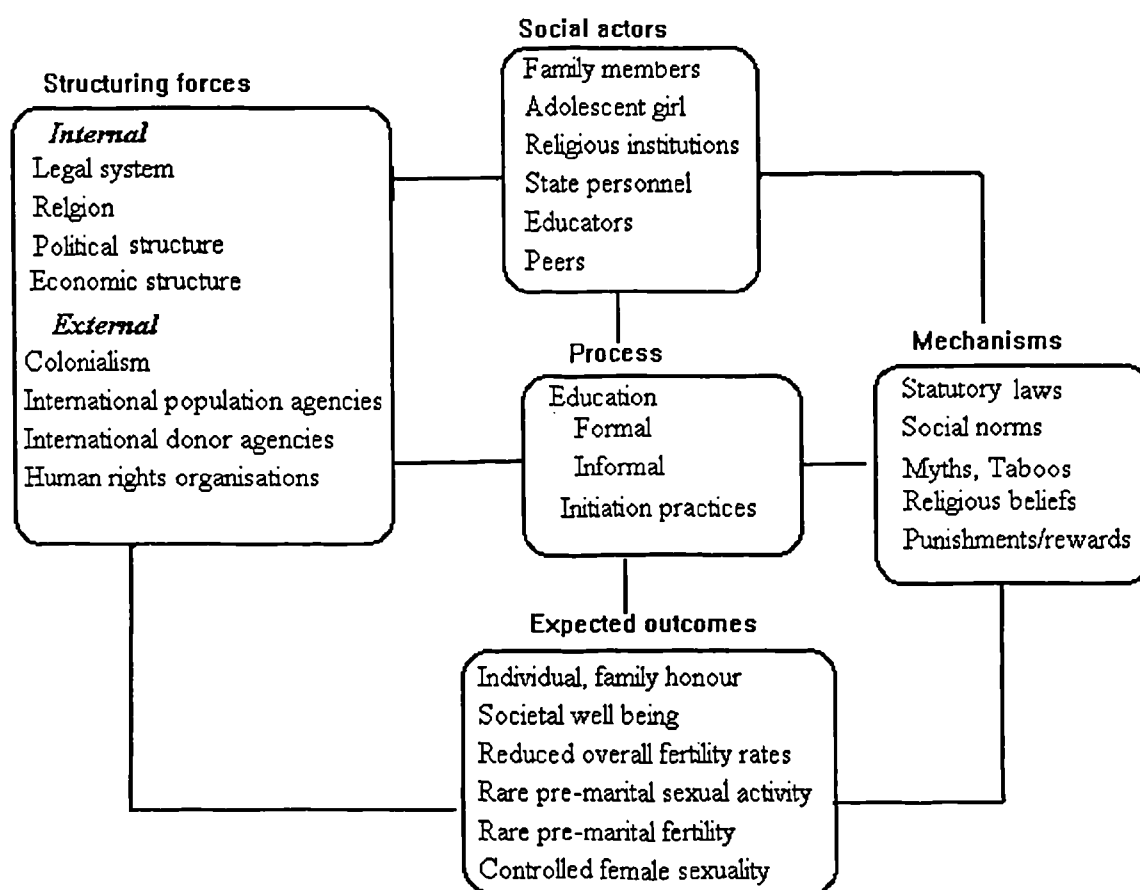
2.4 FRAMEWORK FOR ANALYSING DATA COLLECTED

The starting point for analysis of the collected data in this study is the stage at which a girl reaches puberty, thereby entering the transitory stage of adolescence. By using the puberty stage as a starting point the first step was to identify the social actors involved in the regulation of sexuality and reproduction, and the structuring forces that defined the environment within which they operated. The structuring forces which are in this study regarded as situational and dynamic, are divided into internal and external forces. Internal forces include the legal system, family, culture and religion, political and economic structures, and specify the context within which the construction of adolescent sexuality is constantly re-negotiated and re-defined. The external structuring forces are in the periphery. These include forces such as colonialism, western education, peripheral capitalism, population programs, and western religious beliefs.

The next step was to determine the extent to which structuring forces influence the regulatory processes and the activities of the actors by providing an enabling environment. However, as a consequence of increasing discourses surrounding

sexuality and fertility, new actors and mechanisms are constantly emerging. Therefore, it is impossible to identify all the actors involved in the regulatory processes. Accordingly, the dominant actors in the core and the periphery were identified. The last step was to identify the regulatory mechanisms that are used to regulate sexuality and fertility and the processes of transmitting the norms of sexuality and fertility. Thereafter, the short and long term consequences of the regulatory mechanisms were identified. Table 2.1 below illustrates the framework of analysis and the interaction between the structuring forces, the actors, processes, and regulatory mechanisms.

TABLE 2.1 FRAMEWORK FOR ANALYSING THE REGULATION OF ADOLESCENT SEXUAL AND FERTILITY



2.4.1 Structuring forces

Although the structuring forces and the social actors are considered separately in Table 2.1 neither of them can operate in isolation and there is a tendency for each to impinge and influence the other, hence their relationship is an interactive and symbiotic one. The structuring forces determine who the social actors are going to be, and the mechanisms of regulating sexuality. The structuring forces also interact with each other and in this process they may shape the character of either. For example the nature of the economic structure may lead to changes in the family types, cultural or legal structures; alternatively the nature of the legal system may alter the family structure. However, these changes do not happen on their own but are a result of the activities of social actors (Burns *et al*, 1985). The situational factors are briefly discussed below.

Legal system

The legal system is an important structuring force in that it creates the legal environment for the regulation of sexuality and shapes, and enables or impedes the operation of regulatory mechanisms. Thus the nature of the legal system is addressed with regard to how it structures the regulatory processes in specific historical periods. The SASF framework is used to describe the nature of the legal system as a structuring force and the extent to which plural legal orders come into play.

The family structure

The family is an important primary unit into which individuals are born and it is responsible for their socialisation. In this section, it is considered an important sphere within which sexuality and fertility are regulated. In supporting this contention, Friedman points out that

" [t]he successful transition to adulthood requires both support and structure, the primary source of which is the family, and opportunity for the development of new relationships, roles, behaviours and skills. Yet it is precisely the family which appears to be most weakened in relation to other societal factors as societies become more 'modern'" (Friedman, 1992:1).

In discussing the family structure as an important situational factor, particular focus is placed on the peculiarities of the various family types which are found to exist

generally amongst the different communities in Kenya irrespective of their socio-economic environments. Furthermore, due to the high cultural diversity it is impossible to have one family type and lifestyle which "means that the direction, magnitude and type of family change may vary drastically from one group to the next [and therefore] it becomes hard to conceptualise an ideal type of African family" (Kayongo-Male & Onyango, 1986:107).

The economic structure

It is also important to examine how changes in the economic structure for example urbanisation or industrialisation, have affected the regulatory processes in different historical periods. Bearing this in mind, the activities of the social actors in adapting to economic changes are examined to determine whether new regulatory mechanisms were adopted or the old mechanisms were retained.

Religion and culture

Religion is considered an important structuring force which influences the social conditioning processes in society. It is therefore useful to investigate how religion has over time shaped and re-shaped the interaction of human actors with respect to the regulation of sexuality. Religion in this respect includes both traditional African religions and the Christian religion introduced into Kenya by missionaries last century. It is posited that religion played and continues to play a big role in shaping the culture and values upheld in any society.

Political structure

The political structure includes the decision-making bodies in a community, whether centralised or not. In this study the concern is on how political structures influence the activities of the actors and processes of regulating sexuality and fertility. The intervention by a centralised political structure in the regulation of sexuality and fertility is often through informal or formal methods, which determine the degree of legislative control or moral interventions in sexual life. Laws and policies are therefore formulated to regulate sexuality and fertility which, in turn, may affect the activities of the actors.

Policies formulated by political structures are subject to transformation through either the activities of the social actors or external structuring forces. Other than

transformations brought about by social actors, external structuring forces such as colonialism have altered the nature of political structures. Thus, for example in Kenya, colonialism removed the power of decision making from non-centralised bodies such as clans or elder's councils and over time reinstated these powers in a centralised administration. External forces such as international population agencies or the World Bank continuously influence state population policies and in the process influence changes in the regulatory processes (Foucault, 1978:26; McLean, 1989).

2.4.2 The Social Actors

Although the SASF framework offers an analytical framework for understanding the relationship between state law and the social field, it is posited by this study that for a richer understanding of legal pluralism, it is necessary to investigate further the interaction between the actors in the SASF either in applying the state laws, or in formulating their own rules and how these are used in social conditioning. Furthermore, it has been acknowledged that social activities by human actors are ubiquitously at work and these constantly reshape and restructure cultural forms and rule orders within the areas of autonomy. As Moore points out,

" [t]o try to understand something about law and society in these terms is to address the question how such processes and counter-processes operate together, and what the pre-conditions are for reproduction or transformation" (Moore, 1978:30).

For purposes of analysing the legal and non-legal processes of regulating sexuality and fertility, it is therefore important to analyse the roles and activities of the individuals, institutions, groups or networks which influence the regulatory processes and likewise affect the application of state laws and societal norms. By further addressing the roles played by the actors, it is possible to bring out the plurality of norms which result from the interaction between the actors themselves rather than from their interaction with the law.

The study therefore uses the term social actors (see Burns *et al*, 1985)¹⁹ to refer to those persons who are either directly or indirectly involved in the regulation of sexuality of the adolescent girl even though for different reasons. The constant negotiation, conflict and collaboration between the social actors may result in changes

in one of the structuring forces, for example law or culture. The relationship between the social actors and structuring forces is therefore crucial in illustrating the regulatory processes at various levels in the different historical, socio-economic and cultural contexts.

Although the activities of the actors are constrained by the structuring forces, this does not make them inactive; through social interaction, they acquire new ways of either adapting, or effecting change. By addressing the roles played by the actors, it is possible to understand the power relations in the regulation of sexuality and fertility, the stake that women have, as actors, and how their reproductive choices are shaped. The involvement of the pubescent girl as a social actor in the processes of regulation is difficult to identify especially where her views are dependent on her status in the family and in the community. Her involvement is however at the stage of implementation rather than at the stage of decision-making, and her decisions at the implementation stage will reflect the success of the regulatory process whose agenda is primarily the prevention of pre-marital sexual activity and procreation.

For purposes of this study, the 'core' of social actors comprises the girl, members of the family, peers, the state personnel, members of religious institutions, and educators. The peripheral social actors include family planning agencies, international donor agencies, women's rights activist groups, and medical doctors. Both the core and periphery interact with the girl at different levels.

Actors in the family

Family members are bound together by kinship ties which are founded on consanguineous relationships between descendants of a common ancestor, resulting in permanent social relationships. These ties differ from affinal ties which are social relationships "generated by marriage, between one partner and the other par-consanguines, and even in Africa between the consanguines of both partners" (Shorter, 1978:157). Kinship ties operate both vertically and horizontally in every direction and regulate the special intra-family relationships and those with members of the community. As such

" almost all the concepts connected with human relationships can be understood and interpreted through the kinship system... and there are many kinship terms to express the

precise kind of relationship pertaining between two individuals" (Mbiti, 1971:104).

The kinship system extends to include the departed and those yet to be born. In Kenyan communities, the individual is born into a clan or sub-clan and cannot abandon the clan even where ties with other clan members weaken.

Family members, as actors in regulating sexuality and fertility, have different roles which often emerge in the socialisation processes; these begin from childhood and continue into adulthood and may differ between cultures. For example, in some societies men and women participate either jointly or separately in the socialisation of children irrespective of whether or not they are their biological parents. Thus as Levi-Strauss (1956) points out, whereas "men never give birth to babies, ... in many societies...they are made to act as if they did" (Levi-Strauss, 1956:274). Hence social motherhood is a culturally constructed role that can be carried out by either parent (Mead, 1930).

Within the family, the control of female sexuality depends on which women are to be controlled, especially since the control mechanisms and agents concentrate on particular women, that is young women who are either daughters-in-law or unmarried daughters (Sen, 1984). Their sexuality is controlled for dissimilar reasons. For example, control of the sexuality of daughters is for purposes of marriage and to ensure the reproduction of the family into which the girls enter upon marriage: daughters-in-law are controlled to ensure that they reproduce the patriarchal hierarchy.

The custodians of the control mechanisms are older women who are either mothers or mothers-in-law, "whose own relative position within the hierarchy is based on their ability to recruit and channel the labour and sexuality of younger women so as to reproduce the patriarchal domination" (Sen, 1984:135; Amadiume, 1987). Patriarchal dominance over sexuality and reproduction in the family is however ensured through socialisation processes in which women as custodians of female sexuality, are dominant actors. Thus through their activities women directly or indirectly continue to reproduce patriarchal relations of dominance and values of female sexuality and reproduction (Chodorow, 1978:11; Mitchell, 1973). An example of this is the practice of female genital mutilation and other *rites de passage* which are carried out at the

stage of puberty and within the wider family context. *Rites de passage* are a form of regulating female sexuality, and are used to control who may or may not procreate among the concerned communities.

Kabira (1992) gives further examples of how women use folk tales (for example sleeping beauty), to socialise their daughters into a dependency syndrome which results in girls having an inferiority complex and naive romantic aspirations (Kabira, 1992:3; Meillassoux, 1989:17). One reason why women do this is associated with the low value attached to motherhood, which "has come increasingly to define women's lives" (Chodorow, 1978:3-4) and has further influenced ideology on women, reproduction of masculinity, sexual inequality and particular forms of labour power (Chodorow, 1978:11).

Changes in economic production do not necessarily mean that the existence of patriarchy in the family is automatically eliminated and studies have established the collaboration between the family patriarchs and the capitalist patriarchy in controlling the reproductive capacities of women in and outside the family (Vock, 1985; Hartmann, 1981).

Educators

These are the traditional and modern educators who are entrusted with the socialisation of children and adolescents. However, this group also consists of other social actors such as peers, extended family members, family life educators from family planning agencies, and members of religious institutions, for example missionaries or those involved in church youth programmes. Each of these social actors plays a different role in the process of regulating sexuality and fertility.

State personnel

The state is considered a social actor through the activities of its personnel which includes administrative officers, magistrates, teachers and legislators who interact with other social actors. They intervene at various times to regulate their activities, through the enforcement of state policy and laws and at the same time encroach on the normative systems in the SASF (Moore, 1978:7). The state actors are found both in the core and in the periphery.

2.4.3 The regulatory mechanisms

The regulatory mechanisms can be found in already existing legislation or by-rule, or in Constitutions of various institutions. These rules can be formulated by social actors for the day to day social conditioning of the members and are not necessarily found in any statute or by-laws. An example of this are the rules set by peers for the activities of the peer groups or by family members, which may differ from family to family. The family is often the natural focus of sexual organisation whereby sexuality within the family is readily regulated by pre-marital sex prohibitions and incest taboo rules which prohibit sexual relations between primary kin, for example between parents and their children, between siblings, aunts and nephews, uncles and nieces, and may extend to include a wider kinship group.

The 'who' and 'how' norms within Weeks's (1986 :26) definition are effected through practices such as initiation ceremonies and marriage, which aim at controlling sexuality through the imposition of norms of who can or cannot marry, and who can or cannot procreate. The enforcement of these norms may also be carried out through the use of punishment and reward systems which coerce certain behaviour. For example, punishment may include public shaming carried out through songs about deviancy, names and stories, imposition of fines and physical punishment for deviants. Rewards are given to those who observe the codes of expected behaviour, and songs of praise are sang about them. In addition, where role models are formed and their good behaviour is exemplified as the expected behaviour that all should follow, mimetic conditioning becomes an important mechanism for enforcing norms especially among the peer groups. Rules in the SASFs are however open to manipulation when it is situationally advantageous to social actors. Thus certain norms are regarded as either fixed or fluid depending on the purposes for which they are utilised (Moore, 1978). In order to understand how normative rules on sexuality and fertility operate, it is necessary to identify the dominant norms, how they are transmitted, what happens in the event of transgression, and whether the punishment for their transgression is coercive enough to ensure obedience. The enforcement of the norms of sexuality and fertility is carried out through regulatory mechanisms.

2.4.4 Processes of transmission

In this category, education is a dominant form of transmitting information and regulating social behaviour. Thus education is carried out through informal socialisation methods (in the family, by peers, community), and through the formal methods applied in schools. Socialisation as a process of education includes ideological, political or economic means, by which society perpetuates itself through time. This is done through the instillation of values, attitudes and norms in preparation of the individual for future roles in society.

Socialisation processes, have been criticised for the transmission of male constructions of female sexuality which perpetuate male domination over women. Thus it is argued that boys are socialised to believe that in order to become real men they should have sexual intercourse with a woman. Girls on the other hand, are socialised to be chaste, submissive and passive in sexual relations, since men are the dominant and powerful ones and have uncontrollable urges which women should not provoke. Women are therefore 'gatekeepers' of their sexuality as well as that of men (Richardson, 1993:85). It is therefore no wonder that in cases of sexual abuse, women often blame themselves which further naturalises the abusive male sexual behaviour.

Socialisation may be carried out in various ways, for example through initiation rituals, training, formal and informal education, or story-telling. Eventually people are socialised into customs and practices that will facilitate their full and effective participation with regard to social relations and structures. Language, for example, is a useful tool of socialisation, and through it the construction of sexuality emerges. In Victorian Europe where sexuality was seemingly repressed for instance, in reality new actors emerged and new language was used to say things differently and for different reasons, thus

"control over enunciations as well as, where and when it was not possible to talk about such things became much more strictly defined; in which circumstances, among which speakers, and within which social relationships. Areas were thus established, if not utter silence, at least of tact and discretion: between parents and children, for instance, or teachers and pupils, or masters and domestic servants" (Foucault, 1978:17-18).

Socialisation may be carried out either in a narrow or a broad sense (Spencer, 1970:127). In the narrow sense, socialisation is restricted to the processes in which children are socialised into understanding and acquiring the values of society. The initial and perhaps most important unit of socialisation in this sense is the family, which plays a major role during the formative childhood years and ensures that values are instilled into children in preparation for their future adult roles. In the broad sense, the socialisation process continues into adulthood whereby adults are socialised into the values of new groups before they are allowed to participate in them (Spencer, 1970). Socialisation therefore continues outside the family, and the main actors are the school, peer groups, traditional educators, and the media, each of whom have an impact on the socialisation of the individual (Smart & Smart, 1978:2).

In either narrow or broad socialization, conflicts between the social actors often emerge, especially as concerns the old values which are to be discarded and the new values which are to be acquired (Spencer, 1970:127). Re-socialisation also occurs in instances of social mobility and socio-economic changes such as urbanisation and industrialisation, and in this case it is both children and adults that have to be re-socialised (Mayer, 1970:xiii).

In developing countries, for example, the introduction of a formal system of education has meant that children are taken away from their homes and spend a lot of time in school and institutions of higher learning. The socialising agents and forms of socialisation are therefore expanded to include the family, school, peers, and the media. This means that adults have to be re-socialised into the emerging values and norms that arise out of the social economic changes. As in the case of the family, economic changes have affected the role of society in the socialisation process and likewise the enabling environment within which this takes place has changed. Formal education has replaced the traditional forms of education which went along with this process of socialisation.

2.4.5 Tools of analysis

Discourse analysis

Foucaultian discourse analysis²⁰ is a relevant tool of analysing statements and social meanings, within a social, historical and cultural context. Through it one is able to

understand how power relationships are formed and transformed over time. Thus an analysis of discourses surrounding adolescent sexuality and fertility in Kenya illuminates the power relations between those who regulate and those who are regulated, the forms of regulation, the resistances to such regulation, who resists, and reasons for such resistance (Foucault, 1978:27; Weeks 1986). For example, an analysis of historical and social discourses may reveal the competing forces between social phenomena and the law, the emanating power relations, and the development of dominant ideologies that influence the regulatory processes. An analysis of cultural discourses on sexuality further illuminates how sexuality is constructed through language, stories, song and dance.

Gender as a tool of analysis

The danger of relying only on discourse analysis in examining the processes of regulating sexuality and fertility, is that gender relations which are crucial in the development of these discourses, may be taken for granted. For this reason this study also uses 'gender' as a tool of analysis in order to highlight the gender issues and relations which regulate sexuality and fertility. Gender is a socio--cultural rather than a biological construct, and a gender perspective "recognises gender as a key principle that organises social arrangements, action and even cognition" (Wamahiu, 1992:5). Thus the allocation of roles to the social actors by society is not as a result of biological differences between men and women but rather due to their bio-cultural characteristics (Wamahiu, 1992:6). In using a gender perspective to analyse the activities of the social actors at different levels, the study reveals the gendered nature of the regulatory processes, the dominant power relations, and the extent to which the social actors exercise "power, authority and autonomy" (Wamahiu, 1992:6) in their activities.

2.5 PRESENTATION OF DATA

As noted in section 2.3 interviews were carried out with selected respondents and their stories are used in the discussions on regulation of adolescent sexuality and fertility. The researcher has undertaken to transcribe the stories and accordingly some are not presented in verbatim, but rather in their transcribed form. However, the

researcher has taken all due care to ensure that the stories and their meanings as told are not distorted. Accordingly those stories not presented in quotation-marks are not presented in verbatim.

2.6 LIMITATIONS OF THE STUDY

This study is exploratory rather than confirmatory and is therefore not representative of the position of the entire country. There are a number of reasons for this. Firstly, in order to be representative such a study would require immense human and financial resources which were not available for this research. Secondly, a representative study would require a longer period of investigation in order to understand the development and breakdown of regulatory patterns over time. Thirdly, due to the dearth of both historical and current literature on the forms of regulating adolescent sexuality and fertility, the examples and interviews carried out are not representative, but serve as an illustration. Fourthly, although the study focuses on adolescent girls, it was not possible to carry out a country-wide survey for the reasons stated above. The study research therefore relies on secondary information from the relevant multi-disciplinary country-wide surveys that have been carried out on adolescent sexuality and fertility to provide the necessary background information.

PART TWO
REPRODUCERS REPRODUCED : EMPIRICAL FINDINGS

CHAPTER THREE

REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY

1900 - 1930

3.0 INTRODUCTION

This chapter analyses the prevalent processes in the regulation of sexuality and fertility of unmarried adolescent girls during the adolescent years of two of my oldest informants, Mariamu and Mumbi, between 1910-1930. Their stories are analysed within the context of what was happening in their communities at the time. In particular, the chapter focuses on the regulatory mechanisms, the social actors, possible outcomes and long-term consequences of such regulation for the adolescent girl, and the interplay between the internal and external social actors.

3.1 INTRODUCING MARIAMU AND MUMBI

3.1.1 Mariamu

Mariamu the older of the two respondents, is a widow aged between 96-100 years. Her late husband was a pioneer in bringing the Christian faith to the people of their village and during his lifetime he helped build many churches. Over the years she has removed herself from a number of customary practices related to personal laws. In her lifetime, she has had sixteen (16) children, but today only three (3) are alive. Her account is most interesting especially since she has lived through the socio-economic and cultural transformation of her community,²¹ the Kikuyu, throughout this century.

At the beginning of the interview, Mariamu was asked whether she remembered when she was born. She stated clearly that at that time people did not bother with such records, hence she could not remember when she was born. However, attempts to revive her memory using key events proved futile. For example, she was asked whether during the time of her birth, there was a drought or very heavy rains or an earthquake. But she maintained that such events were not known to her. The emphasis on key events to determine the possible time of birth was useful in identifying the period of her adolescence and possible age at marriage. Although Mariamu had a poor

memory concerning her date of birth, she had a vivid memory of when she got married. Knowledge of her age at marriage was useful in that it was then possible to estimate her age during adolescence and the possible length of time she spent in this transitory stage before marriage.

According to Muriuki, the age at *menarche* for Kikuyu girls at the beginning of this century was at about 18 years, which meant that their reproductive years were shortened, and therefore they spent a short time in the transitory stage before marriage (Muriuki, 1974:118). The First World War (1914-1918) played a major role in the timing of Mariamu's marriage since young men, one of whom was her future husband, were being conscripted into the army. Thus Mariamu recalled

"Ehh Wahito ati riria ndahikire " (you want to know when I got married?)...I know that this was after the great war since your *Guka* (grandfather) had to first go and fight...this was the war with the *Njeremani* (First World War) since they went on foot...²²

This meant that she had to wait until the war was over for her marriage to take place. It is possible that Mariamu spent a longer period in the transitory stage and her marriage age can therefore be approximated at about 25 years.

3.1.2 Mumbi

The second informant, Mumbi is also a widow and is aged about 80 years. She was married as a third wife in a polygamous marriage, and her late husband was a community leader. She has had seven children but today only six survive. Mumbi has spent all her life in Kanyariri, a village on the outskirts of Nairobi, and during this period she has witnessed the development of Nairobi and the infiltration of urban cultural values into her village. Mumbi is a member of the wider extended family to which the researcher belongs, and refers to her as grandmother. The researcher is related to Mumbi through her late husband, who was the researcher's great-grand uncle. The researcher spent most of her school holidays in Mumbi's homestead, and Mumbi was a key player in the researcher's socialisation during the latter's pre-adolescent and adolescent years.

Despite memory lapses caused by old age, Mumbi recalls that she was a "*Muiritu*" (unmarried circumcised girl) in the years between 1928-1930, which she claims was

about 10 years before she heard of the Second World War.²³ She was married under Kikuyu customary law by 1931, which meant that she spent a short time in the transitory stage between initiation and marriage.

3.2 CONTEXTUAL BACKGROUND

Mariamamu and Mumbi were adolescents between 1911-1920, and 1928-1930 respectively. In order to examine their socialisation in preparation for adult roles during these periods, it is instructive to consider the structuring forces that influenced the activities of the social actors and the regulatory processes and mechanisms that prevailed at the time. These factors are the social, economic, political and legal structures, and the introduction of colonialism and christianity.

3.2.1 Political Structure of the indigenous communities

At colonisation in 1897, almost all communities living in present day Kenya were stateless²⁴ in that they did not have a hierarchical political leadership as was the case, for example, amongst the communities living in neighbouring Uganda. Everyone was a member of a community that was not a large administrative unit. The distinction between people in these communities was the differentiation in age, sex and ability. The political structure of these communities was such that there was no overall ruler, nor was there an overall law making body but rather each sub-group e.g. family, lineage, or community, had its own system of rules (Pospisil, 1971:101).

In these communities, decision making was often carried out either by clan elders (for example among the Luo or Luhyia) or by a council of elders belonging to the same age set (for example among the Kikuyu, Kamba and the pastoral Nilo-Hamitic groups)²⁵ whose area of jurisdiction was limited to clan properties and clan members (Middleton, 1965:349; Muriuki, 1974:110). Clan and council elders kept ideas and values of the entire clan at the heart of their decisions and accordingly, individuals were not permitted to make decisions on important family matters without consulting the clan elders.

The clan being the wider extended family whose members were linked together by strong kinship ties, was a group which had semi-autonomy, bargaining powers with other similar groups, rule generating capacities and was at the same time subject to

external influences. Kinship ties bound individuals to the established norms of social organisation (Meillassoux, 1986:18). These ties governed the relationship between the individual and his or her kin in matters of personal laws, and the relationship between the family and the rest of the community.

The Kikuyu community (to which Mariamu and Mumbi belong) for example, was a patriarchal and centralised society made up of nine clans, (Muriuki, 1974:34-36 & 47; Kenyatta, 1978:1 & 6) which were further divided into sub-clans, headed by a nominal head who was the custodian of land held by the sub-clan. The sub-clan was made up of several families having the same clan name, and traced its origin to the same ancestor. The clan (*muhiriga*) was composed of several sub-clans and families mainly due to the persistence of polygamy; as pointed out by Kenyatta (1978), it was not possible for all the clan members to live together. The nine clans were however unified through the age-grading system (*riika*) which "unites and solidifies the whole tribe in all activities" (Kenyatta, 1978:2; Muriuki, 1974; Kinoti, 1983; Ahlberg, 1994). Membership into the different age grades was through male and female initiation ceremonies after which the new initiates, irrespective of their clan membership, became members of one age-group and were thereafter bound together as brothers and sisters. Thus being an acephalous society, power and authority was "widely diffused throughout its varied components" (Muriuki, 1974:110).

Formalized administrative units emerged at the turn of the century, with the introduction of indirect rule as a form of colonial administration (Muriuki, 1974:110). One problem that faced the British in Kenya as at 1897 was that there were "virtually no pre-existing political authorities that they could either effectively supersede or effectively subjugate" (Low, 1965:41). This made the administration of justice by the colonial government an arduous task. The need therefore arose to create a political structure that the Africans would look up to as having legitimate authority.

Consequently, structures that were alien to those of the indigenous communities were introduced and which for a while did not interfere with the Africans' way of life and customs. However, attempts were made at appointing those who cooperated with the colonial administration to the positions of Village Headmen and Paramount Chiefs. Many of those appointed had no political authority in their respective communities,

even though in some cases some held the posts of ritual experts or religious leaders (Low, 1965:43; Snyder, 1982:104).

The creation of these posts through legal or administrative action saw the beginnings of the breakdown of the community structure of authority. The post of Village Headman (not necessarily an elder) was established by the Village Headmen Ordinance. His role was primarily to ensure the maintenance of law and order, and ensure the continued presence of the administration. The Headman also sat in the Native Tribunal at the first level, and sometimes chaired the Tribunal, which slowly diminished the powers of elders and altered the African adjudication institutions (Low, 1965:45; Snyder, 1982:107 *et seq*).

The appointment of Headmen and Chiefs who were supposedly custodians of the customs of the community, led to the introduction of some western ideas in certain customary practices. The Headmen also policed the continuance of those practices which the colonial administration found to be socially acceptable. During the First World War, the Headmen were used to force conscription of young men either into the army carrier corps or alternatively to work in the settler farms.

3.2.2 The Structure of the Family

The family was at the heart of indigenous communities. Within it existed clearly defined power structures in which different leadership positions were allocated to members of the family. For example the father was the normative head of the family, whilst the mother was (and continues to be) the emotional leader in accordance with African tradition. The father's position was linked to his control over the family's economic resources which weakened if he lost control over these resources (Kayongo-Male and Onyango, 1986: 28). Accordingly, the traditional family was a semi-autonomous group which

"had its own rules concerning the obligations of spouses towards each other and of parents towards children, rules which governed the cooperation of daily life and expressed and were supported by a system of values enshrined in religious beliefs" (Phillips, 1953:1).

In order to determine the structure of the family, both Mariamu and Mumbi were asked whether they recalled how their families were organised and who had the

decision making powers within their families. Mariamu vividly recalled that her "father was a very strict man who made the decisions in our family". When asked whether her mother made any decisions, Mariamu exclaimed '*Atumia matiaragia!*'²⁶ (Women are not supposed to talk). She qualified her statement further by stating that women did make decisions, but only on matters which concerned them and their daughters. This implied that men made the overall decisions for the family. On the structure of her natal family, Mariamu stated

We had no brothers, therefore he (father) took control of ensuring that we did not go astray. We also had to be aware of "*baba mukuru*" (eldest paternal uncle) and "*baba munyinyi*" (younger paternal uncle), who assisted our father in making family decisions. If we had brothers, they would have had the responsibility of seeing that we did not go astray.

When asked about her family, the other informant, Mumbi, plainly stated that "the family was headed by my father, who made decisions and with the other "*athuuri*" (elders) made decisions concerning the clan (*muhiriga*). Like Mariamu, she too held the view that women never made decisions on family matters, but only on those concerning women.

A common feature of the family during this period was that it existed as a corporate group, and the larger the group, the better for accumulation of wealth and for defence. This group was bound together by kinship ties which were traced through either the father's line (patrilineal) or through the mother's line (matrilineal) (Meillasoux, 1986: 22). At the highest level was a clan followed by a sub-clan and nuclear family units at the lowest level. These units were composed of a man, his wife or wives and their children. The kinship ties also ensured strict adherence to existing norms. In the case of Mariamu, her paternal uncles were important members of the family, and were also key decision-makers. Female children were expected to care for younger children from the extended family, and this continued until the stage of initiation. According to Mariamu,

I was given the son of "*maitu mukuru*", (eldest paternal aunt) to carry and care for, from the time I could carry firewood on my back. It was my responsibility as was the case for the other girls in the family, to care for the child. The child regarded me as his "*maitu*" (mother) even though I did not bear him, and

today, his children call me "*cucu*" (grandmother), and every so often come and tell me how my son is. The carrying and caring for infant children continued until a girl was ready to remove her "*jiingiri*" (childhood ornaments).

The caring for younger members of the family by female children illustrates the existence of a network of responsibility within the family. It also served to prepare female children for their future roles as mothers.

Creation of the family

The family was created through marriage or by procreation. Due to kinship ties and laws prohibiting incest, the family could not reproduce itself, hence the exchange of nubile girls through marriage to facilitate the continuation of the family. Consequently, it is often argued that because of the direct link between marriage, procreation and continuity of the family, traditional African marriages were intended primarily for procreation (Kabeberi-Macharia, 1992).

Marriages were and continue to be, an alliance between two families, and merged the spouses' families. Thus as the family expanded, new reciprocal rights and obligations for the new spouses, new relationships between the spouses and their relatives, and between the relatives of both spouses were created. However, among the Kikuyu, married women were (and still are) referred to as '*andu a nja*' meaning people from the outside, who are married into a family mainly for their reproductive capacities. Marriage therefore resulted in a "rearrangement of social structures" regulated by custom (Radcliffe Brown & Daryll, 1956:43).

To legalise the African traditional marriage, a payment in the form of gifts, domestic animals, or provision of farm labour, was made by the groom or his family to the father or guardian of the bride on behalf of her family. This bridewealth essentially accorded legality to that marriage. Mariamu was asked whether she remembered the process of her marriage especially since her husband-to-be had just returned from the First World War, she exclaimed

One did not enter marriage asily! First, he had to bring the *ruracio*²⁷ before my family could allow the marriage to take place and this took a long time. But then since he had been in the war he was unable to meet the necessary requirements.²⁸

The gifts offered were distributed between certain members of the bride's family, for example her father, her mother, her eldest uncle and female relatives though in different proportions. In a polygamous family, each household retained their share of the animals and gifts given in the marriage of a daughter and these did not form part of her father's estate for purposes of inheritance (Kabeberi-Macharia, 1992).

By 1900, a number of families had already been infiltrated by Christian missionaries who had since the mid-19th century been actively preaching the Christian gospels and had acquired a number of converts among several communities in the protectorate. However, one problem that faced the missionaries was that despite their efforts to remodel the existing family organisations, the indigenous family structure remained unchanged since converts did not totally abandon their traditional practices and beliefs (Snyder, 1982:106).

The failure of pre-colonial Christian missionaries to alter the indigenous family structure is linked to a number of factors. Firstly, the ideal Christian family was the English family, which was structured on values different from those of the indigenous peoples. Secondly, the way in which the community reproduced itself, was through norms and values that were totally different from those advocated by missionaries. In addition, these norms and values had developed through processes of interaction and collaboration within the communities and with others, over many centuries. Thirdly, the missionaries were on a 'civilising' mission and condemned most indigenous practices, without considering the context within which they were practised, the plurality of religions in existence, and their connections with the lives of the African peoples.

3.2.3 Religion

Traditional religion has from time immemorial been used to protect the well being of the community and has been used to mark important events such as births, marriages, and *rites de passage* especially at puberty and death. In those societies which were stateless (and therefore not having one central authority), traditional religious authorities performed both political and adjudicatory functions.

A majority of the communities believed in the continuity of life, in life after death, and that a continuity of interest existed between the living, the dead and the

generations yet unborn. Accordingly, various rituals were carried out to signify the transition from one life stage to another, for example to mark birth, initiation, marriage and death (Mbiti, 1971:134; Muriuki, 1974). The Iteso for example, had religious rites which were performed by women, such as rites to symbolise birth and growing up of a child "as well as incorporation of a new bride into the *etale*, [i.e.] clan taboos of her husband" (IAS, Busia 1986:36).

This fundamental and three-dimensional concept gave the communities coherence and a deep sense of history and tradition. This concept influenced their day to day religious, social and political life: hence the widespread view that each community was favoured by an ancestor, or a group of ancestors, from whom the ethnic group derived its possession and status. It was also believed that the ancestors established the basic pattern of life for all time which although could be modified or adapted, could not be entirely altered. Superstition and the fear of the unknown reinforced adherence to the practices and norms thus ensuring their continuity (Mbiti, 1971; Westermann, 1934, 1969:65).

3.2.4 The Legal Structure

A major feature of colonialism was the transplantation of legal systems from the metropolises to the colonies which facilitated economic expansion into the colonies (Merry, 1988:869). In the process of enhancing economic development the imposed laws played a dual role. Thus they either created the legislative framework for economic development, or stagnated the development of the indigenous forms of production. For example, Portuguese laws applied in Portuguese East Africa (Mozambique) were primarily used to ensure the control and constant flow of labour in the colony and thus not only stagnated the development of indigenous modes of production but overall economic production (Sachs & Welch, 1990:8-9).

A reception clause of the 1897 East Africa Order-in-Council, which was enacted under the Foreign Jurisdiction Act of 1890, introduced into Kenya

" [t]he common law, the doctrines of equity and the statutes of general application which were in force in England at the date of reception when the colony obtained a local legislature"

Moreover, the reception clause introduced a number of statutes already in force in

India²⁹. These were modelled on already existing English statutes and gave the Consul jurisdiction over British subjects, protected persons and Africans who were within the five mile radius of an administrative post. Apart from the introduction of these statutes, the Order-in-Council also introduced a hierarchical system of subordinate and superior courts.

The subordinate courts comprised the Native Courts, Muslim courts, and courts manned by administrative officers and magistrates. The Native Courts consisted of the Chief Native Court at first level, and the High court which had appellate jurisdiction at the second (Ghai & McAuslan, 1970:130). The Native Courts and Tribunals were initially manned by African elders who applied African traditional law in customary cases. As required by the Native Court Regulations, they applied procedures based on English court procedural rules. The superior courts consisted of Her Majesty's court for East Africa at the first level, and Her Britannic Majesty's court in Zanzibar which had appellate jurisdiction, at the second level. The Privy Council was the final appellate court.

The legal system introduced into colonial Kenya in 1897 was primarily intended to serve the interests of the settlers and colonial administrators and not those "of the African peasants" (Siedman, 1973:49). By 1900 a dual legal system in the then Kenyan Protectorate had already been created as a result of colonial expansion. The indigenous peoples, both in the interior and at the coastal areas, continued to apply their own tribal and religious laws. The Native Courts Regulations of 1897 recognised the application of Islamic laws for those professing the Islamic faith whilst the non-Christian and non-Islamic Africans were to apply "the law of their caste or tribe so far as it can be ascertained, and so far as it is not in the opinion of the Court repugnant to natural morality" (Regulation 64). This was a form of acknowledgement by the colonial administration that they had in actual fact found rule systems in operation in the territories, which were different from their own systems. Nevertheless it was thought important that the indigenous peoples should be allowed to continue with their own legal systems.

The process of introducing the English legal system to Kenya was different from that in India, where the British administration found in existence a well established

system of laws and rules. These were based on existing religions, and a well defined Indian customary law, whose concepts were similar to those of the English law.³⁰ The same was not true of the heterogenous Kenyan colony, whose communities had a diverse system of tribal laws based on concepts of law that were different from those of English law. For example, the African concept of law did not distinguish between civil and criminal wrongs, and therefore "to the Africans wrongs are wrongs and are unclassified" (Kuria, 1976:51). The same views were held by Driberg, who argued that to the African "law comprises those rules of conduct which regulate the behaviour of individuals and communities and which by maintaining equilibrium of society are necessary for the continuance of the corporate whole" (Driberg, 1934: 231). Another difference was the system of administration of laws; for example the forms of punishment for certain crimes included redress to the aggrieved party through some form of compensation, such as *Kore* which was blood money to be paid to the family of a murder victim by the family of the murderer.

The application of African normative rules in the colonial courts was problematic since these courts neither had the jurisdiction to hear claims where these rules were applicable nor were the judges acquainted with them. The differences in the various concepts of law led to legislative efforts by the colonial administration to modify or mould the indigenous laws into laws they were familiar with. Thus the 1902 East Africa Order-in-Council gave the Commissioner powers to make Ordinances and, in so doing, he was to "respect existing native rules and customs, except so far as the same may be opposed to justice and morality" (Article 12(3)). In addition, Article 20 provided that

"[i]n all cases civil and criminal to which natives are parties every court:-

(a) Shall be guided by native laws, so far as it is applicable and *is not repugnant to justice and morality or inconsistent with any Order-in-Council or Ordinance or any regulation or rule made under any Order in Council or Ordinance*; and

(b) shall decide all such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay" (emphasis added).³¹

The effect of the above clause, known as the repugnancy clause, was to reduce the application of African rules in the colonial courts. It also gave the colonial judges the discretion to eliminate the 'objectionable' features of African normative rules which were allegedly repugnant to civilised ideas. This "in practice...meant that unless native customary law is patently and grossly repugnant to European ethical ideas, it should be applied" (Robinson, 1949:159). Thus where a party relied on what was now referred to as African customary law which was in conflict with the received law, the repugnancy clause was invoked and English standards of justice and morality were applied.³²

The dual legal system was therefore comprised on the one hand of general law and the African normative and religious rules on the other. Repugnancy clauses regulated the extent to which the received law interfered with these rules and the process of moulding them into a customary law that fitted into an image recognised by the general law can be said to have begun during this period.

3.2.4.1 The African normative rule systems

The social co-ordination of the community was carried out through a combination of laws, customs and practices, forming what is often dubbed 'living law', which compelled compliance from the community members. A characteristic feature of the rules systems in pre-capitalist communities was their plural nature, which was primarily conditioned by the nature and structure of these communities which over time had undergone changes brought by wars, conquests, migrations, and trade (Muriuki, 1974).

Rules of social conditioning included firstly, those norms that were legally binding and coerced certain behaviour patterns from the group members. These were reinforced by taboos, sexual prohibitions and severe punishment for the transgressor, and compensation for the family of the victim. These norms which were unwritten, governed day to day living and were linked to the religious belief system (Ahlberg, 1994: 59; Achola, 1989:10). Members of the indigenous communities greatly feared taboos which reinforced existing norms in the society. Thus

"[t]he power of taboos lay in their destructive nature to the person who broke them and the community, whether or not the community was aware of the breach. Breaching a taboo was

believed to inherently bring bad luck, misfortune and sometimes destruction of property, children, natural calamities, disease and even death" (Njau, 1992:10)

Where ill fortune befell a family or an individual, this was explained in terms of the victim or a member of his or her family having transgressed some norms of the community. For example, the belief that sexual intercourse with an uncircumcised girl would result in either sterility or death of the man involved served as a deterrent against pre-marital sex especially with an uncircumcised girl.

There were secondly, customs and practices which facilitated the moulding of the members into their expected roles in the community. The community had a responsibility for moulding the behaviour of its members and "in a sense everybody was everyone's keeper [which] was made possible by the fact that the traditional communities were closed and shared clear, common, and uniform values and rules regulating behaviour" (Njau, 1992:10).

3.2.5 Mode of subsistence

Mariamou and Mumbi came from communities that relied heavily on agricultural production, even though livestock was also kept. Due to the demand for labour, high fertility rates existed among agricultural communities, although this was linked to other factors such as high infant mortality rates, and the desire for many children who were to provide the 'social insurance' for their parents in old age (Khasiani, 1992; MacFarlane, 1980:100-101). The household remained the centre of production and reproduction, especially since social, economic and religious activities were centred around the family (Muriuki, 1974: 117; Middleton, 1965:334; Ahlberg, 1994:60).

As a consequence of the colonial economic production, the centre of production was separated from that of reproduction, which in turn altered the division of labour in social reproduction. Thus the home remained the centre of reproduction and women gradually became the main participants in the socialisation of their children since their men now worked outside the home. The weakening of kinship ties also led to the breakdown in the production and reproduction processes, which were founded on these ties. The colonial mode of production was characterised by extensive settler farms engaged in cash crop farming, which initially existed alongside indigenous subsistence

production and modes of reproduction.

The need for labour for the settler farms and for manual work in the towns was after 1903 facilitated by legislation³³ which imposed hut and head taxes on the indigenous people who were in turn forced to work in order to pay their taxes (Middleton, 1965:336). The first was a hut tax based on the number of households, which meant that a polygamous man was bound to pay more than a monogamous man. A further tax was placed on men aged over 15 years between 1906 and 1910, which forced a number of young men to leave their communities to seek work so as to pay their taxes (EAP, 1912-13). The introduction of the hut taxes saw the dispersion of male members of the family and the weakening of kinship control.

The levying of hut tax based on the number of persons in a household however brought another dimension to the modes of reproduction since it now meant that the households with many people had to pay more tax. Thus, whereas in the past, many hands were welcome for farm labour and other tasks, the mandatory payment of hut tax turned uncontrolled fertility into a costly affair. Furthermore, young men were forced to earn money to meet bridewealth obligations especially if their fathers had to pay heavy taxes. Consequently, the young men gradually gained independence from the kinship systems, which controlled marriage and the reproduction process. The overall effect of the tax system was to create an internal migrant labour in Kenya that later was "the cause of much social and political disturbance" as a result of loss of land, imposition of an alien regime, and impressment of the men folk into labouring for settlers (Low, 1965:53).

3.3 CONSTRUCTION OF CHILDHOOD, ADOLESCENCE AND ADULTHOOD

Amongst the Kikuyu, as in other communities, each individual had a different status according to age, for example, *ciana* (children), *mumo* (young initiates) *anake* (warrior) and *athuuri* (elders), all of whom had a part to play in society (Muriuki, 1978:116). The passage from one stage to another was celebrated in a ceremony which symbolised 'new birth'. The act of being born was enacted in different stages to show the transition of an individual into the next stage of life.

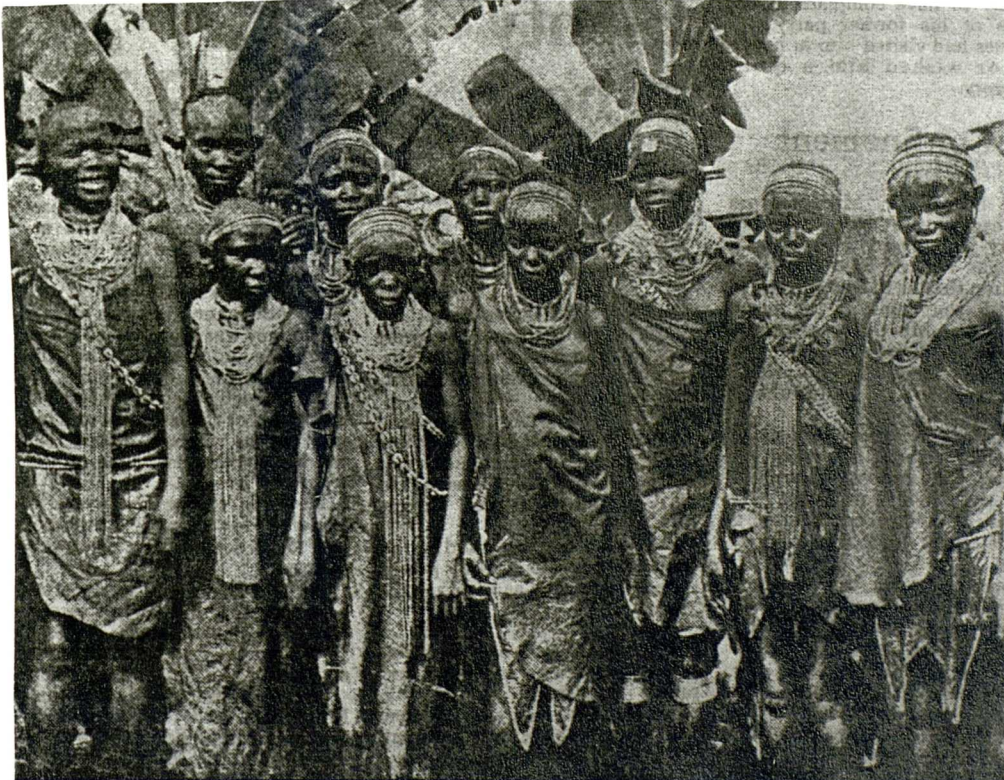
In the first stage, immediately after the birth of a baby, the new mother and baby

were required to stay in seclusion for a period of five days which symbolically signified 'death'. After the end of this period they emerged and a goat was sacrificed and prayers held to celebrate the new birth of a family member. The second stage was between the ages of six and ten years when a child had to undergo another birth (*guciaruo riingi*), which was carried out before initiation and was compulsory if the child was to fully participate in the community (Mbiti, 1971:121). In this ceremony the child was placed in between the mother's legs and was bound to her by goat intestines symbolising the umbilical cord. These were then cut and the child began to imitate the cry of a new born baby symbolising a new birth; afterwards the mother's hair was shaved off and her house swept. After this ceremony the child left the stage of babyhood and entered that of the initiates during which they were prepared for initiation into adulthood (IAS, Muranga, 1986:178-90). According to Mbiti, "the initiation of the young is one of the key moments in the rhythms of individual life, which is also the rhythm of the corporate group of which the individual is a part" (Mbiti, 1971:121). The third stage was that of being initiated into the group of young initiates which, Muriuki posits, was "the most significant experience, both socially and politically" (Muriuki 1974:117).

A key element of these rites is that they symbolised 'new birth' by introducing the initiate into the stage of adulthood, new responsibilities, rights and obligations, and also prepared them for sexual relationships and parenthood in married life (Mbiti, 1971:122). The actual initiation rites differed among the various Kenyan communities. These included the cutting or scarring of the body either through circumcision or facial scarring, or removal of teeth or ear-lobbing, all of which signified a changed personality and the transition from one stage to another. Initiation ceremonies which were part of the *rites de passage* linked to the religious beliefs and practices of the communities, were crucial in determining one's capacity to engage in sexual activities as well as procreate³⁴ (Muriuki, 1974:118; Kenyatta, 1978:134).

A common form of initiation for the Kikuyu was male and female circumcision which were used as a means of deterring early marriage and early childbirth. Initiation often took place between the ages of 14 and 18 years for girls, and 18 years or later for boys. Clitoridectomy was carried out on girls and removal of the foreskin for boys.

Both of these symbolised the separation from childhood, and one was born into a new stage of "knowledge, of activity, of reproduction" (Mbiti, 1971:123; Muriuki, 1974:118 & 133-34). The times for the initiation ceremonies differed for male and females. Female initiation ceremonies were carried out yearly whilst those for males were carried out after five to nine seasons in the Kikuyu calendar year which are equivalent to two and half to four years (Muriuki, 1974). It was important that female circumcision was not delayed since this would interfere with the reproductive process. Another reason was that female circumcision often took place after *menarche* which occurred at about the age of eighteen years; thus delaying the ceremony would have meant that the reproductive years of the female initiates would be reduced further.



Kikuyu Girls in Initiation Robes - Around 1900

Source: Daily Nation 28th December, 1993.

The songs ^usang during circumcision carried messages of responsible parenthood, continuity of the community, bravery, love and friendship. In communities such as the Embu, female circumcision was carried out before a girl began her menstruation, which signified her readiness to move away from the stage of childhood to motherhood. Circumcision after the onset of *menarche* was regarded as a serious offence and the girl's parents were often punished. This meant that the girl was only eligible for marriage as a second wife to an older man (IAS, Embu, 1986:129). After circumcision, the girls remained in a transitory stage awaiting entry into full adulthood which was achieved by marriage.

Those who failed to undergo circumcision became the laughing stock of the community because failure to undergo initiation entailed "in their eyes shame and degradation" (CAR, 1930:5). The uninitiated were prevented from participating in the communities' affairs, and from proceeding to the next stage in life. This also meant that they could not be reproduced by their children since they were estopped from procreation by virtue of not having been initiated into the procreation stage. Inevitably, they could not ensure their immortality and their membership in the wider family (departed, present and future) was bound to cease. Further, by being in that state they prevented the continuation of the family by breaking the chains that linked the family to the future members. Moreover, any misfortune that befell their family or relatives was often linked to their state of not having undergone ritual growth.³⁵ Mariamu thus pointed out that marriage was socially acceptable for those who were already circumcised:

We had to wait for the *irua* (circumcision) before we were eligible for marriage...I remember when we went for the *irua*, it was during the time of that great war that your grandfather fought in.

Once initiated, the new initiates entered a different stage of life and to differentiate them from other groups, the initiates were given new titles. In addition, they joined age-sets which had a distinct name, and they remained life-long members of these sets (Muriuki, 1974:117). For example, amongst the Kikuyu, a circumcised girl was a *Muiritu*, and a circumcised boy a *Mwanake*, titles that bestowed honour on those

referred to and commanded respect from those yet to be initiated.³⁶ These titles said a lot about their holders and differentiated them from the uncircumcised youth whose titles were *Kiriigu* (girl) and *Kihii* (boy) and were also used to refer to those who refused to undergo the initiation ceremony. The actual phonological articulation of *Kiriigu* and *Kihii* depicts the contempt with which one was held if he or she was uncircumcised when they ought to have been circumcised. However, the same contempt is not detected when referring to children who are yet to be initiated. Likewise the articulation of *Muiritu* and *Mwanake* depicts the respect held for the persons who are in this stage, and symbolises that they are ready to progress to the next one.

According to Mariamu and Mumbi, the higher status of the already circumcised youth made the uncircumcised aspire to be like them. Hence they observed them and were obedient so that they too could in time be initiated into that prestigious stage. The power of the language differentiation between the two stages was coercive enough to compel obedience and observance of existing norms. Likewise, the initiates aspired to be like the married members in the community and, accordingly, obeyed the norms governing those in their groups with the hope for societal rewards befitting those who properly entered the next stage, without transgressing any rules. However, marriage for male initiates was delayed since they had to undergo training as junior warriors and graduate to be senior warriors before they became eligible for marriage.

3.3.1 Normative rules on sexuality and fertility

Amongst the different communities, there existed similarities in the rules governing the manner in which the family was reproduced. The rules regulating sexual relations and fertility ensured the continuity of the family, the nomenclature, the objectives of marriage and laws of inheritance. The emphasis that the chain of continuity of the family should not be broken led to strict rules concerning who and when one was allowed to procreate. Uncontrolled procreation meant that it was impossible to know which family name was to continue and this led to strict rules regarding entry into marriage. Social rewards and punishments were used to control reproductive behaviour, control illegitimate births and population growth.

The organisation of reproduction thus made it necessary for an unmarried woman's

sexuality and reproductive functions to be controlled and protected in the interests of her natal family, the family that she is married into, and any children that she may have. Accordingly, potential marriage partners were brought up in strict adherence to the values and rules of conduct of their community. A common feature was the prohibition of an unmarried couple from engaging in full sexual intercourse which was exclusively 'reserved' for married couples, and was linked to procreation. Therefore, the persons permitted to copulate were those who were permitted to procreate.

In most communities, the bride's virginity influenced the bridewealth that her family would receive from the groom's family: if virginity of the bride was proved the bridewealth would be substantial. Furthermore, the bride's family would receive extra gifts, which sometimes included extra cattle from the groom's family, in appreciation for her 'proper' upbringing. Sexual offences such as rape, incest or sexual assault were therefore regarded as offences against the person, family and the community, and were treated severely. Rape attracted death as a punishment, and this served as a deterrent for would be rapists. According to Mumbi,

[r]apists were heavily punished by paying fines in the form of goats and if the rapist was notorious he would be burnt, first by covering him up with dry banana leaves and then setting him on fire or he was put in a beehive and rolled down a hill until he died.

The severity of this death sentence was justified because of the ripple effect of the crime and the number of people affected by the rape. Firstly, the girl suffered from emotional distress knowing that other than the social stigma of having been raped, she was likely to be married off as a second wife with undeserved disgrace. Secondly, her family stood to lose in terms of the bride-wealth that they would have received if she had been a virgin at marriage. This in turn affected the amount of bridewealth that her brothers (if she had any) or close male relatives gave towards their own marriage.

In discussing pre-colonial rules of regulating reproduction among the Kikuyu, Ahlberg points out that in procreation "there were specific social mechanisms including beliefs and practices, taboos, prohibitions, social sanctions, and collective pressures commonly used to regulate sexuality in order to avoid conception and childbirth under certain circumstances" (Ahlberg, 1994:66-67)³⁷. However, there was

collective responsibility in ensuring that the norms and regulations were abided with, as illustrated by the various actors involved in regulating sexuality and reproduction (Ahlberg, 1994:70-71; Kenyatta, 1978).

In discussing the rules concerning pre-marital sexual relations, it is important to note that most communities observed strict norms that linked copulation to procreation and marriage, which meant that all sexual activities of the non-initiates and initiates were restricted to non-copulation (Mbiti, 1971:122). These norms were reinforced by language which was used to differentiate between those who were permitted to engage in sexual relations and those who were not. This in turn had the power of controlling their sexuality and further indicated which sexual activities they were socially authorised to engage in. The following section addresses the rules and penalties imposed on offenders, and focusses on the childhood and initiate stages.

3.3.1.1 Childhood

Persons in this age-group were afforded special protection from sexual exploitation by virtue of their being under age, uncircumcised and socially immature. In the first instance they were referred to differently, for example an uncircumcised Masai girl was (and still is) called *entapai* and therefore one knew that she was either too young or socially immature for sexual relations. Language was thus used as a preventive tool in that it differentiated the child from the initiate and the adult and at the same time accorded the child protection from sexual exploitation.

In the childhood stage, strict norms backed by taboos and punishments prohibited any sexual activity involving those who were in this stage since they had not yet been initiated into the group of persons permitted to engage in any sexual activity. When asked about pre-circumcision sexual relations, Mariamu stated that during her childhood, this was unknown since girls feared being ridiculed and at the same time being punished by their parents. However, she did not rule out the possibility that some girls could have been sexually active, but this was carried out in utmost secrecy.

Whereas uncircumcised youths were prohibited from engaging in sexual activities, some communities actually examined their girls to ensure that they were virgins prior to their moving onto the next stage. Uncircumcised Nandi girls, for example, were examined for virginity, and at times a non-virgin was speared to death by her family

for bringing shame to them and their clan. Those who remained virgins brought honour to their families, and the girl's purity was symbolised by the hanging of a creeping plant on door frames by her family members. For those whose daughters were non-virgins their families hang slightly burnt plants (Mbiti, 1971:127).

Considering that pre-circumcision sexual relations were prohibited for non-initiates, pre-circumcision pregnancy resulted in untold suffering for the uncircumcised girl since she had no 'licence' to engage in any sexual activities or to procreate. Pre-circumcision pregnancy also meant that the girl was unlikely to ever marry and was perpetually seen as an 'unclean' person. It was therefore sheer catastrophe that befell the uninitiated girl and her family if she conceived before circumcision as the family lost a lot in terms of respect and material wealth. Often a girl was left with the option of either killing the infant once it was born, or having a secret abortion often with the assistance of her mother or other female relatives. When asked whether they remembered any incident of pre-circumcision pregnancy during their childhood, Mariamu and Mumbi had different recollections. For Mariamu, this was virtually unknown since, according to her,

[g]irls feared their parents and they knew that if they became pregnant in their uncircumcised state, their mothers would have no one to invite for their circumcision or wedding because of embarrassment. This brought shame to the girls family.

However, Mumbi did recall incidents where sexually active uncircumcised girls became pregnant. She pointed out that

[t]he mother of the girl upon learning that her daughter was pregnant would organise with other women in the family for the daughter's circumcision before delivery.

In addition, the pregnancy of an uncircumcised girl was often hidden from her father by her mother and female relatives since his finding out would result in severe punishment or even banishment from the home for the girl and at times the mother. Further, because female relatives were primarily responsible for socialising and educating the girl about her sexuality and sexual norms of the community, they were held responsible and stood to suffer shame and reprimand for her behaviour.

Infanticide was another option and, together with a hurriedly organised circumcision illustrates the mechanisms that women undertook to protect one of their own rather than let her face punishment, which would follow her for the rest of her life.

3.3.1.2 Initiate stage

By being potential reproducers, the sexuality of initiates was constructed differently from that of the non-initiates. However, strict norms and practices concerning pre-marital sex and pregnancies conditioned the sexuality of the initiates. These are considered below.

Permitted sexual relations

During the seclusion stage, Mumbi explained that young initiates were permitted to engage in limited sexual activity. This served as an outlet for their sexual needs and at the same time they remained within the norms of the community concerning copulation and procreation. Sexual flirtation through practices such as *ngwiko* or *ogosonia* and *ogochobera* (sex-play) among the Kikuyu and Kisii respectively, served this purpose (Njau, 1992:5; IAS, Kisii, 1984:123; Kenyatta 1978:159; Ahlberg, 1978:67; Worthman & Whiting, 1987).

Sexual flirtation between the initiates was socially permissible during ritual dances and other prescribed times, such as when the warriors moved from village to village. The Kikuyu, for example, permitted sex-play (*ngwiko*) between the circumcised youth, who were strictly prohibited from having full sexual intercourse. *Ngwiko* tested the self control of the initiates and taboos prevented them from having any contact with sexual organs of their partners, so as to prevent possible sexual intercourse. Mumbi explained that

[a]fter circumcision girls were allowed to visit boys in their huts and had sexual relations (*ngwiko*) but the lover was not allowed to touch the girl's skirt (*rinda*) or to touch her anywhere below her navel. Should he try to do so, the girl was required to report him and this meant that the boy would be punished through ridicule and public shaming.

To engage in *ngwiko* or *ogosonia* required self-discipline which was achieved through intense socialisation and education during the preparation for the initiation and seclusion stage. During the seclusion period, Kisii female initiates practised *ogosonia*,

which aimed at arousing desire among male initiates healing from the circumcision wounds. The effect of *ogosonia* was to cause pain to the boys who were supposed to practise self-restraint, otherwise their wounds risked bursting open. However, the male initiates in seclusion were taught *gochobera* which was the art of taking the female initiates by stealth during the ritual nights and this at times resulted in sexual intercourse between the two (IAS, Kisii, 1984:123-4). The initiated youth slept in groups in the same hut thus making it difficult for full sexual intercourse to take place, since the youths were collectively involved in ensuring that members of their group did not breach the sexual codes (Njau, 1992:9). Where one was suspected of having engaged in full sexual intercourse, he or she was punished by members of the peer group and was thereafter banned from participating in youth activities, such as dances. Mariamu further pointed out that

[a]t the *Gichukia* (dance for the initiates) the *aiiritu* (female initiates) had to be careful not to be enticed by the *anake* (male initiates). We used to sing a song at the dance which depicted the plight of a girl who went astray and was found not to be a virgin at marriage...the girl in the song was married off to an old man as a second wife.

The importance of female virginity at marriage was also stressed by Mumbi who pointed out that "a virgin was always respected and praised after marriage whilst a non-virgin was laughed at, despised and talked about (*gucambia*) ". However, Mariamu indicated that despite the prohibition against pre-marital sexual intercourse, and the emphasis on female virginity at marriage, it was known that some men accepted non-virgin brides at marriage and refused to disclose this fact to the community. She recalled that the danger of being found to be a non-virgin at marriage was that the bride would be publicly humiliated.

Although Mumbi and Mariamu were unaware of any time when pre-marital sexual intercourse was socially permitted in their communities, the Kamba community who were their neighbours, permitted sexual intercourse among their initiates especially when they met during the dances (IAS, Machakos, 1986:50). However, pregnancy was not expected from such sexual relations and female initiates were taught how to avoid conception using preventative measures such as safe days (Ndeti & Ndeti, 1977:7).

Thus at marriage a girl was expected to be sexually experienced, and a virgin bride was not desirable. A virgin bride was returned to her parents carrying an axe handle with no hole which meant that a man had to be paid to deflower her on behalf of her husband (IAS, Machakos, 1986:45).

Pre-marital sex punishment

Peer groups provided a most effective policing system in that they were the first to know whether one of their own had breached the rules concerning sexual behaviour and if so, they had the powers to mete out punishment to offenders. Due to the heavy sanctioning and public shaming, the peers developed a high sense of responsibility towards each other and undertook to ensure that their age mates followed the set rules and regulations. According to Njau, peer powers were exercised if courtship was carried out in private rather than in public (for example *ngwiko* or *ogosonia*), and this resulted in isolation of the couple and their banishment from the youth dances. This form of punishment 'informed' the rest of the community of the deviant behaviour of the couple (Njau, 1992:9).

The female initiates had ways of checking whether one of their own had engaged in sexual intercourse which included "taking her to the river (to check) her private parts for any sexual friction" (Njau, 1992:9). In addition, she was forced to bathe in the presence of the peers with '*mikeu*' leaves, which were used to test whether one had engaged in copulation or not. If the leaves did not lather on contact with her skin, this indicated that the girl had had sexual intercourse and she would be asked to confess with whom she had had sexual intercourse. Another test was through peer inspection of a girl's breasts if she was suspected to have engaged in sexual intercourse in a boy's hut. If they were seen to be '*nyondo nogu*' or '*kaigoya*' (tired breasts or dried leaf respectively), this indicated that they had been fondled and that she had engaged in sexual intercourse. Punishment for the transgressor included public shaming, payment of fines which included making porridge (*mote*) that would be drunk by her peers in a ceremony of shame concealment known as *kuhumbiira thoni* which literally means 'covering shame' (Njau, 1992:9).

Punishment for pre-marital copulation was equally severe for the male initiates who paid a fine of a *ngoima* (a fattened goat) to his age mates or to the father of the girl

(Njau, 1992:9). This fine was imposed whether or not the girl gave her consent. Once suspected, the boys were made to undergo an oathing ceremony to protest their innocence and if they were found guilty they were ostracised and songs were sang at public dances in their dishonour to inform the public about their actions. Further, as in the case of the female transgressors, they were forbidden from participating in the youth dances since they had brought shame to their peers.

Pre-marital pregnancy

In general, pre-marital pregnancy was socially unacceptable although the punishment for pre-marital pregnancy for the circumcised girl was not as severe as that for an uncircumcised one. Mariamu explained that often "the girl was not punished for the pregnancy if she disclosed to her parents who the father of her child was. If she declined, she was punished until she revealed his name". Fines were imposed on the man or boy responsible. He compensated the father or guardian of the girl for the losses incurred by her pregnancy; thereafter her parents took care of her and her child. This was possible because the nature of the economy was such that the single mother and her child were easily absorbed into the production process since in an agricultural community, there was a demand for more hands.

The negative ripple effect of a pre-marital pregnancy on her family meant that the unmarried mother still faced punishment, which included possible banishment from her home by her father. Mariamu further pointed out that the pregnant girl's greatest punishment was that she faced being married off as a second wife or in some cases failed to get a suitor. Marriage as a second or subsequent wife reduced the bridewealth for her; her brothers would have less wealth to meet their obligations at the time of their own marriage. Thus, according to Mariamu, the unmarried pregnant girl "[a]gatwika mundu hatari kana mahuti" (she became a useless person who is like a pile of rubbish). The suffering of an unmarried mother and her child was further explained by Mumbi who pointed out that

[i]f a circumcised girl had a baby outside marriage, she faced ridicule and was always despised at the *Gichukia* dance, and songs were sang about her³⁸. Her child also suffered ridicule and was constantly despised and not accepted by other members of the clan. Songs sang during circumcision, claimed that no one cried during circumcision apart from the one who came to the clan with his mother.

When asked about the punishment for the man responsible for the pregnancy, both Mariamu and Mumbi stated that a fine was levied upon the father of the child. If he accepted to marry the girl, this fine was added to the bridewealth. However in the case of a male initiate, Mumbi pointed out that

[h]is father would have to pay goats to the father of the girl and the meat from these goats was eaten by the elders. The father of the boy was prohibited from eating with the elders and in this way he too was punished for his son's actions.

Although the father of the boy paid the fine on behalf of his son, the son did not escape punishment from the peer groups. Mariamu noted that

[a]s in the case of the pregnant girl, songs were sang at the *Gichukia* about the boy who was mentioned by his father's name, so that everyone knew who was responsible for the pregnancy. In addition he was denied the chance to eat together with his peers for having shamed them.

Among the Kamba community, which permitted pre-marital sex between the initiates, a male initiate was fined a goat which was "slaughtered and eaten by the elders" and faced further punishment if the girl miscarried or had a still birth (IAS, Machakos, 1986:50). However, full payment of bride-wealth was made if she died as a result of the pregnancy (IAS, Machakos, 1986:50). In all communities no 'compensation' was made to the girl's mother or to other female relatives.

3.4 THE SOCIAL ACTORS AND PROCESSES OF TRANSMITTING NORMS

In the early colonial years, the social actors involved in regulating sexuality and fertility worked within a structural system that defined their roles and the processes and mechanisms that they were to apply. As noted earlier, the control over fertility was thus ensured through bridewealth, initiation, or circumcision ceremonies. Elders, who were situationally advantaged over production and reproduction, were key decision makers in the regulatory processes. The transmission of the normative rules concerning sexuality and fertility, was a process that began in childhood and continued until one achieved adult status upon marriage. The actors and processes are discussed in the following section.

3.4.1. The Actors

The regulatory processes surrounding sexuality and biological reproduction began at an early age of life development and continued through to the stage of adulthood. This in turn meant that social actors who were involved differed, especially since their activities were dependent on the construction of the different stages. The activities of the social actors were carried out within the overall framework of traditional education. Traditional education generally aimed at preparing the individual for every day tasks, transmitting and equipping

" individuals with appropriate values, knowledge, skills, norms and philosophies of life that would create and mould right attitudes and behaviour patterns consistent with a moral and ethical society" (Njau, 1992: 1-2).

Traditional education was a life long process and was taught separately for girls and boys, even though the primary goal was to transmit cultural values and to impart knowledge to children, so as to make them useful members of the community and active participants in the economy of the community (IAS, Busia, 1986; Marsabit, 1987; Kajiado, 1986; Machakos, 1986). Traditional sex education (TSE) was a component of traditional education.

3.4.1.1 Childhood

In the Kikuyu community, traditional education in the childhood stage was carried out in various ways including teaching, learning, guidance, supervision or imitation modelling, depending on the aspect that was being taught. Narratives, for example, were used in traditional sex education (TSE) to warn girls of the dangers of being lured into the huts of men. Tales were told of handsome men who upon luring girls changed into ogres and eventually ate the girls. These narratives conveyed messages on the expected sexual values and behaviour and emphasised that a girl had to wait for marriage. Songs and proverbs likewise transmitted similar messages. For example, a Kikuyu song which used symbols in conveying the message on the importance of virginity amongst girls went as follows

"Daughter...Guard your Father's beehive
Do not open it lest you release the bees
That makes the honey
That brews your father's beer" (Njau, 1992:7).

By losing her virginity, the girl 'opened her father's beehive' pre-maturely and therefore prevented him from drinking beer in celebration of her marriage.

The roles and activities of the social actors varied, even though all were 'stakeholders' in the sexuality of those persons in this stage. During early childhood, children were socialised into their respective gender roles by their parents and relatives (IAS, Embu 1986:127). Parents were, and continue to be, the nascent agents of overall socialisation and their role continued until the child attained adulthood. They were responsible for character moulding and socialising their children into the expected gender roles in and outside the home. According to Mariamu and Mumbi, it was common to find children working side by side with a parent of the same sex as the child. In a polygamous household, co-wives assisted each other in the socialisation of children of the family, and older siblings were required to assist in the socialisation of the younger ones.

Parents were rarely engaged in educating their children on matters concerning sexuality, a task left to male and female relatives. According to Mariamu, mothers however reminded their daughters that they were expected to be married. Thus

[g]irls were socialised by their mothers and grandmothers and this was often carried out as girls assisted their mothers with farm-work. For example a mother would show her daughter the portion of land where sugar cane was growing and tell her that 'some of the sugar cane is for beer for your father, and the rest is for preparing the beer to be drank during your marriage.'

Once children reached the ages between 8 and 10 years, it was common to send them to live either with their grandparents or with paternal aunts and uncles who were responsible for their socialisation and discipline. Grandparents and relatives were responsible for role-modelling young children and could be said to have been their preceptors. Grandparents were interested in undertaking this responsibility since they saw themselves reborn in their grand-children. This responsibility included instilling moral values in the children and introducing them to religious beliefs and practices. Further, grandparents in particular played the role of introducing children and young persons to husband and wife relationships, and sexual and moral behaviour which was carried out through story-telling, proverbs and songs. Grandmothers socialised their

female grandchildren, and grandfathers their male grandchildren (Kayongo-Male & Onyango, 1986:20). Jocular relationships developed and a grandfather referred to his granddaughter as his wife whilst the grandmother referred to the grandson as her husband, and in this way children learnt about love relationships. Thus,

"[i]n this joking relationship with their grandchildren, grandparents taught them a great deal about sexuality, the sex act and about problems of being men and women in practical life" (Ndeti and Ndeti, 1977:6).

Further, open reference to reproductive organs of both human beings and animals created awareness among children of the reproductive parts of their bodies (Njau, 1992: 8-10). Mumbi explained that

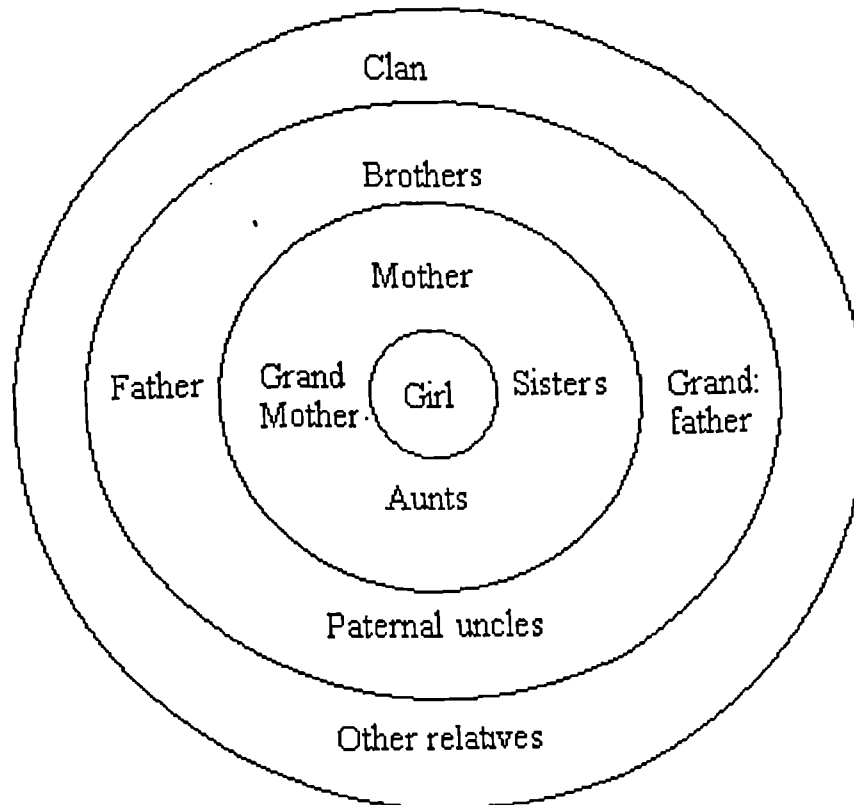
[t]he girl's grandmother was responsible for her sex education and also informed her about menstruation and what she should do once she began menstruating. A girl was known to be ready for marriage and sex counselling once she began menstruating and this was first known by her grandmother and mother. The father of the girl would also be notified that his daughter had reached puberty. If the girl misbehaved, for example by sleeping outside her home, her mother would report this to the girl's father and failure to do so meant that the mother would be punished by the father should he find out from elsewhere.

Grandmothers were however the key actors and educators in the socialisation of pubescent girls. In the discussion on traditional education and TSE, Mumbi and Mariamu indicated that other persons were also actively involved in the education of the uncircumcised girl albeit to a lesser degree. These persons comprised her sisters (which includes female cousins), aunts, paternal uncles and other close female and male relatives. When asked whether the clan had any role or interest, Mariamu pointed out that clan members were interested parties because they undertook to punish a boy who made an uncircumcised girl pregnant. However, their involvement in actual education was minimal.

The degree of interaction between the social actors and the pre-pubescent girl differed, since some interacted with her on a daily basis, whilst others interacted periodically. Accordingly, during the childhood stage, the mother, grandmother, aunts, and sisters were the closest actors followed by the father, paternal uncles and brothers;

then the grandfathers, clan and other relatives. This interaction is illustrated in Figure 3.1.

FIGURE 3.1 THE INTERACTION BETWEEN SOCIAL ACTORS AND THE GIRL IN CHILDHOOD STAGE



In Figure 3.1, the closest actors in the socialisation process were women in the family who, as noted earlier, stood to suffer if a daughter became sexually active or pregnant, especially in her pre-circumcised state. In addition to the daughter suffering, her mother faced punishment from the husband and other male members of the family for the daughter's transgression. Although figure 3.1 shows that the male members of the family were slightly removed from the socialisation process, they directly influenced the ways in which the female members socialised the pubescent girl. The father of the girl had an interest in ensuring that his daughter was properly married and that bridewealth was paid.

3.4.1.2 Initiate stage

In the communities that circumcised their unmarried youth, the young initiates remained in a transition stage during which they had to undergo intensive preparation for future adult roles. By entering this stage, they became potential reproducers of their families and the community. Procreation was however reserved for adulthood and marriage.

After circumcision, the initiates went into a seclusion stage during which sex education, in addition to other education, was carried out. The period spent in the seclusion stage differed from community to community. One of the most important functions of the seclusion period was the social conditioning through education, where the initiates learnt the norms and customs of their communities and in particular those of the clans, and what was expected of them in their new status. They also underwent physical training in preparation for the difficult times ahead as adults. This seclusion stage often overran that of biological adolescence especially with regard to male initiates (Muriuki, 1974:119; Kenyatta, 1978:130; IAS, Kisii, 1984:144).

Akamba initiates, for example, were secluded from public life for a period of at least one week after which they emerged 'newly born'. During that week, "corporate living was instilled into the thinking of the young people" in order for them to become "qualified and legally recognised men and women", who were entitled to procreate and have families as well as know the secrets of the community (Mbiti, 1971:122).

Female Masai initiates entered the seclusion stage; thereafter became 'unclean' and their movements were closely supervised by female relatives. The use of such terms as 'unclean' had the power of restraining men from having sexual relationships with such a girl lest they face some form of calamity (IAS, Kajiado, 1986). After seclusion, these initiates were married off to elders, thus reaching adulthood, by virtue of marriage, earlier than their male counterparts who remained social 'adolescents' until completion of the *morán* (warrior) stage (Spencer, 1970:156).

In the *morán* stage, the *morans* were socialised into the expected roles of elderhood. Masai *morans* lived in camps outside the villages which prevented them from having any contact with women or young girls, except in the ritual dances (IAS, Kajiado, 1986:128). They were also prohibited from having sexual relationships with

wives of elders (even if they were initiated at the same time as the wives). This was because the *morans* did not belong to the same age-set as the elders, which if they did, would permit them to have sexual relations with the elder's wives. Transgressors met with severe punishment which included prolonging of the warrior stage therefore preventing them from entering the stage of elderhood alongside their fellow warriors. The warrior stage sometimes continued until the age of thirty years after which the warriors moved onto the next stage of elderhood and were eligible for marriage and procreation (IAS, Kajiado, 1986:129-131).

3.4.2 Traditional Sex Education

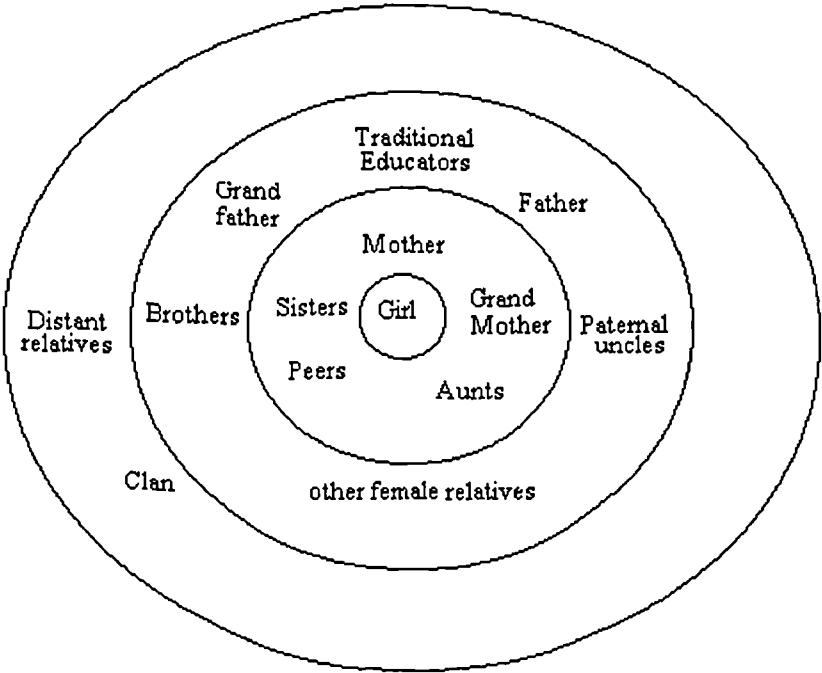
The functions of socialising the initiates were carried out by different persons who included peers, elderly relatives and the community (Muriuki, 1974:119). For example, the primary actors in socialising the warriors living in the camps were the elders, who retained the power and responsibility within the clan and decided whether or not a warrior was ready to move onto the next stage of elderhood. Peers were also important actors at this stage because "sex was considered a peer subject and parents were not peers" (Njau, 1992:6-7). Peer groups comprised the initiates, and were key players in the social conditioning of the group members and ensured that the family or kin values, norms and morals of the community were abided with by the group members (Kayongo-Male & Onyango, 1986; Njau, 1992). In discussing the role of peers, Mumbi pointed out that "peer groups discussed sexual matters and the elder peers gave advice and passed on useful information to the new initiates". Older members of the peer groups also taught the younger ones the art of seduction which they practised during the youth dances (Ndeti & Ndeti, 1977).

The traditional educators (*atiiri*), who were often the circumcisers, had the primary responsibility of imparting sex education to the new initiates and they carried this out through songs and poetry which Mumbi called *Marebeta*. They were later taught the physical side of sexual relationships during the initiation, in which fertility and virility were emphasised. Education on the norms pertaining to sexuality, marriage and procreation or TSE was carried out separately for the female and male initiates. The actual content of TSE differed from community to community although, as Njau observed, female initiates were paradoxically taught to be seductive "and lure men by

provocative gait and fake shyness, yet when men approached them they were supposed to play difficult" (Njau, 1992:4). A major objective of TSE for the initiates was to teach them how to understand sexual feelings rather than negate them, how to control sexual desires, and the prohibited sexual relationships, for example with wives of elders (IAS, Bungoma, 1986; IAS, Kajiado, 1986). However, particular emphasis was placed on the attitudes and expected behaviours, sexual feelings and desires, definition and expression of emotions and to whom, and when, rules and regulations on sexual activities, purpose of sexual expression, and limitation of taboos related to sexual expressions (Njau, 1992:4). Whereas TSE focused on both the male and female initiates, in most cases it focused more on the control of female sexuality than on male sexuality. This may be linked to the fact that it was through women that physical reproduction took place and it was important that paternity was ensured.

Once the girl entered the transitory stage to adulthood (either through initiation or at puberty), the composition of the social actors changed as new actors emerged and interacted with her differently as shown in Figure 3.2 below.

FIGURE 3.2: DEGREE OF INTERACTION BETWEEN THE SOCIAL ACTORS AND THE GIRL (POST-INITIATION STAGE)



The initiated girl's family remained an important sphere for purposes of reproduction. Regulation of sexuality thus remained a crucial role for family members, the reason being that the family was the natural focus of sexual organisation, and sexuality was readily regulated by pre-marital sex prohibitions and incest taboo rules. For reasons noted earlier, brothers of the unmarried girl were also interested parties, and according to Mariamu,

the brothers had to make sure that their sisters *'did not break a leg'*³⁹ by getting pregnant before marriage. They therefore kept a close watch over the sisters and vetoed any 'suspicious' relationships that the sisters formed with boys.

Although in the pre-circumcision stage parents were active in the socialisation process, after circumcision, their roles diminished as new actors took over. Mariamu was emphatic that in her case however, her father was a key player in her socialisation from childhood and even after circumcision. This was clearly evident as she constantly repeated that her father never let her and her sisters out of the homestead and was always asking about the friendships they formed. He only permitted "*iceera ria airiitu*" (friendship with girls only). Perhaps her father's concern was linked to the fact that he had only daughters and was keen to ensure that they were 'properly married off'. This would in turn uplift his status in the community, which was most probably low since he had no sons.

Mariamu was however asked whether her father's strictness was because he had no sons. Her reply to this was that "daughters always leave their parents' household after marriage, sons stay on even after marriage". Whereas Mariamu did not elaborate further on this, her explanation indicates the anguish her father may have had at the thought of him and his wife having no one to care for them during old age. The explanation could also have meant that Mariamu and her sisters had accepted their fate because they were women who eventually left their natal home, hence deserved being locked in. Thus for Mariamu and Mumbi and other girls in their age group, their dignity and their family's honour hinged on their sexual behaviour. Lack of alternatives or opportunities for the girls to make independent choices for opting out of the system were non-existent and therefore they adapted ways of working within the system.

3.5 EMERGENCE OF NEW ACTORS, DISCOURSES AND PROCESSES

The period between 1910 and 1930 saw the development of new discourses surrounding female sexuality carried out locally and internationally. These discourses centred around the practice of female circumcision particularly by the Kikuyu, included those that called for the elimination of the rite and those that called for its continuance. In the former category were medical, religious, and political discourses. Medical discourses specially focused on the harmful effects of this rite (for example scarring, and difficulty in child-birth) which at the turn of the century were reportedly on the increase, because untrained circumcisers were being used in and around the new towns (Middleton, 1965:363). Whereas Kenyatta described the operation as simple clitoridectomy (Kenyatta, 1978:135-7), there were medical reports that this was carried out more severely and by inexperienced circumcisers (Hosken, 1982). Religious discourses argued that the rite was a heathen practice which was against the teachings and values upheld by the Christian faith. Political discourses which were carried out locally and in the British parliament, supported the call for the elimination of female circumcision made by colonial administrative and medical personnel and Christian missionaries.

In the latter category were discourses which called for the continuance of the practice and placed their protests within the anti-colonial struggle. By making female circumcision a political issue, these discourses pitted female sexuality against the overall oppression of the indigenous peoples and their values (Stroebe, 1984:96; Hosken, 1982). Further, these discourses argued that elimination of female circumcision was an attack on a whole body of Kikuyu traditional customs which were at the heart of traditional life and through which a child was initiated into adulthood (Middleton, 1965:363; Kenyatta, 1978:153-4). Whatever the starting point for these discourses, they generated discussions concerning the construction of female sexuality, and in particular that of unmarried pubescent girls. In addition, the concerned communities were now forced to discuss in public the positive and negative aspects of the rite, its relevance to child-bearing capacities and sexuality of young women, and whether the age-old custom should continue. These discourses are discussed below.

3.5.1 Discourses opposing female circumcision

3.5.1.1 Christian Missionaries

In discussions on female circumcision and emerging trends, Mariamu and Mumbi were asked whether they remembered the debates that were carried out in the period between 1910-20 regarding the female circumcision rite. Mariamu, exclaimed in response "*no muthungu ndendete uhoru wa irua!*" (but the white man objected to the whole concept of female circumcision!). When probed further on which '*Muthungu*' opposed female circumcision, Mariamu indicated that it was "*muthungu wa misheni*" (the white missionaries). Most missionary activity was found in Kikuyu-land, in comparison with other parts of the Protectorate. Christian missionaries who spearheaded the pressure to eradicate the practice of female circumcision began mounting pressure as far back as 1906. According to Hewitt,

"missionaries in Kenya, as elsewhere, were for the most part patriotic Englishmen, conservative in their political views, middle class in their social habits of thought...they viewed their calling primarily as that of evangelists, entrusted with a gospel of personal salvation" (Hewitt, 1971:157).

These missionaries were known to rejoice if a convert rejected his or her tribal beliefs, values or customs, for example female circumcision, which to them 'degraded' womanhood. Yet at the same time, the missionaries failed to understand when the same convert reverted to practising the same customs when he or she found

"[t]he pull of these customs to be stronger than the newly learned and imperfectly understood standards of westernised Christianity to which the missionaries had introduced them" (Hewitt, 1971:167-8).

The Church of Scotland began to preach against female circumcision in 1906 and based their teachings on the observations of the effects of the mutilations by medical missionaries. Consequently,

" a number of African converts who had formed their own African Church joined in opposing this practice, and various methods were tried to enable girls, especially those in missionary boarding schools, to escape the practice"(Hewitt, 1971:157).

By the First World War, a number of European and African missionary societies had already initiated discussions about female circumcision although major discussions had to be postponed because of the war. However, by this time the Church Missionary Society (CMS), Church of Scotland and African Inland Mission had made the rejection of female circumcision a condition for membership into their churches. This resulted in open defiance by the Kikuyus and individual missionaries therefore took it upon themselves to ensure compliance by their members. For example, the head of the Embu mission required all parents who were church members to take their daughters to a special meeting during which the parents were to renounce female circumcision. He also banned his church members from membership of the Kikuyu Central Association which upheld female circumcision (Hewitt, 1971:167-8).

In 1919, the debate was opened up when a "unanimous recommendation was made for the abolition of the practice and for disciplinary measures to be taken against all Christians who should countenance it" (Church of Scotland, 1919:15). This led to a number of conferences to discuss the matter and in a 1929 All Kikuyu Native Conference at Kambui, it was noted that

"[t]he elders regret the accusations being made throughout the country that it is only the Europeans who want this custom removed and not the Kikuyu; as Kikuyu, they desire to record in these minutes that the decision is their own free will and not a matter of compulsion by the Europeans" (Mission memo 1930:17).

By 1920, the existing Christian missions in Kikuyuland were all opposed to female circumcision and all but the Anglican Church Missionary Society (CMS) forbade it. The CMS preached against it but did not forbid its church members from practising it. The Bishop of the CMS, in a pastoral letter sent in 1930, pointed out that the church policy was that "heathen practices connected with the custom were to be strictly abandoned, anything public was to be strictly prohibited, any operation involving physical injury was strongly to be condemned" and that through education it was hoped that the practice would disappear (Hewitt, 1971: 157).

The Church of Scotland Mission, African Inland Mission and the Gospel Missionary Society began placing demands on the African elders to denounce in

writing the practice of female circumcision. This led to an immediate decrease in the numbers in the congregation and African teachers in the mission schools resigned rather than denounce female circumcision. According to Middleton, by "12th November, [1929] the Church of Scotland Mission dismissed all its out-teachers who would not sign and lost four-fifths of its school children; the other missions lost even more" (Middleton, 1965:364).

Although Christianity had infiltrated traditional practices, these were still deeply entrenched in the converts who continued to fear the defiance of these practices. The protests concerning female circumcision culminated in the missionaries later allowing the practice provided it was carried out under hygienic conditions. Thus,

"among the earliest trained African midwives, female circumcision ...was part of the training offered...[t]hus female circumcision, which was central in the process of reproduction was expropriated from the people and suppressed through the hospital at the same time as it continued being performed within hospital precincts (Ahlberg, 1994:81).

This led to permissible Christian circumcision which was "very much more painful to the girls than circumcision performed during the course of an emotionally-charged ritual" (Hosken, 1982: 164). This was because the circumcisers used by the hospitals were not as skilled as the traditional ones and either extensively damaged the initiate's organs or removed the wrong ones. Further, the traditional medicinal treatments applied after circumcision were not available in the hospitals, which made the healing process painful for the initiates.

3.5.1.2 Colonial administration and female circumcision

Although the colonial administration supported the missionaries and recognised the harmful effects of female circumcision, they remained neutral parties in the controversy and argued that, with education, the practice would gradually disappear (Middleton, 1965:363). The administration recognised that

"[a]ny attempt at total suppression of the rite would be bitterly resented, and it would certainly be abortive, for native public opinion would combine to that end, and the ceremony, probably in an increasingly severe form, would continue to be carried out in secret" (CAR, 1929:5).

The protests reached the colonial office in London and in 1929 the Under Secretary of State indicated that

"[t]he policy followed up to now by the Colonial Governments concerned has been to bring persuasion to bear upon the tribes which now practice the rite in its more brutal forms to return to the traditional and less harmful form of it. I am glad to say that a number of local Native Councils in East Africa have passed resolutions making illegal the severest forms of the operation" (HC, 1929:598).

The debates on female circumcision were extensively carried out in the British House of Commons (HC) in London on the 11th of December, 1929. Questions were raised as to the measures to be undertaken to safeguard the reproductive health of women in the colonies. In initiating the debate, the Duchess of Atholl discussed the rite of female circumcision, which she claimed existed in its worst form amongst the Kikuyu, and called for "more consideration to be given to the social well-being, health and education of girls in some of our dependencies than sometimes seems to have been the case" (HC, 1929:599-600). She pointed out that the operation was often carried out in public, by an old woman who applied no anaesthetic nor was the girl given any antiseptics. The Duchess called for young women to be accorded opportunities through which they would realise that they were capable of being mothers without having to undergo the operation (HC, 1929: 602).

What was particularly interesting about the debates in the House of Commons was that other issues concerning the colonials were also integrated with the issue of female sexuality and female circumcision. For example, a member of the Committee, Colonel Wedgewood in discussing female circumcision stated that

" [t]he natives in Kenya, I think trust me pretty well. I would beg of them to remember *that their chance of citizenship, their chance of rising to equality with the white, all depends upon their realising that this horrible circumcision custom should be put to an end to, and that their rise in civilisation will be measured there, as it is measured everywhere else, by the treatment of women by them.* It is far better to get these people by persuasion to drop these practices, just as suttee was put down. If persuasion does not succeed, then the law must do it, in the interests of humanity and in the interests of civilisation" (HC, 1929:610 - emphasis added).

A select committee was thereafter set up by the British Parliament in 1930 with the purpose of enquiring into female circumcision and

" especially to stress on the need for the action to be taken regarding the practice of circumcision, especially in the form in which it exists among the Kikuyu tribes in Kenya. We are convinced that it was inflicting grave suffering and injury to the health and life among women and causing much infant mortality" (Colonial Office, 1931:12).

The Select Committee recommended adequate protection for those girls who sought to escape from the practice. The Governor in the colony was also asked to give these girls the right to avoid the operation "by affording [them] adequate opportunities to express [their] wishes in the matter" (Colonial Office, 1931:12). This led to the creation of extension health services especially on mid-wifery and training of girls in missionary boarding schools where they were taught about the harmful effects of female circumcision. However, the Colonial Office stressed that whereas the practising communities were to be urged to eradicate the practice, they were not to be led "to believe that they are being asked to abandon the whole series of customs which constitute entry into tribal membership" (Colonial Office, 1931:12).

3.5.2 Discourses in support of female Circumcision

The opposition to the call for elimination of female circumcision was spearheaded by the Kikuyu. The Kikuyu were however divided as to whether or not they should limit the extent of the operation, do away with it or continue with it. The traditionalists headed by the Kikuyu Central Association (KCA) called for open defiance against the prohibition of female circumcision and insisted that the rite formed part of intricate tribal practices and had an important role in the cohesion of the community. A major issue raised by the controversy was the imposition of western culture and values under the guise of Christianity, and some African Christian converts rebelled against the teachings of the English Christian missionaries. For many African Christians, Christianity and European values were one and the same and therefore they accepted "[C]hristianity as a necessary part of European values as such, rather than as a system of belief and ethics which could be accepted by peoples of all races" (Middleton, 1965:365).

The dispute therefore became one between the KCA and the missionaries, as the former sought to defend the custom and the latter sought to highlight the barbarity of the practice in international fora. This led to the development of break-away churches and schools run by Kikuyu converts who continued to practice their own traditional culture and retained values which they claimed did not conflict with Christianity. As Welbourne pointed out,

"[i]t became a protest against what was seen as a specifically western, rather than a Christian, element in the missionary culture...[and] the rebels wished to remain Christian, in more than name, provided they could be free of missionary control and free to practice their tribal customs...Female circumcision was no more than a symbol of a greater issue. But it was the *casus belli* " (Welbourne, 1976:142).

Mariamamu and Mumbi clearly remembered the protests led by the KCA and the establishment of break-away churches. According to Mariamamu, the African Church elders who opposed the operation in support of the missionaries, faced a lot of physical and verbal harassment from the local traditionalists. The same happened to members of the Kikuyu Progressive Party and parents who refused their daughters to be circumcised. With respect to the elders of the break-away churches, Mariamamu recalled that they were refused training in the missionary institutions and as a result had to go to Nairobi⁴⁰ for training. Both Mariamamu and Mumbi spoke of a dance devised in 1929 among the Kikuyu of Central Province called "*Muthirigu*". Mumbi explained that

Muthirigu was created in opposition to the banning of female circumcision and at the dance it was sang that a 'dog would be paid to the mother (not father) of the uncircumcised girl as bridewealth' (i.e. instead of cows, goats and other gifts).

However, in addition to protesting the ban, the dance was another form of protest by the Kikuyu against the occupation of their land by the white settlers and the erosion of their cultural values through a conspiracy between the colonial government, the white settlers and the Christian missionaries. The issue of women's reproductive health had a lower stake in these protests. Thus, the

" clitoridectomy question represented an early part of the anti-

"~~clitoridectomy~~ question represented an early part of the anti-colonial struggle, which developed later into demands for schools independent of the missions, and later became part of consolidating the exploitative system of colonialism within Kenya" (Stroebe, 1982:96).

3.5.3 Composition of the Social Actors by 1930

The development of various discourses on the sexuality of adolescent girls and their transition into adulthood resulted in an increase in the number of persons and institutions, as social actors who were either interested and/or actively involved in the regulation of the sexuality of adolescent girls. These actors are categorised into two, namely the external and internal actors.

The external actors were individuals and institutions that sought to change the processes of regulating sexuality, by challenging the practice of female circumcision. These actors did not come from the communities that practised female circumcision, which made it possible to challenge the system. The internal actors included the actors during the youth of Mariamu and Mumbi, and new actors who also interacted with the girl on a daily basis. However, due to the challenges against female circumcision and other tribal practices by the external actors, some of the internal actors gained courage to challenge the system, for example the parents who rejected the rite. The composition of these two categories is shown in Table 3.1 below.

TABLE 3.1: COMPOSITION OF INTERNAL AND EXTERNAL SOCIAL ACTORS BY 1930

External actors	Internal Actors
Medical Personnel Colonial Administration Local Native Councils Members of English Parliament Christian Missionaries Nationalist parties African Independent Church Elders	Parents Girl Grandparents Clan Peers Relatives Traditional Educators Traditional Circumcisers

3.6 LEGISLATIVE REGULATION OF SEXUALITY AND FERTILITY

In the earlier colonial years legislative efforts at regulating sexuality and fertility were carried out within the general framework of controlling female circumcision as a *rite de passage*, and later as discussed in Chapter Four pregnancy compensation, and the transformation of the African marriage rule systems. The efforts at regulating female circumcision are discussed below.

3.6.1 Female circumcision

Christian missionaries were at the forefront of urging the colonial administration to prohibit, through legislation, a number of puberty and marriage rituals which they considered to be heathen practices. The colonial administration, as noted earlier, adopted a *laissez faire* attitude and advanced the view that the indigenous laws and practices on sexuality and reproduction would wither away with time, especially with the introduction of formal western education. Further the administration maintained that eradication of the practice could not be achieved by complete prohibition, but rather through sensitizing the communities on the medical consequences of carrying out the severe form of circumcision which

" may constitute an offence of grievous hurt or maim, and in that case would entail consequent penalties, and, moreover, that no girl may be compelled to undergo the operation, even in its mildest form, against her will..."(CAR 1930:5; see also Bruce-Chwatt, 1976:44-45).

This policy gave an early indication that provisions in the then Indian Penal Code on grievous bodily harm, would be invoked to reduce the severity of the operation. The issue of the girl's consent to undergo the operation was also cited as important, but this assumed a situation where the girls had the capacity to give their consent. As indicated earlier, the issue of consent did not arise since the girls had no option but to undergo circumcision or face life-long ostracism. However, earlier attempts to control ritual activities and ceremonial circumcision dances were carried out through the Preservation of Order by Night regulations (No. 15 of 1901). These regulations were initially aimed at controlling the colonial subjects and minimising any possible uprising against colonial rule. However, these were often invoked to prohibit night dances after 9 pm and to restrict ritual activities. For any dance or ritual activity to

take place, a licence had to be applied for and issued by an administrative officer. These regulations effectively restricted dances, including ceremonial circumcision dances, which were part of the religious and ritual ceremonies of the communities.

Although the colonial administration seemingly took 'a back seat' in the regulation of sexuality, it was a controversial key actor which on the one hand collaborated with the elders over retention of female circumcision and on the other supported the missionaries who opposed the practice. However, instead of enacting further legislation to restrict female circumcision, the colonial administration undertook to hold public meetings (*barazas*), and communicate with the local Native Councils on the possible modification of the operation. The colonial administration also issued circulars restricting circumcision ceremonies, so that they did not interfere with demand for labour in settler farms (Stroebel, 1984:96).

The use of legislation to regulate sexuality was indirectly carried out, for example through the local Native Council, rather than through legislative enactments. This approach allowed the African communities some autonomy to continue with their practices, while the colonial laws (for example the Indian Penal Code) were used to control the extent to which these practices could be carried out. The pressure against female circumcision culminated in the passage of resolutions by the local Native Councils in 1930. The Nyeri local Native Council declined to pass any resolutions and argued that female circumcision was an intimate matter (CAR, 1930:11; Middleton, 1965:364). The resolutions passed by the other Native Councils restricted female circumcision to the removal of the clitoris, and forbade the traditional removal of the *labia majora* and other reproductive organs which caused difficulties during childbirth (Hosken, 1982). Although these resolutions were legally binding and offenders faced penalties, their effectiveness was doubted since "it appears that little or nothing was done to enforce the restriction, so that it remained practically a dead letter" (CAR, 1930:11). This was because the Native Councils did not have the full support of their communities which opposed the conviction of offenders, although the councils had support from some people who called for harsher sentences (CAR, 1930:12).

Despite the apparent ineffectiveness of the council resolutions, some Native Councils undertook to prosecute those who disobeyed their orders. The punishments

introduced by the Native Councils included a fine of sh. 50 and one month's imprisonment, which was effectively applied in the reserve areas but was not easily enforceable in the urban centres (HC, 1929-30:604). In 1929, the Local Native Council in Kiambu began prosecutions for disobedience of the resolutions and in April 1929, two women were fined sh. 30 each for performing a more severe operation (Middleton, 1965:364).

Cases of forced circumcision however increased as girls undertook to report their families or relatives to the councils. In a 1930 case, a 14 year old schoolgirl was forcibly circumcised on her father's initiative. The father was jailed for two weeks and the circumciser fined. In another case, a 13 year old girl who had refused to undergo circumcision was seized by her brothers and abducted to a nearby river where she was severely mutilated, despite her strong resistance. The girl lodged a complaint against her brothers, and five more people who had planned the circumcision. They were arrested and prosecuted (Hosken, 1982:159).

The adolescent girl therefore became a strong internal actor especially where she refused to undergo female circumcision and when forced to do so used the colonial legal system to ensure that the offenders (including fathers or brothers) were taken to court. The tension between the adolescent girl who resisted and those who insisted that she must undergo circumcision also illuminates the fact that despite the various changes that had been brought about by colonialism, some aspects of tribal culture and customs remained resilient.

In the colonial courts, English law could be invoked to eradicate female circumcision by declaring it repugnant to morality and justice, and heavier sentences meted out to the offenders. However, in most cases heard either by the colonial courts or Native Councils and offenders prosecuted, the sentences issued were light in comparison with the injurious nature of the offence which followed a girl throughout her life, and affected her reproductive health. For example in July 1929, a girl was forcibly circumcised by her relatives and the case was taken to the Native Court and damages claimed on her behalf. The Magistrate ruled that no grievous harm had been done to the girl and fined the operator sh. 30. The case was thereafter taken on appeal and the Supreme Court upheld the decision of the lower court. The decision of the

Supreme Court caused an uproar and the East African Women's League protested in the newspapers pleading "for liberty of conscience for African women" (Hosken, 1982:158). The lightness of these sentences generated various debates in the House of Commons. The Duchess of Atholl queried, "what could be more contrary to British justice than that a girl endeavouring to escape from this terrible custom should not have the protection of a British court?" (HC, 1929-30:605).

3.7 CONCLUSION

This chapter has illustrated the processes and actors involved in the regulation of adolescent sexuality and fertility between 1910-1930. This took place within a closed system which constrained any attempts by the social actors to make any changes. Female sexuality was closely regulated especially because of the biological reproductive capacities of women. This in turn meant that heavy punishment was meted out to those who broke the rules, the heaviest being that meted out to the girl who was subjected to public ridicule which followed her and her child for the rest of her life.

This chapter thus sets the pace for discussions on the developments in the process of regulating sexuality and fertility which started at the turn of the century. Discussions highlighting the opportunities provided by these developments for adolescent girls regarding their reproductive capacities in subsequent time periods will be illustrated in the following chapters.

CHAPTER FOUR

REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY

1930-1963: New debates, new options

4.0 INTRODUCTION

During the early 1930s, it was clear that although the discourses on female sexuality and the social actors had increased, their focal points were varied. Thus the sexuality of unmarried Kenyan girls gained entry into the international fora particularly through the discussions on the practice of female circumcision. These discussions were conducted mainly within the context of women's health, human rights, children's and women's 'rights'.

In England for example, discussions centred on issues of women's reproductive health, and the right to making individual choices about their reproductive capacities. The debates emphasised women's rights to choose and to have their choices protected, and were consistent with developments of the European women's movements which focused on the equality of women and men. Female circumcision as a *rite de passage*, was thus regarded as no more than a mutilation that was injurious to the reproductive health of the affected women. It was argued further that the *rite* illuminated the oppression of African women who lived in conditions of slavery, perpetuated by the African institution of marriage (HC, 1929-30:607). Female circumcision was also discussed within the framework of children's rights. For example, in 1931, Save the Children Fund called upon the colonial British government to pass laws to make female circumcision a criminal offence (Kenyatta, 1978:132).

The East African Women's League Convention whose membership consisted of white settler women living in Kenya, also called upon the colonial administration to offer protection to those girls wishing to break away from their tribal customs. It also called for legislative steps to eradicate the practice and admit those girls who sought to avoid circumcision into boarding schools. The whole issue was addressed within the context of women making independent individual choices about their sexuality. However, in the indigenous colonial communities, individual choice was often made within the wider framework of family and community rights which often overruled

individual choices, as was illustrated in Chapter Three.

The attempts at eradicating female circumcision as a *rite de passage*, were carried out through education and legislative action which provided the girls with new options concerning their sexuality and reproductive capacities. Thus uncircumcised girls could opt out of the circumcision rite with or without the help of their families, albeit at the risk of being ostracized by their communities. This implied that young women had gained some control over their sexuality and reproductive capacities. Paradoxically, the young African women who opted out of the circumcision rite did not view their action necessarily within the realm of 'rights'.

This chapter explores these options further and focuses on the convergence and divergence between the internal and external social actors, rules and practices in the process of regulating sexuality and fertility among adolescent girls, and the short and long-term consequences of this process. The chapter further discusses the parallel operation of indigenous and introduced family laws and the increasing colonial influence on indigenous family personal laws through the creation of customary law during this period.

The convergence and divergence of the regulatory processes are illustrated by stories of two women who were adolescents in the colonial period. Both Joan and Wamaitha came from Christian families living in the outskirts of colonial Nairobi and were among the few girls from their villages who attended mission schools. Joan, the older of the two informants is aged about 68 years. Her parents who had received both traditional and Christian education during their youth, ensured that Joan and her siblings received both Christian and modern education. Wamaitha is aged 60 years. Her mother was one of the first girls to attend the girls' missionary school established at Kikuyu at the turn of the century. Her father was employed in the 1930s as a clerk by the colonial government, a job he held until retirement in 1969.

The experiences of Joan and Wamaitha in their adolescent years are reflective of the shift in the family's role in traditional education and the emergence of new actors. In addition, the views of Mariamu and Mumbi are used especially because during this period, both had entered a new group of social actors namely mothers.

4.1 CONTEXTUAL BACKGROUND

This section discusses the structural forces that influenced the processes of regulating sexuality and fertility during the colonial period between 1930-1963. This discussion however focuses on the changes in the social systems which were influenced by the colonial economy and system of education. It is also during this time that issues of population control were first considered by the colonial administration.

4.1.1 Changes in the family systems

The family systems began to change in response to the social, cultural and economic changes resulting from the infiltration of Christianity, western education and the colonial economy. Although these factors were interrelated, this section will consider Christianity and economy separately in order to highlight the changes brought about by each of these factors. Education is also considered separately later in the chapter.

4.1.1.1 Christianity and the family

By the 1930s, there started to emerge new types of African families whose members were either Christian converts or sympathised with the Christian faith, or those that belonged to the rebel churches. For example according to Joan,

[m]y parents were among the early christian converts when the missionaries arrived in our area. They were taught the basics of simple christian religion and baptised. My father went further and became an evangelist and was later among the first church ministers to be ordained in the Presbyterian Church of East Africa.

Wamaitha on the other hand, initially had a mixture of both traditional and christian upbringing:

[m]y parents were initially members of the African Christian rebel church (Karinga). This meant that although they embraced the Christian faith, they continued to follow certain traditional practices which was common in the community we lived in. However, when I reached the age of eight years, both my parents abandoned the African Christian church, joined the Anglican church and wholly adopted the Christian faith.

4.1.1.2 Economy and the family

Although at the onset of colonialism it was not clear what economy would emerge, by the mid-1940s the colonial economy had evolved on a dual pattern. There were large scale settler farms engaged in cash cropping which utilised cheap African labour and exported most of the raw materials to England and Europe for processing (Wolff, 1974; Brett, 1973). In addition, manufactured luxury goods and machinery were imported from Europe for use by those who could afford them (Seidman & Seidman, 1984:46).

The economy included a subsistence economy characterised by use of outdated methods of farming by many Africans: mostly children, women and old people who were left in the villages. Moreover, the young men who in the pre-colonial society would have been engaged in hunting, warfare or cattle herding and living in the *manyattas* (warrior camps), were idle since this system was now diminished by the new economy. The accumulation of cattle herds to symbolise wealth was lessened as cattle began to lose their value and were replaced by cash (Phillips, 1953:68; Spencer, 1970).

Within this economy, social reproduction continued to take place outside the colonial relations of production, as women in the villages increasingly took up biological and social reproduction especially since the wages paid to the male workers only met the daily needs of the worker and not that of his family. Increasingly, women were removed from the production process and their role became one of servicing the workers for the colonial economy and at their own costs (Lovet, 1989:27; Kettle, 1986). This meant that "because the hinterland existed, the employer in the export enclave had to pay only enough to keep alive the single male migrant labourer" (Seidman & Seidman, 1984:49).

The nature of the colonial economy also affected the division of labour between the sexes and within the family. Thus the men who had received some form of western education "earn[ed] cash incomes, in the service of missions or government, in agricultural and other wage labour, or by growing crops for sale" (Phillips, 1953:68), while their wives remained in the villages. This led to gender segregation in the family especially in terms of roles, due to the differences in outlook between the educated

and working man and his illiterate village wife. The families that Joan and Wamaitha were born into had these characteristics. In Wamaitha's recollection, her mother worked on the farm and carried out housewife duties and the children's socialisation. The same scenario existed in Joan's family, because her father was actively involved with the local Christian church and therefore was often away from home. The division of labour between man and wife, which existed in pre-colonial communities therefore was slowly eroded by colonialism, which in turn forced women to become economically dependent on men, and at the same time increased their work load as was the case in the families of Joan and Wamaitha.

The migration to the towns or farms, especially by the men, separated them from their families, and in most cases resulted in the dispersion of the extended family. Thus between 1930 and 1940, in East and Central Africa alone, 40% to 60% of the young men were living in the towns (White, 1984:60). However, proximity to the urban centre meant that the nuclear family stayed together and became stronger. Further, as a consequence of urbanisation and the dispersion of the extended family, parents became decision makers over their children's future in which they invested, and expected no returns as was expected in the pre-colonial communities. Wamaitha's natal family is one example of this. Her father migrated to Nairobi in search of work, and settled in the outskirts where he met and married her mother. Thus for Wamaitha and her siblings, her father's extended family had a minimal impact in their upbringing and socialisation, and in this way her natal family gained autonomy from the patrilineal extended family. In addition, her family was not separated by the urban migration, since her father was not physically removed from the home but commuted daily to his place of work.

Urbanisation also meant that women who moved from their rural homes to the towns became independent of family ties and earned their own income. In order for these women to earn a living

"they became independent suppliers of those domestic services that made town life tolerable to men living in cramped quarters on low wages. They sold sex, companionship, bath water, beer, food (greatly in demand by men with no previous cooking experience), and sometimes a dinner for two. They enabled the African men to return to their jobs somewhat replenished"

(White, 1984:63).

Some urban women took to petty trading and sold cigarettes or matches and also recruited other female members of their family to engage in the same trade. In this way women extended "the role of the housewife out of the house into the streets, where a profit can be made from the sale of women's work" (White, 1984:65). The sexual roles of women living and working in colonial Nairobi therefore aided the social reproduction of workers for the colonial Government, a function which the Government could not undertake. However, once these women began to acquire and own property, they became a threat to the existence of patriarchal control and the administration sought to repatriate them to their home districts (Obbo, 1980; Bujra, 1982; Echemeta, 1988).

The introduction of colonialism meant that patriarchal control of the dependant males and females was weakened, because these dependants sought escape routes. But it also led to more control over women's labour by the patriarchs in order to meet the demands of the colonialists. To ensure this control, the patriarchs sought the help of the colonialists in controlling the movement of women into the towns. The colonialists responded by enacting pass laws which restricted the movement of women. In this case the patriarchs were able to maintain their control, over women but they lost political and military control especially since the young men were working for the colonialists (Henn, 1993).

Although pass laws were enacted as a result of the emergency regulations, they also served as a means of regulating the movement of young unmarried women who were now not allowed to remain in the towns. Bearing in mind the nature of the colonial economy, more often than not it was men and not women who had work in the towns, possessed town passes, and could therefore account for their residence. The very existence of unmarried women in the towns depended on their being attached to a man who had a job and a pass and could therefore justify the presence of the woman (Likimani, 1985). Women who were unattached to a man faced repatriation to their home villages after being charged under the Vagrancy Ordinance for either loitering with intent to prostitute, or for having no fixed abode.

Overall, the introduction of a colonial economy weakened the status of women and girls in the family especially as colonial policies widened the gender gap. They "robbed women of some of their traditional safeguards such as their usufruct rights to land and security in their matrimonial homes" (Wamahu, 1992:14).

4.1.1.3 Changes in marriage types

Although marriage remained a way of creating the family, changes in the processes and types of marriage were becoming increasingly evident. One change was the bridewealth which over time became commercialised, resulting in less costly cohabitation unions as an alternative to formal marriage. The effect of this was that elder's control over sexuality, time of marriage and fertility was weakened. Thus a Kenya Administrative Circular of 1948 observed that

" [y]oung men often cannot afford to pay the big dowry demanded and as a result young women form unions without the consent of either of their families or with a modified consent which, in the absence of the usual customary ties, may result in the complete break-up of the family at a later date" (Colonial Office, 1948).

Furthermore, marriage was now delayed as young men went to work for the European farmers or to boarding schools where they learnt to be self-sufficient. Since they could now earn a living without having to farm, the necessity for a large family also diminished and the move from polygynous marriage to monogamous unions became noticeable.

A new form of polygyny however emerged, where a man married one woman under customary law, left her in the village, and cohabited with another woman in the towns or farms. However, since he spent most of his time outside his village, the 'town or farm' wife was often regarded as the legal wife even though no marriage ceremony had been entered into. At the same time he continued to maintain his family at home by sending them money at the end of the month (Phillips, 1953:69). The colonial administration encouraged the men in towns to cohabit with women, since it had become common knowledge that this made them better workers. It was also a move to reduce the rate of prostitution in the towns, and prevent women who had come to the towns from competing with the men for the scarce resources (Bujra,

1982).

Cohabitation unions emerged in the European farms, largely due to young men running away from the "kinship obligations or some real or imagined abuse by their local headman or chief" (Phillips, 1953: 70). This meant that they removed themselves from kinship ties, and in time became independent, remaining loosely linked to the wider extended family. Due to the informal nature of these unions, cohabiters received minimal co-operation from kinship members (Phillips, 1953: 70).

4.1.2 Religion and education

The spread of Christianity as a religion was linked to the introduction of western education. It initialised the alteration of the traditional socialisation processes which Christianity portrayed as inferior to those of the missionaries. This led to a rejection, especially by the Christian converts, of the cultural and religious values which were incompatible with Christian moral values (Acholla, 1989:14). However, African religions continued alongside the introduction of Christianity and in the case of the Christian rebels, they combined the two faiths and formed independent churches.

Other than the English missionaries, the American Society of Friends, and the Friends African Mission (Quakers) also made inroads into the colonial communities especially western Kenya where they constructed a school in Lugulu (Bungoma) in 1912. In addition, missionaries from the Roman Catholic Church, and the Salvation Army later followed suit. In Bungoma, education was dominated by mission groups and it was only in 1948 that a government school was set up in Namilama and the first secondary school was set up in Kamusinga by Quakers in 1958 (IAS, Bungoma, 1986:66).

4.1.2.1 Christian missionaries and female education

As Christianity spread, missionaries set up schools which provided education for girls. The first school for girls was opened in 1900 by missionaries in Kikuyu and offered training in laundry work. Later a boarding school was opened in 1909

"with seven girls, mainly as a protection against unwelcome marriages to heathen husbands, mostly polygamist, and also to prepare suitable wives for our mission boys, who as time went on were getting more and more beyond the status of the raw native" (Watson, CAR, 1928:75).

The subjects taught to the pupils centred on cleanliness, hygiene, housekeeping and mothercraft (Watson, 1928; Mutua, 1975:161). In this way the girls were introduced to a new mode of social reproduction whereby their husbands went out to work and they carried out the housework, rearing of children and other social reproduction work. This type of education differed from traditional education in that women were now trained to remain in their homes rather than participate in production, as was the case in the pre-colonial communities. This in turn reduced the producer role of women and emphasised the reproducer role of women.

Sex education was not taught in the mission schools but remained an important component in the independent schools. The Christian missionaries insisted on new dress codes for the converted Africans as a way of enforcing their abhorrence of "traditional cultures with a view towards exorcising the 'demon of promiscuity' " (Wamahiu, 1992:15). The objection to sex education or related topics being taught in the mission schools was within the context of overall objections to female circumcision made by the missionaries.

Due to the crisis over female circumcision, the educational work of the missions, namely the Church of Scotland, African Inland Mission and the Methodist mission, was affected. In 1929 the Church of Scotland dismissed all African teachers "unless they made a declaration to the effect that they had given up the practice of female circumcision" (Education Dept., 1929:29). A mass exit from teaching in mission schools followed and some African teachers urged the Government to open Government schools in place of the mission schools since the Government did not openly object to female circumcision. This raised fears that the Africans might open up schools which were independent from the control of the missions and the Government. A compromise was reached between the Church of Scotland and the African teachers whereby the Church allowed the African teachers to continue with their work so long as instruction of female circumcision was not provided since the Church had a "right to control the political and spiritual beliefs of those whom it employs to teach in its schools" (Education Dept., 1929:30).

4.1.2.2 Colonial Education policy

In early colonial years, boys underwent traditional and western education and were exposed to a new way of life outside the villages, whilst a majority of the girls underwent traditional education only. Education of the Kenyan Africans was carried out in two main ways. Some schools which focused on industrial education taught skills such as carpentry, because it was believed that the African learnt best by hand, and therefore was trained to take his place in the community. Other schools, for example the mission schools, sought to separate the African from his customs and way of life. Mission schools aimed

" at conversion and a complete break from native customs and superstitions...Hardly a mission can be named which collects, preserves and makes an educational opportunity of the folklore of the African tribes. These appear to be ruled out as utterly bad, and are replaced by the bible stories, and hymn tunes entirely foreign to African life" (Education Dept., 1925:13-14).

By 1927, it was clear that African education was tailored to suit either the needs of the administration, the missionary, or the settler. This is best stated by Webb, the Inspector for Schools, who observed that the aim of the

"administration is peace and economic development in the reserve; of the settlers, cheap labour for work on the farms; of the missionary, additional converts to his own particular denomination...The only person who is confessedly keen on education is the native himself" (Webb, Education Dept., 1927:34).

The primary focus of formal education was on African males, mainly because female education received no financial support from the colonial office (Webb, Education Dept., 1927:34). This meant that, economically, boys were given a head-start over girls. The long after-circumcision seclusion periods for boys which delayed their marriage, enabled them to be fitted into the education system more easily than girls whose seclusion period was shorter. Further, the slow pace in developing female education amongst the indigenous communities was linked to the fact that women and children in the villages served as the reserve labour force for the colonial government which at the time was not concerned with their social reproduction but rather in the

labour that they provided.

For cultural reasons, parents were willing to educate their boys but not their girls. For example, early marriage for girls made them unlikely to fit into the new education system. Moreover the education of girls was not considered a wise investment especially since girls were married into their husbands' families and were thus removed from caring for their natal kin. This, according to Watson, was attributable to the "opposition of the Kikuyu male to his wives and daughters becoming anything but child-bearing and food-and-dowry producing assets in his life" (Watson, CAR, 1928:75).

Western and Christian religious based education was carried out in the missionary and government schools. At the same time new laws that regulated family life and validated Christian religious norms while remaining silent on African norms and practices were introduced. The Indian and Muslim communities were left to continue with their religious practices and personal laws which were enacted into legislation. They were also permitted to found schools which carried out religious instruction (Education Dept., 1925). The educational system introduced by the missionaries and the government did not include sex education, which was a major difference from the traditional education system. Consequently, demands for African-run schools in the style of Muslim and Hindu schools increased.

Increasing demand for African run schools by the Africans in Kikuyu and the Kavirondo districts, saw the emergence of the independent schools movement especially in the Kikuyu areas. These people were opposed to their children being educated by a person who did not believe in their customs, and in particular female circumcision which was an "essential element in the life of the Kikuyu people" (Education Dept., 1925). As a result, a number of independent schools in which Africans, rather than the missionaries, controlled the teaching emerged. The Kikuyu

" adherents of the independent schools movement, most of whom were...sincere Christians although against mission influence and control, were the first people in Kenya to realise that education and mission evangelisation were not, in fact, necessarily linked" (Middleton, 1965:365).

This led to the development of two educational bodies, the Kikuyu Independent

Schools Association (KISA) and the Kikuyu Karinga Educational Association (KKEA). The KISA sought to work with the Government to provide alternative educational facilities and "further the interests of the Kikuyu and its members and to safeguard the homogeneity of such interests relating to their spiritual, economic, social and educational upliftment" (Middleton, 1965:366). The KKEA which was based on Kikuyu tribal values resisted any Government intervention from the start.

The education system throughout the colonial era sought to reproduce the colonial relations of production and consequently there were

"three educational systems for the three races [European, Asian and African] designed to prepare the children of each race for the position they were to occupy in the economic hierarchy" (Kinyanjui, 1978:17).

Although female education was introduced, the nature of the economy which relied heavily on male labour meant fewer roles for women, hence less emphasis on women's education. Further, the type of education that girls received did not prepare them for the well paying jobs that were available for men, but rather for their social reproduction roles as teachers or nurses.

4.1.3 The Legal System

The English legal system facilitated the introduction of a new economy, based on cash crop production, which was alien to the indigenous modes of production. However, fifty years on, law was increasingly used as a tool for economic and social change, and therefore efforts were made to bring African customary laws in line with the introduced laws, which went alongside socio-economic transformations.

Initially, the application of African rules in the colonial courts which were limited to personal laws only, was determined by their level of consistency with the written colonial laws and whether they were repugnant to colonial morality and justice. Those which passed the test therefore became part of the newly created customary law. The construction of customary law also included the creation of the attendant administrative institutions such as Paramount Chiefs, Village Headmen, tribes, and villages.

The wide discretionary supervisory powers of the administrative officers who were

lay persons, over the decisions of the Native Courts and Tribunals, gave them powers to decide which decisions were repugnant to morality and justice and also determine the procedure that was to be followed (Seidman & Seidman, 1984:49). The effect of this was that in the courts of first instance and in the appellate courts, there was an increasing influence of European ideas on indigenous custom especially in matters concerning personal law. For example, the Native Courts enforced the Native Authority Rules and Orders which embodied English procedural rules and customary principles and thus it became increasingly difficult to distinguish between customary and non-customary cases (Brooke, 1954:68; Hailey, 1938:160). Further, the structure and procedures followed by the Native Courts and later tribunals, conformed to those that were familiar to the colonial administration. The effect of this was that the Native Courts lacked "roots in the pre-colonial past" but nevertheless were preferred by the indigenous peoples because the law applied was familiar to them even though it was modified by English law (Hailey, 1938).

The discussions surrounding unitary customary law were based on the fact that, in most of the British colonies, there was already an apparent fusion of customary and English law as applied in the courts, especially the Native Courts. In the initial stages it was recognised that African rules needed to be recorded and possibly codified, while ensuring that their vitality for the indigenous peoples was not lost. Similarly, the repugnancy clauses continued to determine the acceptable African rules and eliminated those that were deemed repugnant, and in their place English laws were applied.

The 1940s saw a move towards the integration of the Native Courts into the general court structure, as the indirect rule policy of administering the territory declined. The integration of the Native Courts into the formal courts system required that they be manned by trained legal personnel, rather than by lay persons such as administrative officers and traditional elders as was the case in the past. The process of integration however took a long time, due to the perseverance of a dual legal system, whereby the two types of courts applied different laws, for example the acceptable African rules in Native Courts, and English statutes and common law in the Magistrates courts.

A conflicts of law situation however arose once the two courts were integrated and there was a need for guidance as to the applicable law in a conflict situation (Morris,

1970:22). The new personnel in the integrated courts were not conversant with any African rules as was the case of the predecessors in the Native Courts; hence the likelihood of applying English law in a conflict situation. Another problem was that African rules were not codified and did not fit into the English concepts especially of personal law (Brooke, 1954:73)⁴¹.

This resulted in moves towards the possible codification of the acceptable African rules into a "known body of law" (Colonial Office, 1949: 86) which was adaptable to socio-economic changes. It brought African commercial and contractual relations into conformity with the imported English law. Thus the process of ascertaining and developing a customary law for the Native Courts began. Consequently, the mixture of certain African and English legal concepts and procedures, resulted in the creation of a hybrid customary law which was subordinated to English laws and procedures.

Local law panels of customary law 'experts' headed by an administrative officer were set up in 1948 with the objective of recording and developing customary law and making recommendations for any changes. These panels could also make declarations on the prevailing customary law, for example in the 1950's the panels outlawed the practice of female circumcision without parental consent, because of the increase in female circumcision for nationalistic reasons (J.A.A., 1953:24). In addition, District Officers, who had administrative and judicial capacities, were required to record their personal knowledge of African civil wrongs (Colonial Office, 1949:86-88; see also Robinson, 1949). It was further suggested that rather than codifying African rules, English laws should be simplified and fused with the non-repugnant African rules such that in time "English law on some matters should become customary law in the eyes of native societies" (Robinson, 1949: 161).

The danger of codification of African rules into 'customary law' was that these rules would be fossilised hence eliminating their dynamic nature and that the new law would gain a likeness to English law. The Judicial Advisers Conference held in 1953 recognised the dynamic nature of African rule system, and the increasing "tendency to assimilate itself to English concepts" (J.A.A., 1953:24), which Allott argued, would be the undoing of 'African customary law' as it tried to adapt itself to the new laws (Allott, 1950:8). The conference therefore recommended that

"[i]t is inevitable and essential, moreover, that the development of native law should, to considerable extent, be guided through the supervision exercised over Native Courts, the revision of their judgements and the instruction of their members. Care must, however, be taken that such influence should not go too far, lest the law should cease to be acceptable to the people" (J.A.A. 1953:24).

One of the recommendations of the Conference was that an unofficial code of customary law should be prepared. This was later carried out in the form of Restatements of the law, which outlined the laws on marriage, divorce and succession of the different Kenyan communities (see Cotran, 1968).

Gradually, due to the penetration of general law, customary law grew to resemble the general law under which it was administered but this masked the fact that the newly developed customary law was inferior to the imported law (Allott, 1959:79; Snyder, 1982:74) and also protected the true identity of general law against its arbitrary demands (Fitzpatrick, 1984a:126). The new customary law dealt with those areas over which the initial Native Courts had jurisdiction, namely marriage, custody of women and children, and inheritance.⁴² It is this modified hybrid customary law that was integrated into the general legal system and in its application "details of English procedure were all too often zealously applied regardless of their appropriateness in a social environment very different from that in which they had evolved" (Morris, 1970:25). The moulding process took place in the courts, and therefore, as long as the Africans did not take their customary disputes to court, they would continue applying their customary laws and practices without interference from the Native Courts. Hence the continuation of traditional adjudicating bodies such as councils of clan elders to hear family disputes which applied customary law (Gulliver, 1963:243; Abel, 1970:53). The effect of this was that African customary law, which was ascertained by elders continued to operate outside the imposed judiciary system, hence the operation of three types of law, namely African customary law (outside court), hybrid customary law and English law, which applied to the Africans depending on the adjudicating body (Seidman & Seidman, 1984:50). Therefore, where disputes were taken to court and the new evolving customary law was invoked, the courts did not

have to consider the repugnancy of this law especially since it had adopted itself to new changes and was therefore up to date (Read, 1972: 180). In this way, customary law survived in the colonial period (both)

"formally and informally, officially and unofficially, in recorded proceedings of statutory courts and in the unrecorded discussions of family, clan, or association which remained unknown - often unknowable - outside the number of those who participated" (Read, 1972:187).

However, the customary law operating outside the courts was dynamic and continued to react to the socio-economic changes brought about by colonialism, thus continuously acquiring a new character (see Hailey, 1956:641). However, since the elders remained the custodians of customary law, they used this to consolidate their power in controlling sexuality and fertility.

The effect of the codification of customary law was the transformation by the received laws of "social issues into its own terms of communication or substantive content" so as to protect its identity against arbitrary demands (Fitzpatrick, 1984a:126). The process of codifying customary law involved negotiation between the colonial administration and the tribal elders. In this process, the elders sought to ensure that they retained some form of control in their communities (Rwezaura, 1992:4). In reality this meant control over women, children and unmarried men through control of marriage and custody of children. Accordingly the power relations in the process of creating customary law involved dominance and subordination: of colonial state-laws over the African rules; and of the colonial administration over the elders, and the elders over women, children and young unmarried men (Merry, 1988:878).

4.1.4 Population policy during colonial area

Since 1902, censuses were carried out on the non-African populations, whilst estimates were taken of the African population, which suggests that the growth of the African population was not on the agenda of the colonial office. One reason for this was that in the early colonial years the indigenous modes of production supplemented the colonial ones which were primarily concerned with extraction and importation of raw materials to Europe mainly, with limited re-investment in the colonies. It was not until 1948 that the first census of the African population was actually carried out, after

it became clear that the areas reserved for Africans were not able to sustain a growing population especially since large tracts of land previously occupied by the Africans were now under large scale farming. This census revealed that the total population had risen from an estimated 2.55 million in 1925 to 5.25 million (EARC, 1953-55:464).

In addition, the African nationalist struggle towards the end of the colonial period led to the formulation of a population policy. This was prompted by the mass migration of white settlers from Kenya as independence drew near, and the threat that this posed to investors who wanted to pull out of the country. The census was therefore necessary to convince the investors that the colony still had a large white population (Ndeti & Ndeti, 1977).

Although there was no official colonial policy on contraceptive use, these had been in use since the early 1950s, and were available mostly to members of the "upper socio-economic class - mainly the Europeans" and to a few upper class Africans and Indians (Ndeti & Ndeti, 1977:31). Interest in family planning developed in the 1950s as funds from family planning agencies such as the Pathfinder Fund were received; thereafter the Family Planning Committee was formed in Mombasa in 1955, and in Nairobi in 1956. The Family Planning Association of Kenya (FPAK) was formed in 1957 "in response to increased demand and interest from women from all races, and especially African and Asians" (Ndeti & Ndeti, 1977: 32).

4.2: CONSTRUCTION AND REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY

4.2.1 Construction of female sexuality

Despite attempts to eliminate female circumcision and other initiation rites by the Christian missionaries, these continued and played a role in defining the stages of childhood and adolescence among the non-Christians and members of the rebel churches. However, as will be illustrated in the following section which focuses on the experiences of Joan and Wamaitha, the African Christian converts did not carry out initiation rites, and childhood and adolescence were therefore constructed differently. Thus girls left the childhood stage at puberty and not through initiation rites. This in turn affected the construction of female sexuality but not that of male sexuality since

male initiation practices were carried out by both converts and non-converts.

In discussing how sexuality was constructed during her childhood and adolescence, Wamaitha pointed that she and her sisters were often caught up in the conflicts about their sexuality, especially after their parents had converted to Christianity and abandoned the African Church. Consequently, Wamaitha and her sisters had to be differentiated from the other girls whose parents were either traditionalists or Christian rebels. In this regard,

[m]y mother forbade us to wear earrings and bangles, or plait our hair and at all times we had to wear a head scarf. Everyone laughed at us especially because by our manner of dress it was clear that we were not going to be circumcised.

Furthermore, they now wore western dresses which distinctively differentiated them from the non-Christians who wore jewellery and traditional attire. As she approached puberty, Wamaitha became increasingly aware of her sexuality and was constantly reminded by cruel jokes that she was 'smelly, unclean and promiscuous' and an outcast. Hence

the fact that I was not going to be circumcised made me more aware of my sexuality especially because of the songs that were sang about us, and the jokes that were made about us. At one time my sister and some of her 'Christian' friends beat up some uncircumcised boys who had exposed themselves and proposed to have sex with them.

Mumbi (whose story was narrated in chapter three) was during this period a mother and an aunt to Wamaitha. She recalled the way in which uncircumcised girls were treated. According to her,

[u]ncircumcised girls were laughed at and despised if they had refused to undergo the circumcision rite. Young boys and girls were allowed to ridicule and make fun of them and at times throw stones at them. At times young boys who were uncircumcised would ask them for sex which was the ultimate humiliation. It was believed that uncircumcised girls were smelly, mannerless, were over-sexed, would not know how to care for a baby and that if a baby choked on its food the uncircumcised mother would laugh. It was also believed that if the uncircumcised girl went to the *shamba* (garden) she would start climbing a castor tree instead of digging.

Although Joan's family lived in an area that was predominantly Christian she still recalled that circumcision was used to construct female sexuality and motherhood. She points out that

the girls who had undergone female circumcision were held in high esteem in the village and the community. Sometimes this was expressed in songs. There were unfounded beliefs about uncircumcised girls, for example that uncircumcised female could not conceive or give birth. Hence young men were discouraged from courting uncircumcised women. There were all kinds of derogatory and demeaning terms used for uncircumcised girls

The use of language such as 'unclean', 'smelly' or 'promiscuous' in describing uncircumcised girls, created a negative image of them, denied them respect and dignity in their communities, and affected their inter-family relationships, as in the case of Wamaitha.

Wamaitha and her sisters had by the age of 12 years undergone religious instruction in preparation for baptism, after which they would be received into the Christian church and community. However, she felt that she still had to be accepted by the other members of the community who were non-Christians or rebels, which to her was important especially if she was to get a husband. Furthermore, uncircumcised women who were no longer accepted by their communities had the option of either moving away and marrying men from other communities or moving to the towns and working either as sex-workers or petty traders. This she did not want to do. Therefore she colluded with her cousins (who belonged to the polygamous household Mumbi was married into) and arranged for her to go with them for circumcision because they did not want to leave her behind. As Wamaitha recalls

I remember the time when the circumcision period neared my cousins from Kanyariri arranged that I should be with them because they knew that I would undergo a lot of suffering if I did not undergo the rite with them. This also meant that I would be forbidden to visit them both by my parents and their parents, and in any case they would not want to have anything to do with me because I would not be a *Muiritu*. I informed my elder sister of the plan and I tried my best to ask her to

accompany me but she refused. In the meantime my elder cousin had kept a new cloth for me which I was to wear after the rite and with her other sisters had arranged that I was to stay with them after the rite since my parents were bound to reject me after the ceremony. However, the night I was to sneak out to my cousin's home, my sister informed my mother of my intentions and I was given the beating of my lifetime. I was forbidden from seeing those cousins and even going near their home. I joined the group of those that were despised and laughed at by even small children.

According to Wamaitha, entry into boarding school was a break for her from the cruel jokes. While in school she learnt that girls from other communities did not undergo circumcision and this did not make them unclean or promiscuous as she had been socialised to believe.

In communities that did not circumcise their girls, virginity rituals carried out at marriage reflected the way the communities constructed the sexuality of an unmarried girl. At marriage, a defloration ceremony (*ringre nyako*) was performed to check the virginity of a Luo bride. This was carried out in the presence of two young married women and two young married men who, after symbolic breaking of the hymen by the groom, were to examine whether the bride was a virgin or not. This witnessing ceremony was crucial in order to ascertain whether or not a heifer was to be paid for virginity. In the event of the marriage breaking down, the father of the girl had to know whether or not he was to return any animal (Wilson, 1968:100). The result of proven virginity at marriage, was that the girl and her mother received a lot of praise and songs were sang in their honour. For example once the virginity of the bride was proved, the Luo *jondaria* (witnesses or bridesmaids) sang a song "*Konglo Wadiyo*" meaning " We carry the hymen safely" (Wilson, 1968:102) and proceeded to the natal home of the bride whereby they anointed "the head and neck of the mother and father of the bride with ashes, a symbol of their correct parenthood in having given a virgin in marriage" (Wilson, 1968:103). Therefore being a non-virgin brought shame for the girl and her parents, who as in the case of the southern Luo did not receive the bull of virginity. A non-virgin bride was mocked using the term "*fududu fuong*" meaning "empty thing" and was stigmatized for the rest of her life (Wilson, 1968:103). By the

1950s the witnessing ceremony had changed to examination of sheets the morning following the consummation by women from the village as a way of verifying the virginity of the bride (Wilson, 1968:100).

Whereas the Luo praised the virginity of a bride and therefore discouraged girls from pre-marital sexual relationships, the death of a virgin girl was regarded as ill fortune. A common belief was that she would become a "malevolent ghost, which will cause barrenness to all of her female kinsfolk, both affinal and agnatic" (Wilson, 1968:100). Moreover, it was believed that she would haunt the other girls of the family and threaten that they shall die as virgins because their father and brothers let her die a virgin. To avoid ill fortune befalling the family and the community "an old woman [who has reached menopause] was brought to deflower her corpse" after which she was buried a non-virgin (Wilson, 1968:100-1). By the late 1950s this practice changed and in lieu of the defloration of the corpse, a number of sacrificial rites are now carried out. However, the belief that she would bring ill luck if buried a virgin still remained.

The importance placed on virginity of the bride at marriage was symbolised differently in other communities. For example at marriage a Mbeere bride was examined by her in-laws and once her virginity was proved her parents received a gourd of honey beer with fine goat droppings. If she was not, the beer had dirty leaves and sugar cane husks which brought shame and lessened the demand for dowry (IAS, Embu, 1986:150). However, among the Iteso who did not practice female circumcision, female virginity at marriage was encouraged though it was not strictly adhered to (IAS, Busia, 1986:133).

4.2.2 Normative rules on pre-marital sexual relations

The pre-1930 normative rules as described in Chapter Three did not differ substantially from those in the period between 1930 and 1963 although there were differences in the enforcement and observance of these norms. Thus the prevalent norms for both the Christians and non-Christians remained that pre-marital sex and pregnancy were not socially accepted. In the traditional non-Christian communities, moral values continued to be enforced through a system of taboos and where calamity befell the clan it was imperative that it was established who had brought the evil upon

the clan. However since the Christians did not believe in superstition or fear that ill luck would befall a transgressor of his or her family, their norms concerning sexuality and fertility were not enforced in the same way as the traditional ones.

However, even though their parents did not adhere to traditional norms, Joan and Wamaitha recalled that they would be punished if seen talking to or were known to have talked to boys irrespective of the boys' religious conviction. For example Wamaitha recalled 'we were not allowed to talk to boys anywhere and if this was known we received a thorough beating'. The junior school that both attended was a mixed school, and girls were strictly forbidden from communicating with the boys with whom they interacted only in the classroom. If one was found talking to a boy, she and the boy were both punished. When asked whether peers had any norms about pre-marital sexuality, Wamaitha pointed out that

[a]lthough some girls including myself did not undergo traditional sex education, we had our own code of respect and avoided any sexual relations with boys and in fact being near a boy was seen as a 'crime' by the peer group.

Thus a girl was subjected to ridicule by her peers if she was seen talking to a boy and it was joked that was behaving like the 'uncivilised' circumcised girls whose only interest was marriage.

By the 1940s the practice of *ngwiko* by initiates and traditional youth dances were already dying off even though female circumcision continued. Wamaitha and her friends often hid to go and witness the traditional dances which their parents had forbidden them to attend. In this way, she argued, they observed practices such as the boy-girl behaviour at these dances that they would otherwise not have learnt.

4.2.3. Normative rules concerning pre-marital pregnancies

The norms concerning pre-marital pregnancy were similar for Christians and non-Christians as is reflected in the way that both constructed pre-marital motherhood. The norms for the Christians were based on religious teachings that emphasised female virginity at marriage and often linked marriage with procreation. In addition, in most communities (both Christian and non-Christian) it was rare that a pre-marital pregnancy was regarded a blessing for the already circumcised girl and her family. In most colonial communities

"[c]onception must be socially authorised. In some societies conception before the puberty ceremony, which it must be remembered, is surrounded with religious rites and beliefs, is regarded with severe disapproval than conception before marriage, but in these societies marriage is expected to follow very closely on the puberty ceremony" (Phillips, 1953:3).

However, amongst the Kipsigis, pre-marital pregnancy was a sign of fertility and subsequently the unmarried mother had a number of suitors who were willing to marry her, since her pregnancy assured them of her reproductive capabilities. Thus once circumcised, a Kipsigis girl was

"free to have a child without anybody being offended. Her future husband will usually be glad of the proof of his fiancée's fertility and also of the young baby, which will become his. A baby is in reality more of an asset than a handicap to an unmarried, but circumcised girl" (Peristiany, quoted in Phillips, 1953:51).

Illegitimacy, as known in English family law, did not exist, since for most communities a child born outside marriage belonged to the mother's family (Cotran, 1968) which undertook to care for the child. Among the Iteso, the girl's father adopted her child which meant that upon marriage she could not take the child with her. Upon her marriage to another man her father retained the child, but if compensation had been paid, the father of the child took the child (IAS, Busia, 1986:133). However, among other Luhya communities the natural father was under an obligation to care for his children born outside marriage irrespective of his marital status (IAS, Busia, 1986:133).

Different communities had names for children born outside marriage. For example, the Luo called a male child *Kimirwa* which indicated that he was conceived and born before his mother was married to the man who was not the father. The effect of being a *Kimirwa* is that one "has no rights beyond a portion of his mother's garden unless the foster father...gives him cattle to marry a wife and gives him a garden and one to his wife, [and therefore] gardens are his inalienable right" (Wilson, 1968:55). However, if his natural father subsequently married his mother he is called *Nyathi Dhuok*, "a child of cattle" (Wilson, 1968:55) establishing that he now had inheritance rights over the property of his father. To avoid the social consequences arising from

pre-marital pregnancies, the sexuality of unmarried women was closely guarded.

Pre-marital procreation however meant that the newborn child had no link to the past or the future. The child had no inheritance rights since it did not belong to the clan or family of its paternal father, unless subsequent marriage took place. What was broken was the continuity of the family chain since, for example as in Kikuyu customs, the first child is named after the parent of the father. Thus if a child is born outside wedlock, the naming system changes and the child is named after a maternal grand-parent. Although this gives the child some form of social identity, it disrupts inheritance patterns especially if the mother had no inheritance rights. This would mean that the child would then enter the circle of potential heirs of the maternal grandparent. This further destabilises the established succession structures since, in normal circumstances, such a child ought to inherit from its father's lineage and not from the mother's. Furthermore, the maternal uncles would not be too keen to share the property with the child who came from the 'outside'.

4.2.3.1 Punishment for pre-marital fertility

The punishments for pre-marital pregnancy however differed between the Christian and non-Christian groups, although in both cases the girl was severely punished. Both Joan and Wamaitha were asked whether they remembered any punishments for pre-marital pregnancy meted out by the parents, church, peers or the schools. Joan pointed out that the girl suffered double punishment in that her school 'would expel her and her parents would sometimes disown her because she was a big let down...however, in my family the girl was accepted and taken care of'.⁴³ Wamaitha pointed out further that

[s]ometimes the mother was held responsible and both were expelled from the home by the father of the girl or at times the girl was sent to stay with her grandmother until she gave birth. The man was usually fined for the pregnancy if he did not want to marry the girl and a goat was slaughtered and eaten by the clan elders and the girl's father's peers. The mother did not get even a piece of meat, because it was argued that the child belonged to the community!

Wamaitha's younger sister became pregnant while in primary school thus terminating her education. Their father sought neither pregnancy compensation nor

bridewealth from the father of the child who later married her. This reinforced her father's religious beliefs then, especially since in his will he clearly stated that the bridewealth was outstanding from his son in law and that it was to be paid to his estate. However, Wamaitha could not recall whether the church did punish any one (parents or daughter) for a pre-marital pregnancy, but there was the possibility of one being excommunicated which could perhaps explain her father's reluctance to claim compensation or bride-wealth.

The fear of punishment from school and parents, possible peer ostracism and, according to Wamaitha, the desire to continue with education led to abortions by school girls. Thus she stated that

[a]bortion was opted for by those who found themselves pregnant, for example some girls drank *bururu* (i.e. Colman's blue) or *Kero* (a toilet cleaner) to abort the foetus.

According to Joan and Wamaitha, peers, especially in the schools, often laughed at the girl. Despite this, if a school-girl became pregnant, school peers undertook to protect her from the teachers because if found out she would be expelled. Thus Wamaitha stated that

[m]ore often than not it was the girls who would first know who was pregnant and they secretly kept this away from the teachers. This enabled some girls to complete their education without ever being found out, especially if the pregnancy was not so advanced.

In communities where female circumcision persisted, pregnancy for an uncircumcised girl continued to be regarded as a severe crime which was severely punished and the girl ostracised. For example, amongst the Nandi, a pregnant circumcised girl was referred to as *cesorpucot* which meant an unclean person, so that people were automatically 'informed' of her bad deeds and her unclean state (Huntingford, 1950). In some societies, pre-initiation pregnancy meant a death penalty being imposed upon the girl and her lover (Phillips, 1953:47).

The Kipsigis for example, believed that pre-circumcision pregnancy made a girl barren and ritually unclean and therefore the women practised infanticide. An old woman who assisted in the delivery of the baby smothered it before it gave its first

cry, after which the uncircumcised girl underwent cleansing. However after the Indian Penal Code made infanticide an offence in the 1950s, uncircumcised Kipsigis mothers left their villages and took their children to the Christian missions where they were taken care of. The effect of this was that the girls were not ritually cleansed since the child was not killed and were therefore not accepted back into their communities. According to Phillips, "such a girl may hang herself" (Phillips, 1953:51). The Borana either practised infanticide or threw away children born out of pre-marital sexual relations, a practice that continued into the early 1970s (IAS, Marsabit, 1986:31). The Iteso however forbade pregnancy for an unmarried girl and the man responsible was made to either marry her or pay *emong lok' eluk* (a bull) to her father in compensation "for her damaged purity" (IAS, Busia, 1986:133).

Amongst the Luo, who did not practise female circumcision, pre-marital pregnancy was treated with superstition since it was believed that ill fortune would befall the family of the girl. Furthermore, if one broke the moral values, it was believed that *chira* (bad luck) would befall him or her, which in turn meant sterility, barrenness, sickness and death of children (Acholla, 1989:10). Luo girls were therefore expected to be virgins at marriage and therefore pre-marital pregnancy "was sanctioned by severe shame, ridicule and loss of reputation as well as loss of bride-wealth in case of transgression" (Southall, 1973: 337; see also Wilson, 1965). A pregnant Luo girl was married off quickly, for it was believed that by giving birth at home she threatened the fertility of the paternal lineage and the health of "legitimate" children born in the home. If she died at home while giving birth, she was not buried at home it was believed that she would return as a vengeful spirit (*Jachien*) who would bring misfortune to the children of the home, threaten the fertility of other family members, and be a source for illness and death in the family (Achola, 1989:12).

Thus to avoid the punishments arising from a pre-marital pregnancy, a mother organised with a *dhako mariek* (knowledgeable woman) to perform an abortion on her daughter. It was further believed that only the *dhako mariek* "could negotiate with the ancestral spirits so as to ward off the otherwise inevitable *chira* that would descend on the family of a girl whose pregnancy was artificially terminated" (Achola, 1989:12). Girls were therefore brought up in the knowledge that they faced severe

punishment should they become pregnant before marriage, likewise the man responsible similarly faced punishment.

4.3 THE SOCIAL ACTORS AND PROCESSES

Traditional education continued even in the communities where both Joan and Wamaitha lived, and the internal social actors remained the same as those of the early colonial years (see Chapter Three). However, the role of the extended family was affected by the urban migration of nuclear families, which reduced the number of actors. In most communities, despite the introduction of western education and the effects of urban migration, traditional education persisted, especially in the childhood stage and involved various actors. For example amongst the pastoral Borana, Rendille and Gabra communities of Northern Kenya, traditional education and socialisation, which reinforced the functional differentialism between the sexes, were carried out by the community rather than the family members (IAS, Marsabit, 1987:106).

4.3.1 Childhood

Traditional education for children was carried out in different places and in varied ways and aimed at preparing children for their future roles as adults. For example among the Borana, Rendille and Gabra, uncircumcised boys were educated in the *kraals* which were exclusively a male domain, whilst uncircumcised girls were educated in the huts which were the domain of women. The Rendille carried out extensive training in herd management for boys whilst girls were educated on their activities in relation to the herds and hut building (IAS, Marsabit, 1987:109). Traditional Masai education also involved training the girls to build huts and control activities within the hut whilst boys were trained in cattle herding (IAS, Kajiado, 1986:114).

Grand-mothers and other women in the family, however continued to play an important role in the socialisation of pubescent girls especially where families had not been entirely separated by urban migration. For example among the Bungoma communities, grandmothers taught pubescent grand-daughters about menstruation and the implications of changes in their physiology, the virtue of virginity was stressed and pre-marital sex was abhorred (IAS, Bungoma, 1986:64). Among the Kisii, the girl's

mother was a key player in her preparation for adult roles until the girl was aged about six (6) years. After circumcision, sex education was carried out by a grandmother who was assisted by an elderly widow. Both stressed the virtues of virginity and responsibility as a wife (IAS, Kisii, 1984:145).

4.3.1.1 The Construction of Childhood in Christian families

In Christian families, as the narratives of Joan and Wamaitha indicate, the composition of the internal social actors was different from that discussed in Chapter Three, during the pubescence of Mariamu and Mumbi. As the following section highlights, changes brought about by Christianity and other socio-economic factors had various effects on the actors and the socialisation processes.

Joan and Wamaitha were asked whether they recalled the socialisation processes and the actors during childhood, especially as they approached adolescence. In both cases, their fathers played a minimal role in their early socialisation, a task which was dominated by their mothers. However, Joan did not elaborate about other social actors in her early childhood, but referred to her Christian upbringing in which both parents played a role, albeit with her mother playing a bigger role since her father was often away from home. In addition, the church and school were actors from an early age in the Christian socialisation process.

Wamaitha pointed out that when her parents abandoned traditional practices and adopted Christianity, this was a total shift in the socialisation of her and her sisters. She recalled that

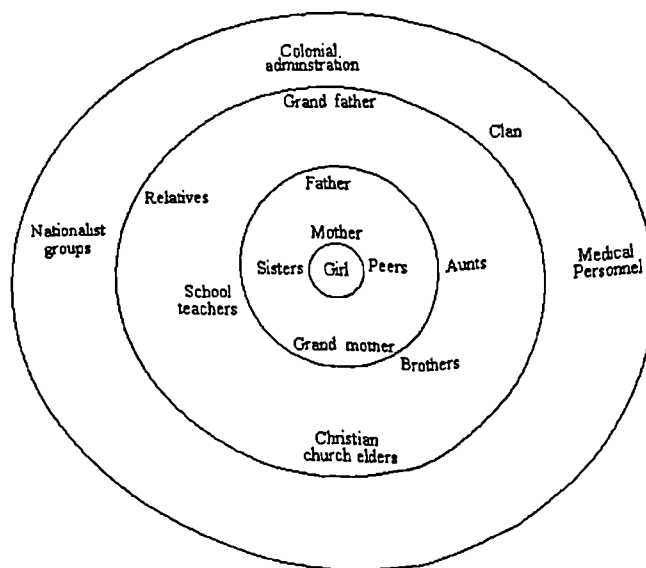
[c]ounselling was usually carried out by the girl's grandmother, but we did not undergo any counselling from our grandmother because our parents were Christian converts who rejected traditional education and practices including female circumcision. Our maternal grand-mother who was a traditionalist was very bitter about the conversion of my parents which also meant that my sisters and I were not to be circumcised. She therefore would not counsel us even when we visited her.

According to Joan and Wamaitha, the Christian converts did not want their children to mix with the grand parents whom they called "*gicenji*" (uncivilised) because they retained their traditional practices. Therefore even where grandparents might have

wanted to counsel their grand-children irrespective of the religious beliefs, they could not do since the parents did not want them to.

Wamaitha's maternal grandmother refused to participate in their socialisation. Since her paternal grandparents lived far away, the task of socialisation was left to Wamaitha's mother. Her mother's role as an educator was limited to traditional education which she carried out through stories, songs and myths. However, her mother was unable to fill the gap in the initial traditional sex education which ideally ought to have been carried out by the grand-mother. Wamaitha pointed out that her mother considered "counselling on sexual matters or even mere discussion to be non-Christian and therefore evil...". Her mother's reluctance to provide counselling on sexual matters extended to discussions on menstruation. Thus, when Wamaitha entered *menarche* at the age of thirteen, she thought she was going to die and approached her sister who told her what to do. When her mother found out she declined to either discuss menstruation with Wamaitha or to inform her father as was traditionally expected of her. Wamaitha and her sisters received scanty information and counselling from other sources, for example, they received some counselling in the bible study groups which they attended in preparation for baptism. However, these sessions were conducted by male church elders who were not comfortable with issues on sexuality or reproduction, and were ill equipped to discuss them. The degree of interaction in a typical Christian family is illustrated in Figure 4.1 below.

FIGURE 4.1: DEGREE OF INTERACTION BETWEEN THE ADOLESCENT GIRL AND THE SOCIAL ACTORS IN A TYPICAL CHRISTIAN FAMILY



The grandmother as an internal social actor is in the periphery of the inner circle, for example, in a family such as that of Wamaitha's where her grandmother was a traditionalist and her parents were Christian converts. However the grandmother still has a role to play in other socialisation practices which are not related to sexuality. The father is also in the outer periphery of the inner circle and not in the second level as was the case in the youth of Mariamu and Mumbi (see Chapter 3). The reason for this is that as the family became more nuclearised, the father became increasingly involved in certain aspects of socialisation e.g. schooling for the children. Since school based education started at an early stage, school peers became dominant social actors who filled in the gap in information that the mission schools failed to provide, and the peers developed their own regulatory codes. Sisters who include female cousins were dominant social actors who also filled in the information that mothers and other female relatives were unable to furnish, especially due to religious convictions.

In the non-Christian communities, the internal social actors remained similar to those described in Chapter 3 (see Table 3.1) although school teachers in the independent schools and Christian mission schools (which accepted non-Christians), were increasingly involved in the socialisation processes even though they differed in the teaching of sex education.

4.3.2 Adolescence, Socialisation and Education

In communities that practised female circumcision, the functions of socialising the initiates continued to be carried out by different persons who included peers, elderly relatives and the community, as discussed in Chapter Three. Furthermore, the independent schools' movement continued to establish schools for those who retained their tribal customs, and hence aspects of tradition and traditional sex education were taught in these schools. Outside these schools, the dominant actors involved in instilling moral values and norms of the community remained the women in the family, even in communities such as the Luo who did not circumcise pubescent girls. The education of pubescent Luo girls focused mainly on instilling into their minds the values of having children. This was carried out by paternal aunts and grand-mothers either through didactic story-telling or direct instruction (Achola, 1989:9).

The introduction of classroom-based western education placed educational

institutions at the centre of the changing processes of socialisation for girls in both childhood and adolescence. Although in the initial stages not many girls attended school, those who did were either in the mission or independent schools. The emergence of formal schooling and Christianity led to a gradual change in the manner of socialisation as new values alien to those of the communities were introduced. In addition, these differed from the earlier objectives of colonial education, which aimed at creating a reserve force of skilled manual workers. Thus a change in the values and traditions of the indigenous peoples was not favoured by the administration.

When queried about the social actors and the socialisation processes in her adolescence, Joan said 'My youth was spent in school'. Joan was among the first girls to be educated in her village. In fact when she was due for admission into secondary school there were no government or missionary secondary schools for girls at the time. Hence, she was admitted with five other girls into an all boys school, which was run by the Church of Scotland. Besides making history as pioneers, the admission of Joan and her fellow female schoolmates into a boys' school proved that girls and boys could actually be educated together. This differed from the process of traditional education which separated girls and boys. It also showed that girls could attend a school and learn the same things as boys did, as opposed to being trained only in mothercraft and hygiene, as was the case in Watson's school at the turn of the century.

Wamaitha began primary school in 1944 at the age of nine and eight years later joined the intermediate school where Joan was now employed as a teacher trainee, and two years later she joined secondary school. However, by the time Wamaitha entered primary school in the mid-1940s, both missionary and government-run girls' schools had already begun to mushroom in the country although at a much slower pace than boys' schools.

4.3.2.1 Role of educational institutions

As discussed earlier, the religious conviction of family members constrained the process of early sex education which was traditionally carried out by grandparents. This meant that alternatives had to be sought to fill in this gap. This section focuses on the roles played by the social actors in the missionary or government education institutions (hereinafter the school), in filling in this gap and what information was

imparted to school girls.

According to Joan, the mission schools admitted both circumcised and uncircumcised girls even though this was not initially intended. Many girls entered the mission school after circumcision and it was difficult to bar their entry. However,

[o]nce a girl entered a mission school she was expected to observe Christian practices. Although some protestant missions especially the Scottish missions objected to girls' circumcision, girls who had undergone the rite prior to joining their schools were not barred. But the independent schools only admitted those whose families accepted traditional practices including female circumcision

According to Wamaitha, when they entered secondary school all the new girls were subjected to a medical examination ostensibly to find out whether or not they were pregnant, since pregnancy barred entry into school. However, in reality this examination was carried out to investigate whether the girls were circumcised. She further stated that

[a]lthough we objected to this examination which was degrading to most of us, we were told that this was part of the admission process and refusal to go for the examination, meant non-enrolment into that school. Since we all wanted to acquire education and the school had a good academic reputation, we therefore went for the examination.

Teachers and peers as social actors

The intermediate school that Wamaitha attended after primary education was mixed (i.e. girls and boys). Most of the teachers were men who were unable to counsel the female students on sexuality and reproduction issues, and the few female teachers to whom they could go for advice were unwilling to help. This, according to Wamaitha meant that she lost out on the traditional sex education that her non-Christian counterparts had already received. When she joined an all girls secondary school, her peers were her main informants, especially since the school admitted both circumcised and uncircumcised girls. However, some of the circumcised girls were willing to pass on some information and at times provided information which appeared distorted, although she had no way of verifying this.

The secondary school offered a course on mothercraft, which focused on early

pregnancy and child care, but Wamaitha claimed that most girls wanted more information on how a pregnancy occurred and how to prevent this happening. However, she pointed out that

[t]he missionary teachers were unable to carry out any counselling and when we approached them for any information they castigated us for having evil thoughts like uncivilised circumcised girls. At times even questions concerning menstruation were met with accusations that we were '*mau mau*'⁴⁴ which instantly silenced us. We were left to find information on our own especially about menstruation, conception etc.

Instead, Wamaitha and a group of girls wrote to Johnson and Johnson, a pharmaceutical company in Nairobi, they had read about in a newspaper, and requested information about menstruation and feminine hygiene. The company thereafter sent them the information sought which she said was shared among her peers.

Although female education during this era gave the girls opportunities to make decisions concerning their future, it failed to fill in the gap on sex education that was traditionally carried out, hence the affected girls relied on scanty information and peer knowledge. Wamaitha was however quick to point out that pregnancies in their school were rare, in comparison with other girls' schools, and therefore discounted the belief that failure to undergo circumcision or receive traditional sex education made girls promiscuous. She further explained that the low pregnancy rates were due to a combination of factors. According to her,

[f]irst, the girls received some information from friends and magazines, although in late adolescence. Secondly, some girls had already undergone traditional counselling during their circumcision which was now carried out before they joined the school. Third and most importantly, most girls wanted to pursue careers either as teachers or nurses and they knew that early motherhood would prevent them from doing so.

Therefore for those who completed their education, this provided them with the gateway to employment where they earned a wage even though the employment opportunities for women were limited to nursing and teaching. Whereas uncircumcised girls (e.g. Wamaitha and Joan) were socially undervalued by the non-Christian

communities, the acquisition of western education and delayed marriage, thus gave them an opportunity to develop their careers and in this way they gained social value as educated and working women. Moreover, since the mission schools admitted both circumcised and uncircumcised girls, they competed at the same level and for the same resources such as paid employment, which weakened the belief that access to certain resources was only through circumcision as was the case for Mariamu and Mumbi.

Wamaitha became a teacher trainee after completion of her secondary school education. When asked whether she counselled girls about their sexuality in the schools in which she taught, Wamaitha stated

I answered questions to the best of my ability, but you know...I was inadequately prepared and trained to give proper counselling...during my adolescence, sexuality was shrouded in mystery both in and out of school and I continued to mystify sexuality and reproduction.

4.3.3 Composition of the Social Actors by 1963

Between 1930 and 1963 new social actors who were involved in the socialisation of children and adolescents emerged. These actors included the teachers in the mission, government and independent schools, and traditional educators who were involved in childhood and adolescence. The teachers in Christian missionary schools were involved from pre-adolescent years, during which they sought to instill Christian values into the pupils. However, these teachers were neither involved in preparing the pubescent girl for circumcision, nor in counselling her thereafter, since the practice was abhorred by the missions. The composition of the social actors in this period is illustrated in Table 4.1 below.

TABLE 4.1: COMPOSITION OF INTERNAL AND EXTERNAL SOCIAL ACTORS BETWEEN 1930 -1963

Internal social actors	External Social actors
Aunts	Relatives
Parents	Medical Personnel
Girl	Colonial Administration
Sisters	Christian Missionaries
Grand parents	Nationalist parties
Clan	Distant relatives
Peers	Women's and children's rights groups
Traditional educators	Traditional and Christian church elders
School teachers	

The interaction between the social actors and the adolescent girl in her pre-puberty and pubescent stages was at different levels and for different reasons. For example, external actors such as Christian missionaries, colonial administration and tribal elders sought to reinforce their control over women's reproductive capacities. This control was ensured through both traditional and western education which reinforced patriarchal dominance in the family especially since women were educated to stay at home and men were to be the breadwinners.

Patriarchal control over women's reproductive capacities was carried out at different levels, namely at the level of elders, church and colonial administration. Elders controlled reproduction through governance over the marriage process and practice of female circumcision, which was enhanced by their collaboration with the colonial administration over supply of labour for the colonial economy. Thus control of women's production and reproduction capacities continued to be a means through which elders had access to both human and economic resources. At the same time, elders ensured that there was a reserve labour force for the colony economy. The Christian church controlled female reproductive capacities through education which emphasised social reproduction and control of entry into marriage using Christian values.

4.4 LEGISLATIVE REGULATION OF SEXUALITY AND FERTILITY

The norms concerning sexuality and fertility were not as crucial to the administration (as they were to the Africans and the missionaries) as long as these did not affect the reproducer role of women. The colonial administration was concerned with the social reproducer role of women especially since "house-wives produced healthier workers than wage-working wives and that educated children became better workers than non-educated ones" (Hartmann, 1971:22). Therefore the colonial administration interfered with the social reproduction processes within the nuclear and extended family to ensure that the family's activities did not interfere with the availability of labour for the economy.

4.4.1 Female circumcision

Despite the efforts that were made in the 1920s to eradicate female circumcision, legislative attempts at eradicating the practice were halted until 1956-58 when by-laws were passed in Meru and Embu. However these were later repealed because of opposition from the local communities (Hosken, 1982:164). The last document aimed at abolishing female circumcision was in January 1959.

4.4.2 Pre-marital pregnancies and pregnancy compensation

In the early colonial years, the administration abolished the payment of penalties for pre-marital pregnancy which led to an increase in pre-marital pregnancies "and a corresponding rise in the mortality rate in early childbirth" (Middleton, 1965:367). These prohibitions were ineffective and through negotiation with the administration, the elders retained control over pre-marital fertility through pregnancy compensation. This in turn assured the colonial administration of a reserve labour force comprised of women and children.

Although Mariamu claimed that pre-marital pregnancies were unknown in her adolescent years, she recalled that incidents of pre-marital pregnancies were frequent especially after 1930. She attributed these to the colonial administration which appointed guards (*askaris*) who came from communities which did not respect the values of the communities they were posted to. She claimed that girls, whether initiated or not, would run away with the askaris especially after the communal dances. Other than this, the powerful tentacles of the elders controlling the sexuality of young

men and women weakened. The elders sought to retain their control over the sexuality of young men and women by increasing the amount payable for bride-wealth which led to discontent among the young men who had to wait for long periods to accumulate the amounts required and were therefore not willing to abide by the traditional rules for limited sexual activity (Middleton, 1965). According to Mariamu, once a girl became pregnant, the man responsible (especially if he was not married) had the option of running away to the settler farms or towns, thus escaping from the punishments and any responsibilities. But for those who returned to the villages, they were fined and had to slaughter goats for the *Kiama* (clan council) after which they were permitted to marry if they so wished.

4.4.3 Creation of a hybrid family law

Despite the dual nature of the legal system, by 1900 the Christian missionaries had initiated moves towards eradicating indigenous family laws and especially marriage practices such as polygyny and initiation ceremonies such as female circumcision. This was carried out through attempts at applying family law principles in the introduced legislation⁴⁵ and linking these to Christian principles. Secondly, transforming family laws and in particular marriage laws, meant changing the social conditioning of members of the community and particularly the youth. Hence for example, there was need to prepare the girls for wifehood for the mission boys, because girls brought up in the traditional way were not going to fit in with the new ways of life that the mission boys had been taught (Watson, 1928). New marriage laws therefore went hand in hand with the transformation of the socialisation practices and values upheld by the Africans.

This presented problems especially since the African normative systems were personal in that they regulated the relationship between individuals and their immediate community rather than the imported legal system which was territorial in its operation. In addition, this meant that if the indigenous family law systems were broken down, the traditional entry points into the family would also be broken and new rules concerning sexuality and procreation would emerge.

The process of creating a hybrid family law was initiated in two ways. Firstly by the British judges manning the colonial courts who played an important role in

creating a hybrid customary law. Thus despite the statutory recognition given to African rules and the general desire by the colonial administrative service to preserve and fortify these rules, the colonial judges tended too often to regard African rules, on marriages especially, as something rather less than law proper and in particular treated these marriages as having a "distinctly inferior status to marriage under statute law" (Phillips & Morris 1971:56). Secondly, statutory enactments⁴⁶ enabled African Christian converts to convert their non-Christian marriages and family laws into those that were recognised by statute and at the same time conformed to English concepts of marriage. Therefore through the Native Marriage and Divorce Ordinance, it was presumed that the convertees abandoned their family laws and values and thereafter adopted those upheld under English law. Accordingly, African marriages began to be moulded to suit the image and likeness of English law and the effect was that certain aspects of indigenous marriage laws were eroded.

Whereas the African marriage laws regulated sexuality of both young men and women through restrictions on capacity to marry and procreate, the new marriage laws did not carry the same restrictions and limited capacity to marry to factors such as age, consent, single status and sanity. In addition, the new laws did not place any restrictions concerning the sexuality of would be couples, which in effect demystified taboos and superstitious beliefs that enforced control over pre-marital sexuality and fertility.

The creation of the hybrid family law was therefore open to manipulation by the Africans who sought to gain acceptance either by their communities, the colonial administration, or Christian missionaries. This was also an indication of how the Africans adapted to new social changes and manipulated their customary practices and beliefs to fit in with the new changes. Hence many Africans did not abandon their traditional family laws but rather fitted these within the new legal structures because of the failure or reluctance by the colonial Government to give legal recognition to African family law. Thus new ways had to be found to provide the required legality.

One example is seen in the marriage processes whereby Africans first celebrated their marriages under African rules and later converted these in another ceremony celebrated in church. This meant that all formalities under the African normative

systems had to be satisfied before the marriage was celebrated. These formalities include capacity, for example one had to be properly initiated either through circumcision or another ceremony before marriage was permitted. In this way, the communities retained autonomy in the social reproduction processes prior to marriage, which were therefore not entirely eliminated by the introduction of the new marriage laws.

The development of a hybrid family law also led to the recognition of new marriage types such as cohabitation unions which were not recognised under by the African rules and were outside the control of the elders. Further, the legal recognition of cohabitation unions as common law marriages, broke down the stringent rules for entry into marriage and procreation.

The rebel churches which professed Christianity while retaining traditional practices challenged the new marriage laws and argued that becoming a Christian did not mean abandoning one's values or laws and adopting those of another community. They did not therefore see the need to abandon their modes of social reproduction and in particular female circumcision and traditional education.

One of the effects of the colonial legal system and adjudicatory bodies was the undermining of tribal religious sanctions, legal structures and norms. These were eventually replaced with other structures which, though they commanded obedience, led to a breakdown of tribal morality, since offenders now feared the police and magistrates and possible jail sentences, rather than the mystical consequences of not observing tribal taboos. Moreover, being charged and arraigned in court did not mean calamity to the offender, and new explanations which had nothing to with transgression of tribal norms were given for any ill fortune or calamity. The effect of this was that in matters concerning sexuality and fertility for example, tribal sanctions ceased to have their full effect and the power of norms was weakened, and in addition, a corresponding loss of elements of tribal culture (Huntingford, 1950:112).

4.5 CONCLUSION

During the colonial period, statutory law paved the way for changes in socialisation through increased expansion of Christianity, western education, and introduction of

alien family laws. Consequently, the immediate noticeable changes were in the social conditioning processes rather than in the norms of social reproduction that regulated sexuality and fertility. However, through the activities of the social actors, the norms of social reproduction were constantly undergoing change.

Failure to undergo the traditional initiation processes, as in the case of Joan and Wamaitha, did not alter the norms concerning pre-marital sexual relations and fertility. However, the enforcement mechanisms changed from strict peer policing, seclusion and early marriage, which was the case during the adolescence of Mariamu and Mumbi (see chapter three), to late marriage, minimal peer control and weakening roles played by parents and grandparents in transmitting the norms. Consequently, as earlier pointed out by Wamaitha, the affected girls adopted ways of regulating their own sexuality and fertility.

The changes in the regulatory mechanisms and the emergence of new social actors in the colonial period, formed a basis for the processes of regulating sexuality and fertility in the post-colonial period. This is discussed further in Chapters Five and Six.

CHAPTER FIVE

SOCIAL ACTORS AND PROCESSES OF REGULATING SEXUALITY AND FERTILITY 1963-1995

5.0 INTRODUCTION

At the attainment of political independence in 1963, a centralised government was formed in Kenya. It had both political and administrative powers over those persons living within the political boundaries already established during the colonial era. It has been argued that this change in government, was a "transfer of power from one ruling group to another, the institutional basis of power never having changed" (Ombaka, 1989:33). The new government adopted the colonial legal, education and welfare systems. This chapter addresses the roles of the social actors and the processes of regulating sexuality and fertility after political independence. It does so within the context of the social, economic and cultural transformations that occurred in the colonial era and continued after independence. The stories of two women, Akinyi and Karimi,⁴⁷ are used to illustrate these processes within their families, the schools they attended, and their community. Akinyi, aged 32 years works as a secretary in Nairobi, though her parents live outside Nairobi. Akinyi has two teenage daughters (both born before she was 19 years) who are now in secondary school and a son in primary school. Karimi is 30 years and has a three year old child. Karimi decided to have a child once she was economically independent which, according to her, was the right decision especially since this has not affected her career. Karimi's experiences during her school years (both at home and in school) are useful because they highlight the changing roles of the social actors especially in the peer environment.

In addition, further interviews with Mariamu, Mumbi, Joan, Wamaitha and three Youth counsellors are used. These discussions are supplemented by statistical information from two studies, the first carried out by African Medical Research

Foundation (hereinafter AMREF) which highlights the knowledge, attitudes and practices of adolescent school girls in Kenya regarding their sexuality and reproductive health. The second was carried out by Maendeleo ya Wanawake, a national women's development organisation (hereinafter PATH/MYWO). It highlights the views of women, men, boys and girls, from four Kenyan communities, about the practice of female circumcision and its implications on their lives, culture and traditions, social arrangements, economics and development, and its effects on the reproductive health of women.

5.1 THE CONTEXTUAL BACKGROUND

This section focuses on the structuring forces that have influenced and continue to influence the activities of the social actors and the processes of regulating sexuality after independence. In particular the population policies of the government, the education system and the nature of the family are examined.

5.1.1 Population policy and fertility control in Kenya

Since 1960, the Kenya Government has made serious efforts to reduce the population growth rate by making the sexuality and reproductive behaviour of its population a major concern. In a bid to tackle the increasing population growth, family planning programmes have been on the Government's population control agenda for the past three decades. The first concern was indicated in 1965 *Sessional Paper Number 1* in which the Government noted that

"the present high rate of population growth makes extensive and intensive provision of social service more expensive, the unemployment problem more intractable, and saving for development harder than need be ... thus lowering the rate of economic growth" (GOK, 1965:52).

A national family planning policy was formulated in 1967 and by 1968, the Ministry of Health which was given the responsibility of implementing the policy, was running forty clinics. However, this was with the assistance of the Family Planning Association of Kenya (FPAK) which had began its operations in the late 1950s (Gyepi-Gabrah, 1985:7; Kelly & Nobbe, 1992:15-17). The next two decades saw the development of Government initiatives aimed at controlling population growth while

improving overall maternal/child health care (Kabeberi-Macharia, 1994a:4). By 1989, 910 family planning clinics existed in the country.

According to Gyepi-Gabrah, Kenya's "population control programme has been the best funded in sub-saharan Africa" and has received funds from United States Agency for International Development (USAID), United Nations Fund for Population Activities (UNFPA), United Nations Development Programme (UNDP), Overseas Development Agency (ODA), the Governments of Sweden, Germany and Denmark (Gyepi-Gabrah, 1985:8; Kelly & Nobbe, 1992:21). This highlights population control as a national and international problem (Gyepi-Gabrah, 1985:11). In the 1980s, the Government adopted an anti-natalist approach and re-formulated its population policy which aimed at reducing population growth through control of fertility rates (Khasiani, 1992:2). This was necessary because the existing population program had had a low impact on fertility rates, hence the continued population growth. Further, agencies such as the UNFPA increasingly became interested parties in how the Government was controlling its growing population, and in particular focused on the inadequacy of the existing population control programmes.

Another reason that necessitated a reformulation of the population policy concerned the economy which is largely agrarian based: and the issue was whether it would be able to sustain a fast growing population which requires

"heavy investments in education and health services, as well as job creation as the baby boom [of the 1960s and 1970s] enters working ages, [which] will necessitate structural adjustments towards an economy less dependent on agriculture" (Kelly & Nobbe, 1992:20).

A further concern is whether the available land could sustain a growing population especially since three-quarters ($\frac{3}{4}$ s) of the country is either arid or semi-arid and only a quarter ($\frac{1}{4}$) is arable land which sustains more than three-quarters ($\frac{3}{4}$ s) of the population. The Sixth Development Plan (1989-93) revealed the Government's concern over the impact of population growth on the national resource base, and focused on strategies of ensuring a sustainable economic growth which would not have negative consequences such as increased poor standards of living and environmental degradation (GOK, 1989-93:203).

The coordination of all population activities and the formulation of population policies was vested by the Government in the National Council for Population Development (NCPD). Further, an integrated rural health and family planning programme was set up by the Government in 1982 to expand community-based health and family planning services which were previously run by various churches and other organisations. Properly trained community-based educators were to be used "in disseminating information, generating interest, and increasing understanding of family planning" (Kabeberi-Macharia, 1992:4-5). The Ministry of Health (Family Division) has therefore undertaken to give training to registered midwives and enrolled community nurses on maternal child health care and family planning.

The use of modern contraception methods as a way of regulating fertility has been favoured by most family planning programmes, both Governmental and non-Governmental, and by religious institutions, although the Catholic Church supports natural family planning methods. However, a comparison between the 1977-78 Kenya Fertility Survey (KFS) and the 1984 Kenya Contraceptive Prevalence Survey (KCPS) reveals that whereas the number of married women using any form of contraception had increased within a period of six years, there was a notable increase in the use of traditional methods in comparison with modern methods (UNICEF/GOK, 1989:80). A possible reason for the relatively low use of modern contraceptive methods by married women, despite high knowledge of modern methods, could be that this is an indirect reaction to socio-cultural, economic and institutional changes that have taken place, but have failed to integrate the realities of women's lives.

However, the availability of contraception services does not automatically mean that all women have access or are entitled to these services. The ability of any woman in her reproductive years to safely regulate her fertility necessitates that she be healthy and have access to medical facilities, information and services. Accessibility to these facilities and information has been restricted by a number of factors. For example, low literacy rates amongst women have resulted in women having limited knowledge concerning *inter-alia* their reproductive health and the health of their families. In addition, other factors such as traditional practices, beliefs and customs may also override the utilisation of the knowledge received.

Discourses on women and fertility in Kenya are dominated by institutions that offer family planning services and which continue to define who is fit for motherhood and who is not. The underlying implication of the overall family planning policy is that only those women who are socially fit to be mothers are entitled to family planning and contraceptive services. The target population was until recently, married adolescent girls aged between 15-19 years, and married adult women aged between 20-49 years, who are within the reproductive years bracket.

5.1.1.1 Government policy on adolescent fertility

Whereas the policy towards unmarried women aged 20 years and above has changed in the last ten years and more family planning clinics are providing services to them, current Government policy has until recently remained silent on adolescent fertility (Kumah *et al*, 1992:22).. The first concerns by the Government were shown at the 1984 NCPD Leaders Conference on Population which noted with concern that

"due to the erosion of traditional values, youth were in increasing danger of engaging in sexual experimentation [and] recommended that population and family life education (FLE) should be used to shape the attitudes of youth" (Kumah *et al*, 1992: 22).

The provision of contraceptives to youth was not supported by the 1984 or the later 1989 Conference which emphasised Family Life Education (FLE)⁴⁸ as a form of shaping the youth into responsible adults. In 1989, the Government reiterated its policy that contraceptives should not be given to the youth, which constrained efforts by family planning agencies to reduce adolescent fertility rates (Kumah *et al*, 1992). This has had two effects: the reluctance of family planning providers to provide information or services to adolescents (Barker & Rich, 1992:200), and the relegation of "adolescent health issues to the domain of parental control even though evidence exists to the effect that family institutions are no longer effective instruments in this regard" (Okoth-Ogendo, 1992:5).

The Government's policy towards adolescent fertility has been to expel pregnant girls from school, and this has reduced their chances of being admitted into other schools. However in March 1994, the first signs that the Government was going to change its policy was given by the Chief Inspector of Schools who stated that the

Government was now ready to accept that pregnant girls could return to school after giving birth and that "this is now a policy and sensitisation is being done among all education officers to allow girls to continue with their education" (Daily Nation, 25/3/94:5).

5.1.2 The Family structure

The nature of the family has undergone transformation in the last ninety years, not least because of the socio-economic, cultural, legal and religious changes that occurred during the colonial era. By the early 1960s, two types of families began to emerge, namely the classical extended family founded on the physical contiguity of related nuclear families which were economically interdependent, and the modified family type which was characterised by the physical separateness of the nuclear families. This family type remained bound together by loose kinship ties and continued to "value and maintain extra-nuclear kin relationships" (Nukunya, 1992:10). Although there are significant differences between these two types of families, they are not mutually exclusive in composition.

The nuclear family unit in the modified extended family is somewhat different from the ideal nuclear family type. These so-called nuclear families were thus constituted as a consequence of being physically separated from the extended family by external factors such as employment, housing constraints, or urbanisation, but remain linked to the wider family network. The dispersion process can be traced to the colonial era where, for example, African housing in colonial towns was basically reduced to bed-space for only one worker, whose family was not expected to live with him in the towns. Where families moved in, the space did not cater for cultural considerations, for example daughters and fathers sleeping in the same room, or parents and children living in the same room (Kayongo-Male & Onyango, 1986:36).

The urban population growth has also been rapid and this has coincided with the growth of urban centres which accelerated after independence in 1963. The total urban population grew from 671,000 in 1962 to 2.3 million in 1979, whilst the total number of urban centres grew from 34 in 1962 to 90 in 1979. The 1979 census put the total urbanisation rate at 7.9% (UNICEF/GOK, 1989:13-14), and in 1990 it was estimated that 24% of the population (i.e 6 million) lived in an urban area (World Bank, 1993:

298).

Today, the concept of the extended family and the importance of having the wider family network has adapted itself to urbanisation and lack of physical contiguity with other family members. Consequently new types of the extended family have developed. For example, one type of the extended family that is common in urban areas is composed of household members who include the spouses, their children, relatives living with them and

"adult married children of the spouses who live in separate households [and] are still considered to be members of the family and have a range of rights and responsibilities attached to the family membership" (Armstrong *et al*, 1993:318).

Another feature of this family is the obligation placed upon the better-off members to provide for the needy members of the family. Hence, as was the practice in pre-colonial and colonial societies, children are sent to live with relatives in the towns in the hope that the relatives will care for them and provide for their needs.

The persistence of the extended family and its capability to adapt to new changes and undertake new functions is a factor that will hinder the convergence of the extended family into a separate nuclearised social unit (Kayongo-Male & Onyango, 1986:107). Children continue to be regarded as an important resource in terms of reproducing the family, and for providing labour especially in the subsistence economy. They also provide a form of social insurance for their parents who will need to have someone to care for them in old age.

A characteristic feature of most families living in the urban areas is that wage is the chief economic resource for the family; therefore wives or female partners who are either self-employed or in formal employment now contribute towards the household income (Stichter, 1988:179). Increasingly where both partners are employed, a house-girl carries out the daily house-hold chores and it is usually the wife who has the responsibility over the housegirl's salary. The housegirl is an important social reproducer in that she is responsible for the upbringing of the children when their mother is away, and at the same time carries out other social reproducing roles such as cooking and washing clothes for the family.⁴⁹ However, in most cases where there are children to be taken care of, the wife assists the house girl with other duties like

preparing the evening meal or washing clothes after she returns home from work (Stichter, 1988:197-8; see also Bujra, 1982:135).

In the above scenario the husband's contribution is negligible, but his contribution is in many cases made towards the payment of school fees, books and uniforms for the children, rent, food and other 'hidden aspects' such as children's discipline. Thus irrespective of their occupational roles, women continue to be expected to carry out their social reproduction roles and, as Suda points out, they continue to be housewives whether or not they perform the household tasks themselves or pay someone to do it for them (Suda, 1990:5).

Due to the pressures and expense of living in an urban centre, extended family members provide cheap labour for urban relatives. For example, a niece may go and live with her urban relatives and assist in caring for infant children while the female relative goes out to work.⁵⁰ Where relatives are not living in the same household, they are still considered to be family members and continue to have certain rights and obligations towards the sustenance of the extended family. Accordingly, one finds that despite the physical separation, "ritual obligations, ownership of property and distribution of earnings may all operate on the basis of an on-going relationship among absent and present members of a family" (Kayongo-Male & Onyango, 1986:38).

On the other hand, the family in the rural areas continues to supplement the incomes of relatives in urban areas by sending them supplies such as vegetables, fruits, or home ground maize meal. In these families women continue to contribute towards the family subsistence through farmwork, housework, and child rearing. Some women are also engaged in petty trading (selling produce in the markets), or as health-workers and teachers. The work-load for women in the rural family has however been increased as children who in the past would have performed certain tasks, are now in school. Such tasks included assistance in child care or in farmwork (Suda, 1990:9). Although male urban migration continues, this has not necessarily altered the power relations in the rural family and many women are restricted by "structural and attitudinal constraints" from making major family decisions which range from the type of schools the children should attend to financial decisions (Suda, 1990:10).

Marriage continues to be an important process through which the family is created.

However, the types of marriage unions have changed, for example today polygynous marriage types have decreased, especially because of financial constraints and the infiltration of religion. By 1984, 25% of married Kenyan women aged between 15-49 years were in polygamous households as compared to 30% in 1977-78 (UNICEF/GOK, 1979: 79). However, cohabitation unions have continued to be a way of reproducing the family. According to Acholla, due to the free mobility of both men and women, many enter into cohabitation relationships which are beyond the control of parents or other relatives, but at the same time continue to believe that these relationships are in fact valid marriages (Acholla, 1989:24). For example, Akinyi cohabited with her partner for about six years and during this time no attempt was made to formalise their relationship. The pre-mature end to her education because of the three pregnancies meant that Akinyi was unable to get any employment and remained at home caring for her children, whilst her partner went to work.

In some cases, after cohabitation unions break up, women are left to care for children but due to the nature of the relationship, they hesitate to claim any child maintenance from their partners. This was the case for Akinyi. When she was aged 24 years, after six years of cohabitation, her partner walked out on her and the children. She has struggled to bring up her three children and her ex-partner is now formally married to someone else. Female-headed households have however been on the increase especially due to the male urban migration which began in the colonial era, but today these are found in both rural and urban areas (Hay, 1982:112). In 1989 it was estimated that 33% of all the households in Kenya were female headed (Women's Bureau, 1990). These households are headed by either married women with absentee husbands, widows, or single women with children who are either divorced or never married (IAS, Murang'a, 1986:44; Bujra, 1982:125; Obbo, 1980:84).

5.1.3 Education

The overall Government philosophy on education seeks to produce individuals who are properly socialised and possess the necessary knowledge, skills, attitudes, and values to enable positive participation in nation building (Kabeberi-Macharia & Kibwana, 1992:32; GOK/Development Plan, 1989-93:21). In addition, education continues to facilitate entry into the employment market and is "valued primarily as

a means of attaining wage or salaried employment" (Whiting & Edwards, 1988:244).

In 1974, the Government abolished school fees for the first four years of primary education for the entire country. As a consequence, the enrolment rates of children into primary schools escalated to 95% of those who were of school going age. By 1987 it was estimated that 48% of the total number of children enrolled into school were female children, although there are regional variations in the enrolment rates especially in arid and semi-arid areas (Kabeberi-Macharia & Kibwana 1992:35). This increase was attributed to the abolition by 1979 of school fees for all years of primary education and the increased awareness by parents of the importance of girls' education (Kabeberi-Macharia & Kibwana 1992:32).

The number of girls-only schools has increased over the last twenty years. For example, by 1992 there were 416 schools for girls and 435 for boys, while 1797 schools were co-educational (Wamahiu, 1992:23). However, due to high wastage rates among female school children in the last ten years, only about 30% of those who enrolled into standard one complete primary school eight years later. An even smaller percentage of girls proceed onto secondary school in comparison with the percentage of boys entering secondary school (Wamahiu, 1992:23; See Appendix B). The reasons given for the high wastage rates include early marriage, pregnancy (especially among girls in the exit years), and parents preferring to educate sons. In addition, girls (more than boys) are expected to carry out household duties after school which gives them less time to concentrate on their school work (Eshiwani, 1985:93; Karani, 1989:25). Whereas primary education is free in the sense that no school fees are paid, parents are increasingly bearing the financial burden of education, through purchase of schoolbooks, stationery and uniform for their children (Kelly & Nobbe, 1992:51). In addition, due to the inability of both the central and local Governments to finance a number of school programmes, parents are often requested to raise money for school projects such as new classrooms, dormitories, and school buses.

Primary education begins at the age of six (6) years, although children enter the school system earlier at the kindergarten and pre-school stages. Most primary schools are mixed for both girls and boys, which differs from the traditional education systems which were gender segregated. Prior to 1985, the subjects taught at the secondary level

were aimed at preparing the student to fit into their expected roles in society. Thus in girls-only high schools, the A-level subjects were predominantly Arts oriented, whilst those in boys schools were science oriented (Eshiwani, 1985:97).

The education system was re-formulated with the introduction of the 8-4-4 system in 1985 which extended primary education from seven (7) to eight (8) years; reduced secondary and high school education from six (6) to four (4) years and extended university from three (3) to four (4) years. The new system aimed at providing equal opportunities for girls and boys without emphasising their expected gender roles in society. It also rather aimed to provide them with skills which they could utilise after completion of their education (Kabeberi-Macharia & Kibwana, 1992:37). This meant that all students were to be exposed to arts and science subjects, for example boys are now taught nutrition and needlework which were traditionally taught to girls. Despite the 'good intentions' of this system, due to many years of poor quality equipment or lack of facilities for teaching science subjects, girls' schools are academically disadvantaged in teaching these subjects (Kabeberi-Macharia & Kibwana, 1992; Wamahiu, 1992).

A major criticism levelled against this system is the stereotyping of women's roles in the textbooks. For example the textbooks use biology to explain the division of labour in the household; therefore because they are fathers and husbands, men are the authority and breadwinners for the family. Due to their feminine character women are better at household administration and are further portrayed as being submissive, easily won over by small praise or material things (Wamahiu, 1992:22). This continuously "prevents female students from fully developing their intellectual abilities" (Karani, 1985:26) despite the introduction of a wide range of subjects with the new system.

5.1.3.1 Family Life Education

Medical studies have established especially that the adolescents of today have no access to sex education and counselling as was the case earlier and that they have limited knowledge concerning human reproduction (Gyepi-Gabrah, 1985:15). This has been attributed to the transformation of the social reproduction processes and actors over the last ninety years, and the emergence of new processes which have not effectively filled the gap in education.

In an attempt to fill the gap, family life education (FLE) programmes have been set up by Government agencies, church groups, family planning organisations, and population agencies. It is intended by these agencies that through family life education adolescents will in the short term understand human relationships, human sexuality and reproduction, and in the long term adolescent fertility will be reduced (Gabra, 1985:29). However, the process of introducing family life education has been plagued by diverse opinions on how much adolescents or youth ought to know about human reproduction and who should transmit this information.

5.1.4 Religious policies towards sexuality and fertility

The intervention of Christian religious institutions in matters concerning sexuality and fertility that began at the end of last century continues to present day. Whereas in the colonial era their concern was with the eradication of female circumcision, the current focus is on fertility, family planning, pre-marital sexual relationships, and motherhood. Increasingly religious institutions have begun to challenge the Government's role in reproduction. For example, the National Council of Churches of Kenya (NCCCK) points out that

"the sexual nature of man was created by God to be a good and satisfying experience set within the context of a husband-wife relationship (part of the family, community and nation) [and therefore]... [o]utside marriage no one has 'rights' to another person's body" (NCCCK, undated: 6).

The Catholic Church has in this regard been comparatively more vocal especially through its opposition to the use of modern artificial methods of contraception. The argument of the church is that "the size of the family is a decision that belongs to the couple and not the state" (Daily Nation, 19/8/93:15), and that God was not a fool when he told man to 'go forth and multiply' (The Standard, 28/8/93:11). The church has been adamant that reproduction should only take place within marriage and is therefore opposed to family planning information or services being provided to unmarried people.

The NCCCK⁵¹ and Catholic Church have also been vocal about the process of regulating sexuality and fertility among the youth. The NCCCK's position is indicated in a 1963 statement in which it stated that

"[f]amily planning services were intended to help families to plan families...the giving of services to young unmarried peoples meant that society approved and accepted pre-marital and extra-marital sex relations. Where this is practised it should be discouraged" (NCKK, undated:6)

The Catholic Church postulates that distribution of contraceptives to adolescents is

"tantamount to promoting promiscuity amongst them and is an abuse and degradation of the sexual functions that God has given them. It would inevitably lead to the undermining of true love among them and the happy family life that should grow from it and would create a climate where venereal diseases will flourish in our society" (KCS, Vol. 14/12:12).

The Catholic Church also argues that family life education for the youth should be devoid of contraceptive and sexuality ideology, especially that which encourages "sex-play between boys and girls" (Wanjohi, 1992:3). As such, a moral duty should be placed upon society to provide a healthy climate in which the youth can appreciate and develop a certain degree of maturity (Wanjohi, 1992:2). The *Charter of the Rights of the Family* prepared by the Holy See of the Catholic Church, accords responsibility to parents over the moral education of their children. Article 5 states that

"[s]ince they have conferred life on their children, parents have the original, primary and inalienable right to educate them; hence they must be acknowledged as the first and foremost educators of their children.

...Parents have the right to educate their children in conformity with their moral and religious convictions, taking into account the cultural traditions of the family which favour the good and the dignity of the child."

Although the introduction of Christianity led to the erosion of the pre-colonial traditional African religions, certain aspects of these religious practices are still evident today especially with respect to the reproduction of the family. Thus biological reproduction continues to link the departed family members with the living family and kin members and to a certain extent with those yet to be born and all are "incorporated into the wider family of both the dead and the living" (Mbiti, 1971: 108). This is evidenced by the present day naming ceremonies of most communities, whereby the

newly born are named either after paternal or maternal parents and relatives, or are given names of already departed family members to ensure the latter's immortality. The perpetuity of the family is ensured through marriage and new birth and

"for that reason, African parents are anxious to see that their children marry, otherwise failure to do so would mean death of the unborn and a diminishing of the family as a whole" (Mbiti, 1971:107).

Communities such as the Borana, Rendille or Gabra continue to practise their religious beliefs. These are centred on cattle, grass, rainfall, and spirits which are associated with the increase of human and animal's fertility. Thus where procreation occurs outside marital relations, these communities practice infanticide to appease their gods, as it is believed that such children will affect the fertility of the animals, hence the survival of the communities (IAS, Marsabit, 1986:37; see also Elam, 1973).

5.2 SOCIAL REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY

5.2.1 Construction of sexuality

The rituals for the transition into adolescence from childhood practised in the pre-colonial and colonial communities have been eroded. This is especially so because other determinants of transition into adolescence (such as puberty status, teenage years, and secondary education) are used to differentiate between the two stages of life development. The new developments have resulted in the emergence of adolescence as a distinct stage of life development. As will be seen in Chapter Six this stage is characterised by delayed age at first marriage, statutory age of majority and prolonged education.

5.2.1.1 Female circumcision

Discourses on female circumcision were rare in the 1960s and 1970s. This was because independence implied retention of those cultural values and practices which had been eroded by colonialisation. This meant the continued practice of female circumcision as a form of initiation into adulthood of girls among the practising communities. The discourses on female circumcision however resurged in the 1980s after some communities reintroduced the rite with the misconceived idea that previously successful social conditioning routines could work today (Daily Nation,

1/5/92).

A country-wide study in 1993, revealed the prevalence of this practice in four communities in Kenya, and also that by the age of 15 years more than 50% percent of girls in these communities were already circumcised, and in the transitory stage to adulthood (PATH/MYWO, 1993). The age at circumcision for the four districts is illustrated in Table 5.1 below

TABLE 5.1 AGE AT CIRCUMCISION IN SELECTED DISTRICTS IN KENYA

Region	<10 yrs	10-12 yrs	13-15 yrs	16-18 yrs	does not know	Total
Meru	2.0	15.1	51.2	18.4	13.3	100
Kisii	51.1	43.5	4.2	0.0	1.0	100
Narok	1.2	6.9	56.7	23.7	11.5	100
Samburu	2.0	4.1	21.04	26.04	47.2	100
Total	14.0	17.2	33.3	17.1	18.4	100

SOURCE: PATH/MYWO 1993

Surrounding the whole issue of female circumcision as a *rite de passage* is the definition of childhood and the stage at which one is regarded as sexually mature for purposes of marriage and procreation. It was only among the Samburu that circumcision was linked to achievement of adult status since their girls are circumcised on the day of their marriage. This explains why Samburu district continues to have the highest rate of child marriages in the country.

The Narok Masai also "regard circumcision as a very important milestone in the life of a Masai and everyone has to go through it regardless of one's gender and social standing on the society" (Lema & Njau, 1991:46). They perform circumcision between the ages of 12-16 years for both boys and girls, although for girls this is done before puberty, which signifies her readiness to move away from the stage of childhood into adulthood. After circumcision, the girls remain in a transitory stage awaiting entry into full adulthood which for women is achieved by marriage (Lema & Njau, 1991:26). Although circumcised Masai boys have specific age-sets ranging from boyhood to elderhood, a similar age-set grouping is not done for the girls. They are therefore

identified "in status with the male age-set with whom they danced as young unmarried maidens" (IAS, Kajiado, 1986:96).

In the practising communities, female circumcision continues to be used in constructing the sexuality of female initiates as well as that of uncircumcised girls. In the first instance, a circumcised girl is considered both sexually clean and mature, and this increases her marriage prospects and likewise bridewealth paid for her. She also earns respect from her family, peers and the community. In differentiating her from those who have not undergone the rite, language is an important tool in constructing the sexuality of the non-initiate. For example, boys interviewed in the PATH/MYWO study who supported the rite stated that an uncircumcised girl was 'dirty', 'unclean', a 'coward' and a 'curse to the community' (PATH/MYWO, 1993:9).

In the second instance, is the general belief among the practising communities that female circumcision ensured "sexual submissiveness, dependency and obedience which are prescribed by the society as virtues for a good woman" (PATH/MYWO, 1993:7). This in turn spares men the 'agony' of worrying about their wives having extra-marital affairs. In comparison, there was the general belief that an uncircumcised woman was not obedient, was economically independent and had the tendency to divorce her husband since she "has the financial and emotional means to support herself and her children" (PATH/MYWO, 1993:7).

The same belief was held by a majority of the boys interviewed who stated that a circumcised girl made a good wife and many "felt that uncircumcised girls tend to seek divorce more easily since they are independent..." (PATH/MYWO, 1993:15). A minority of the boys did indicate that they were willing to marry uncircumcised girls who, they argued, make good wives.

In these circumstances, it is not surprising that the female informants indicated that a woman does not have control over her sexuality, which according to Samburu women accounts for the continuity of the practice. Thus they queried

'[w]hat right does a woman have over her body? Circumcision is a must and it spares one from future pain and ridicule from the community' (PATH/MYWO, 1993 (Samburu):2).

5.2.1.2 Sexual activity among adolescents

The social, economic and cultural transformations that the Kenyan communities have undergone in the last ninety years has led to the demise of traditional activities such as communal dances for the initiates, in which peer policing worked effectively in controlling pre-marital sexual relations. Today, youth activities such as discotheques or cultural gatherings, *inter alia* lack in peer policing and often bear the brunt for increased sexual activity among adolescents (Youri, 1993; Acholla 1989:20). For example, 2% of the girls interviewed in the AMREF study stated that discotheques and going out at night was bad and presumably a cause for irresponsible sexual behaviour (Youri, 1993:25).

In seeking a better understanding of the regulatory mechanisms, this study sought to investigate whether the control mechanisms in the urban areas are stricter than those in the rural areas, especially since in the latter it is always presumed that traditional controls are strong and therefore sexual activity is less. The AMREF study for example, carried out a comparison between high school girls in Nairobi and a rural area, which revealed that 24% of girls in Nairobi (urban) and 58% of those from the rural area were sexually active (Youri, 1993:11).

These findings contradict the belief that girls in urban centres are bound to be more sexually active due to living in a sexually stimulating environment imbued with media exposition, and the erosion of traditional structures by urbanisation. In investigating this further, three FLE counsellors were asked what they thought of this disparity. One cause for this disparity, according to Wallace Njenga, a counsellor for the National Youth Service, is poverty, especially where girls want material things in exchange for sex and in this regard rural girls are more daring than urban girls. A second counsellor, Mwangi, who grew up in Murang'a, gave an example of his adolescent years and pointed out that in the rural areas there were more opportunities for boy-girl sexual relationships to develop. For example,

during the coffee season, when boys and girls go to sort out the coffee at the sorting plant which at times continues into the night. This is often used as an excuse by most youth to sleep away from home and many return home in the early hours of the morning.

In addition, the fact that in many families parents slept in different huts from the grown up boys and girls, reduced any checking mechanisms. However, in urban areas, the living conditions are such that 'opportunities' to have sexual relations are restricted because families live in one house and 'curfews' are imposed by parents.

Another counsellor, Sarah, who grew up in a suburban part of Nairobi argued that during her adolescence there was practically no opportunity to mix with her peers, because her mother ensured that during the school holidays, she and her sisters had house-work or farm-work every day. She argued that her brothers seemed to have it easy and could visit friends. As far as Sarah is concerned, the difference between urban and rural sexual activity is related to opportunity to have sexual relations and that if given the opportunity, adolescents in urban areas would be as sexually active as their rural counterparts.

In the urban areas, the movement of girls is comparatively more controlled than in rural areas, especially by mothers using house-helpers and neighbours who 'watch' over the girls when their mothers are away. For example, Joan and Wamaitha, who were both career women, depended on house help to carry out this role, in addition to carrying out other household chores. At the end of the day they enquired from their help about the activities that went on during the day, what the children did and who visited them. Moreover, good relations with neighbours, especially housewives, also ensured that a watch was kept over the children, particularly their daughters. In this way both Joan and Wamaitha controlled their daughters' movements and their daughters in turn feared being reported to their mothers especially if boys did visit them. When asked what happened when boys visited her or her sisters in the parents absence, Karimi stated that

[w]hen we were in our early teens it was only our mother who punished us, and our father kept a 'hands off' attitude! But as we grew older she just asked questions about the boys, their parents and what schools they attended...but this did not mean that she condoned the visits...we were now too old to be punished!

Joan however attributes the current trends in adolescent sexual behaviour to the fact that some parents do not take their parental responsibilities seriously and further

there is irresponsibility in the community in general and yet we expect good standards for the youth, which is not practicable. In the traditional society a father or a mother was a respected parent to all youth regardless of whether they were their biological parents...today some parents are involved in sugar daddy or sugar mummy practices.

In addition, poor relationships between parents may cause adolescents to engage in sexual relationships, for example, as Akinyi claimed,

my parents were estranged even though they lived in the same house and our family was not a happy one and therefore I sought comfort and happiness elsewhere.

Akinyi further claimed that her mother was aware that she was having sexual intercourse with her boyfriend and that she spent many nights outside home with her mother's knowledge but all this was kept away from her father. Perhaps as Akinyi argued, her mother used this 'knowledge' as a weapon against her husband, knowing how pregnancy among his daughters would affect him.

Although virginity rituals are almost non-existent today, the AMREF study also found that for most girls, both male and female virginity at marriage is still important. Thus 80% of the girls in the study felt that being a virgin at marriage is important and out of this group, a further 81% felt it was equally important that the "boy not to have had sex with other girls at the time of marriage" (Youri, 1993:26).

Whereas female circumcision continues to be practised, new changes in the norms of sexuality have infiltrated communities such as the Masai whose culture and traditional values were resilient to the socio-economic transformations in the colonial era. The Masai were hostile to any interference in their social systems by Christianity or the colonial administration. However today, although norms on pre-marital sexual relations have remained the same in present day Masai communities, they are not strictly enforced. Thus, as was noted in Chapter Three, pre-marital sexual relations are discouraged but not specifically prohibited as was the case in pre-colonial and colonial communities.

Further, in the contemporary Masai communities, *Morans* are socially permitted to have sexual intercourse with uncircumcised girls (Lema & Njau, 1991:31; IAS, Kajiado, 1986:99). In addition, sexual activity among initiates has increased since the

colonial period, especially during the period between circumcision and marriage. This has been attributed to a combination of factors, for example prolonged periods between the two stages caused by years in school, and because the "concept of uncleanliness during this period is slowly dying out, just like many other traditional aspects of their lives" (Lema & Njau, 1991:56).

5.2.2. Construction and regulation of adolescent fertility

Adolescent motherhood is often characterised within the context of the negative health, demographic and social consequences of early motherhood, such as expulsion from school or home, increased infant and maternal mortality rates, and abortions among adolescent mothers (Barker & Rich, 1992:200). As in the pre-colonial and colonial era, adolescent motherhood continues to be portrayed in a negative manner especially because of the ripple effect of the consequences of early motherhood, which are felt by both the girl and her family. This is also reflected in the language used by peers to construct motherhood in adolescence, for example use of terms such as *Pg'd* or *Peno* rather than using the term pregnant, implies that the pregnancy is not normal for an adolescent girl. Often the effect of applying such terms is that a pregnant girl is perceived negatively by her peers (Sunday Standard, 27/10/85:8).

The use of different names to differentiate between children, adolescents, and adults, continues to define the readiness for motherhood. For example, the Masai regard an uncircumcised girl (*entapai*) as a child who is too young to be a mother or to engage in sexual relations. She is different from the circumcised girl (*redito*) who is neither a child nor an adult but is considered to be ready for sexual relations and whose pregnancy before marriage does not bear the same wrath as that of an uncircumcised girl (IAS, Kajiado, 1986:98; Lema & Njau 1991:35). If an *entapai's* father or other male members of her family discover that she is pregnant, she faces severe punishment, for example banishment from the home. If banished, she has to exit from the rear side of the homestead and at this point her father may throw a spear at her which if it hits her may kill her. However, "once out of the compound she is not to return to the homestead ever [and]...her parents regard her...as dead" (Lema & Njau 1991:37).

Once banished, the girl may go to the home of a woman who left her natal home

in similar circumstances, and it is this woman who will arrange for the girl's circumcision before the birth, and later her marriage. In such circumstances a token dowry is paid to this woman. Banishment from the home also means that the girl is denied certain privileges in society; for example, she is prohibited from participating in certain traditional or cultural functions such as the circumcision of her daughters, or carrying out certain chores during their wedding preparation. However, if the family accept the pregnancy, the girl is immediately circumcised and married off soon thereafter because for taboo reasons she is not allowed to give birth while living in her father's home. Token or no dowry is payable in this case (Lema & Njau 1991:37).

Today, pregnancy among circumcised Masai girls is not unknown, and where this occurs the pregnancy is dealt with in various ways (Lema & Njau 1991:34). The girl either aborts secretly, or is married off quickly either to her lover or as second wife to an older man. She may either be chased away from home or alternatively her family may accept her pregnancy. However, if the pregnancy is accepted, for taboo reasons she cannot give birth in her father's homestead and often she has to stay with relatives until after the birth. After birth she cannot visit her father's home with her children until she is married. This taboo has meant that single Masai mothers who live in the towns cannot visit their families with their children (Lema & Njau, 1991).

5.2.2.1 Abortions among adolescent girls

Due to the negative social consequences of adolescent motherhood, abortion continues to be an alternative for many pregnant girls who seek to avoid these consequences and possible punishments. The AMREF study revealed that abortion remains an option for the termination of unwanted pregnancies among adolescent girls (see Appendix B). Thus out of the girls interviewed, 47% of those who had ever become pregnant had terminated the pregnancy while 53% had opted for delivery (Youri, 1993:29).

The AMREF study further indicated that abortions were more common among the Masai school girls in Narok district, than in any other district, which may be linked to the taboos and rules about pre-circumcision pregnancy. Thus if an *entapai* (uncircumcised girl) conceives, the women in her family undertake to hide the pregnancy and organise her immediate circumcision in secrecy (Lema & Njau,

1991:37). The girl may also have an abortion with the assistance of her mother, who may either give her an abortifacient or send her to an 'expert' to perform the abortion, or she may opt to abort on her own (Lema & Njau, 1991:37). The methods opted for by the girls are either the traditional abortion methods or modern methods which are carried out in private hospitals for those who can afford such services (even though abortion is illegal in Kenya). In addition, deaths from unsafe abortions have increased among the Masai because girls are now using methods such as taking an overdose of anti-malaria tablets (Lema & Njau, 1991:34).

The Crisis Pregnancy Ministry (CPM) centre⁵² (a Christian based organisation) in Nairobi was visited by the researcher and discussions were held with a counsellor, Agnes, regarding the options that pregnant girls have concerning their pregnancies. The CPM which is pro-life does not perpetuate the negative construction of motherhood but rather seeks to counsel girls through their pregnancy and in particular convince them to carry the pregnancy to full term. Thus the researcher was allowed access to files on the clients who visit the centre⁵³ and Table 5.2 below reveals the choices made by clients aged between 14 -25 years concerning their pregnancy, before and after visits to the centre.

TABLE 5.2 CHOICES MADE BY CLIENTS CONCERNING THEIR PREGNANCY BEFORE AND AFTER COUNSELLING AT THE CPM CENTRE 1989-1992

DECISION (Before)	1989	1990	1991	1992
Abortion	25	141	138	208
Carry to full term	35	136	166	243
Undecided	15	89	77	74
Total	75	366	381	525

DECISION (After)	1989	1990	1991	1992
Abortion	15	41	40	69
Carry to full term	38	151	200*	264
Undecided	15	103	51	105
Total*	68	295	295*	438

* This is an estimate

SOURCE: Compiled from Crisis Pregnancy Ministries - Nairobi Kenya (1992)

From Table 5.2, the disparity between the totals before and after result from different factors. Firstly, when a client visits the centre and claims that she is pregnant, the counsellors first discuss with her what she wants to do with the pregnancy if it is confirmed, and in most cases as shown in the table the clients want to have an abortion rather than carry the pregnancy to full term. The Centre thereafter offers to carry out pregnancy tests, some of which are negative, though the clients still receive counselling about their sexuality and boy-girl relationships, with the aim of assisting them make proper choices in the future. Secondly, some clients do not return to the centre once the tests are confirmed to be positive and it is not possible to find out what decisions they opted for.

Where the test is confirmed to be positive, Agnes pointed out that the counsellors discuss with the client the options that she wants to choose concerning the pregnancy. The main work of the centre is to counsel those clients who are already pregnant, are traumatised and do not know what to do. However, the counsellors are keen that the girl keeps the pregnancy to full term and also discuss with her the dangers of having an abortion by showing them examples of how abortions are carried out and the ethical issues surrounding abortion. The success rates of the centre in this respect are measured in terms of how many clients opt to carry the pregnancy to full term after

the counselling sessions, and being a Christian organisation, by the numbers of clients who after discussions about their faith, convert to Christianity.

However, a major problem facing the Centre is that some clients are unable financially to care for a child and the Centre does not have the financial resources to provide such assistance. In some instances, the counsellors have had to raise money to assist an expectant mother who is financially hard up to assist her with the maintenance of the baby. A counsellor, Judy Kamau in giving an example of one case at a CPM meeting⁵⁴ stated

[t]he client was threatening to have an abortion, because she was unable to care for the child...although the counsellors tried to convince her otherwise she was adamant and to us this was a crisis and in times of crisis we do not need a committee!...we therefore raised money for the mother from our own pockets which convinced her to keep the pregnancy.

Clients who have already had abortions are also welcomed and the centre undertakes to counsel them through the post-abortion trauma. The counsellor, Agnes felt that there was an urgent need for more counselling services to reach out to other girls in the country, especially since some girls travel from very far to come to the centre. In addition, there is the need for welfare to take care of those girls who are banished from their family homes once the pregnancy is discovered by family members.

5.2.2.2 Knowledge and use of contraception

Medical and demographic statistics reveal that adolescent girls have incorrect information about their menstrual cycle, and the days that they are likely to conceive (Youri, 1993; Lema, 1989). However, knowledge about contraception is quite high amongst adolescents girls, but actual use is minimal (Lema, 1989 & 1990b; Kiragu, 1991). This is given as one of the causes for the persistence of fertility among unmarried adolescent girls. The files perused by the researcher at the CPM revealed that use of contraceptives among girls aged between 14 -19 years is very low in comparison with other older age groups. This is shown in Table 5.3.

TABLE 5.3: USE OF CONTRACEPTIVES AMONG CLIENTS ATTENDING CPM CENTRE AGED BETWEEN 14-25 YEARS: 1989 - 1992

Year	Age Group 14 - 19 years		Age Group 20 - 25 years		Total	Total of all groups
	Yes	None	Yes	None		
1989	0	19	9	40	68	117
1990	4	90	51	184	329	425
1991	7	88	58	201	354	440
1992	9	94	77	323	503	697

SOURCE: Compiled from Crisis Pregnancy Ministries - Nairobi, Kenya 1992.

Although the CPM does not give contraceptives, the researcher was informed by the CPM counsellor Agnes that most girls attending the centre were aware of modern and traditional forms of contraception, but only a negligible number were using any. Moreover, she pointed out that many adolescent clients were especially ignorant about their menstrual cycle and how conception occurs. The information given by the CPM focuses on contraception, the outcome of conception and the options that clients may take concerning their sexuality and pregnancy. The Centre also distributes various brochures on sexuality, boy-girl relationships and contraception.

Misconceptions about one's reproductive functions are not rare, even though an individual may have knowledge about contraception. For example, Akinyi who began having sexual intercourse with her partner at an early age used no contraceptive protection. Her partner who was older than her and was employed, convinced her that it was alright and that she would not get pregnant. She further pointed out that

[a]t that age I could not make any connection between sexual intercourse and conception because as far as I was concerned only married women became pregnant and since I was not married the likelihood of my becoming pregnant was absolutely nil!

After the birth of her first child, Akinyi continued to have unprotected sexual

intercourse with the same boyfriend even though this time she was aware of contraception. However, with her boyfriend's assurance she decided to 'take the risk, after all the same mistake cannot happen twice', so she thought. Soon after, at the age of 17 years she was pregnant again and this time her father chased her away from home and told her to go and live with the father of her children.

One of the reasons for the disparity between knowledge and use of contraceptives for sexually active girls, is the restricted access to modern contraceptives. This is a consequence of social barriers such as Government policy, and negative attitudes by family planning providers (Ongwae & Ndege, 1993:2-3). When queried further about the negative attitudes of family planning providers, a Family Planning Association of Kenya (FPAK) youth counsellor in Eastleigh (Nairobi), informed the researcher that

[d]ue to the Government policy that adolescent girls should not be availed modern contraceptives, we only inform girls of the dangers of unprotected sex which includes transmission of STDs and unwanted pregnancy.

However, the only time that an adolescent may be considered for contraceptive services is if she is married, has children, or has had an abortion. But even then, she is thereafter referred to the FPAK clinics for further counselling (IPPF, 1992:12). The implication of this is that the girl has to first prove her fertility before receiving contraceptive services or advice on how to regulate fertility. The reason given for this is that the clinic avoids a future claim by a young client that the contraceptives she was given made her infertile, which clearly indicates misconceptions by the clinic staff regarding contraception (IPPF, 1992:12). Restricted access to modern contraceptives for sexually active girls continues to reinforce the general norm that motherhood for unmarried adolescents is not socially condoned.

In some cases sexually active girls rely on natural methods of contraception. For example among the Masai, the *Morans* engage in sexual relations with uncircumcised girls by practising *coitus interruptus* (withdrawal) since conception of an uncircumcised girl would mean severe punishment including "banishment from home, or being barred from participating in important traditional ceremonies" (Lema & Njau, 1991:31). In addition, to avoid pregnancy, uncircumcised girls are taught which sexual relations are prohibited. However, if they show signs of being sexually active they are

circumcised immediately, after which they go into seclusion and therefore become 'unclean' and in that state, for taboo reasons, no man should touch her. This is therefore used as a way of avoiding further sexual intercourse and possible conception. Despite the social barriers that restrict access to contraceptives, some medical practitioners do prescribe contraceptives to adolescent girls, as was revealed in the AMREF study. Thus 18% of the sexually active girls stated that they had at one time or another used a form of contraception. Of these, 47% were using the pill, 11% had an IUD fitted, 8% used a diaphragm and 7% received an injection (Depo-provera) (Youri, 1993:30), all of which are given either on Doctor's prescription or fitted by a medical practitioner. Although the numbers of those girls who have ever used a form of contraception is low (533 in the AMREF study), it is clear that doctors and medical personnel in family planning services are willing to provide some form of contraception to adolescent girls. However, the study does not reveal how the girls got the contraceptives and whether parental consent was necessary.

5.3 FAMILY LIFE EDUCATION: SOCIAL ACTORS AND PROCESSES

The state has emerged as a dominant actor in the social reproduction process, especially since it has taken over most of the social reproduction roles that were traditionally carried out by the family. This has been done through the provision of education from childhood, housing, health care (especially maternal and child health), and other family welfare services. Consequently, the introduction of FLE has removed the role of traditional family life education from the extended family network as was the case in the pre-colonial and colonial communities.

According to Joan, due to the social and economic transformations that the society has undergone, it would not be practical to rely on the traditional role of the family in transmitting sex education. Thus in her own case she stated that

[t]he family does not live together any more, for example my own children have never lived with their grandparents although they used to go for visits and still do.. therefore the methods of educating children have to be learnt anew.

As a consequence of this and other transformations, adult social actors are re-socialised into the emerging values and norms, and some have adopted their own

ways of coping with these changes.

The introduction of a formal system of education has also entailed children being taken away from their homes and spending more time in schools and institutions of higher learning, than at home. This has in turn resulted in changes in the socialisation process starting from the childhood stage, especially since children enter school at an early age and learn to compete with peers who are not necessarily their relatives (Whiting & Edwards, 1988:240-1). The socialising agents and forms of socialisation from childhood have therefore expanded to include family members, teachers, and peers in and out of the school environment.

As discussed in Chapter Three, among the communities that perform female circumcision, the initiates received family life education from their circumcisers or traditional educators during the seclusion period. However, in contemporary communities, this is changing; for example amongst the Kisii, circumcision is increasingly being performed in hospitals and thereafter mothers, and female relatives are left with the responsibility of nursing the girl who receives minimal family life education (PATH/MYWO, 1993; IAS, Kisii, 1986:19).

Among the Samburu, the socialisation of children is increasingly being carried out in schools, thus minimising the role of the family in imparting traditional sex education, especially since a girl is circumcised and married off on the same day. But for the Meru, efforts are still made at ensuring that once the girl is circumcised, she enters the seclusion period and undergoes traditional education on various topics for example on menstruation, good manners, discipline and how to take care of her husband (PATH/MYWO, 1993). This period however has to coincide with the school holidays so as not to conflict with the school term.

In the AMREF study, high school girls were asked about the usefulness of adults as actors in transmitting information to adolescents on matters concerning their sexuality and fertility. About 66% felt that adults would be very useful in advising teenagers about their sexuality though the remaining 34% felt that adults were ill-equipped because they failed to understand adolescents and adolescent culture especially due to differences in age, and there was the possibility that they might impart wrong information (Youri, 1993:52; see also IPPF, 1992:9). Whereas social

actors such as parents, peers, siblings, teachers, health professionals, and religious actors were cited as sources of information on sexuality, their usefulness in imparting this information varied and also differed depending on residence, as illustrated in Table 5.4.

TABLE 5.4: SOURCES OF GUIDANCE ON SEXUALITY ISSUES AND PLACE OF RESIDENCE

Source of guidance n=9942	Residence		
	Urban %	Rural %	*Urban-rural %
Girlfriend (peer)	9.7	11.2	10.1
Boyfriend	4.4	4.1	4.1
Lover	4.2	2.9	3.4
Sister	10.6	10.2	11.6
Teacher	15.1	15.6	15.5
Mother	33.7	32.6	31.3
Church	4.0	6.3	4.8
Health professional	9.2	8.8	9.7
Nobody	5.8	5.5	5.6
Other	2.9	2.7	3.6
Father	0.5	0.3	0.3

* This refers to peri-urban areas

SOURCE: Youri, 1993: 54.

In the following section the roles of mothers, peers, teachers, religious institutions and family planning agencies as social actors are discussed further.

5.3.1 Family and parental roles

The family, which has always been the primary unit within which individuals are prepared for roles in the outside world, continuously

"influences the economy primarily through its preparation of family members for roles in the national economy and by its selectivity in permitting some family members the option of being trained by society for various roles" (Kayongo-Male & Onyango, 1986:42).

An example of this is seen in selective education of children whereby families have from time to time prioritised the education of boys in the hope that sons would prosper and cater for the other family members. In the colonial era for example, female education was not prioritised mainly because daughters married and entered the families of their husbands and thus removed themselves from caring for their natal kin. As noted earlier (section 5.1.3), contemporary statistics show that this has changed and female school enrolment rates are almost equivalent to those of male enrolment.

5.3.1.2 Regulating sexuality and fertility within the family

According to Table 5.4, mothers and sisters are the most useful family members in imparting information about sexuality, with mothers being the more useful of the two. The implication of this is that the mother's role in imparting information about sexuality has changed from that in pre-colonial and colonial societies where this was primarily performed either by the grandmother or other female relatives.

In discussing the role of the family in regulating sexuality and fertility, the informants were asked who in their family they thought was the most important person to carry out this task. Akinyi argued that a mother has a moral duty towards her daughters, to ensure that they receive accurate information about their sexuality and are aware of the consequences of irresponsible sexual relationships. In referring to her experiences, Akinyi felt that her mother was to blame for her getting pregnant, because of her refusal or failure to counsel her. In addition, she felt that the school she was attending failed her by not providing her with information about her sexuality and reproductive capacities. Asked about her knowledge concerning her menstrual cycle, Akinyi claimed that when she started her menstruation, she had no idea what was happening to her, that her mother did not want to know about it and proceeded to ignore any signs that her daughter had reached puberty. Accordingly she sought assistance and information from her friends and at times had to rely on her boyfriend for money to buy sanitary towels.

When Akinyi conceived, she had no idea as to what was happening to her while her mother maintained silence on the matter. She expressed her dilemma in the following way,

[I]et me tell you.. my stomach was growing bigger and bigger,

yet my mother ignored me and my state. My father kept on asking questions but my mother denied that I was pregnant and insisted that I was just growing fat!

Akinyi ran away from home when it became obvious that she was pregnant and stayed with an aunt until she gave birth. She was aged 15 years. When asked whether she thought information on sexuality and reproduction would have made any difference, considering that she was already seeking comfort away from the unhappy situation at home, Akinyi replied

[i]f I had been warned and given the right information or even discussed with my mother about menstruation, pregnancy etc., I would have been able to make proper choices and maybe I would have avoided having sexual intercourse with my boyfriend

After the birth of her baby, Akinyi returned home and since her secondary education was pre-maturely ended by the pregnancy, her father paid for her to undergo secretarial training once the baby was old enough to be weaned. This training however terminated when she became pregnant a second time. The same action was taken by the parents of Karimi, after her sister had a child which caused a lot of distress to her mother especially since her sister was in her late teenage years, and totally dependent on her parents.

On the role of the mother as an educator, Wamaitha argued that whereas mothers are expected to talk to their daughters about their sexuality, a majority of mothers were not socialised to do so, and 'silently' hope that someone would perform the duty for them. Using her own socialisation as an example, Wamaitha pointed out that during the adolescence of women of her generation, issues concerning sexuality were a taboo subject and not discussed between mother and daughter; therefore today many of these women find it difficult to converse with their daughters. On her own role she explained that

I tried discuss with my oldest daughter about contraception but she became defensive and claimed that she knew all about it and since she became hostile I refrained from having further discussions with her or my other two daughters and hoped that somehow they would get the right information

Although adolescent mothers suffer from ostracism in their families and among their friends, their mothers are often blamed for their behaviour and they too feel that they are responsible as Wamaitha pointed out from her experiences. Despite the fact that her daughter was 19 years old, and in university when she became pregnant, Wamaitha felt that her daughter had let her down. When asked what she meant by 'letting her down', she stated that

I was let down in three ways. Firstly, socially because everyone regarded me a failure for not having counselled my daughter about her sexuality and consequences of pre-marital sex. I also felt that in the eyes of my friends, my daughter was promiscuous and her actions were a reflection of my behaviour. Secondly, since she was dependent on the family, this was an extra mouth to feed and therefore extra expenses, which we could not afford at the time, because she was in a private university and we were paying the fees. Thirdly, the dreams that I had that my daughter would finish university and get a good job before becoming a wife and a mother were shattered.

The fact that her daughter was 19 years old and a major was irrelevant, and Wamaitha stated that as far as she was concerned adult status was achieved upon marriage or the acquisition of an independent means of maintenance. When asked if she would have been pleased had her daughter got married immediately after the pregnancy, she replied

[a] mother feels honoured if her daughter is married off respectably that is without a child or being pregnant...but if the daughter is pregnant at the time of her marriage, even though the mother feels embarrassed, she is nevertheless happy that her daughter was not rejected or dumped with a baby.

When asked whom she thought was to blame and whether society ought to place blame on any one for adolescent motherhood, Wamaitha replied " you know... all eyes turn to the mother of the girl who is seen as a failure because it is assumed that she failed to educate her daughter".

On the question of who she thought was to blame for pre-marital pregnancies in her area today, Mariamu was clear that girls are to blame and exclaimed "*Ni makwiendithia... nimetwaaraga...*" (the pregnancies are wanted and the girls literally

'take themselves to the boys') and therefore should not blame anyone else. According to Mariamu, the problem lies in the fact that girls today no longer respect their parents as was the case in her youth.⁵⁵ The rules for sexual relations among the people living in Murang'a where Mariamu comes from, have undergone tremendous changes and this has led to 'liberation' of single girls from family controls over their sexuality. Thus new values have been introduced because of a money economy, and demystification of sexual life (IAS, Murang'a, 1987:45). Mariamu has also witnessed some of her great-grand-daughters become unmarried adolescent mothers, and today one of her grand-daughters who has two children, dropped out of school after her first pregnancy and stays at home. Her chance of marriage seems remote as she is now in her early twenties and this worries Mariamu. Joan also felt that girls are partly to blame and there was both

[i]gnorance on the part of the girls and too much experimentation, therefore attempts should be made to give prior information about sex and sexuality by responsible people in the community.

Today, Akinyi claims that the most important maternal role for her is to ensure that her two teenage daughters who are in high school, are not caught in the trap that she was caught in. By using her own experience as an example, she has made it a point to openly discuss with her daughters about their sexuality and reproductive capacities and the importance of making the right choices. In addition she commented "I am not waiting for any one to give them information and I do not want them to receive distorted information".

5.3.2 Peers as social actors and educators

Whereas parents, religious institutions and school teachers have been seen as important actors, the role of peers in this process should not be ignored. Peers have from time immemorial provided the social environment for the development of different inter-personal relationships from those of home. In the peer environment there is

"room for autonomy and creativity and new patterns of social interaction. There is a tendency for youths to conform to the peers' rules, standards, values, goals and aspirations. They make friends easily with peers because they share the same feelings.

They confide in the peers more than anyone else in the community or in the society" (Muthoni, 1987:125).

Peers can be either constructive or destructive social actors in the regulatory processes. For example Akinyi claimed that her peers influenced her decision to have unprotected sexual intercourse with her boyfriend. She stated that "after all they were all having sexual intercourse with their boyfriends and none had conceived!"

Recent studies have shown that both boys and girls undergo peer pressure to have sexual activity with many partners. For boys, it is intended to symbolise their maturity, or control over girls, or to help them make the right choices over their marriage partners. The culture of male dominance extends to boy-girl relationships especially where boys have been socialised to believe that a girl's 'no' means 'yes' and do not therefore respect the girl's answer (IPPF, 1992:7). For their part, girls engage in sex to show or hopefully receive love, consent through coercion, or for sheer survival, and often the line between forced sex and rape is very thin (Kiragu, op.cit:10).

According to Karimi, pregnancy for a girl during her secondary school years meant sheer torture from the other girls if they got to know about it. When she was in form four, one of her classmates became pregnant and she recounted the torture that the girl was put under by the rest of the class:

Rumours began to spread that [she] was pregnant and the girls in the class undertook to observe the progress of her pregnancy and constantly taunted her about the size of her stomach. Although she claimed that she had malaria 'hence the growing stomach', the girls became pre-occupied with trying to determine how she became pregnant and who was responsible. This made her withdraw from the rest of the class. Eventually she gave birth on her own and hid the baby for one week in her locker, and only removed it after her room mates complained of a foul smell coming from her locker. She threw the body into a rubbish pit and it was later found by workers who were burning rubbish.

This harassment of a pregnant girl by her peers reflects the negative construction of adolescent motherhood and of the adolescent mother. Clearly the girl in question had misconceptions about her reproductive functions and could only explain her

pregnancy as a case of malaria. Her recourse to infanticide could have been as a result of her ignorance about her reproduction, peer torture, or the desire to continue with her education. According to Karimi, the school allowed her to continue with her education and she probably received some counselling.

Despite being potentially destructive and uncaring, peers provide the information that parents and teachers are unable to give. For example Karimi pointed out that

[s]ince my mother never discussed matters concerning reproduction with me or my sisters, we often received most of our information from our friends in school...when a girl in our school had an abortion and was seriously ill, my friends and I vowed that we would avoid intimate relationships with boys at all costs until we completed our education.

Because of the dual roles that peers can play, family planning agencies have developed youth programmes that target such groups. These programmes seek to provide sex education and counselling to the youth in order to assist them in understanding their sexuality and the risks emanating from pre-marital sex and unwanted pregnancies (Muthoni, 1987:126; Kimani, 1985:6) .

5.3.3 Family life educators

Family life educators have taken over the role of traditional family educators. They use a combination of traditional and modern methods of addressing sexuality and fertility problems especially where young people are concerned. For example the Family Planning Private Services (FPPS) educators use folk drama, income generation activities, and language to conduct peer education seminars with the youth on matters concerning sexuality and the negative consequences of early motherhood.

At the Government-run National Youth Service, family planning education and counselling services are offered to students before they go for training in the various NYS training camps. According to the counsellor, Wallace Njenga,

[i]nformation concerning sexuality and contraception is disseminated through plays and interactional teaching whereby the youth are allowed to freely give their views and discuss the options that are available to them. The purpose of this is to empower both the young men and women to take control over their own sexuality as well as give them a better understanding of their reproductive functions.

Njenga pointed out that the reason for this is that boys have been socialised to expect girls to always consent to sex and at the same time girls have been socialised to regard sex with their boyfriends as a sign of love (see also Kiragu, 1991). Thus for example, the need for both parties to understand the importance of using condoms in order to avoid the short and long term consequences of unprotected sex. 'Condom negotiation' as Njenga termed it is therefore illustrated through plays, where the roles of the parties are acted out by male and female students.

5.3.3.1 Role of non-Governmental family planning agencies

Organisations interested in improving the overall reproductive health of women, for example the Family Planning Association of Kenya (FPAK) and the Centre for African Family Studies (CAFS), have trained family life educators with the objective of improving overall adolescent health through family life education. Non-Governmental agencies such as the National Christian Council of Kenya (NCCCK) and the FPAK therefore undertook to fill in the 'gap' in FLE, that the Government was apparently unwilling to do. As is illustrated below, these organisations have to work within Government policies and the law regarding the type of information that can be transmitted to the youth.

In 1977, the FPAK initiated an FLE programme; since 1988 this has been supplemented by two youth centres in Nairobi and Mombasa. The objective of establishing the two centres was to "target specific counselling and services" while recruiting volunteer youth workers who were to "provide counselling in the community, distribute condoms and refer young people to the youth centre for counselling services" (IPPF, 1992:5). The FPAK had also initiated a fertility management program for the youth but due to opposition by religious groups and Government policy on the provision of contraceptives to adolescents, the project was abandoned.

Discussions between the researcher and Family Life Educators undergoing training at the Centre for African Family Studies revealed that most educators felt that provision of family planning services to the youth and educating them on the problems of pre-marital sexual relationships, early pregnancies, and unplanned families was the best way of avoiding the negative consequences of uncontrolled fertility. Many did not

consider that what they were involved in was a form of regulation and were not comfortable discussing this aspect⁵⁶.

The information given out by the FLEs also depends on the nature of the organisation they work with; hence there are differences in the information given and the approaches to dissemination. The non-religious NGOs provide reproductive health and sexuality information and services to the youth, and information on HIV/AIDS prevention. Organisations supported by the church, for example the Catholic Church oppose giving contraceptive information and education to young unmarried people, and reserve this information for married couples. Although only 4.8% of the girls in the AMREF study stated that the church was a source of information on sexuality matters, about 89% (n=6930) of all the girls interviewed stated that religion was useful, and that the most helpful message they received from religion was that 'sex before marriage is sinful', as it could lead to embarrassing parents and the community (Youri, 1993:25). The activities of the Catholic and Protestant churches, which have been most vocal on FLE, are carried out through youth programmes run by churches, and counselling services such as the Crisis Pregnancy Ministries, Amani Counselling Centre and Maria House which are found in Nairobi.

5.3.4 The Media as a source of information

The media (print and electronic) plays an important role in the socialisation of contemporary adolescents. It is sometimes argued however, that in carrying out this role the media often gives mixed messages to adolescents about their sexuality. For example the messages received from the media often contradict those given by parents, and portray sexuality as something that is natural, necessary and enjoyable (Kumah *et al*, 1992:8 ; Njau, 1992). Whether the media plays a big role in imparting information to adolescents about their sexuality depends on their access to print and electronic media. As shown in Table 5.5 below, the media is an important source of information for adolescent girls about their sexuality.

TABLE 5.5 MEDIA AS A SOURCE OF SEX EDUCATION BY AREA OF RESIDENCE

Source of Education	Urban %	Rural %	*Urban-rural %
Radio	23.8	26.1	24.2
TV	10.7	9.2	9.8
Magazines/newspapers	39.3	48.1	44.8
Movies/Films	21.8	12.6	17.5
Others	4.3	4.0	3.8
Total	100.0	100.0	100.0

* This refers to peri-urban areas

Source: Youri, 1993:54.

Whether adolescents have access to radio services especially during the holidays depends on a number of factors. A 1985 Voice of Kenya (VOK) media survey showed that 70% of the radios in the country were owned by men, and 60% of the listeners were men who were mainly interested in entertainment and news. Additionally, newspapers were purchased by about 1% of the population of which 83% were men, which influenced the coverage of issues in the papers. Television reaches only about two million viewers who were mainly found in the urban centres (UNICEF/GOK, 1989).

The CPM centre however relies on the media to reach adolescents, for example through advertisements in a Christian teenage magazine *Step*, which has wide coverage in the country, and in *The Standard* newspaper. The availability of 'phone in' services for pregnancy counselling is available in Nairobi and the advertisement for these services are placed in the newspapers. Whereas this type of service ensures confidentiality, access to a telephone is one of the constraints that most adolescents face because having a telephone at home is a luxury rather than a necessity. Secondly, the use of public telephones requires money which adolescents may not have.

5.4 EDUCATIONAL INSTITUTIONS AND PROTECTION OF THE SEXUALITY OF SCHOOL GIRLS

The discourse on the role of educational institutions in the protection of female adolescent sexuality pivots on the role of teachers as family life educators and 'male teacher and female pupil' affairs, rape of school girls by their male teachers which end up in pregnancies, and the continuous threat of sexual assault or rape of girls by boys in mixed boarding schools. These issues are discussed below.

5.4.1. School teachers as family life educators

In the AMREF study, 73% of the respondents stated that teachers were a useful source of information on sexuality and consequences of sexual intercourse (Youri, 1993:24; see Appendix A). If teachers are to impart any information on human sexuality and reproduction to their pupils, it is important that their training should impart sufficient knowledge about human reproduction, reproductive health and human sexuality. However, since the 1970s when calls for the introduction of FLE were first made, the Government has been hesitant to train its teachers for this task. Only those teachers who were interested in teaching FLE were sponsored by the Government to undergo training by the NCK based on its draft syllabus, and these teachers were only allowed to teach FLE as an out of school activity (Gyepi-Gabrah, *op.cit*:4).

Due to the policies of the teacher-training colleges, female trainees gain insufficient knowledge about controlling their own fertility. Further, all trainees are inadequately trained to handle topics of sex education and reproduction (Ferguson, 1978; Ferguson *et al*, 1988:1). As a result, the use of inadequately trained teachers means that the long term prospects for effective sex-education in schools are not favourable.

A majority of the students in the teacher training colleges (who are aged between 20-25 years) enter the colleges either after having completed secondary school education, or after having worked as untrained primary school teachers for several years (Ferguson *et al* 1988:1). One glaring omission in these colleges is the lack of family planning services despite the fact that a substantial number of students are married, and a majority of the students are aged over twenty years. This omission is often associated with the history of the colleges, most of which were established by Christian missionaries in the colonial period. The founders therefore imposed strong

moral sanctions to regulate sexual and reproductive behaviour among the trainee students. Further, to avoid pregnant girls enrolling, a number of these colleges have pregnancy screening programs at the beginning of the courses, but this does not guarantee that the students will not become pregnant later.

The occurrence of pregnancies and abortions among female students in the teacher training colleges is higher than in secondary schools. This also indicates that the knowledge, attitudes and practice of the trainee teachers on matters of sexuality and family planning are deficient (Ferguson *et al*, 1988:40). Periodic pregnancy tests are however carried out in most colleges and when these tests are due, cases of induced abortions are reported. As one nurse put it "the time that screening is announced in assembly, you better expect to see girls coming bleeding to you in the next week" (Ferguson *et al*, 1988:40). If a female trainee is found to be pregnant, she is sent home for a period of one year after which she may resume her studies. The effect of this is that her studies are disrupted, and perhaps the pregnancy could have been avoided if family planning services had been readily available (Ferguson *et al*, 1988:1). In a number of cases the trainees drop out of the colleges and, comparatively, the drop out rates in the colleges are relatively higher than those of school girls (Ferguson *et al*, 1988:7). By 1987, out of the twenty (20) teacher training colleges in Kenya, only four (4)⁵⁷ had begun providing family planning services to their students.

Although the College Boards are aware that there is a need for family planning services in the colleges, they are divided in their views with respect to the introduction of such services. One school of thought holds the view that the only way in which the pregnancies will be curbed is through tougher screening with a combination of refusal of re-admission after delivery. The other holds that the introduction of family planning services would help reduce the pregnancy rates and enable the female students to complete their studies (Ferguson *et al*, 1988:37). Those in the former school also maintain that family planning services would promote promiscuity among the students (Ferguson *et al*, 1988:3). But this view is disputed by the fact that 80% of women entering the colleges are already sexually experienced, and therefore the argument that promiscuity would arise from provision of family planning services is weak.

Despite their inadequate training in this respect, school teachers continue to play the role of family life educators, especially where family education has been integrated into the syllabus. The Ministry of Education through the Kenya Institute of Education (KIE) implemented a FLE pilot project which was executed by UNESCO and funded by UNFPA, between 1987 and 1991, in which a FLE syllabus was developed for standards 5-8 in primary school and forms 1-4 in secondary school. This syllabus was integrated into existing subjects, for example geography, history, civics and home science. The topics covered at the secondary school level included maternal and child care, teenage pregnancies and teenage fatherhood, adolescence and its problems (KIE, 1989; Min. of Educ. 1989). In all cases, the teacher may use resource persons such as social workers or medical personnel, books or short films to impart this information. In addition, the electronic media is also used in the teaching of FLE through the school broadcasting services provided by the Kenya Institute of Education (KIE) which prepares radio programmes for schools on various subjects. The school broadcasting services are however aired during the school term and which means that during the school holidays students do not get to listen to the programmes.

5.4.2 Teacher and pupil sexual relationships

In these discourses, the power relationships between a male teacher and his pupil emerges especially since the teacher uses his dominant, to seduce his female pupils. In addition the power relations between the teachers, their employers, and parents of the girls also emerge. A teacher is always amongst the most respected members of the community especially since education continues to be valued as a conduit to a career and well paying job.

These new discourses therefore reveal the abuse of power by teachers who are regarded by parents as responsible actors in the process of socialisation, and who have entrusted them with this role. Parents have continuously decried the abuse of this respect by male teachers and thus it is argued that

"[w]hen we take our children to school we assume and we are entitled to assume that they are safe. They are in the hands of adults who are charged with the responsibility of educating and moulding them into responsible citizens" (Sunday Nation, 17/10/93).

The power relationships between teacher, pupils and parents are illustrated further in the cases below.

5.4.2.1 Teacher 'power' over pupil

It is clear that teachers are aware that having sexual relationships with their female pupils is wrong. This is evidenced by the fact that in many cases, those teachers involved try to bribe the girls not to disclose what went on between them even in cases of rape. For example, in one case reported from Thika, a primary school teacher attempted to bribe a standard seven pupil with shs. 200 to prevent her from reporting that he had raped her (The Standard, 15/11/89). In another, a head teacher bribed his pupils with school milk and sodas (Sunday Standard, 29/9/91). In most cases, the girls involved are threatened either with physical punishment or deliberate failure in school examinations, and they are therefore unwilling to report their teachers. It is only when a pregnancy occurs that the girls are forced to disclose who is responsible (Daily Nation, 11/3/76).

Some teachers have manipulated parental concern over their daughter's academic performance and used this to lure girls into their houses under the pretext that these girls require further private tuition. For example, in 1993 it was reported that

"[a] Primary School teacher was arrested by police after he allegedly sexually assaulted a Standard seven pupil whom he had been asked to give private tuition by her parents. The girl claimed that the teacher invited her to his house at around 6.30 pm saying that he had some homework for her. When she went to his house he called from the bedroom and when she entered the bedroom he ordered her to lie on the bed where she was sexually assaulted. The girl said that she did not raise an alarm because her mouth was gagged with a cloth" (Daily Nation, 25/8/93:13).

5.4.2.2 Teacher 'power' over parents

The prevalence of school girl pregnancies in certain districts has been linked to the fact that male teachers are able to convince parents not to report them, after parents discover that the teachers either have sexual relations with their daughters or are responsible when the girls become pregnant (Kenya Times, 18/12/89).

Although parents are helpless in most cases, some have devised various ways of

dealing with amorous teachers. Accordingly, there are reports of parents having taken the law into their own hands by locking school offices, or physically forcing the teachers concerned out of the school. Two reports are recounted below as examples of parents using their powers to protect their daughters.

Case one

"In 1991 more than 110 parents locked the offices of a primary school headmaster who it was reported was having affairs with his female pupils and as a result one of them had become pregnant. This led to meetings held by the parents and they resolved that the deputy headmaster should run the school. The next meeting was with the DEO (District Education Officer), who said that his office had not received the headmaster's report on the alleged claims but said he will act on it as soon as possible. The DEO was interrupted at one point by irate parents when he tried to defend the headmaster. The parents insisted the headmaster was immoral and should be removed" (Daily Nation, 27/9/91).

Case two

"Parents of primary school children who revealed a love affair scandal involving their headmaster and school girls in Nyamira District, have threatened to take stern measures against the headmaster if his wife continued to victimise their children. The parents, numbering 15, sought anonymity, claiming that giving their names at the moment might affect their children, most of them being KCPE⁵⁸ candidates. They said the headmaster...who was interdicted by the DEO pending investigations, allegedly seduced a number of his pupils and managed to create a relationship with five of them.

When one girl became pregnant, he assisted her to procure an abortion. They claimed he initiated morning and evening studies to get a convenient time for dating the children, and that he used empty cartons of school milk as his beddings for his evil deeds. The parents further claimed that when the headmaster was caught in the act and served with a letter of interdiction, his wife who is also a teacher in the same school, started harassing the pupils who disclosed the affair. When contacted for comment, the headmaster said the allegations were baseless and only aimed at tarnishing his good name. He said he had been a respected teacher for a long time and many people in the area knew him and his wife as hard-working and dedicated" (Sunday Standard, 22/9/91).

The wife of the headmaster in the second case, emerges as an important actor in this case because she stood to lose if her husband was interdicted. Therefore she used her powers as a teacher to victimise the pupils who reported her husband, presumably because of the effect of their allegations on her family. In this case she was willing to condone her husband's behaviour so that he could keep his job. The fact that the headmaster, as he claimed, was a respected member of the community highlights the fact that he was powerful and that it was his word against those of the pupils.

In some cases where male teachers have been reported for having affairs with their pupils, the Kenya National Union of Teachers (KNUT) which protects the interest of its members, comes up in defence of the teachers and threatens to institute legal proceedings to effect the reinstatement of the teacher involved. For example in case two above

"[t]he KNUT Nyamira Branch Secretary, refuted the accusations against the head-teacher and challenged the parents to take action if they had enough evidence. The branch secretary urged the District Education Officer to reinstate the teacher or his union would take stern measures" (Sunday Standard, 22/9/91).

Thus the head teacher in this case was assured that the power of the union was behind him, which the parents did not have.

The reasons why parents take the law into their hands and either lock offices or report incidents to the press, is linked to the inadequacy or the lack of law to deal with teachers who abuse their powers and have relationships with their female pupils. In the second case, the parents were not willing to release their names because they knew that this would jeopardise the chances of their daughters either sitting for the national examinations at the end of their primary education, or that their children's results would be tampered with thus jeopardising their chances of proceeding to secondary education. At one level these parents are concerned with protecting their daughters' sexuality and dignity, yet at another they know that they cannot go very far because if they do, they will have to release their names and this will in turn ruin the future of their daughters. In these circumstances, the likelihood of these parents using legal means (if these were available) to bring the culprit to book is very low because it would mean that they would have to release their names. The use of the press is

therefore a powerful tool of highlighting the problem.

In desperation, parents have undertaken various measures such as setting up 'Kangaroo Courts' and forcing teachers to sign agreements accepting that they have made girls pregnant (Daily Nation, 31/1/94), or taking up vigilante activities to seek out teachers who take school girls to their houses at night and 'frog march' them to the Chief's offices for action (Daily Nation, 28/12/93). Cases of school girls being forced by their parents to marry their teachers are not rare although in one case, this resulted in suicide. This was reported in 1983, when a school girl committed suicide after her parents allegedly forced her marry her teacher who was also her cousin and was alleged to have made her pregnant (The Standard, 28/2/83).

In all these cases reported in the press, the incidents occur in primary schools, in which most of the pupils are still in their childhood stage and have not reached puberty. It is clear that these teachers use their dominant positions to manipulate the girls who, due to their age, are not likely to be believed if they report the teachers.

5.4.2.3. The role of the Teachers' Service Commission

The Teachers' Service Commission (TSC) is the employer of all teachers in Government-run schools and is charged with the responsibility of disciplining them. In all cases where parents allege teacher-pupil affairs, the TSC has to investigate the allegations and where the allegations are true, the concerned teacher is interdicted and later dismissed from the TSC. Although the TSC can invoke powers under the Teachers Service Commission Act to discipline a teacher, it has no 'legal teeth' because the teacher can still appeal to the TSC tribunal for a review of the case and if he succeeds then he is reinstated. In most cases, the teachers deny fathering the child and at times due to lack of medical evidence, the likeness of the child to the teacher has been used as evidence to justify his dismissal (The Standard, 29/8/89).

Despite these weaknesses, six hundred and fifty (650) cases involving teachers who had made their pupils pregnant were reported to the TSC between 1986 and 1990. Of this number, 409 were found guilty and consequently dismissed from the service (Wamahiu, 1992:25). In 1990 alone, twenty-one (21) teachers (two from secondary school and the rest from primary schools) in Bungoma district were dismissed by the TSC for making their pupils pregnant (Sunday Nation, 2/12/90). Every year the TSC

receives an estimated one hundred (100) reports about teachers who have allegedly defiled school girls (Sunday Nation, 17/10/93:8). In cases where rape is alleged, the TSC has to wait for the outcome of a court case before making any decision about the teacher. However, technicalities in rape case have at times leaned towards the teacher's favour especially where, due to the young age of the girl, there is need for corroboration of her evidence, or the lack of medical evidence especially where the rape is reported long after it had occurred. Therefore only 1% of those who are charged with defilement are actually convicted (Sunday Nation, 17/10/93:8). This calls for an amendment of the laws of evidence in defilement cases if the sexuality of school girls is to be protected.

Some cases are however settled out of court either because some parents are compensated by the teachers or the fear by parents that they would have to spend money prosecuting the offender without realising that rape and defilement are criminal offences prosecuted by the state (Sunday Nation, 17/10/93:8). To avoid teachers taking advantage of parents in this way, it has been suggested that Chiefs in the locations all over the country should be given powers to arrest teachers who have love affairs with school girls (Daily Nation, 16/1/92). This would in turn assist the TSC in getting hold of the teachers. Although Chiefs are powerful people in the community, their powers are hierarchically below those of the TSC and the teachers' union in terms of disciplining a teacher and the likelihood of a chief successfully disciplining a teacher is remote.

A Presidential directive in 1986 decreed that all teachers who made school girls pregnant were to be summarily dismissed. The effect of this directive was to politicise the issue of teacher-school-girl affairs and empowered the TSC in disciplining the concerned teachers. However, efforts to find out from the TSC whether as a result of this directive the incidence of teacher-pupil affairs had reduced were fruitless, as bureaucratic red-tape prevented the researcher gaining access to the records of the TSC.

KNUT has acknowledged that some male teachers do have affairs with their female pupils which at times result in pregnancies, and therefore agree that these teachers ought to be sacked. However, the union received the Presidential directive with

feelings that their members were being unjustifiably singled out. In a speech made in response to the Presidential directive, the Secretary General of the union said "[w]e support the President's directive wholly, but we recommend that the directive affecting teachers should also be extended to civil servants, employees of parastatal bodies, and church leaders, who are also a threat to school girls" (Daily Nation, 10/12/86).

5.4.3 Rape in schools

The issue of the rape of girls - especially those in mixed schools - by their male counterparts lends another dimension to the whole issue about the construction of female sexuality, and the protection mechanisms in the schools. Cases of girls in mixed schools being gang raped by their male counterparts are however not new (Kenya Times, 18/1/91) and this has raised questions as to the viability of having mixed schools, if the schools themselves are unable to protect the girls.

The dangers of mixed schools were highlighted by the St. Kizito tragedy in 1990, where 71 girls were gang-raped by boys in their school and 19 others died, after the girls refused to join the boys in a school riot. The school authorities had barricaded the girls' dormitory windows to prevent the boys from entering at night, which they often tried to do. Unfortunately this extra measure aimed at protecting the girls turned against them on the fateful day because once the boys forced open the dormitory doors and entered the dormitory, the girls had no escape route. Those who died were either trampled on as others tried to escape, or suffocated to death. The issue of rape was not new to the community and the school. It was reported in the press that the boys often waylaid and raped girls and that parents were aware of this but turned a blind eye. Perhaps they saw this as the price for their daughters' education.

What about the law in such a situation? Clearly this case fell within the provisions of the Penal Code. Whereas the boys were arraigned in court and charged with rape and murder, it became increasingly clear that since the act was carried out in the dark, the real culprits could not be identified. Although some boys were charged, the issues raised by the case went unanswered and the researcher was unable to establish whether any action by the Ministry of Education has been undertaken to prevent the repeat of such occurrences.

5.5 OLD DEBATES, NEW DIMENSIONS

Although the actors involved in the process of regulating sexuality and fertility have increased from the pre-colonial and colonial era, the main issues in the debates about the processes have remained the same and have continued to the present day. These issues are centred on the content of family life education, who the educators should be, and when this should be carried out, female circumcision and its usefulness as a *rite de passage* for pubescent girls, and early marriage for girls. These debates are considered below.

5.5.1 Controversy over Family Life Education

From the 1970's, the incorporation of a sex education component into the FLE syllabus has been subjected to controversial debates between parents, the Government (Ministry of Education), religious institutions, and family planning agencies. The proponents of sex education argue that armed with the correct information, adolescents would be able to make proper choices about their reproductive capacities and that this would reduce the negative consequences of unprotected sex and unwanted pregnancies (Gachuhi, 1980; Aggarwal & Mati, 1980).

Although recommendations were made in 1978 by the Government-appointed National Committee on Educational objectives and Policies to integrate population and sex education into the existing primary school and secondary school syllabus, no serious efforts had been made to implement these recommendations by 1985. The 1979-83 Development Plan gave partial recognition to population and sex education by emphasising the Government's intentions to promote a "sense of ethical values and social obligation which will uphold the values of traditional African society while preparing for the challenges of modern society" (GOK Dev. Plan, 1979-83:83).

The Ministry of Education currently intends to introduce FLE as a separate subject, rather than integrate it into other subjects, and to place emphasis on human sexuality, responsible reproductive behaviour, and AIDS prevention (Weekly Review, 16/12/94:6). This proposed programme was devised by the UNFPA and has sparked off a conflict between the Ministry of Education and the religious institutions⁵⁹ about the content of the new FLE syllabus. The furore was however started by an announcement by the country's Vice-President in September 1994, that plans for

introducing FLE into primary schools were at an advanced stage and that "those who opposed FLE claiming it was sex education missed the point as the subject was of immense benefit to the adolescents", and further that the Government was to spend Ksh 75 million on FLE in primary schools (Weekly Review, 16/12/94:4).

At the centre of the current controversy are, on the one side, the Ministry of Education, the NCPD, family planning agencies, donor agencies, health educators and some members of the public. They contend that with accurate information on sexuality and the consequences of pre-marital sex, the youth would be better placed to avoid any negative consequences. Accordingly, the answer lies in imparting this information as "it would be hypocritical and foolish to suggest that leaving them [adolescents] in the dark about their sexuality will prevent [them] from indulging in sexual relations before marriage" (Weekly Review, 16/12/94:4). The call that FLE should be introduced into the schools is intensified by the increased incidence of STDs and HIV/AIDS amongst adolescents, thus making it imperative that adolescents are taught about safe sex at an early age so that they learn how to avoid dangerous consequences of unprotected sex.

The opposing group, which is led by the religious institutions, includes some parents and members of the public who argue that sex is a god-given gift primarily for procreation, to be enjoyed within the institution of marriage and that this gift would be stripped off by sex education. Whilst on a visit in Kenya in 1994, the Archbishop of Canterbury joined the debates and cautioned that sex education should only be carried out if the youth are able to understand its relevance and that the "teaching of sex education should be approached from a Christian perspective and should not be divorced from morality" (Daily Nation, 10/12/94:3).

A further argument by its opponents is that sex education encourages promiscuity and hastens the erosion of moral values (Daily Nation, 10/12/94). This is however hypocritical especially because, as noted in Chapter Three, in the past traditional societies which were characterised by high moral values girls and boys were taught about their sexuality through idioms, parables, myths and songs (see Gachuhi, 1990:12;). The Catholic Church even called for mass action by parents to reject the introduction of FLE in schools and further insisted that it is parents who have the

mandate of deciding whether or not this should be taught to their children in the schools. What is particularly interesting in the current debates is the analogy drawn between poor academic performance in schools, and the introduction of FLE with the intended provision of family planning services to school children. One Catholic Bishop argued that only those without children in schools would advocate for the introduction of sex education in schools, and that by listening to these people the Government was committing an unforgivable sin (Daily Nation, 12/12/94:1-2).

Muslim leaders headed by the Supreme Council of Kenya Muslims and Imams, though not as vocal as the Catholic or Protestant church leaders, also opposed the introduction of the proposed FLE, which they argued "talks of sex and love to the young" and was against the doctrines of Islam (Daily Nation 10/12/94:3). The Council also called upon parents to sign a petition to the Government opposing the introduction of FLE in schools (Daily Nation, 20/12/94: 3).

The opposition by religious institutions and a group of parents is based on the assertion that the FLE contents draws from a syllabus prepared for boy scouts, which is allegedly obscene and pornographic. The scouts programme is developed by the World Scout Bureau and the Margaret Sanger Centre for Planned Parenthood, and is supported by Pathfinder International and funded by the UNFPA. It teaches about masturbation, decision-making and self-esteem with regard to sex; sexual perversions, and other forms of sexuality like homosexuality. Methods of family planning are discussed but with no emphasis on the sanctity of marriage. The Ministry of Education and the Kenya Institute of Education (KIE) have denied that FLE was sex education, and accused the religious institutions of having a hidden political agenda (Daily Nation, 15/12/94: 1-2).

The critics of FLE hold the view "that the Government is being forced or coerced into implementing the FLE programme in exchange for donor funds" (Weekly Review, 16/12/94). They also argue that it is important to consider who controls the global contraceptives market, because it is they who want to increase their markets in the Third World by calling for the provision of contraceptives to adolescents. Further, it is maintained that there is a hidden agenda behind the introduction of FLE which is aimed at introducing western liberal behavioural propaganda into Kenya, and hence

eliminate the African race and erode the moral authority of religious organisations (Weekly Review, 16/12/94).

Despite denials by the Ministry of Education and the Kenya Institute of Education, a new dimension to the whole debate was added when the President of Kenya intervened in December 1994 and announced that if the Church was opposed to the introduction of FLE in schools then the Government would not introduce it. He further stated that the Ministry of Education would not "implement any new programmes without the support and collaboration of interested groups such as churches" (Standard, 13/12/94:1). This announcement contradicted both the earlier statement made by the Vice-President in September 1994, and the contentions of the Ministry of Education, and was a temporary victory for the opponents of FLE. However, in early 1995 the Government through the Ministry of Education announced that FLE was in the last stages of introduction into the education syllabus which generated some opposition but not as intense as in 1994. This implied that the Government was publicly supporting those opposed to FLE but was quietly going ahead with its plans.

5.5.2 Female circumcision: old debates continue

Contemporary discourses on female circumcision have centred mainly on the health risks posed by the operation especially as concerns the type of operation, the unsterilised instruments used, and the unskilled circumcisers (Daily Nation, 25/1/94). The Government has also entered the discourse on female circumcision especially after the President publicly decreed in 1984 that female circumcision was illegal in Kenya, and that the Government was going to take all measures to eradicate this practice. Earlier in October 1982 the President had banned female circumcision in Baringo district and stated "if I hear of a person circumcising girls in this district he will be on fire" and will face legal prosecution (Daily Nation, 14/10/82).

An analysis of the discourses between 1984 and present day reveals that in the areas where circumcision is commonly practised, the Government's administrative apparatus has been assembled at the provincial, district and locational levels in a bid to curb this practice. It is however common to find newspaper reports of Chiefs and District Officers prohibiting the practice of female circumcision, banning the use of 'bush doctors' to carry out the practice (Daily Nation, 12/1/84), or arresting parents

who remove their daughters from school for circumcision (Daily Nation, 14/9/84). Provincial administration personnel are able to condemn certain tribal practices because as part of policy they are posted to districts other than those that they hail from. They therefore become external actors as they seek to effect change in the communities where they serve.

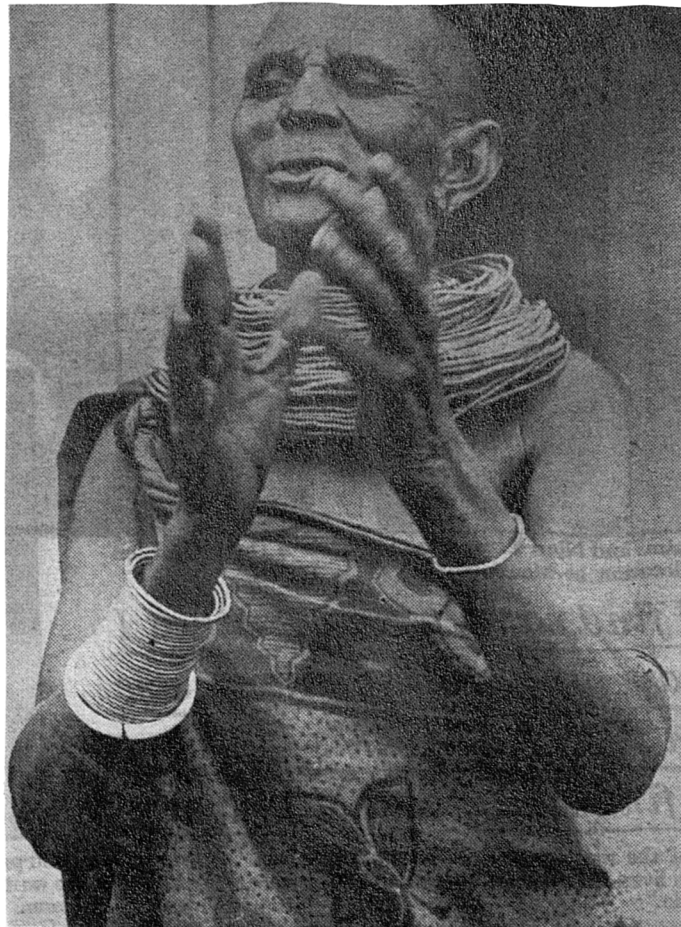
Medical doctors and women's groups have also decried the negative health consequences, which may sometimes result in death (Daily Nation, 14/8/90) or permanent damage to a woman's reproductive capacities. For example, out of every 1000 girls who are circumcised, 70 die from post-operation complications (Sunday Standard, 27/3/94). The AIDS pandemic has also raised fears concerning the practice and the risk of using instruments which are often not sterilised, and are thus capable of transmitting the HIV virus (Daily Nation, 23/10/88). In addition, focus has also been placed on the role of female circumcision in initiating the pubescent girl into adulthood and whether this practice makes her any different from her uncircumcised peers.

In their views about circumcision as a *rite de passage*, women in the PATH/MYWO study however contradicted the belief that female circumcision is carried out from ignorance. The Samburu for example practice the worst form of circumcision - infibulation - and Samburu women pointed out that from their experiences, they were well aware of the negative effects of infibulation. Therefore most did not want their daughters to undergo the same pain but at the same time their hands were tied by customs. Some pointed out that:

"We are in a bind. If we do not circumcise our daughters, what will happen to them in the future? Would they get a husband, or would they just be loiterers?" (PATH/MYWO, Samburu, 1993:3).

Further, some women felt that they carried out the practice because they were not the custodians of culture which they claimed was in the hands of men and elders and that "female circumcision like any other tradition, could be eradicated if men so dictated" (PATH/MYWO, Samburu, 1993:10). Although the Samburu women feel and know that they are culturally bound and therefore must abide by the demands of their

culture, they have adopted other mechanisms to ensure that whereas they abide with their culture, their daughters do not suffer so much pain and are not mutilated by the circumciser. Accordingly, since it is the women who perform the operation, they arrange with (and at times have to bribe) the circumcisers to cut off only the tip of the clitoris rather than carry out infibulation. Therefore the operation is performed as "a small sign, (and) special people are called to participate to avoid the hassles from the villagers who would insist that the operation was not well done according to the traditions" (PATH/MYWO, 1993 (Samburu):10).



Samburu woman circumciser:' who are custodians of community laws - men or women?' Source: Sunday Nation, 3/4/94.

In all the communities, female circumcision remains within the domain of women who decide whether a girl is ready for circumcision and arrange for the ceremonies. The practice persists due to a number of reasons. Firstly; girls opt to undergo the

operation to gain respect from the elderly, because failure to do this means constant taunting by elderly women who, for instance among the Meru, allegedly call the girls *Kirigu*, (uncircumcised girl) which is pejorative. (Daily Nation, 14/10/82). Secondly, for fear of losing votes, some political leaders refrain from attacking certain tribal practices in public and therefore they pay lip service to the Government ban (The Standard, 29/10/90).

Thirdly, when asked whether they supported the call to end the ban, some women felt that this was the only practice in which they had sole control and to eradicate the practice would mean that women would no longer be

"useful...in instilling good family values in their communities...[t]he continuation of female circumcision gives them a time and a place in society to exercise their rights" (PATH/MYWO, 1993:8).

Above all, in continuing this practice women make a significant contribution towards the "solidification of community bonds by taking part in the act that gives identity to their ethnic entities" (Sunday Nation, 27/3/94).

Fourth, female circumcision led to a number of social, economic and cultural rewards for the girl and her family. For example among the Narok Masai, apart from gifts for the female initiate, assurance of marriage and a possible increase in the bride-wealth, the parents gain prestige in the community; indeed in some communities the father is elevated to the status of an elder. Through this rite, women also acquire access to resources because as the Samburu women argued, 'in-laws cannot pay dowry for an uncircumcised girl' (PATH/MYWO, Samburu: 2). In addition, among the Narok Masai the mother of a circumcised girl receives many presents from her daughter's in-laws when she gets married (Lema & Njau, 1991).

Whereas in the pre-independence era the circumcision rite was used to accord new prestigious roles to the initiates, these roles fitted within the socio-economic and cultural set-up of their community. This also gave them access to certain resources which were inaccessible to the uncircumcised, for example traditional sex education, respect, gifts, marriage and parenthood. Today however, the resource base has expanded beyond the control of some communities, and access to new resources is

determined by other factors rather than the sexuality status of the individual. Thus some elders commented that the rite has lost its meaning since for example, uncircumcised girls go to school and proceed onto university and do better than the circumcised ones; they drive cars and also have children, and can be happily married. These views reflect the erosion of patriarchal control over access to resources through the control over sexuality of young men and women.

One of the new dimensions of female circumcision as a *rite de passage* is that circumcised girls begin to feel that school is for children only and therefore many discontinue their education (PATH/MYWO, 1993:14). Another is that there is increased sexual activity among those who are circumcised since they feel that they have the licence to engage in sexual activities, hence an increase in post-circumcision pregnancies. Thus a majority of the fathers and opinion leaders in the PATH/MYWO study felt that the practice should be done away with, since initiates have abused the whole system and lost respect for elders, which means that they are no longer different from the uncircumcised youth. Their dismay could also be because the patriarchs have lost their power base in the community.

5.5.3 Sexuality and marriage: old processes, new actors

It is important to establish the sexuality status of a girl prior to her marriage to take place especially among the communities that continue to circumcise their girls. For example, an uncircumcised Samburu girl is not eligible for marriage and her future in-laws must be satisfied that she has been circumcised otherwise they will do it themselves. Thus her circumcision is carried out on the morning of her marriage and she recovers at the home of her in-laws (PATH/MYWO, op. cit: 6). Due to the age at which they circumcise their girls, early marriages are also common.

The link between female circumcision and marriage has resulted in a number of girls, especially from the pastoral communities, being withdrawn from school by parents, and being married off thus terminating their education. This practice has now been turned into a political issue by the Government which, through its administrative apparatus, seeks to stop the practice of parents marrying off their school-going daughters. This is carried out within the context of administrative prohibition of early marriages and the promotion of female education as a means of eradicating illiteracy

especially among women, and reducing fertility, since the reproductive period is shortened by delayed marriage.

The district administrations' efforts at enforcing the Government prohibition order, are often carried out by a District Officer (DO) who can order the arrest of parents caught or known to have forcibly removed their daughters from school to marry them off (Daily Nation, 24/9/75, 29/12/85, 2/2/87; Kenya Times, 16/9/92) and ensure that the girls are returned to school to continue with their education (Daily Nation, 19/6/91). The enforcement of the ban has also been carried out within the context of children's rights and ensuring that girls enjoy their right to be educated and later when more mature the right to choose their future husbands and therefore "parents should give their daughters the freedom to grow up" (Sunday Nation, 17/6/90).

The District administration often relies on headteachers and the girls themselves, to forward information of any incidence of forced withdrawal of girls from school for marriage. For example, in 1991 it was reported that a 10 year old Masai girl who was in primary school was offered for marriage to a 100 year-old man who had already given bridewealth to her parents. The girl who was in standard five was also

"one of the only pair of girls at the school's upper level, [and] was saved from the 'arranged' marriage by her headmaster who reported the matter to the area DO who immediately went to the school and convened a *baraza* [public gathering] to denounce the practice which has resulted in low enrolment of Masai girls in schools. The DO warned parents against coercing their daughters into early marriages. The headmaster blamed early marriages on forced pregnancies" (Daily Nation, 23/6/91).

Girls are part of the machinery to eradicate early marriage and they often rely on the district administration to protect them or the media (where possible) to highlight their plight (Daily Nation, 5/2/87). The district administration has continuously assured affected girls that it would act immediately, if informed of any attempts to remove them from school and force them into marriage (Daily Nation, 31/10/89). For example, in January 1986 it was reported that three Masai girls had appealed to the District Commissioner (DC) for Kajiado for assistance as they wanted to continue with their education but their parents wanted to forcibly marry them off. One of the girls in her appeal for help implored the DC "as a Nyayo (President Moi's regime) representative

in the district, please save us from our fathers who are more interested in dowry than our future welfare". This resulted in the arrest of one parent by the area chief, and the reiteration by the DC that the Government would punish those parents who forced their daughters into marriage and pre-maturely ended their education (Daily Nation, 2/1/86).

Despite the district administration's concern and efforts, some area Chiefs collude with parents in ensuring that these marriages take place. This has been revealed in letters that the affected girls write to the DO or DC seeking assistance. For example in 1985 a Masai primary school girl who was forcibly married to a rich man with the collusion of the local Chief, wrote to the Kajiado DC explaining her troubles and seeking his help. The DC claimed that he took action against the Chief and stated that Chiefs who colluded in the marriage of immature girls were a disgrace to the society and the Government, and defeated the Government's policy that all children should go to school (Daily Nation, 4/11/85; Daily Nation, 2/1/86).

The increasing incidence of girls writing to the district administration seeking their assistance reflects the fact that these girls are willing to risk their families' honour and continue with their education. The intercession by the district administration has given the affected girls an opportunity they would not have had in the past, to break away from patriarchal cultural values that regulate their reproductive functions. However, one emerging problem from this is that having broken away, there is no provision for an alternative culture or family for these girls: even if they return to school, they continue to live with their parents who have the responsibility to maintain them and may refuse to do so because the girl disobeyed them. Thus despite the good intentions in ordering her return to school and cancellation of her marriage, the girl remains in a dilemma concerning her status within her family and community if she refuses to marry her chosen suitor and returns to school. At the same time, her future education and possible career opportunities are at stake if she agrees to the marriage to ensure her family's honour.

This dilemma is reflected in a 1990 case in which an arranged marriage between a 17 year old (Kenyan) Somali school girl and the son of a nominated councillor was cancelled by a District Commissioner. The girl had been traditionally engaged to the

imposed suitor, but had allegedly been trying to evade the marriage for a year and was therefore forcibly removed from school by her parents in preparation for the marriage. She wrote to the District Commissioner, District Education Officer, and the Eastern Provincial Education Officer asking for protection from the intended marriage. This resulted in the summoning of the girl, her parents and her chosen suitor to the District Commissioner's office for further investigation. It was reported that

"[t]he girl seemed under pressure and she wept as she told the DC that she had decided to get married. Investigations revealed that the girl had opted to get married after being cheated that she could not be admitted back to school since she had already obtained her School Leaving Certificate. She had also been told that she might miss both education and husband if she refused to marry. *Further reports said that the elders who were preparing the girl for the wedding had admonished her for writing to the administration. The elders said education was secondary to their tradition and should not be used as an excuse to snub marriage.* However after lengthy discussions the Moyale DO convinced her parents to suspend the marriage until the girl completed her education. The girl, who looked jovial after the meeting, asked to be allowed one month to settle down before resuming school since, she said, she had been shocked by the publicity the marriage had caused" (Daily Nation, 7/5/90, emphasis added).

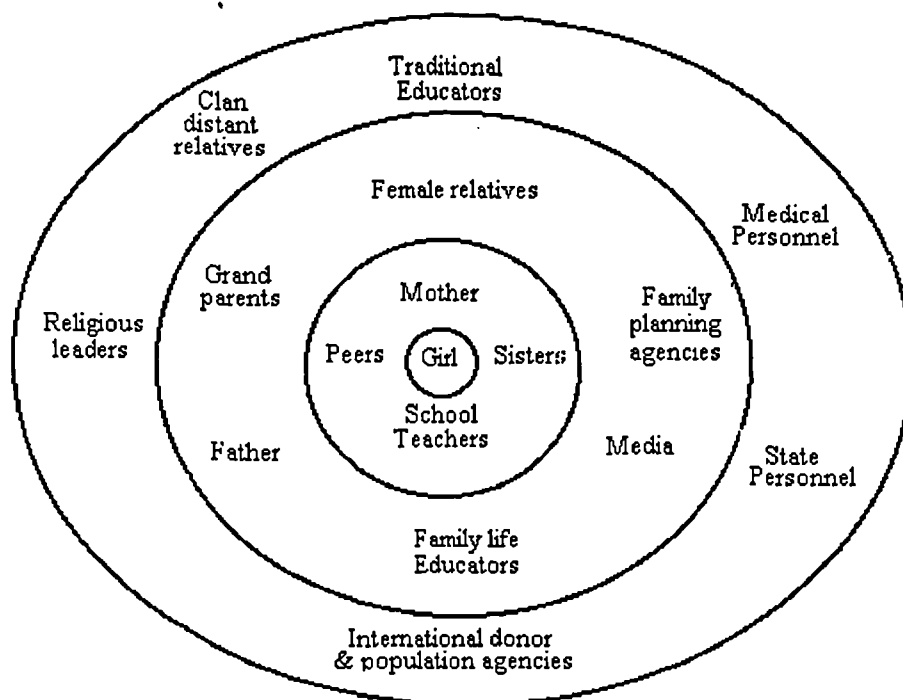
The admonition by the elders reflects the conflict between traditional and modern social reproduction practices, and how women and girls are often caught in between these conflicts. This in turn causes a dilemma for the girl with respect to the choice that she is to make. In the above case for instance, it was further reported four days later that the girl faced ridicule from her former classmates because of the wide-spread publicity the would-be marriage had gained, and that she had threatened suicide if she returned to the same school (Daily Nation, 11/5/90).

These cases show the struggles and resistances between the powerful and weaker actors in the semi-autonomous social fields and the points of intervention by the state machinery. The intervention by the executive arm of the Government rather than its judicial arm raises issues about the plural nature of the legal system in Kenya and the enforcement machinery in respect of personal law matters.

5.6 COMPOSITION OF THE SOCIAL ACTORS: PRESENT DAY

The present day system of regulating sexuality and fertility is quite diffuse and the interaction between the pubescent girl and the social actors in the social systems is not as closed as it was in the colonial era. This is illustrated further in Figure 5.1 below.

FIGURE 5.1 DEGREE OF INTERACTION BETWEEN THE PUBESCENT GIRL AND SOCIAL ACTORS: PRESENT DAY



A closer look at the spheres in contemporary communities reveals that a network of persons and institutions are involved in the transmission of the norms at different levels. In both the family and the school, the transmission of the norms concerning sexuality and reproduction is through informal means such as socialisation and education. In the inner sphere are family members such as the mother and sisters of the adolescent girls whilst other female relatives are found in the next sphere. The FLE debates however revealed that parents are ill equipped for the role of family life educators, and some have called for the establishment of a programme to educate them

FLE debates however revealed that parents are ill equipped for the role of family life educators, and some have called for the establishment of a programme to educate them so that they are well equipped to handle discussions on matters of sexuality with their children at home (Weekly Review, 16/12/94). Teachers are in the inner sphere of social actors especially since they begin interacting with the girl from an early age and play a key role in her socialisation. School teachers have replaced the traditional educators who are now found in the outer periphery and whose roles have been curtailed by the introduction of school-based education. In addition, the roles of the traditional educators have to be carried out in such a way that they do not interfere with the formal schooling which in turn reduces the duration of traditional education. The main actors in the educational institutions are teachers and the peer groups. The former use material from a pre-set syllabus designed and prepared outside the school by an already established educational institution, whilst the latter rely on personal knowledge, magazines and media etc as sources of information. The church has increasingly entered the inner spheres and become an active social actor. Thus opponents of FLE insist that the church's traditional "responsibility as the upholder of moral standards" puts it in a position to impart family life education (Weekly Review, 16/12/94). The Government, has through the Ministry of Education and its administrative arm continued to be a dominant social actor in the process of regulating adolescent sexuality and fertility. This is carried out through education and intervention in early marriage or female circumcision.

At the tertiary level are the population agencies and donors such as the UNFPA whose keen interest in population control is evident. The entry of international population agencies such as the UNFPA, IPPF and western donor agencies such as ODA, and USAID in funding population control programmes in Kenya increases the number of external actors who continue to influence the processes of regulating sexuality and fertility. The international donor agencies who fund a number of Government programmes have an upper hand in that they can dictate the terms of the funds allocation and the World Bank, for example, has made population reduction a condition of allocation of more funds to the country. In this scenario it is evidently clear who controls the economic resources which in turn influences the population

growth management.

5.7 CONCLUSION

Although norms of regulating pre-marital fertility have remained the same as in the colonial period, the transmission and enforcement of these norms have transformed and in some instances weakened. As in the case of the family, economic changes have affected the role of society in the socialisation process and likewise the enabling environment within which this took place has changed. Increasingly, the social punishments for engaging in prohibited sexual relationships which end up in pregnancy are more stringent for women than for the men responsible. In all cases, it is not only the girl who does not want the pregnancy but also the society in which this is happening which includes her family, her school, her clan and the entire community. Continuing with the pregnancy especially when she is in school means a premature end to her education, possible marriage as a second wife, banishment from the family, and possible ostracism of her children for taboo reasons.

CHAPTER SIX
LAWS ON ADOLESCENT SEXUALITY AND FERTILITY
PRESENT DAY

6.0 INTRODUCTION

As discussed in Chapter Four, the colonial administration made efforts towards applying statutory provisions to regulate sexuality and fertility thus removing these from the control of the indigenous communities. This approach was continued after independence by the new centralised state. In this chapter focus is placed on the current statutory provisions in the regulation of sexuality and fertility.

6.1 THE NATURE OF THE KENYAN LEGAL SYSTEM

A major feature of the contemporary legal system in Kenya is its dual character, which was developed in the colonial era, and is today sanctioned by the Constitution and elaborated further by the Judicature Act. The Constitution is the supreme law of the land. It allows the plurality of personal laws by recognising the diverse and heterogeneous nature of the Kenyan community (section 82 (4)(b) & (c)). In addition, constitutional provisions on discrimination are not applicable in matters of personal law such as adoption, marriage, divorce, and burial. This effectively allows the application of customary personal laws even where these are discriminatory. The recognition of the diversity in personal laws is extended further to include religious laws. Thus for example, the Constitution recognises the application of Islamic personal laws in the Kadhi's Court, which has jurisdiction in matters relating to personal status, marriage, divorce or inheritance proceedings where all the parties are Muslims (section 66 (5)). The Judicature Act however provides for choice of law rules. Firstly, section 3(1) elaborates the applicable laws which the High Court and the Subordinate Courts apply. These are the Constitution, all written laws including United Kingdom Acts of Parliament stipulated in the schedule of the Act, the substance of the common law, doctrines of equity and statutes of general application in force in England as of 12th

August 1897, and the "procedure and practice observed in courts of justice in England at that date". Today however, the application of English common law, doctrines of equity and statutes of general application "shall apply in so far as the circumstances of Kenya, and its inhabitants permit and subject to such qualifications as those circumstances may render necessary" (Judicature Act, section 3(1)).

The integration of personal and religious laws which is commonly found in ex-British colonies has resulted in the creation of a "multi-tiered and multi-sourced system of law" (Armstrong *et al*, 1993:328). Thus the choice of law rules is susceptible to manipulation, especially by those who have the knowledge and power to control these rules (Armstrong *et al*, 1993:328).

6.1.1 Status of customary law in Kenya

The nature and development of customary law has occupied the minds of legal scholars involved in the discourses on African law in the colonial and post-colonial era. Today, it is generally accepted that contemporary customary law was constructed during the colonial era by the colonial administration and judicial machinery (Chanock, 1989; Snyder, 1982; Rwezaura, 1992).

At independence, the colonial construction of customary law was given statutory recognition. This gave customary law a limited definition and scope of operation. The creation of the dual legal system in personal laws and the continuous process of administrative and judicial 'panel-beating' of customary law which began in the colonial era, resulted in the 'death' of the African normative systems. Therefore what is perceived as customary law today is "a set of social and cultural facts which provide an environment for the operation of authoritative (largely state) norms in a society " (Okoth-Ogendo, 1989:136).

Perhaps one reason why customary law was retained was in response to the use of tradition (especially in the early years), to legitimate the fight against the intrusion of cultures brought in by colonialism. Thus the call to retain traditional values and customs went alongside the move towards national economic development, and involved the manipulation of tradition especially by those in power. This call was buttressed by the legitimization of distorted colonial customary law which had ensured the control of women who remained constrained by traditional rules whilst enabling

men to seek new opportunities (Fitzpatrick, 1984b:22) in the development process.

However, customary law continues to prevail as the personal law of the people of Kenya, complementing the relevant written law, and is often invoked in the absence of statutory law in civil law cases⁶⁰. The application of customary law in the courts conforms to the definition provided by Rwezaura (1992) of 'customary law as proved in evidence'. Thus section 3(2) of the Judicature Act stipulates that

"the High Court and all subordinate courts shall be *guided by African customary law in civil cases*, in which one or more parties is subject to it or is affected by it in so far as it is not repugnant to justice and morality or inconsistent with any written law, and shall decide all such cases according to substantial justice without undue regard to technicalities and without undue delay"

Section 3 (2) differs from the repugnancy clause of Article 20 of the 1902 East Africa Order-in-Council, in that customary law is applied only in civil cases. This difference is a result of the process of 'panel beating' of customary law which began in the colonial era, survived into the post-independence era and set the parameters for the application of customary law in the courts. In most cases where experts on customary law are summoned to give evidence, they tend to give the opinions of what they perceive to be customary law, and at times some experts are unwilling to accept the dynamism of customary law and interpret it to deny women certain rights⁶¹. However it should be noted that the manipulation of customary law not only affects women but also other groups in society.

The types of customary law claims that can be heard in the subordinate courts are listed in the Magistrate's Court Act which abolished the African Courts system in 1967. The Act defines customary law in terms of its content⁶², by expressly stating in section 2 that a 'claim under customary law' is a "claim concerning any of the following matters under African customary law: land held under customary tenure; marriage, divorce, maintenance or dowry; seduction or pregnancy of an unmarried woman or girl; enticement of, or adultery with, an unmarried woman; matters affecting status, and in particular the status of women, widows and children, including guardianship, custody, adoption and legitimacy".

The effect of the Constitution, the Judicature Act, the Magistrate's Court Act, and the Kadhi's Courts Act is to create a dual legal system in matters of personal law and a single legal system in other civil and criminal matters. The procedures to be followed by the courts in applying the law are however those determined within the general law except in the case of Kadhi's Courts which apply procedures normally applicable under Islamic law. In this respect, the Kenyan legal system falls within the weak or juristic conception of legal pluralism which is "merely a particular arrangement in a system whose basic ideology is centrist", and the application of the plural laws depends on a validating source (Griffiths, 1986:7-8).

Moreover, the integration of what was perceived to be customary and religious personal laws with general law has resulted in the combination of "certain elements of the various systems of personal law" (Wanitzek quoted in Armstrong *et al*, 1993:322) and the complete erosion of others. In addition, customary law marriages have increasingly become symbolic especially since "much of the long drawn ceremonies in connection with customary marriage" have disappeared alongside the dispersion of the extended family members, which has inevitably weakened kinship ties and marriage laws (Phillips and Morris, 1971:48).

6.1.2 Legal context of regulating sexuality and fertility

The overall legal regulation of sexuality and fertility is dependent on the enjoyment of individual liberties such as the freedom of expression, freedom of conscience, freedom of speech, protection and right to life, which are guaranteed by the Constitution. However, the Constitution also allows the state to intervene in matters which are within the so-called 'private' sphere, in the interests of defence, public safety, public morality or public health, or where it is necessary to protect the "reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings" (section 79(2)(a) and (b)).

Apart from the Constitutional provisions, there are statutory laws which limit the extent to which such constitutional guarantees can be enjoyed. These include laws on sedition, public morality, censorship, and publication. These laws directly or indirectly restrict and also facilitate the regulation of sexuality and fertility. For example, they may restrict access to information, what type of information is received and

disseminated.

6.1.3 Legal status of Adolescents

The status of adolescents under Kenyan law is associated with their incapacity to independently enter into legally binding contracts. Thus the issue of the adolescent's capacity to make independent decisions concerning his or her sexuality should be considered within the context of laws that define his or her legal status. The age of majority is stipulated in section 2 of the Age of Majority Act which expressly states that "[A] person shall be of full age and cease to be under any disability by reason of age on attaining the age of eighteen years". The effect of this set age of majority is that a person aged below 18 years lacks the capacity to enter into a legally binding contract.

The laws that define an adolescent for purposes of providing protection are the Age of Majority Act, the Children and Young Persons Act, the Penal Code, and the Marriage Act. The Penal Code for example, has different age levels for its application. Thus section 14 states that a child aged under 8 years cannot be held criminally responsible for any act or omission. However, section 4 (2) provides that a child aged below 12 years but older than 8 years is not criminally responsible for an act or omission unless it is proved that he or she knew that they were committing a crime.

Despite the age limit set by the Age of Majority Act, other statutes set their own age limits for purposes of their operation. For example, a girl aged 16 years or a boy aged 18 years may enter into a marriage contract with the consent of a parent or guardian (Marriage Act, section 16). The age at marriage under Islamic law is linked to the age at puberty and therefore girls who enter the pubescent stage before they are 16 years old are eligible for marriage. As observed in Chapter Five, initiation practices such as female circumcision are used under the prevailing customary law to determine one's capacity to marry.

Whereas parental consent is requisite if a girl is aged 16 years, she still has to consent to the marriage otherwise this amounts to abduction. The law against abduction (including forced marriages), is often invoked by the district administration to order the arrest of those who have contravened the ban on forced marriages. Section 142 of the Penal Code provides that

[a]ny person who, with intent to marry or carnally know *a woman of any age*, or to cause her to be married or carnally known by any other person, takes her away, or detains her against her will, is guilty of a felony and is liable to imprisonment for seven years.

The lack of consent by the girl to the forcible marriage is therefore a crucial factor upon which the district administration often relies on to stop forced marriages (Daily Nation, 11/5/90). Therefore whereas the Marriage Act states that a girl aged 16 years may marry with parental consent, which would therefore cover arranged and forced marriages, the Penal Code provides the girl an option out of such a marriage if it can be proved that she did not consent to it.

The application of these powers must contend with the extent to which an individual can exercise rights within the family. It has already been established that in the African family (past and contemporary), exercise of individual rights is often undertaken within the collective rights of the community (Armstrong *et al*, 1993:321). This is clearly evident in the case of the Samburu girl who is circumcised and married on the same day. These girls are not given the choice of selecting their suitors, which is done by their uncles and brothers. Once the suitor is selected and the marriage negotiation is completed, the girl, whether in school or not, is circumcised immediately before being handed over to her in-laws who then have the responsibility of nursing her back to health.

The Commission on Law, Marriage and Divorce appointed in 1967, recommended that a uniform age of marriage - 16 years for girls and 18 years for boys - be applicable to all communities. This recommendation is found in section 21 of the Marriage Bill, which is yet to become law. However, due to the time spent in formal education and increased emphasis on female education, the mean age at first marriage for girls has increased from about 18.4 years in 1962 to 20 years in the 1980s (Gyepi-Gabrah, 1985:23). In 1962, 55% of girls aged between 15-19 years were unmarried and by 1989 this had increased to 92.7%, whilst for those aged between 20-24 years the numbers increased from 12.6% in 1962 to 52.1% in 1989 (GOK, 1966: 54; UNICEF/GOK, 1989:79).

6.2 LAW AND REGULATION OF SEXUALITY

6.2.1 Legal Construction of sexuality

The Penal Code provides the main legal framework for regulating sexuality. It was originally the Indian Penal Code, and together with the Criminal Procedure Code, was introduced into Kenya from England via India during the colonial era. The effect of both statutes was to take over the adjudication over offences concerning sexuality and reproduction, which in the pre-colonial communities were handled by the family. These were thereafter reconstituted into offences against the public, and today the state prosecutes these offences.

Inherent in the Penal Code clauses on sexuality are 19th century Victorian notions on sexuality that prevailed at the time and were mainly reflected in the Offences Against the Person Act of 1861, and the Criminal Law Amendment Act of 1885. These notions sought to protect "reproductive sex within marriage" (Weeks, 1992:99) and therefore emphasised heterosexuality as the norm. Sexual acts which were not linked with biological reproduction were therefore categorised as unnatural offences, and these ranged from bestiality to birth control (Weeks, 1992).

The construction of sexuality in the Penal Code is therefore within the heterosexual norm. This is evidenced by provisions which provide penalties for homosexual acts, which are construed as sexual acts that are against the order of nature and are regulated through provisions on indecent assault and gross indecency (Penal Code, sections 162-165). However, one need not be a homosexual to be prosecuted for the last two offences. The Penal Code specifically provides protection to boys aged below fourteen years from indecent assault and the underlying presumption is that because of their age, such boys are incapable of giving their consent. The offence however becomes one of gross indecency for those aged over 14 years and attracts a lesser punishment than that given if the boy is aged under 14 years.

The legal construction of sexuality for purposes of regulation and protection has however remained static. Few amendments have been made to the Penal Code to reflect contemporary social constructions that are dynamic and responsive to socio-economic and cultural changes in society. Two examples of this are given below.

Women's rights activists in Kenya are currently engaged in debates that are centred

on the negative portrayal of women's bodies (hence women as a whole) in commercial advertisements for consumer goods in the print and electronic media. These debates have brought into the public the issue on how female sexuality is constructed and by whom, hence as one woman queried "what [do] a woman's legs have to do with a car, or toothpaste have to do with seduction?"⁶³(Sunday Nation 11/9/94).

The use of women's bodies to sell commodities is not peculiar to Kenya. In western countries, for example, women's bodies are used to sell commodities ranging from cars to soap. According to Sen, "the choice of brand is believed to depend on the extent of sexual arousal of the customer" (Sen, 1984:134), thus objectifying women's bodies in a commodity form. The debates in Kenya are centred on the control and male construction of female sexuality. Thus women's rights activists are challenging this construction in commercial advertisements, hence their call for new advertisement laws to regulate commercial advertising, and encourage those advertisements that portray female sexuality in a positive manner (Kabeberi-Macharia, 1994b).

The second example are the debates over whether rape can occur within marriage, which were initiated by an announcement by the Attorney General in April 1994 that men who had non-consensual sexual intercourse with their wives faced prosecution in courts of law for rape. He further pointed out the contradiction in the Penal Code which presumed that a man cannot rape his wife, thus implying her ever present consent, yet at the same time "the law protects every woman from rape, in that it recognises her right to agree or consent to sexual advances of any man" (The Standard, 19/4/94). At the time when the Penal Code was introduced into Kenya, the prevailing belief in England was that sexual intercourse, marriage and procreation were interlinked, hence the presumption in the penal laws that rape within marriage cannot occur. In stating that the Government was looking into how to reform the law, the Attorney General pointed out that "[I]n England, the situation has changed and a man can be charged with raping his wife if he does not get her consent before sexual intercourse" (Standard, 19/4/94).

The prospect of penal laws in Kenya being amended to recognise rape within marriage was met with mixed feelings. On the one side, some members of the public felt it was important for marital harmony that sexual intercourse was consensual and

each partner should respect the other's feelings. On the other was an outcry led by the Protestant Church, that this was an intrusion into the social lives of Kenyans and that the warning was inciting women to rebel against their husbands. The Archbishop of the Anglican Church of the Province of Kenya (CPK) stated that the views of the Attorney General were "westernised and impractical in the African social set-up" and further, were "perplexing and intended to disrupt the marriage institution" (Standard, 20/4/94). This statement implied that the Christian church which he represented, condoned rape within marriage because it was peculiar to the African way of life.

The Archbishop's views were upheld by a male lawyer who warned the Attorney General to cease "pleasing women while blinding his eyes to the bitter aftermath" (Standard, 20/4/94). Another male legislator warned of increased marital quarrels and violence, family breakdown, divorces, illegitimate children, male promiscuity, and school drop-outs (Standard, 21/4/94). Thus flowing from this latter view, any misfortune or calamity within family or society would be seen as a direct consequence of a law that protected married women from rape by their husbands. These debates are dominant, and will be rekindled once the Marriage Bill is re-introduced into parliament for the sixth time. The Bill specifically recognises rape within marriage through an amendment of section 145 of the Penal Code.

Statutory provisions are sometimes manipulated to conform with social constructions of female sexuality. For example, the Public Health Act makes it an offence for anyone knowingly to carry a sexually transmitted disease (STD) and not seek treatment from a Medical Doctor. The Police have interpreted the Act to mean arresting unaccompanied (by men) women (and not men) in the towns, often at night and forcibly taking them for a medical examination after which they charge them under the Public Health Act if found to have an STD. In addition, through a combination of powers emanating from the provisions from the Vagrancy Act, Public Health Act, and Penal Code, the police arrest and harass women who are not accompanied by a man and charge them with loitering with intention to prostitute, and being of no fixed abode. The Penal Code is however silent on the definition of who is a prostitute and what is prostitution, although sections 153 and 154 make it an offence for a man or woman to be living off the earnings of prostitution. This leaves

it open to the police to define who is a prostitute for purposes of rounding up unaccompanied women.

6.2.2 Law and adolescent sexuality

The contemporary regulation of adolescent sexuality is carried out through contemporary normative rules of the semi-autonomous social fields (which were discussed in chapter six) and provisions of the Penal Code, which are considered further in this section.

6.2.2.1 Age of consent to sexual intercourse

Section 14 (3) recognises that male children under 12 years are incapable of having carnal knowledge, while section 145 recognises that a girl aged 14 years and below is incapable of consenting to sexual intercourse. The underlying implication of these two provisions is not that a girl aged 14 years and below and a boy aged 12 years are incapable of having sexual intercourse; the Penal Code seeks to protect them from exploitation because of their immature age and incapacity to enter into a legally binding contract. The age of consent for sexual intercourse for girls is associated with the desire to prevent pregnancy amongst unwed adolescent girls. Historically, these provisions are linked to Victorian notions on female sexuality and the need to protect girls from sexual exploitation (O'Donovan, 1985:104).

The aim of the Penal Code in these matters is to protect the sexuality of those under 18 years from exploitation, by reason of their age, through provisions for penalties for certain offences against morality. It however seeks to control the information that an individual receives concerning sexuality. Thus it is an offence if anyone

"for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects, or any other object tending to corrupt morals"

(181 (a))

or

"publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals"(181 (e)).

Even though this section deals mainly with pornographic material and shows, it may be extended to show that certain adverts tend to corrupt morals, and can be used to restrict sex education where this is seen to be morally wrong especially if the target groups are minors.

6.2.2.2 Offences against adolescent sexuality

Chapter Eight of the Penal Code caters for offences against sexuality. These include those against an individual's sexuality such as rape, defilement, sexual assault and incest. For purposes of this study, cases collected from 11 district courts as shown in Table 6.1 below were related to the above offences, with the intention of investigating the types and prevalence of offences.

TABLE 6.1: OFFENCES RELATING TO SEXUALITY AND FERTILITY BETWEEN 1985 - 1991: SELECTED DISTRICTS

Age of Victim	Defilement	Rape	Indecent Assault	Incest	Forced Circumcision
Below 18 yrs	5	0	1	1	1
Over 18 yrs	0	13	12	0	1
Total	5	13	13	1	1

Source: District Magistrate's Courts Registry: Mombasa, Meru, Narok, Nakuru, Kakamega, Machakos, Kericho, Kisii, Kirinyaga, Bungoma, and Kiambu 1991.

Although the implication of Table 6.1 is that cases against morality are uncommon, this however may in fact not be the case. Firstly, there is the possibility that many cases may not have reached the courts system and are either settled out of court or not reported, because of the age of the victim, or some of the cases are settled by 'elder's courts'. Furthermore, the cases were collected from the District Resident Magistrate's

courts and did not include lower courts in other parts of the district.

6.3.2.2.1. Sexual assault and defilement

Section 145 of the Penal Code provides punishment for statutory rape. Thus

"[a]ny person who unlawfully and carnally knows any girl under the age of fourteen years is guilty of a felony and is liable to imprisonment with hard labour for fourteen years together with corporal punishment".

The issues of consent, provocative walk and talk, and dress are irrelevant as defences for statutory rape. The only defence that an offender can raise is given in a proviso to section 145 that the offender had reasonable cause to believe that the girl was over the age of fourteen years, or that she was his wife. The stated age for statutory rape indicates that the Penal Code construes the female aged under fourteen years to be a person who is sexually immature and therefore incapable of consenting to sexual intercourse. Secondly, being in a vulnerable position because of her age, she needs the special protection of the law from sexual assault and harassment⁶⁴. The Children and Young Persons Act however, provides further protection for a victim (aged below 16 years) when she is brought into court. In all cases where rape or defilement is alleged, the cases are heard *in camera*, which gives protection to the female victim in so far as matters concerning her sexuality are not made public knowledge and also to save her from possible social stigmatisation.

The Penal Code recognises that minors aged above 16 years are capable of having sexual intercourse, and this amounts to rape only where they did not consent. Nonetheless, consent is important for the charge of rape to be repudiated. For example, in *R vs. Daniel Kiplagat (Kericho, cr.c. no. 33, 1991)* the accused was charged with raping his girlfriend, a form three student. The charge was brought by the father of the victim. However, the victim contrary to her father's claims, withdrew the charge on grounds that she had consented to sexual intercourse and that she normally slept in his hut, hence discounting the claim for rape. The court acquitted the accused on the basis that she was aged over 16 years and was capable of consenting to sexual intercourse.

However, in most rape or defilement cases, the victim does not consent to any sexual advances from the accused and at times the accused is not known to her. For example in *R v. Mwatete Mwangome (Mombasa, cr.c. no. 330, 1990)*, the complainant,

a girl aged below 14 years had gone to the river to wash her clothes, whereupon the accused pounced on her and ran her down on a rock, tore her clothes and defiled her. Her consent was immaterial in this case because this was a case of statutory rape within the provisions of section 145 of the Penal Code. The accused who said nothing in mitigation was sentenced to three years imprisonment with hard labour and three strokes of the cane.

The courts give heavier sentences when the victim is under ten years. For example, in *R vs. Benedict Wandera (Mombasa, unreported)* the accused abducted an eight year old girl and defiled her, and in *R. vs Duncan Mwangi (Narok, cr.c. no. 218, 1991)*, the accused ambushed a five year old girl, dragged her into the bush, and defiled her. In both cases the court sentenced the accused to seven years imprisonment with hard labour and six stokes of the cane.

6.2.2.2.2. Incest

Although only one incest case was found in the research, it may be only the tip of the iceberg, as most incest cases are likely to be handled within the family and therefore outside the courts system. One reason that incest cases are not brought to court relates to the power relationship between the offender and the victims. It is likely that the offence is committed by a male relative who is older than the victim and he is more likely to be believed should the victim allege incest. In addition, the victims fear reprisal from the rest of the family especially where the offender is a father, grandfather or brother.

Incest brings another dimension to the protection of the sexuality of female children, especially where it is committed by those who ought to be their protectors. In *R vs. Koptumuri arap Tesoti (Narok, cr.c. no. 76, 1991)*, the accused allegedly defiled his five year old daughter. However, section 215 of the Criminal Procedure Code required that the evidence of the daughter who was only five years be corroborated by anyone or by medical evidence which in this case was lacking. Accordingly, the accused was acquitted by the court.

Male relatives are also known to give their girl victims presents such as sweets or fruits to make sure that they do not expose the rape or sexual assault. For example, in 1993 it was reported in the press that a four year old girl told a Nakuru Court that

she was raped by her relative, and was given an orange in order not to report the incident. She said that the rape took place in a maize plantation, and later she told her older brother aged 6 years what had happened (Daily Nation, 25/8/93:13). The requirement that the girl's and her brother's evidence should be corroborated by other evidence led to the dismissal of this case as in the earlier case of *R vs. Koptumuri arap Tesoti* (Narok, cr.c. no. 76, 1991).

Although traditionally children were often sent to live with grandparents who were crucial actors in their socialisation, in some cases incestuous relationships have developed between a grandfather and his granddaughter. In 1993 it was reported in the press that a 74 year old man who made his grand-daughter pregnant was jailed for 18 months by a Vihiga Court. The girl's parents suspected that she was pregnant and when questioned she admitted that she had been having a love affair with her grandfather with whom she had been living since December 1992. The grandfather who had earlier publicly admitted the affair before a traditional elders court (Daily Nation, 25/8/93:13) sought leniency from the Vihiga court because he felt that the matter could be effectively dealt with within the family.

6.2.2.2.3 Female circumcision

Although the PATH/MYWO study, (1993) revealed that female circumcision continues to be practised and a Presidential decree has banned the practice, statutory law is silent on the *rite de passage*. Thus the affected communities have continued to carry out the rite to symbolise the transition from childhood into adolescence and later adulthood, in defiance of the ban. So far no efforts have been made to put the 1984 ban into law and it is therefore left to the Provincial Administration to enforce the Presidential decree. In order to curb the practice, girls were, after the ban, encouraged to report to their chiefs if their parents were forcing them to undergo the operation. However, even though the circumcised girls are no longer in the childhood stage they are not automatically accorded adult status which is achieved upon marriage, and until then they remain within the provisions of the Age of Majority Act.

The 1984 Government ban was initially interpreted to apply against medical personnel carrying out the operation, which effectively meant that the practice could continue as long as it was not carried out in hospitals. The Director of Medical

Services threatened to invoke the Medical Practitioners and Dentists Act, and the Nurses Act, to enforce the Presidential ban (Daily Nation 14/9/94). The use of registration and licensing laws has been suggested as a way of curbing the practice. The provisions of the Nurses Act (section 25:1) and the Medical Practitioners and Dentists Act (section 20:1) can be invoked to de-register a nurse or medical practitioner who is known to have carried out a circumcision operation and has already been charged under the Penal Code for it.

In order to curb the use of unhygienic instruments, Meru traditional circumcisers were required to register with the Ministry of health before carrying out their work, after which a licence to practice would be issued. However this order applied to those involved in male and not female circumcision, because it was presumed that since the ban the latter was no longer carried out (Daily Nation 24/1/91). The information from the PATH/MYWO study showed otherwise. The effect of this is that non-registration of the traditional circumcisers involved in female circumcision means that they continue to use unhygienic methods. The Ministry of Health has also undertaken to crack down on private clinics that carry out female circumcision, especially since parents are increasingly taking their daughters to clinics and hospitals where circumcision can be hygienically carried out (Daily Nation, 12/6/93). The doctors in these clinics are therefore threatened with de-registration if found carrying out the operation.

Other statutory provisions applicable in dealing with female circumcision are found in the Penal Code provisions concerning grievous bodily harm. Thus section 234 states that

"Any person who unlawfully does grievous harm to another is guilty of a felony and is liable for imprisonment for life, with or without corporal punishment".

The cases that have been brought to court are negligible in comparison with the occurrence of the practice, which shows a clear disparity between the law and practice (see PATH/MYWO, 1993). The courts however use the Penal Code when dealing with such cases. One such case reported in the press is provided below.

"Two men who forced their daughters to be circumcised have been jailed for a total of 4 months by a Nakuru court. Barutuny

arap Cheptim and Cheron Tanui appeared before Nakuru acting resident magistrate. They were charged with committing the offence at *Kampi ya moto* Nakuru between December 24 and January 1. Female circumcision had been banned by the local Chief following President Moi's directive. The magistrate in sentencing the two said that female circumcision posed a health risk to girls and should therefore be curtailed at all costs and proceeded to sentence the two" (Daily Nation, 14/9/84).

Among the cases collected from the eleven courts, only one was concerned with female circumcision. In *R v. Samwel Mbai, Samson Kaune, Naomi Mukwanjeru, Mary Mbiro, Mariam M'ribo (Meru, cr.c. no. 1305, 1989)*, the accused were charged under section 234 of the Penal Code for causing grievous bodily harm through forced circumcision of the complainant.

"On the material day, the complainant (aged 17 years) received a message from the wife of the 1st accused inviting her to his house. When she was being escorted back, someone came from the direction of her house. The light in her house was put off. The 1st accused told her that he had a message for her. She saw masked people in her house. They knocked her down, gagged her mouth and dragged her to a nearby coffee plantation where they circumcised her using a razor blade. She could not walk, she went to the hospital and later the accused were arrested and charged".

Although grievous harm attracts a life sentence and corporal punishment, the accused were only fined sh. 1,000 each because the court noted that circumcision of women was a custom of the accused's ethnic community and they may have assumed that their action was legal. Where courts condone a practice because it is custom even though it has been banned, it reduces the options that girls had in the 1930's of seeking help from the courts, or relying on statutory law. This could be one of the reasons why there are few female circumcision cases in court and more administrative action outside the court system.

There are a few reasons for the lack of enforcement. These include firstly, that some aspects of culture (both negative and positive) are resistant to change, even though the context within which they are being practised has changed; therefore their elimination needs an approach which takes into consideration the context of ignorance,

obscurantism, exploitation of poverty, and the structures and social relations which perpetuate the practice.

Secondly, the attitude of legislators themselves - especially if they come from the communities which continue to circumcise women - may inhibit such legislation. An example of this was recently displayed in Parliament when a male Member of Parliament in response to a question from a female Member of Parliament retorted that he had no business talking to a woman who was not circumcised! (Daily Nation, 28/2/95). This retort is evidence of how female sexuality issues are, depending on the circumstances, negatively brought up to demean women. The third reason is also linked to legislators fearing that they will lose votes and hence their parliamentary seats if they are too vocal in seeking eradication of the practice especially if it is prevalent in their constituencies.

6.3 LAWS ON ADOLESCENT FERTILITY

Whereas there is minimal legislative intervention in rules regulating pre-marital sexual relations in the semi-autonomous social fields, there is increased intervention on matters concerning fertility. This is carried out through criminal laws on abortion, infanticide, concealing birth, and civil laws which regulate the distribution of contraceptives and related information, and recognise compensation for seduction and pregnancy.

As discussed in Chapter Three, one of the punishments given for pre-marital sexual activity or pre-marital pregnancy, was that the father of the girl was compensated by the man or boy responsible. In the process of ascertaining and codifying customary law during the colonial era, seduction and pregnancy compensation was one of the indigenous practices that was recognised and retained. The effect of this was that the rules concerning seduction and pregnancy compensation were fossilised into a static customary law and are still recognised as valid customary law claims by statutory law. This continues to highlight the intervention of statute law in the semi-social autonomous fields.

6.3.1 Laws on contraceptives

Although the Kenyan legislature is competent to legislate on who is eligible for

family planning and contraception services, it has not done so. Accordingly, there is no minimum legal age at which one is eligible for contraception, although in practice only adults (aged over 18 years) and married women (some of whom are aged below 18 years) are eligible. Since there is no law prohibiting the provision of contraceptives, Government policy against provision of contraceptives to adolescents operates as the guideline, and family planning organisations have to abide with this in their activities.

The restricted access to contraceptives for adolescent girls arises from a combination of the definition of the child and the 'policy handcuffs' that prevent family planning information providers from providing services or information on contraception or family planning to those aged below 18 years. In these circumstances, an adolescent girl would be afraid to seek contraceptive information or services. However, marriage before reaching the age of 18 years for girls accords them adult status hence social maturity. Accordingly, married female adolescents are eligible for contraception services and information, whilst their unmarried peers are not.

The fact that the age of sexual maturity does not correspond with the age of social maturity presents problems for sexually active female adolescents because most female based contraceptives are not sold across the counter without a doctor's prescription. The issue of consent is crucial when an adolescent seeks independent information or services from a doctor who feels constrained by the law (e.g. Age of Majority Act) in giving the services. In addition, doctors would be hesitant to prescribe contraceptives to an adolescent female without parental consent, so as to avoid legal suits from parents especially where medical complications occur. Since unmarried adolescents would certainly not want their parents to know that they are sexually active, they opt to take the risk of unprotected sex rather than be found out (Kabeberi-Macharia, 1994a:19).

Laws on contraceptives can be divided into two: those that regulate the manufacture and sale of contraceptives, and those that regulate the dissemination of contraceptive information.

6.3.1.1 Laws on manufacture and sale of contraceptives

The manufacture and packaging of contraceptives is regulated by the Food, Drug and Chemical Substances Act (section 10-12) which is primarily concerned with the

packaging of drugs, and the Standards Act, which empowers the Bureau of Standards to set standards for manufactured products, drugs or chemical substances. However, the sale of contraceptives is controlled by the Pharmacy and Poisons Act which, through the Pharmacy and Poisons Board, controls the sale of medicines and medical appliances. Thus contraceptive pills, diaphragm, or IUD have to be prescribed and fitted by a doctor. Contraceptive pills cannot therefore be bought across the counter, but other forms of contraception, such as condoms, foams and jellies can be bought without a doctor's prescription (Pharmacy and Poisons Act: Part One). Whereas condoms do not fall within the restricted contraceptives, "most girls do not like condoms, and...if a boy uses a condom a girl will ask 'don't you trust me?' " (IPPF 1992:8-9). The converse position is also true; if a girl insists that her boyfriend uses a condom.

6.3.1.2 Laws on dissemination of family planning and contraceptive information

The law regulating advertising and dissemination of information is provided by the Book and Newspapers Act, and the Film and Stage Plays Act. Both statutes require that a licence should be issued before any form of information is disseminated or displayed. Whereas these statutes are silent on the dissemination of family planning information, Government policy has hindered access to such information and services for those below the age of majority. In addition section 181 of the Penal Code requires that the dissemination or display of information should be neither obscene nor offensive to public morality. Accordingly, family planning information is liable to censorship if found to be obscene or contrary to public morality. The offence attracts a term of not more than two years imprisonment and a fine of Kshs 7,000.

6.3.2 Criminal law and fertility

The threshold of criminal law in regulating fertility is at the stage where conception has already taken place, and a woman does not want to keep either the foetus or the baby. The Penal Code therefore provides penalties for abortion, infanticide and concealing birth which seek to deter occurrence of these offences and indirectly regulate sexuality. The provisions in the Penal Code that concern fertility can be traced to the English Offences Against the Person Act of 1861 in relation to abortion and the Infanticide Acts of 1922 and 1938 in cases of infanticide and concealing birth.

The cases collected from eleven District Courts for the years 1985-1991 on these offences are illustrated in Table 6.2 below.

TABLE 6.2: OFFENCES RELATED TO FERTILITY: SELECTED AREAS FROM 1985-1991

Age of girl	Abortion	Infanticide	Concealing Birth
Below 18 years	1	5	6
Over 18 years	2	3	6
Total	3	8	12

Source: District Magistrates Courts Registry: Mombasa, Meru, Narok, Nakuru, Kakamega, Machakos, Kericho, Kisii, Kirinyaga, Bungoma, and Kiambu, 1991.

6.3.2.1 Abortion

Abortions are generally illegal and can only be performed in circumstances where the life of the mother is at stake. The Penal Code imposes liability irrespective of the existence of a pregnancy, as long as the intention to procure an abortion is proven. Thus section 158 provides that

"[a]ny person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, is guilty of a felony and is liable to imprisonment for fourteen years."

In addition, Section 159 places liability on a woman who causes her own abortion or allows an abortion to be performed on her through whatever means. However, she must have the intention to do so and this must be proven. An offence under section 159 attracts a sentence of seven years imprisonment for the woman.

In the AMREF study, the most commonly chosen person to perform an abortion was a qualified doctor and 12% of the abortions were self-induced as shown in Table 6.3 which distinguishes urban and rural residence. Although the sample size was small in the study (n=222; see Appendix B), the findings are useful in illuminating the

disparity between law and practice.

TABLE 6.3. CHOICE OF ABORTION PERFORMER AND PLACE OF RESIDENCE

Abortion Performer	Urban %	Rural %	*Urban-rural %
Doctor	57.1	39.0	46.7
Nurse	11.4	17.1	22.2
Other medical staff	5.7	11.4	11.1
None medical staff	2.9	4.1	4.4
Relative	8.6	2.4	4.4
Self	11.4	15.4	2.2
Other	2.9	10.6	8.9
Total n=203	100.0	100.0	100.0

*This refers to peri-urban areas

Source: Youri, 1993:52.

In most cases, abortions are self-induced and once the foetus starts coming out, the girls go to hospital to have the abortion completed (Rogo & Nyamu, 1989; Lema & Kabeberi-Macharia, 1992). In such situations doctors are left with no alternative but to complete the abortion lest the patient loses her life or suffers further damage to her health. In this way doctors are not within the provisions of section 158 or 159 since they do not induce the abortion, but are in fact protected by section 240 of the Penal Code which provides that

"A person is not criminally responsible for the performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all circumstances of the case."

The advertisement or publication of information concerning drugs or instruments which can be used for abortions is illegal. Penalties such as fines and imprisonment are provided by the Pharmacy and Poisons Act which provides under section 38 that

"[s]ubject to the provisions of the Act, no person shall take part in the publication of an advertisement referring to a drug, appliance or article of any description in terms which are calculated to lead to the use of the drug, appliance or article for procuring the miscarriage of women."

Section 160 makes it is an offence to supply drugs or instruments knowing that they will be used for performing an abortion. Liability under this provision arises irrespective of whether the woman is pregnant or not and attracts a prison sentence of three years. The requirement that a supplier must know that the drugs or instruments supplied are for an abortion reduces the number of persons who can be charged under this provision. This is more so considering the methods that are often used to procure abortions, for example malaria pills, herbal concoctions, and insertion of coat hangers. These methods differ depending on the socio-economic and cultural background of the community in which the girl lives (Baker & Khasiani, 1990).

6.3.2.1.1 Prosecution for abortions

Based on medical statistics which show that abortions among adolescent girls are prevalent in the country, it was expected that more cases would be found in the District Magistrate's Courts.⁶⁵ However, only three cases on abortion were found in the nine District Courts, although not all the District Courts were visited; there is therefore a likelihood that there could be more abortion cases. In some of the districts where no abortion cases were found, statistics from the AMREF study show that abortions are indeed carried out which implies that these cases are rarely prosecuted.

The large number of adolescent girls who are admitted into hospital for the completion of induced abortions (Rogo & Nyamu, 1989; Maranga, 1987; Lema & Kabeberi-Macharia, 1990) indicates that they have somehow managed to circumvent the provisions of the Penal Code by inducing the abortion themselves. Thus by going to hospital for the completion of the induced abortion, these girls receive medical care and attention which they would otherwise not have. This places doctors or medical personnel in a dilemma since they have to keep the affairs of the patients confidential and at the same time they are aware that their patients have committed an offence punishable by law.

However, in *R v. Selly Chepkoch (Kericho cr. c. no. 1684, 1989)*, the accused

who came from a poor family of 12 children, was charged under section 160 of the Penal Code with procuring abortion on herself. Her father took her to hospital after she complained that she was sick. At the hospital it was found that she had had an abortion and when queried further she said that she had taken malarquin tablets to procure the abortion. After treatment the hospital reported her to the police, whom she later took to the latrine where she had thrown the foetus. In mitigation, the accused said that she was remorseful and aborted in desperation because she was a form three student and wanted to complete her studies. On the recommendation of the probation officer, the court placed her on two years probation.

The courts are however not so lenient when abortion results in the death of a girl or woman, and doctors or other medical personnel are prosecuted for causing death by negligence if the patient dies either during or after the abortion. The leading case is that of *Singh Bansel vs. R. (1959, EA 813)* in which a doctor was charged with causing the death of a patient on whom he had performed an abortion. The East African Court of Appeal reiterated the provisions of section 158 of the Penal Code and stated that abortions should only be carried out to save the life of the mother.

6.3.2.2 Infanticide and concealing birth

The laws on infanticide and concealing birth are found in the Penal Code. Section 210 of the Penal Code states that

"[w]here a woman by any wilful act or omission causes the death of her child being under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent on the birth of the child...shall be guilty of the felony to wit, infanticide... and punished as if she were guilty of manslaughter of the child"

However section 227 of the Penal Code treats the offence of concealing birth as a misdemeanour.

Infanticide is an age-old form of controlling unwanted pregnancies, as was indicated in Chapters Four and Five, and has become widespread today. Amongst the Samburu and Masai who have strict norms on female sexuality, the pregnancy of an uncircumcised girl is seen as a bad omen and women in the girl's family or her

mother's friends organise to have the girl abort, and if this fails the baby is killed immediately after birth. The Samburu women in the PATH/MYWO study justified such actions and pointed out that "we cannot let them have babies...who would marry an uncircumcised mother? nobody, it is unheard of" (PATH/MYWO: Samburu: 2). Other than in these circumstances, infanticide and concealing birth are opted for due to other circumstances as discussed in the cases discussed below.

Although only six cases of concealing birth and five cases of infanticide were collected, these indicated that pregnancy is not a desirable outcome especially for school girls. Out of the eleven cases collected, in only one case was a girl given a custodial sentence of nine months (*R.v Mary Auma d/o Alfred Odedo, Kisii cr. c. no. 2533, 1987*). In all the remaining ten cases, the court placed the accused on probation for periods of up to three years.

Bearing in mind that the accused is a person aged below eighteen years, a report by a probation officer into the circumstances that led to the offence is mandatory. The probation reports often reveal the girl's desire to continue with her education, for example *R v. Agnes Butachi (Bungoma cr.c. no. case 1655, 1990)*; *R v. Mary Wanjiku (Kiambu cr.c. no. 8, 1990)*; *R v. Hellen Wanjiru (Nakuru cr.c. no. 1965, 1990)*; *R v. Mary Auma d/o Alfred Odedo (Kisii cr.c. no. 2533, 1987)*; *R v. Josephine Kemunto Nyamamba (Kisii cr. c. no. 3750, 1988)*; or fear of punishment from the girl's father, for example *R. v. Eunice Seroney (Nakuru cr.c. no. 1526, 1990)*; *R v. Ruth Chepkoech Misik (Kericho cr.c. no. 2116, 1989)*; and poverty, for example *R. v. Joan Njoki Mugo (Kiambu cr.c. no. 683, 1991)*.

In one case, *R v. Dorcas Njeri Kamenya (Kiambu cr.c. no. 3973, 1989)*, the accused having given birth in school and attempted to hide the dead body in a bush, was charged with concealing birth. The probation report revealed that she had been gang-raped and feared stigmatisation, and as a result refused to report the rape. She went through the pregnancy and hoped to conceal the birth and in this way, the rape would not be revealed. The court gave her a conditional discharge of twelve months.

With respect to the courts' leniency towards girls accused under section 227 and 210, the researcher enquired from a Probation Officer why this approach was taken by the courts. The officer stated that in most cases, the accused are young girls who

are in school, and

"[i]t is obvious that their actions are carried out in desperation especially since they want to continue with their education...some have no way out and have to be treated with compassion. Probation gives them the opportunity to continue with their studies and at the same time they learn a lesson".

Similar views were expressed by the magistrate in *R v. Magdalene Gature (Bungoma cr. c. no. 2052, 1989)*, in which a fifteen year old girl was charged with concealing birth contrary to section 227 of the Penal Code. In mitigation, she stated that she wanted to continue with her studies and was remorseful. The magistrate noted that the accused was a juvenile who was undergoing a difficult stage in adolescence and was a victim of circumstance rather than being a criminal. She was placed on probation for 2 years.

6.3.3 Seduction and pregnancy compensation

The Magistrate's Courts Act recognises claims 'for the seduction or pregnancy of an unmarried woman or girl' (section 2:c) as valid customary law claims. Section 9 of the Act vests jurisdiction to hear such claims in District Magistrate's Courts of the Third Class (DM III) in the first instance and appeals lie to the District Magistrate Court of the First Class (DMI), and thereafter to the Resident Magistrate.

The Restatements on customary law of marriage and divorce continue to present day to be regarded as the authority on customary law, in cases regarding personal law matters. The punishments as outlined in the Restatements were drawn up in the 1960s and reflect the status of customary law at that time but are still used today. The effect of this is to fossilise customary law, especially as the restatements have not been reviewed since their publication in 1968 (see Appendix B).

According to the Restatement in most tribes, subsequent marriage to the man responsible for a pregnancy was accepted and the compensation, if it had been paid, formed part of the bridewealth. Moreover one feature of pregnancy compensation in customary laws is that if the girl died at childbirth, the man responsible was required to pay her father compensation which was equivalent to either the bride-price or was in the form of a bull or heifer (Cotran, 1968).

For this study cases on seduction and pregnancy compensation were collected from district courts in Kiambu, Thika, and Muranga for the years between 1975 and 1993. These three districts are in the central province and the choice of these districts is based on the fact that these are among the few remaining districts where such claims continue to be claimed and paid today.

Claims for seduction were often termed 'unlawful' sexual intercourse, and were in all cases made together with the claims for pregnancy compensation. The reason for this is that today there are no mechanisms such as peer policing as discussed in Chapter Three, which would seek to prevent pre-marital sexual intercourse, and therefore the only evidence that claimants can rely on is actual pregnancy. The seduction of girls is carried out in many ways, for example the promise of material things, marriage and friendship, or as in one case 'further prayers' with a pastor in his house was used as a means of seducing a teenage girl by the pastor of her church (Daily Nation 20/7/93). The use of the term 'unlawful' sexual intercourse in these claims is not in the context of sections 139 or 145 of the Penal Code concerning rape or defilement. It is unlawful because the defendant was not married to the plaintiff nor was he intending to marry her and therefore had no 'licence' to have sexual intercourse with her in the first place. This reflects the use of a traditional term to make a modern claim. The number of cases are shown in Table 6.4 below.

TABLE 6.4: NUMBER OF CASES ON PREGNANCY COMPENSATION IN KIAMBU, THIKA AND MURANG'A DISTRICT COURTS: 1975-1993

Year	Kiambu	Thika	Murang'a
1975	-	5	3
1976	-	2	1
1977	-	-	2
1978	-	1	5
1979	-	-	3
1980	-	-	6
1981	-	-	2
1982	-	-	1
1983	-	-	-
1984	-	-	2
1985	-	-	2
1986	-	-	1
1987	-	-	-
1988	1	-	3
1989	-	1	2
1990	-	-	-
1991	2	-	-
1992	1	-	2
1993	1	-	1
Total	5	9	36
Total cases involving an unmarried girl	3	5	31

Source: District Magistrates' Courts Registry: Kiambu, Thika and Murang'a (1993)

The above statistics imply that there are very few cases on pregnancy compensation. One of the reasons which could have led to few reported cases was the decentralisation of the District Courts and creation of new courts with a District Magistrate of the third level who has jurisdiction to hear pregnancy compensation

cases. This is the reason why Thika District Court had no cases after 1978: the Thika courts were decentralised and the current Court has appellate jurisdiction over cases arising from the District Magistrates' Courts. After the new courts were founded, the records from the District Court Registry pertaining to the area where the courts were established were transferred to the new courts. The Kiambu court is also a district court and there is a possibility that more cases can be found in subordinate courts spread out in the district, hence only three case were found in the district court.

Another implication is that the incidence of pre-marital pregnancies is very low especially in the selected areas. This may not be the case, as medical statistics suggest the contrary. For example from the AMREF study, out of the 18 girls selected in the survey in Murang'a district in 1992, at least seven had carried the pregnancy to full term and had delivered. Although the sample sizes in that study were small, they remain useful in that they raise questions as to whether pregnancy compensation claims are settled outside the courts or whether such claims are made at all. There is the possibility that most pregnancy compensation claims are mediated outside the courts by informal adjudicatory bodies such as the clan of elders, chiefs or family members and any payments as compensation are duly made without the courts' interference.

The awards given by the courts were however uniform in all three areas for the years between 1975 and 1993 and were more or less in line with those found in the Restatements. Emerging from the collected cases was the fact that under Kikuyu customary law, pregnancy compensation was paid in the form of twenty (20) live goats or six (6) live cows or their monetary equivalent. The amount payable however doubled if the defendant cohabited with the girl as man and wife, and if other children were born out of that relationship. A new dimension is that additional claims are being made today for maternity or hospital charges, or clothes for the new born baby, all of which ideally ought to be taken care of by the stipulated compensation. However, the amounts awarded differ by district as shown in table 6.5 below.

TABLE 6.5: VALUE OF AWARDS FOR PREGNANCY COMPENSATION: SELECTED DISTRICT COURTS

Year	Thika	Murang'a	Kiambu
1972 - 1982	700/-	700/-	n/a
1982 - 1992	n/a	11,000/-	8,400/-*
1992	n/a	11,000/-	20,300/-
1993	n/a	11,000/-	67,000/-

* In 1991 the value of the claims reached Ksh. 12,800/-

Source: District Magistrates' Courts Registry: Thika, Murang'a and Kiambu 1975-1993

Although further research is required to investigate whether there is a direct link between the value of the awards given and the rate of pregnancies in each area, a few observations can be made, with respect to Kiambu and Murang'a. The standard of living in Kiambu is higher than that of Murang'a especially since Kiambu is close to Nairobi, and its rate of urbanisation is faster than that of Murang'a. Accordingly, expenses incurred by the father of the unmarried mother are likely to be high and include expenses such as hospital bills whilst in Murang'a there is a likelihood that a birth attendant would be present at birth thus minimising the expenses. Another reason for the variations is that the value attached to the animals to be paid in compensation differs between the two districts, as the examples illustrate.

In *Peter Waiyu and Grace Njeri vs. Joseph Njuguna Kinuthia (Kiambu c.c. no. 815, 1993)*, the first plaintiff who was the father of the girl (second plaintiff) claimed that his daughter, a secondary school student, was enticed by the defendant and she conceived, after which the defendant refused to marry her. In his claim for pregnancy compensation he claimed twenty (20) live goats and six (6) live cows according to Kikuyu customary law, all valued at Ksh. 67,000/- . The goats and cows were valued at the prevailing market value in Kiambu. In addition he claimed a further Ksh.

1,050/- as maternity charges; Ksh. 350/- clinical charges; Ksh. 500/ as travelling expenses; Ksh 3,000/- as clothes for the baby and Ksh. 900/ as general expenses. The court awarded the amount in its entirety.

In *Gabriel Wanyoike and Margaret Wambui Wanyoike vs. Peter Mburu Njuguna (Murang'a c.c. no. 269, 1993)* the first plaintiff, who was the father of the girl (second plaintiff), brought a charge against the defendant on the grounds that he had *unlawful* sexual intercourse with the second plaintiff as a result of which she became pregnant. The compensation claimed for this unlawful pregnancy under Kikuyu customary law, was twenty (20) goats valued at Ksh. 400 each therefore Ksh. 8,000 and six (6) cows each valued at 500 therefore 3,000 the total being Ksh. 11,000. In addition a claim was made for Kshs. 5,000/- for both hospital expenses and costs of the suit.

6.3.3.1 The claimants

In the pre-colonial and colonial Kikuyu communities, the claimant for pregnancy compensation was the father or male guardian of the pregnant girl. However in four of the cases collected, the pregnancy compensation claim was made by the mother of the girl. In the cases of *Edith Wanjiku and Maritha Wangu v. John Irungu (Thika, c.c. no. not given, 1975)* and *Esther Wamaiitha Njuki and Jane Wanjiku v. Philip Mugo (Murang'a c.c. 24, 1982)*, the mothers successfully claimed and were awarded pregnancy compensation of 20 goats, 6 cows, and costs of the suit from the defendant. The court did not discuss the legitimacy of their capacity as women and mothers to make the claim.

However, in *Hilary Murathi and Mary Wairimu v. Festus Mutegi Kiathe (Thika c.c. 52, 1976)* and *Beth Mutare and Olive Muthoni v. Kanyiri Ngure (Murang'a c.c. 34, 1981)*, the claims were dismissed due to the plaintiffs' failure to comply with requirements of the Civil Procedure Rules. Although the cases are brought under customary law, Civil Procedure rules apply and cases which do not abide with these rules are often dismissed. One can only speculate why as in the case of *Beth Mutare and Olive Muthoni v. Kanyiri Ngure* the claim was brought in three years after the 'offence' had taken place. There is a possibility that the mother tried to mediate the payment through informal means, received no redress, and thereafter opted to go to court albeit very late. In addition, the plaint read that the defendant declined to marry

her daughter after making her pregnant and there was therefore the possibility that the defendant could have promised initially to marry her daughter. This would have meant that any compensation would have been paid alongside bridewealth due.

However, the issue of applying civil procedure rules to pregnancy compensation claims was challenged in *Murichu Ichurua vs. Sammy Kuria s/o Chege Githinji (Thika RMCCA no. 7, 1980)*. The Resident Magistrate's (RM) Court hearing an appeal from a District Magistrates Court (III), criticised a claim by the District Magistrate that a claim had to be brought within six months after the alleged sexual intercourse. In criticising this, the Resident Magistrate pointed out that Kikuyu customary law does not have procedural requirements stipulating when a claim for unlawful sexual intercourse or pregnancy compensation can be made and it was therefore wrong for the District Magistrate to make such a claim. If the two women plaintiffs in *Hilary Murathi and Mary Wairimu v. Festus Mutegi Kiathe* and *Beth Mutare and Olive Muthoni v. Kanyiri Ngure* were aware that they could appeal against the application of the Civil Procedure Rules in their cases, they would probably have received the redress they sought.

In the cases collected from Thika, Murang'a and Kiambu, there was no claim made by the girl herself. However in other parts of the country there are reported cases where a girl made the claim herself rather than through her parents or guardian. For example in *Eliud Mamati vs. Milia Makaya d/o Daruna (Kisumu HCCA no. 47, 1977; Cotran, 1987:3)*, the case was in the first instance brought by the respondent who claimed that the appellant had seduced her and made her pregnant. She made a claim for Kshs. 1,000/- as compensation for girlhood expenses within the provisions of the Magistrate's Courts Act. The respondent claimed that the appellant was her former primary school teacher and befriended her with a view to friendship and marriage. When the respondent fell pregnant, the appellant refused to marry her, and she reported him to the Education office. In awarding her claim, the magistrate in the court of first instance noted that as a result of the pregnancy, she had lost the opportunity to proceed to Form 1, and this had in turn ruined her future career opportunities.

On appeal, the appellant sought to have the award quashed on the grounds that the

claim made was one not recognised under Luhya customary law and secondly, that even if it was recognised, the claim should have been brought by the respondent's father and not by her. In accepting that Luhya customary law does not recognise a claim for pregnancy compensation, the appellate court however pointed out that a claim for unlawful sexual intercourse was recognised, and in this case the claim for loss of girlhood fell within this category. With respect to the girl bringing the claim instead of her father or a legal guardian, the appellate court was quick to comment that this was a technicality and that in any case, the father of the girl fully supported the daughter's claim for compensation.

These cases illustrate that women are now using the law to make claims that were traditionally only made by men. Thus whereas the process of ascertaining customary law could be argued to have been intended primarily to ensure patriarchal control over women's sexuality and reproductive capacities, the resulting fossilisation of these laws has worked in favour of women who can now make the claims since the relevant statute law does not restrict who can make the claim.

6.3.3.2 Out of court claims

The misuse of power by influential male community and religious leaders (Daily Nation, 20/7/93) in cases where pregnancy compensation claims are made against them, is possibly one of the factors that has led to claims for pregnancy compensation never reaching the courts. In the two cases discussed below, it was alleged that pregnancy compensation claims were politically motivated, which diverted the course of justice.

Case One

In March 1992 it was reported in the press in an article that 'Civic man 50 'made' girl pregnant' (Daily Nation, 25/3/1992) and the circumstances of this case were reported as follows:

"A 12 year old girl in standard five has been forced to drop out of school after she was made pregnant by a 50 year old councillor. The Chesimba Primary School pupil who is fourth in a family of eight, is one of the latest victims of child pregnancies in Kilifi and Kwale districts in Coast Province. The headmaster confirmed that the girl who was always in the top ten in the class, was medically examined and found to be 5

months pregnant. The claim was brought before the area chief who summoned the councillor to defend himself.

The girl claimed that the councillor had promised to marry her and that her mother was aware of this promise. The girl claimed that she was cheated into sleeping with the councillor in a store of a shop which he had rented from her deceased father who died 12 years ago. She claimed, "the councillor promised to marry me but now he is running away from me. He has spoilt my future and I do not know what to do now..."

The councillor agreed that he had slept with her "several times" but denied that he was responsible for the pregnancy. He claimed "I found that she had slept with other people before I met her" and that the allegation was politically motivated and that someone was trying to ruin him politically. He further stated that "If I receive the letter summoning me, I will go but I will vehemently deny the claim. This is politics and someone is trying to work for my downfall"

The girl's mother claimed that if he refused to marry her daughter she was ready to take the councillor to court and ensure that the court punished him for his actions as she would not let him go scot free".

The above report illustrates the power relations between the girl, her mother and the councillor. In the first instance the mother, a widow, had the sole responsibility over the girl and would probably have wanted her daughter to be married to the councillor, which would result in better material living conditions for her and the rest of the family, besides prestige for her family. In addition the girl would also have wanted to be married by the councillor and acquire a better standard of living as a councillor's wife. In this case marriage to the councillor would have been a way of accessing resources for her, her mother and the rest of the family. The age of the girl and her eligibility for marriage in these circumstances, would not be seen as an issue for concern since in Kwale district child marriages are socially condoned (Wamahiu, 1992:26).

However, there is a possibility that the councillor was aware of what marriage meant to the girl and her family and manipulated the situation although all he wanted was to have a good time which is clearly evident in the levity with which he made the

claims about the girl. The allegation that the claim by the girl is politically motivated and out to ruin him politically is also evidence of where his priorities lay. Being a councillor, he had more 'social weight' in the community than the mother of the girl had and this would probably have affected her ability to take him to court. Therefore he was confident that nothing would be done to him especially since he had only been summoned by a Chief. Instead the girl was punished in many ways because her studies ended pre-maturely at Standard five, and there is a likelihood that her marriage prospects were reduced since she was now a single mother.

This case is also one of statutory rape and all the men who allegedly had sexual intercourse with the girl ought to have been brought to court and charged under section 145 of the Penal Code. Instead this was taken before a Chief who, being a Government employee, has only administrative and not legal powers in such a case and would be unable to charge the councillor who, being an elected person, is often more powerful in the community than the Chief. Another factor is that if the councillor was 'well-connected politically', the Chief would rule in his favour in order to save his job and this would technically kill any further attempts to take the case to the courts. Unfortunately, no more reports of the case were made, hence one can only speculate on the outcome.

Case two

Early in 1990 a Member of Parliament (MP) was charged in the High Court in Nairobi for making a 16 year old school girl pregnant in 1987. The charge was filed by the father of the girl, who claimed in the suit that the MP had indicated that he would maintain the child, but failed to do so. The claim was brought for the recovery of school fees amounting to Kshs 160,000 spent on the girls education by her father and a further claim was made for damages as pregnancy compensation under Kikuyu customary law (Daily Nation 20/3/90). The MP denied the seduction and pregnancy claims, and further went on to state that the charge was politically motivated because he had recently moved a motion in Parliament which led to the resignation of the then Vice-President. The claims in his defence are recounted below:

" The MP charged in his defence that this "suit is politically motivated, scandalous and intended specially to finish me politically" and because of his role in removing the then Vice-

President he claimed that he was publicly threatened and warned of political doom and oblivion and that he would become 'finished'".

The politicisation of pregnancy compensation claims, or sexuality of adolescent girls, is not a new phenomenon as was shown in chapter three where issues on female circumcision were used in the political debates between nationalists, white Christian missionaries and the colonial administration. Today, claims of political motivation are however used by community leaders, who ought to be setting an example, to escape from responsibility⁶⁶. The leaders cited in the two cases above are in the age group of the fathers of the girls and their actions are evident of the moral decadence in society and also the erosion of tribal rules which would have punished them for their actions.

The intervention by the district administration in pregnancy claims is another possible reason why pregnancy compensation claims never reach the courts. In addition, this illustrates the intervention of the Government machinery into the semi-social autonomous fields to regulate behaviour without its legal machinery, preferring to use non-legal means to settle disputes. The use of criminal law in charging men who have made girls pregnant and abandoned the responsibility of caring for the children or marrying the girls has been seen as a last resort by the district administration. However, what is not clear is what provisions of the Penal Code would be utilised and therefore there is a likelihood that most charges would be made under provisions of the Magistrates Court Act for pregnancy compensation.

6.4 CONCLUSION

The co-existence of Kenyan statutory, religious and customary laws has brought about a number of conflicting interests between the dominant social actors, and adolescents as potential reproducers are often caught within these conflicts. These laws are numerous, vague, often overlapping and contradictory. For example the lack of affiliation laws to ensure a child's maintenance by its natural father, facilitates the operation of customary laws which grant pregnancy compensation to the pregnant girl's father for the loss he incurs. In this case the loss is that of the pregnant girl who receives no maintenance for her child and, if in school, faces discontinuity of her

education because of pregnancy.

Moreover, due to a lack of affiliation laws, men are under no obligation to maintain any children born outside wedlock and therefore this responsibility is borne by the girl or her family. Today public shaming or censorship for men and boys responsible for pre-marital pregnancies are non-existent and public knowledge of pre-marital or extra-marital sexual relationships are treated with levity as seen for example in the case of the councillor in section 6.3.3. This may in turn explain why girls opt for unsafe and at times criminal methods of terminating an unwanted pregnancy.

**PART THREE:
EMERGING ISSUES AND CONCLUSION**

CHAPTER SEVEN
EMERGING ISSUES IN THE REGULATION OF
ADOLESCENT SEXUALITY AND FERTILITY

7.0 INTRODUCTION

This chapter provides observations focused on the general pattern of the findings emerging from the data presented and analysed in Chapters Three to Six. This discussion seeks to show the similarities and differences in the dominant ideologies, the actors, the construction of female sexuality and motherhood, the gendered nature of the regulatory processes and different points of intervention by both law and normative rules.

7.1 REGULATION OF SEXUALITY AND FERTILITY, FROM FAMILY TO STATE

One of the major transformations that have occurred over the last 90 years in the processes of regulating sexuality and fertility is that the Kenyan state has taken certain roles of social reproduction from the family. In addition, the familial patriarchal control over female sexuality and reproductive capacities has now been transformed to that of the state, especially through the its population control and maternal health programmes. Despite the change in roles, the family remains a primary unit of social and biological reproduction although the state intervenes at different points to regulate these processes. This was illustrated earlier by Figure 5.1 in Chapter Five.

Inside all the social systems of the regulatory spheres, for example in the family, the school, the church or the state, there exist different power relations especially since the social actors in these systems exercise and experience power in varied ways. Thus as Weeks emphasises, power operates through "complex and over-lapping - and often contradictory - mechanisms which produce domination and oppositions, subordination and resistances" (Weeks, 1986:36-37).

The social actors in the regulatory process were found in different social

systems in the spheres and they interacted with the adolescent girl in varying degrees. The activities of the social actors were and continue to be shaped by internal and external forces. External structuring forces include colonialism, Christianity, women's and children's rights movements, and international population control policies which shaped the activities of the actors at different levels. Consequently, new ideas, education and religious systems, social and cultural forms emerged; for example, colonialism engendered transformations *inter alia* in education, ways of dressing, and family structures.

7.1.1 The family

The family in Kenya and other parts of Africa has continually undergone transformation in response to internal and external socio-economic, legal and cultural changes. These have altered or modified the family as an institution, its traditions and values. Further, urbanisation and christianity diminished the power of the family patriarchs especially following the dispersion of the extended family and the emergence of an independent nuclear family. Over time, as is discussed in Chapters Three to Five, new patterns emerge which influence sexuality patterns within the family "by encouraging or discouraging the rate of marriage, age of marriage, incidence of reproduction" (Weeks, 1986:27), and attitudes towards pre-marital sexual relationships.

The contemporary nuclear family type is the epitome of the interplay between tradition and modernity and as such it remains distinguishable from the pure nuclear family model especially due to the resilience of certain traditional family values. Although inter-and intra-family relationships have been modified by these changes, the contemporary nuclear family continues to maintain ties with the wider

extended family. Thus as Gluckman observed, "an urbanised African is outside the tribe, but is not beyond the reach of the tribe" (Gluckman, 1961, quoted in Harvey, 1975:14). Additionally, individual rights were, and continue to be exercised, within the context of regulating internal family relations, although the family as a collective unit has collective rights which regulate its external relations with the community (Armstrong *et al*, 1993: 321).

The blending of the traditional and the new has brought changes in the socialisation of children. Increasingly, it is natural parents rather than extended family members who are expected to carry out this task. As a result, parents in the nuclear family have become decision makers over their children's future (in which they have invested), and from which they expect returns, such as being cared for in old age by their children. However, parallel to this are other actors and institutions such as schools, peer groups and the mass media which are involved in the socialisation processes (Nukunya, 1992:19). The contemporary nuclear family however continues to have unwritten norms and practices of social conditioning which are binding on the family members and continue to influence the activities of the family actors.

7.1.1.1 The family sphere and the 'visibility' of women as social actors

An important aspect of regulation is that the individual should have knowledge about his or her sexuality and reproductive capacities. Accordingly, as the study has shown, the transmission of this knowledge is carried out by different actors in the spheres, although this process has been transformed over time by external and internal factors such as Christianity and western education. The transmission of norms concerning female sexuality and fertility continues to be primarily carried by female relatives in the family, who are most closely connected to the sexuality of the adolescent girl. The transmission of norms was carried out through songs and stories which emphasised the importance of motherhood within marriage, and the plight of pre-marital motherhood. The subsequent adherence to these norms has certain consequences for the concerned girl, other female members of her family, and her mother in particular.

In pre-colonial societies where the household was the centre of production and reproduction, men and women were active participants in the socialisation of their

children. Men trained boys and women trained girls. This division of labour in the socialisation process has been transformed considerably alongside the socio-economic changes that have occurred over the last ninety years. The emergence of the colonial economy led to the separation of the centre of production from reproduction, which altered the division of labour in social reproduction. Thus large scale farms and urban towns became the centre of production, while the home remained the centre of reproduction with women becoming the main participants in the socialisation of their children since the men went to work outside the home.

Urbanisation, self or formal employment, and growth of households headed by women has altered the social reproduction roles that were traditionally shared out between parents and grandparents. Progressively, either voluntarily or as a result of external causes, fathers spend less time with their children and leave the burden of discipline and socialisation to the mothers. Women in self or formal employment increasingly rely on housegirls to care for their children in their absence, placing the burden of socialisation of children on housegirls. As a consequence of the dispersion of the extended family, the traditional role of grandparents in the socialisation process is diminishing. In adapting to these changes, women emerge as the strong and dominant actors in social reproduction processes.

Moreover, because of these changes mothers continue to be the key sources of information on sexuality and fertility as was shown by the AMREF (1993) study even though they may have scanty knowledge on the subject. As the informants in Chapter Five indicated, a mother is a key actor in the regulatory processes within the family. However, the mother like her unmarried daughter, becomes a victim, and is condemned by society if the daughter becomes pregnant. Blaming the victim continues today, even though due to the socio-economic changes that have taken place, the roles of the mother as a primary social reproducer has been taken over by teachers and other family life educators.

7.1.2 State intervention in regulating adolescent sexuality and fertility

In all spheres of interaction, the state emerges as an active social actor through its personnel, for example teachers, medical doctors and clinical staff, judiciary and administrative personnel, who interact with the adolescent girl at different levels.

Through its executive arm the state has continuously entered the social fields in the different spheres, and regulated the social conditioning processes carried out by the social actors. This interference is traced to the colonial era where the colonial administration used its administrative personnel (such as Village Headmen or Chiefs) to penetrate into the social fields and regulate the activities of the social actors.

As illustrated in Chapter Three traditional educators were accorded high respect especially since they had the duty of educating initiated girls and boys into their expected roles as adults. Further in Chapter Six the role of school teachers as family life educators highlighted the importance placed on this group of persons in the socialisation processes. However, as the data revealed in contemporary society this role has been abused by some male teachers who either sexually exploit or have sexual relationships with their female pupils. This has resulted in intervention through Presidential decrees which highlights the inadequacies in the law in dealing with the offending teachers.

Through its population control programmes, the present Government has undertaken to tell citizens how to reproduce, and in so doing has by implication defined who is and who is not eligible to procreate. Despite this concern, the Government remained non-committal over Family Life Education (FLE) for twenty years and, as was discussed in Chapter Five, passed the buck onto others. This non-committal attitude was in spite of its already having formulated a policy on FLE to show its concern over the demographic and medical implications of adolescent sexuality and fertility. Over the last two years, the Government has collaborated with international family planning agencies such as the UNFPA and IPPF in redesigning the proposed FLE syllabus. This has generated new debates regarding the extent to which the state can interfere in the private lives of its citizens and regulate the manner in which they socially reproduce their children.

The activities of the state in matters concerning female circumcision, forced marriage or pregnancies do not generate as much public outcry as the decision to intervene directly in the social reproduction of adolescents through the introduction of family life education. Whereas in both instances the state is interfering with its citizens rights to decide if, when, and who shall reproduce, it is instructive to note that one

aspect of interference generates so much wrath whilst the other does not.

7.1.2.1 The 'public domain' and invisibility of women as actors

As discussed in Chapter Two, feminist discourses on women's sexuality and reproductive rights often call for women's rights to control their sexuality and make decisions regarding how and when they want to reproduce. It is clear from this study that the exercise of these rights and their enjoyment by women in the family must be within the context of wider family rights. In addition, the ability to do so may be determined either by economic, cultural, social, political or medical factors, or a combination of them, which are found in the public domain and continue to define women's lives and choices.

Sexuality and fertility enter the public domain in the form of population control, family planning, sex education, abortion and infanticide laws, and pregnancy compensation. Consequently, women who are the dominant actors in the family based processes of regulating sexuality and fertility become invisible. Thus, their daily activities in the social reproduction and regulatory mechanisms remain invisible in the public domain, hence the assumption that women as a group are voiceless when it comes to matters concerning their sexuality and fertility.

This invisibility however, does not mean that women are not actors in public. The public voice of women is heard when it is incorporated into other public voices, such as where parents decide to take action against teachers who have sexual relationships with their female pupils, or where they join protests over the abuse of female sexuality. However, the decision making powers that women have at this level may not be as strong as those they have in the daily social conditioning within the family.

The public domain has however become a battle site for patriarchal ideologies on the definition of motherhood and how best to regulate sexuality and fertility. This campaign is traced back to the colonial era where the dominant actors were the Christian missionaries, the colonial administration and the tribal elders. This era eventually led to the weakening of the elders' powers and strengthening of the powers of the colonial administration and Christian missionaries. However, this was possible then because the control over the resource base (in this case economic and human resources) shifted from the elders to the colonial administration and the missionaries.

By the 1940s and 1950s, female circumcision was being used as a political tool especially by the nationalist fighters to challenge the colonial administration attempts to eradicate important tribal cultures. Earlier on, missionaries had used female circumcision to challenge tribal cultural and religious practices and enforce their own.

Today the dominant actors in the public domain are the state, the Christian church, international and national population agencies and donor agencies who interact with the adolescent girl at different levels. The Christian church remains a key actor in the whole process of regulation of sexuality and reproduction through its family life educators, as illustrated in Figure 7.1, although religious leaders are in the outer periphery of the social actors. The Christian church has also remained a dominant actor at the level of policy and decision-making in matters concerning sexuality and fertility especially through its opposition to sex education, a position it has held since colonialism.

At all levels, patriarchy emerges as the dominant ideology behind the overall regulation of sexuality and fertility, and dictates how future generations shall be reproduced. However, patriarchy operates at different levels in different historical periods due to the increasing number of actors interested in the regulation of sexuality. Women however experience patriarchy differently, depending on the social, economic, cultural and political contexts. Thus patriarchal dominance over women's lives manifests itself in different ways, for example ranging from direct control in the family to the provision of welfare benefits by the state (McDonough & Harrison, 1978:38), to the demands of international population and donor agencies.

The power relationships between the dominant and weak actors in the regulatory processes, are a crucial factor in determining whose views will be heard, for example in relation to Government interference in the activities of the social actors. This also depends on who owns or has access to the means through which the voices are heard. Thus the Christian Church has since the pre-colonial era had a high platform from which to voice its objection to activities which are contrary to the teachings of the church. For example, in the colonial era the voice of the church in its opposition to female circumcision was always heard especially since the church was situationally advantaged to air its views in the colony and abroad. This was an advantage that the

affected communities did not have although nationalists and traditionalists used the platform of nationalism to air their views about interference by the church and colonial administration in their culture.

The convergence and divergence between tradition and modernity has been illustrated by the activities of the social actors in the different time periods which are characterised by internal forces such as negotiation, struggles and resistance by the dominant actors. For example the negotiation between the elders and the colonial administration over customary law reflects the struggle between the stronger and weaker actors both of whom sought to reinforce their authority in the communities; at the same time this reinforced the elders' control over marriage and reproductive capacities of women. However, although the elders were the weaker actors vis-a-vis the colonial administrators, they were the stronger ones vis-a-vis the women.

International population agencies such as UNFPA, IPPF or the Population Council are also important actors in the regulation of reproduction. The role played by these agencies primarily focuses on enhancing women's social and biological reproducer roles, thus ensuring proper child development. Hence the ideology of mothering which Paliwala argues, assumes that women are the best carers of children, and focus is placed by the concerned agencies on enhancing this role (Paliwala, 1993). Currently, the dominant voices are those of the Government the Christian church, and international population agencies all of whom have their own agenda about who should reproduce, when, and how. The bone of contention between these actors is the content of the education process, the initiation processes, and rules concerning sexual relations and reproduction. All the contenders seek to control the regulatory processes and also enforce their own definition of who is fit for motherhood.

7.2: CONSTRUCTION OF ADOLESCENT FEMALE SEXUALITY AND MOTHERHOOD

The data in this study reveal that female adolescent sexuality and motherhood are contextually constructed. This in turn influences the nature of the dominant norms of sexuality and fertility. Thus for example, if a child derives its social identity only from its father who in the terms of Dube is 'the seed giver', norms of procreation will recognise motherhood within wedlock (Dube, 1989:25-26). Consequently, pre-marital

motherhood is dealt with through heavy punishment particularly for the affected girl.

The study further illustrates in Chapter Three that the sexuality of the adolescent girl before marriage has both economic and social value. Historically, norms on sexuality emphasised female virginity at marriage, and were enforced through virginity rituals and the public shaming of non-virgins. The subsequent adherence to these norms uplifted a girl's social value and dignity within her family and community. As was illustrated in Chapters Three and Four, the economic value is illustrated by the relationship between the amount of bride-wealth, the virginity of the bride, and the payment of compensation for pre-marital pregnancy or seduction.

Today, claims for seduction of an unmarried girl have however diminished. As was discussed in Chapter Six, these claims are combined with those for pregnancy compensation since pregnancy is taken to be evidence of sexual intercourse having taken place. The increasing value of the pregnancy compensation payments shown in Chapter Six illustrates that unlike in the pre-colonial and colonial communities where the value of the payments was fairly static, today the payments are attached to the cost of living in the area where the claim is made. Thus for example the value of awards given in Nairobi are higher than those awarded in Murang'a.

7.2.1. Female circumcision and value of female sexuality

From the colonial period the discourses on female circumcision continued to pivot on the construction of female sexuality and the construction of motherhood. Among the communities that practice female circumcision, a binary concept in the construction of female sexuality emerges centered on the promiscuous girl on the one hand, and the good obedient girl on the other as illustrated in Table 7.1.

TABLE 7.1 CONSTRUCTION OF FEMALE SEXUALITY AMONG CIRCUMCISING COMMUNITIES

Good Girl	Promiscuous Girl
Circumcised	Uncircumcised
Obedient	Disobedient
Dependent	Independent
Not likely to divorce	Divorces easily
Honours parents	Shames parents and family
Clean	Dirty and smelly
Mature	Childish
Well mannered	Ill mannered
Eligible for marriage	Not eligible for marriage
Can conceive	Cannot conceive

What emerges from the discourses on female circumcision are different conceptions of female adolescent sexuality. One of the reasons behind female circumcision is to control female sexuality by reducing a woman's sexual desires, and also to ensure that once married she will be sexually subservient to her husband only. This construction has always existed among the communities that circumcise their women and, as the PATH/MYWO (1993) study revealed, it is still widely held today especially by men and boys (PATH/MYWO 1993:8). Although those who oppose the practice are a minority within these communities, they argue that non-circumcised women are also obedient, clean, and provide examples from communities that do not practice female circumcision. The above constructions of female sexuality in the circumcising communities highlight the social and economic value attached to female adolescent sexuality which has future implications for her as a potential reproducer.

Circumcision, however, has a dual role in that it either limits or enhances women's access to social and economic resources. Thus upon circumcision the family of the

initiate receives many gifts, and the initiate's father may gain a high social status in the community. In addition, her mother receives gifts from the initiated daughter's in-laws on her subsequent marriage; likewise the initiate receives gifts after her circumcision (see Chapter Five). In this respect certain economic resources are made available only to those girls who are circumcised and their families. Further, circumcision irrespective of the historical period, is primarily used as a tool of limiting women's access to human resources for example children, through the belief that an uncircumcised girl is incapable of conceiving (see Table 7.1).

Since the 1940s, education has facilitated women's access to economic resources, as both circumcised and uncircumcised girls compete at the same level, and for the same resources - for example further education, or paid employment - and both are capable of being economically independent. Although uncircumcised girls continue to be socially under-valued by the circumcising communities, education and delayed marriage further enables them to develop their careers, and in this way they later gain social value as educated and working women. Moreover, an educated girl whether circumcised or not, gains high social value especially if she is employed in a well paying job.

Although today women are increasingly becoming economically independent, among the circumcising communities one finds that this is negatively construed especially if the woman is uncircumcised, which is a new dimension in limiting women's access to economic resources. For example, the PATH/MYWO study revealed that an uncircumcised woman's economic independence (which symbolises independence from men), was portrayed as something bad and which could only be associated with her sexuality status. Hence only the sexually unclean and uncircumcised women did 'negative' things such as being economically independent or seeking to divorce their men (PATH/MYWO 1993:8). This in turn reinforces patriarchal dominance over women in general and over their sexuality and reproductive capacities in particular. In addition, it portrays the subordinate role that women are supposed to occupy in the economy.

7.2.2 The concept of 'the unfit mother'

As indicated in Chapter One and illustrated further in Chapters Three to Six, unmarried adolescent girls have in different historical periods, been regarded as unfit for motherhood, until their achievement of a particular social status in their communities. Furthermore, the negative medical, social and economic consequences of early motherhood for the adolescent mother and her child have perpetuated this negative construction of adolescent motherhood (Phoenix, 1991). The negative construction of adolescent motherhood is reflected in the manner in which an unwanted pregnancy is dealt with by the pregnant girl or by the women in her family, especially regarding the dire consequences facing the girl. Moreover, as illustrated in the data in Chapters Three to Six, the ripple effect of a pre-marital pregnancy irrespective of the historical period, shows that motherhood in an unmarried adolescent girl is not socially condoned.

The data analysed in Chapters Three to Six however reveal that dealing with an unwanted pregnancy is often a woman's concern and this is illustrated by the fact that it is women who have knowledge of how to dispense with a pregnancy or what to do with an unwanted child. The actors surrounding an unwanted pregnancy include the pregnant girl who may resort to outside help once she herself is unable to terminate the pregnancy. A mother is also a key player in dealing with the unwanted pregnancy of her daughter and she would either rely on her own knowledge, or seek assistance from female friends.

The communities that circumcise their girls have always been aware of the fact that an uncircumcised girl is capable of being a mother. However, in her uncircumcised state she is not socially 'licensed' to reproduce. Thus women, especially mothers and grandmothers, become important actors in dealing with an unwanted pre-circumcision pregnancy. In these circumstances the uncircumcised girl has two options: to have an abortion, or to carry the pregnancy to full term and thereafter face ostracism by her family. The concerned women therefore undertake to ensure that either the girl in her pregnant state is circumcised quickly and possibly married off before the pregnancy is noticeable, or that she has an abortion; failing which the newly born baby is killed at birth. Whatever measures are undertaken by the concerned women or the girl, this

illustrates the different ways in which women manoeuvre their lives and those of their daughters within the social system.

An unmarried adolescent mother (whether circumcised or not) loses both economic and social value and, if in school, motherhood pre-maturely terminates her education thus reducing her chances of developing career opportunities. Moreover, short-term measures such as expulsion from school or home, or severe punishment by her family and community on grounds of pregnancy, reflect the low social value that she has acquired. These measures have long-term consequences for the girl, especially where expulsion is justified on the basis that she is a bad influence on the girls in the school or family, which perpetuates the negative construction of adolescent motherhood. Whereas this may have been true in some cases, these measures have nevertheless failed to fill in the gap in sex education, that would probably enable girls to make informed choices concerning their sexuality and reproductive capacities.

The concept of the unfit mother is further illustrated through the language used to describe motherhood in adolescence. Language has often been used as a tool of constructing social relations, and, the social construction of adolescent motherhood is reflected in the terms applied when referring to adolescent mothers. For example, terms such as 'Girl mums', 'teen mums', 'Peno', 'P'gd', indicate that these girls are not fit to be mothers since motherhood implies maturity; they also portray these girls in a negative manner and in most cases as deviants. Often these terms reflect the low value attached to adolescent motherhood since, as Phoenix points out, "whatever terms are used to denote any devalued group will necessarily acquire pejorative connotations" (Phoenix, 1991:6).

In past traditional communities, unmarried mothers were married off to older men who were expected to treat children born outside wedlock as their own, thereby giving them "the much needed father image and the social identity by becoming members of his clan" (Akong'a, 1988:6). The position today is different as most men prefer to marry women with no children " who, so to say, are not 'loose'" (Akong'a, 1988:18). At the same time they are not willing to maintain any children that they themselves father outside marriage. Further, the lack of affiliation laws means that a man is not legally liable to maintain any children born to him outside marriage. Today, public

shaming or censorship for men and boys responsible for pre-marital pregnancies are non-existent and public knowledge of pre-marital or extra-marital sexual relationships is treated with levity (as was illustrated in Chapter six).

The low social value accorded to the unwed adolescent mother is extended to her child who, under Kenyan law, is illegitimate. This concept is enforced through laws and social norms which deny children born out of wedlock any legal or social identity. As was argued in Chapter Four, the use of special names for children born out of wedlock by the different communities has the effect of stigmatising the child for the rest of his or her life. Whereas in countries such as the United Kingdom the social stigma that was attached to children born out of wedlock was removed by the enactment of the 1987 Family Law Reform Act, the same is yet to happen in Kenya: hence children born out of wedlock are legally considered to be illegitimate. Accordingly, marriage or attachment to a man becomes important for both the mother and her child, especially where the status of both in the community is determined by this relationship.

The concerns surrounding out-of wedlock fertility are centred on the question of responsibility for the welfare of any children born in these circumstances. Kenya does not have a welfare or child support system. Consequently, the unmarried adolescent mother or her family (if willing), bears the burden for her child which may result in other problems for the child and its mother. An example is seen in inheritance matters where children born to a single mother living with her parents, are likely to be regarded by male members from the family as potential threats to their share of the inheritance.

The lack of affiliation laws to ensure a child's maintenance by its natural father facilitates the operation of customary laws which grant pregnancy compensation to the pregnant girl's guardian (who is often the father), for the loss he incurs. Traditionally, women (mothers, grandmothers and female relatives) were not compensated alongside the men when a girl became pregnant, which implied that they too were being punished. This in turn made the women in the family the custodians of their daughters' sexuality and reproductive capacities to avoid out of wedlock fertility. However as shown in Chapter Six, today women are making claims for compensation even though

the the number of cases found was negligible.

The tension between tradition and modernity in this respect means that women are constantly caught up in these struggles and have to bear the brunt of the results. Thus, irrespective of the historical period, women are at once weak and strong social actors, in the reproduction of the social systems and rules. Women appear weak where they do not have a role in decision-making processes and are therefore unable to change the system or provide their daughters with other options. They are strong because they still manage to manipulate the system through their own networks in order to protect their daughters and in so doing alter certain processes of regulating sexuality. For example, as shown in Chapter Five, contemporary Samburu women, through negotiation with the circumciser for a less harmful operation, save their daughters from the grave consequences of infibulation, painful and obstructed childbirth, and at the same time abide with their culture.

7.3: LAW AND REGULATION OF ADOLESCENT SEXUALITY AND FERTILITY

As indicated in the analytical framework developed in Chapter Two, the legal system constitutes a structuring force which influences, directly or indirectly, the regulatory processes and the activities of the social actors. Statutory and customary laws interact with the social actors at different levels and this provides the legal environment within which these interactions take place and at times enables the social actors to continuously develop their own rules of social conditioning. This relationship is both conflictual and symbiotic, and developed in the colonial era where the colonial statutory laws intervened at specific levels of the social fields.

By the time the English legal system was transplanted into Kenya, there were already in existence regulatory regimes through which the indigenous communities ordered their lives. As was discussed in Chapter Three, the concepts behind these regimes differed from those of the transplanted laws. Furthermore, the pre-colonial African regulatory regimes were plural in nature and their existence was not created by a centralised legal system. Therefore, at the onset of colonialism, the transplanted laws further added to, rather than created, the plurality of regulatory regimes.

As noted in Chapter Four, the above framework of the plural regulatory regimes

was however transformed throughout the colonial era, as efforts were made to create a framework that fitted within the concept of juristic legal pluralism. This concept recognises the existence of a centralised legal system, which allows and regulates the operation of religious, statutory and customary laws. The process of transformation occurred through legislative action that moulded the native rules into a customary law that fitted into the likeness of the transplanted laws. Therefore, as discussed in Chapters Three and Four, the colonial legal system recognised the operation of certain normative rules of the indigenous communities and rejected others through the use of repugnancy clauses. This in turn enabled the continuous application of native normative rules, but only to the extent that these rules did not come into conflict with the imposed laws. Consequently, the dual character of the current Kenyan legal system is a result of the transplantation of laws from the United Kingdom rather than a consequence of the activities of the indigenous social actors in their different spheres of activity.

7.3.1. Plural regulation of adolescent sexuality and fertility

The transplantation of a legal system from England paved the way for changes in *inter alia*, social reproduction through religious expansion and western education. Consequently, the immediately noticeable changes brought about by external and internal factors were in the social conditioning processes rather than in the norms of social reproduction that regulated sexuality and fertility. Generally, norms on sexuality and fertility did not condone pre-marital sexual intercourse and pre-marital pregnancy, but the extent of this non-acceptance varies from community to community in the different historical periods. For example in pre-colonial and colonial communities, normative rules delineated the times when motherhood was permissible and the context within which this could happen. In contemporary communities, although these norms exist, the extent of their application has been influenced by other factors such as education and delayed marriage.

A common feature of the norms of sexuality and fertility is that although they apply to both male and female sexuality, the latter is comparatively more regulated. Further, normative rules of the different communities play an important role in constructing sexuality through the prescription of penalties for those who transgress these rules. In

this study, socialisation was found to be the dominant mode of transmitting knowledge and norms of sexuality and fertility. The mechanisms of ingraining norms which included punishment, rewards, language, strict peer policing, seclusion and early marriage in the colonial era, changed to late marriage, minimal peer control and reduction in the *rites de passage* ceremonies in contemporary communities.

The daily activities of the various actors are regulated by normative rules which are developed within the spheres of their activities. At times actors utilise statute law whilst at others they develop alternative rules to solve their problems rather than rely on statute law. The rules developed by the actors are either as a result of the daily interaction of the actors (for example women in the family), or are developed through powers vested in the actors by statutory law. For example, in educational institutions, which are established by the Education Act, it is the responsibility of the individual institutions to ensure that both students and teachers conform to certain standards set in education policies. To achieve this, schools have boards of governors who decide the day to day running of the school. These boards establish rules to regulate the behaviour of the pupils and their teachers, and are delegated with the duty of ensuring that these are followed. However, on another level the Teachers Service Commission, through powers vested in it by the Teachers Service Commission Act, regulates the behaviour of the teachers vis-a-vis the pupils and their teaching colleagues.

Rules on reproducing the family continue to be principally centred on procreation both as an important entry point into the family, and as a means for the continuity of the family. The closest level at which statutory law intervenes in the reproduction of the family is at the point of regulating the celebration of marriage, custody of children, divorce or inheritance, but remains silent on the social reproduction processes carried out by the family. Accordingly, statutory law does not intervene in the cultural and religious practices of day-to-day conditioning of the members of the family unless this is contrary to public policy, morality and sense of justice. The Penal Code has however systematically taken over from the indigenous communities, the regulation of offenses concerning sexuality for example rape, sexual assault, or defilement, and constituted these to be offences against the public. As noted in Chapter Six, the protection offered by the Penal Code is however curative in nature and is not deterrent

enough to prevent the occurrence of sexual offences against vulnerable persons in society, especially female children and adolescents.

Due to the intervention by the Penal Code, activities that were traditionally carried out by women in the process of regulating fertility, for example female circumcision, abortions and infanticide, were brought into the public and reconstituted as criminal acts punishable under the Penal Code. However, in this process few alternatives were made available for those women involved in dealing with unwanted pre-marital or pre-circumcision pregnancies to save their daughters and themselves from the wrath of their families and communities.

7.3.1.1 Law and administrative intervention in reproduction

The state through its executive arm and administrative apparatus from the level of the President to the Chief, has continued to intervene in the social reproduction activities carried out by the family. Executive intervention in the social fields occurs through making Decrees which are made within the executive powers vested in the President by section 23(1) of the Constitution. Further, the President may exercise these powers directly or indirectly through subordinate officers. Presidential decrees have been the most direct way of intervention by the executive arm of the State in regulating social life in the different social fields. These Decrees neatly fit into the command theory of law, and the administrative arm of the state is used to implement these Decrees.

Administrative intervention in the social fields is part of Kenya's colonial legacy, whereby the posts of Chiefs and Headmen were created as part of the enforcement machinery of the colonial legal system. Colonial Chiefs were given unlimited powers by the Chiefs Authority Ordinance to maintain law and order, and these powers ranged from prevention of soil erosion to prohibition of night dances. Today, Chiefs continue to derive their powers from the Chiefs Authority Act and have extended these powers to prohibit forced marriages, female circumcision, or to ban village discotheques, thus making the Chief a powerful actor in the state's intervention process. However, banning orders issued by Chiefs and District Officers are not enforceable on their own in a court of law, unless where they are attached to an already existing piece of legislation such as the Penal Code to give them their legality. Hence recourse is made

to the provisions of the Penal Code on abduction or grievous bodily harm to punish offenders.

State intervention has however not been wholly accepted by the affected communities. At times the social actors welcome change brought about by other socio-economic and political transformations, such as education. At another level, social actors insist on retaining certain aspects of their culture, thus rekindling the authority of the elders, and the practices continue in defiance of the Decrees or threats from the district administration. For example in the case of a 17 year old girl forced into marriage, the elders as shown in Chapter Five, (section:5.4.3),

"[w]ho were preparing the girl for the wedding had admonished her for writing to the administration. The elders said *education was secondary to their tradition and should not be used as an excuse to snub marriage* " (Daily Nation 7/5/90) (emphasis added).

Whereas in the above case the elders accepted education for girls, they were at the same time maintaining that when this education conflicts with their culture and traditions the latter have priority. The same attitude is reflected in the persistence of female circumcision, especially where Samburu girls are removed from school, circumcised and thereafter married off, despite Presidential Decrees banning both female circumcision and forced marriage. The resistance to external intervention illustrates that certain aspects of tribal culture have remained resilient to external influence even though the same communities may have accepted certain changes in social reproduction such as western education.

The persistence of the resistance may be caused by the fact that these Decrees or Banning Orders are reminiscent of colonial interference in the lives of the different communities which in most cases was met with defiance. Although today, this resistance is on a lower scale (i.e. not country-wide), this calls for different intervention mechanisms by the state, if it is to effect the desired social change. Further, this in effect means that

"the Government cannot ban that over which it has no influence, and that pronouncing a ban is equivalent to government interference with a people's freedom of choice and way of life" (Sunday Nation, 27/3/94:15).

The prohibition of early marriage and female circumcision which the affected communities have practised from time immemorial, will be effective if there are alternative practices to replace successfully those banned, otherwise as history has shown, mere prohibition is doomed to be ineffective. Moreover, statistical information shows that despite the banning orders and threat of prosecution, the practices continue and in some cases they have increased in defiance.

7.4 CONCLUSION

This chapter has addressed the emerging issues concerning sexuality and fertility and has taken into account the diverse context within which adolescent sexuality and fertility is regulated. The chapter therefore argues that any regulation must take into consideration the multi-tiered nature of sexuality, its construction, the gender relationships, and the power relationships between the social actors all of which make regulation a complex and multi-dimensional process. The nature of power relationships determines who takes the platform to mediate on issues concerning sexuality and fertility. As the data revealed, more often than not, the protagonists have been neither female adolescents nor women.

CHAPTER EIGHT
CONCLUSION: IMPLICATIONS OF THE FINDINGS
AND DIRECTIONS FOR FUTURE RESEARCH

8.0 INTRODUCTION

This study has undertaken an examination and analysis of the social and legal processes of regulating female adolescent sexuality and fertility in Kenya, within the broad analytical framework developed in Chapter Two. It has examined the inter-relationship between the social actors, processes, and regulatory mechanisms and their points of divergence and convergence. The study has also highlighted the social, cultural, economic and legal factors that have historically shaped and continue to shape the regulatory processes and activities of the social actors. An examination of the roles of the social actors involved in the regulatory processes also highlighted the stakes held by adolescent girls and the respective actors in the former's sexuality and reproductive capacities.

The processes and actors involved in regulating sexuality and fertility were analysed historically so as to illuminate different constructions of female sexuality and motherhood, and how these have over time, adapted to new social and economic changes. This analysis of the construction of sexuality thus enabled the study to distinguish between the dynamic social and self-definitions of sexuality, and to expose the incessant struggles in the regulation of sexuality between those who have the power to regulate and those who resist such regulation.

This chapter addresses the implications of the findings for policy and law making and also by way of conclusion proceeds to make suggestions for future research on the regulation of adolescent sexuality and fertility. In so doing the chapter draws attention to some of the basic problems that will need to be confronted in future research and at the same time provides suggestions as to how these might begin to be addressed.

8.1 IMPLICATIONS FOR THE ROLE OF LAW

The regulation of adolescent sexuality and fertility is dynamic and responsive to

change whether this change is legal, social or economic. The issue to contend with is whether this response positively deals with problems arising out of sexuality and fertility, and in what ways this enables adolescent girls to make choices concerning their reproductive capacities in later years. The question that therefore arises regards the best way in which adolescent sexuality and fertility in Kenya can be effectively regulated and what this means for the choices that women make in later life regarding their reproductive capacities. This study has illustrated that the regulation of sexuality and fertility has been effected through normative rules developed in the social fields by the social actors and are constantly undergoing change. The normative rules - especially those that existed under the native rule systems - were both preventative and curative in nature. Alongside these rule regimes were institutions that were actively involved in ingraining norms of social reproduction. Although the native rule regimes have been eliminated through the socio-economic transformations that have occurred over the last ninety years, there are some lessons that can be learnt from the way in which these regimes regulated adolescent sexuality and fertility.

The resistances to state intervention in the activities of the affected communities is evidence that these measures are not being well received. This highlights the need for consensus in the interpretation and application of the mediations, be they Presidential or Chief's banning orders. To this end, this study proposes that measures for social change should involve the affected communities in order that they too may understand why social change is necessary. Moreover, although statutory laws have transformed certain cultural practices, they have not altered norms on sexuality and fertility, which continue to regulate women's lives. Consequently, this has perpetuated the subordination of women through negative construction of their sexuality or adolescent motherhood. Accordingly, the activities and experiences of women (including the adolescent girl) as social actors in coping with these constructions, will have to be taken into consideration and brought into public, if any change is to be effective at all.

As the data revealed, adolescents lack access to information about reproduction and as a result they rely on information which is either distorted or unreliable. Access to information and services where required, can be effected through a more

comprehensive reproductive health law which takes into consideration issues about access to reproductive health information, age for contraception, and age of consent.

The use of law to regulate adolescent sexuality and fertility requires further investigation into what role law can play especially since the data has shown that regulation is often effected outside the state made law. Moreover, as discussed in Chapters Three and Four the transplanted laws were primarily intended for the sake of forging ahead economic development and facilitating colonial administration in the colonies: societal normative ordering was on the agenda if it interfered with the activities of the colonial administration. It is instructive however, that we do not lose sight of the fact that a number of the changes, both social and legal, which were brought about by colonialism were carried on after independence and some have persisted to present day. Accordingly, the existing statutory laws do not necessarily reflect the norms upheld by the Kenyan society especially since most of these are transplanted.

Statutory law is potentially an effective tool of regulation, but as this study has revealed, the multiple constructions of female sexuality (hence multiple female sexualities) pose certain challenges at the levels of policy and law making, and implementation of relevant laws and policies. Those involved in the policy and law making processes need to be aware of the social constructions of sexuality and the emerging multiple sexualities when enacting policies and laws which concern adolescent sexuality and fertility. In addition, the multiple constructions of sexuality have particular consequences for the interpretations of sexuality laws, for example by lawyers, police, judges, or the affected communities, particularly in cases of female circumcision, defilement or forced marriage. These consequences are compounded by the fact that sexuality is constructed differently depending on the social, cultural, religious and economic contexts. A further problem is attributed to the nature of the Kenyan statutory law, which is curative in that it only intervenes once a problem has occurred and provides a legal remedy, as is the case with the provisions of the Penal Code.

Whereas societal norms on sexuality may be transformed into statute law, thus becoming law of the land, there is the danger that even when these norms cease to be

observed, they will remain valid law until repealed. In this scenario these state law norms will become dead letter, whilst new norms will develop which the society will continue to observe irrespective of the state law.

The data revealed that legal eradication of a practice that communities consider to be part of their culture may be dead letter, as in the case of female circumcision and forced marriages, which continue in defiance of law or any executive interference. This calls for different intervention mechanisms especially with practices that the concerned communities defend as their cultural heritage. Such interventions should involve both men and women in developing any strategies for change.

8.2 SUGGESTIONS FOR FUTURE RESEARCH

In Chapter Two, this study explored the different theoretical and methodological perspectives that guide research and their relevance to the area of study, and noted that qualitative methodological perspectives in research on adolescents are limited. The chapter further observed that African feminist researchers are at times faced with dilemmas with respect to the theory and methodologies that inform their research. One of the challenges posed is a matter of choice: whether to apply western feminist theories and methodologies, to develop those relevant to one's specific context or not to apply any theory at all.

Although this study opted for the Women's Law methodological perspective of starting from below, it went further than this methodology and focused not only on how women experience the law, but also on other non-legal regulatory mechanisms that come into play as regards the regulation of sexuality and fertility. In this way the study revealed the gendered nature of responses to regulation of sexuality, in dealing with unwanted pregnancies in adolescent girls, and the inter-relationship between the social actors. Thus, as was noted in Chapter One, this study constitutes a pioneering effort and sets the pace in further investigation on the role of law in the regulation of adolescent sexuality and fertility in Kenya. Further this study recommends that more qualitative research needs to be carried out if at all there is to be any meaningful discussion of the sexual and reproductive rights of women. In particular the study recommends the following:

* Most feminist studies focus on adult women, hence few feminist studies have been carried out on adolescent girls or the female child. There is therefore a need for studies which use feminist perspectives that focus on the adolescent girl as a starting point and seek to bring out her story concerning her sexuality and reproductive capacities, and within her specific socio-cultural context.

* This study has argued that regulation of sexuality and fertility is best carried out through a symbiotic combination of both legal and normative rules and mechanisms. Further investigation into the nature of the normative rules, who develops them, why, and their effectiveness as regulatory mechanisms could constitute a fruitful line of research. This investigation should also focus on the role of both law and non-legal rules in regulating sexuality and fertility, and analyse the different ways in which people use or do not use the law and the alternative rules they adopt to solve their problems rather than relying on the law. This may also give an insight into how social conditioning can be effectively carried out without recourse to more legislative enactment or reform of existing legislation.

* There is need for more qualitative studies that analyse the construction of motherhood. Addressing the way in which motherhood is constructed within the specific socio-economic and cultural contexts, would make it possible to analyse gender relations of reproduction within that society, and the justification for the regulation of sexuality and fertility. In addition, such studies could offer a contribution towards a better understanding of the power relations between the actors involved in regulating sexuality and fertility, the nature of gender relations, and the status and rights of women in their communities.

* It is essential to investigate further the relationship between female circumcision and the status of women in the practising communities. This research should focus on what women gain from the practice and whether it gives them any power within their families and communities; why female circumcision which is carried out by women, is used to assert this power (if any)? In addition, it is necessary to establish what

mechanisms can be used to eradicate this practice, who the actors will be and what alternatives can be offered to the concerned communities. There is need to investigate the social-cultural, religious and gender factors underlying the continuation of this practice: it cannot be dealt with only within the context of violence against women's rights which has dominated international fora on women's rights as human rights.

This study adapted an exploratory rather than a confirmatory approach and thus sets the pace in exploring the multiplicity of issues surrounding the lives of Kenyan women in general and the regulation of the adolescent girl's sexuality in particular. The study thus constitutes a critical starting point for further interdisciplinary research that could contribute towards a better understanding of Kenyan women within their specific contexts. It is hoped that through increased qualitative studies and the emergence of more points of view, the development of theory and practice in the field of research on African women and law will be enhanced.

NOTES

1. 'Sugar daddies' are older men who lure girls with sweets, sodas and material things, in exchange for sexual relationships.
2. Today children enter the education system from the age of three (3) years at the level of play school, thereafter they enter pre-school at age of four (4) to five (5) years during which they are prepared for entry into primary school at the age of six (6) years. They spend a further 8 years in primary school; four years at secondary school and four years at University.
3. The term reproduction has been used to explain historical processes (Balibar, 1970: 265).
4. This was particularly evident in the 1994 World Conference on Human Rights held in Vienna Austria, and the 1994 International Conference on Population and Development (ICPD) held in Cairo, Egypt.
5. The apparent unity of sexuality has been challenged by social movements which have politicised sexuality and brought about contestation which are concerned with issues that go beyond moral control. The homosexual and lesbian movements for example, challenge heterosexuality and the invisibility of people in same-sex relationships. Sexual liberals have also called for sexual liberation, opposing the views held by traditional moralists, who emphasise sexual restraint (Weeks, 1986:12).
6. For example the Antenatal Sex determination Clinic of the New Bhandari Hospital in Amritsar, Punjab in India in promoting its program used the slogan - '*Better five hundred now than five lacs later*' suggesting that it was a better choice to pay 500 rupees to abort a female foetus than have to pay 500,000 rupees as dowry for the girl at the time of her marriage (Sen, 1994).
7. The debates about the mini skirt were carried out even in boys' schools, for example one writer in the 1973 Lenana (Boys) School magazine aptly summarised the whole issue by writing 'Never before in the history of fashion has so little material been raised so high to reveal so much that needs to be covered so badly' which indicates that male constructions develop from an early age.
8. *Purdah* refers to the seclusion of women and their movement in public is restricted.
9. Menstruation is in this community considered a sign of a woman's fertility.
10. The development of African feminist perspectives on law has been a slow process in comparison with that in western countries, and presently African feminist researchers from East and Southern Africa are in the process of developing perspectives on law within their own contexts. However, western feminist perspectives on law, although developed from different contexts, are considered in so far as they

offer an insight into the relationships between women and law, and whose perspective of social reality is used in enacting law.

11. However, it is also important to remember that law reform is a slow and complex process and that law does not by "itself cause nor cure social inequalities" (Dawson, 1993:155) hence the need to go beyond the law to identify the root causes and possible solutions.

12. Firestone relies on biological determinism to explain women's oppression, but her call for women to take control over their bodies failed to consider other factors which also perpetuate women's oppression. Reliance on technology as the solution assumes that science and technology are neutral institutions (Hanmer, 1993:226) and are there for the taking, which in reality is not the case.

13. Social reproduction policies of the state are however subject to challenge. In Britain for example, recent activities have challenged state policies on social and biological reproduction particularly the provision of welfare benefits to single mothers. Whereas provision of benefits for single mothers in Britain is aimed at helping them, this resulted in an increase in single parenthood; this gradually altered the traditional family structure allowing for the growth of single parent families (Gillmore, 1993). Thus opponents of state benefits for single parents argued that by reducing the benefits given to single parents (a majority of whom are women), this regulates their sexuality and fertility thus limiting the number of children that they can bear (Sunday Times 11/7/93; Gillmore, 1993).

14. The Chinese Government rewards families that abide with the one child policy and penalises those who contravene the policy (Davin, 1987).

15. Feminist researchers however differ in their starting points in the process of developing research norms. For example, there are feminist empiricists, feminists standpointists, feminist post-modernists, and women of color, all of whom have different starting points (Harding, 1987: 183 ; Fraser & Nicholson, 1990:26).

16. The need for the micro-level to show the specificity and multiplicity of women's problems has been taken up by two regional research projects Women and Law in Southern Africa (WLSA) and Women and Law in East Africa (WLEA). The studies carried out so far have highlighted the multiple identities of African women in the countries of study.

17. Pospisil further argues that different legal systems exist at different levels. For example, at the level of the family, lineage, community, and political confederacy, and are also superimposed on one another (Pospisil, 1971:125). His approach has been criticised for being too structural and orderly, and that it has implications for an overall hierarchical arrangement (Griffiths, 1986; Moore, 1978).

18. Working on one's memory is suggested where collective memory work cannot be

done (Widerberg, 1985:9).

19. According to Burns *et al*, social actors may be constituted or transformed by a finite set of forces, for example "political struggles, shifts in cultural forms, the development of new technologies and the mergence of opportunities to make economic gains" (Burns *et al*, 1985:xii). However, social actors may be divided into two groups: those "viewed as the essential forces that structure and restructure social systems and conditions of human activity", and the faceless actors who follow "iron rules or given roles and functions in a world which they cannot basically change" and therefore have no role in the structuring and re-structuring of social and material conditions of life (Burns *et al* , 1985:4).

20. This approach goes beyond narrow discourse analysis which is grounded in linguistics, grammar and semantics, which is not a concern for this study.

21. The concept of a tribe as a wider political unit is a creation of the colonial administration in that communities with common languages, and customs were grouped together subsuming the authority of the clans in the smaller communities. The Kikuyu 'tribe' in the colonial era was thus comprised of all those communities living in central part of Kenya who had a common dialect and was therefore a larger group than present day 'tribe'.

22. In East Africa the war was fought in the then German East Africa colony which is present day Tanzania.

23. By the time the colonies became involved in the second World War, the war had gone on for about five years.

24. Examples of stateless Kenyan communities were the Kikuyu, Kamba and Masai. It was also common to find in the stateless societies that religious leaders also performed political functions especially since religion was intricately linked to the well being of the community. However, the only known chiefly communities were the Wanga, ruled by Mumia who was said to have political and ritual powers, and was later proclaimed Paramount Chief of all north Kavirondo by the colonial administration. The Muslim community at the coastal region was governed by the Sultan of Zanzibar.

25. The age sets were composed of members who although they came from different clans, were initiated at the same time, and ruled for periods of about 20 years (as in the case of the Kikuyu) after which a new and younger age-set took over (Muriuki, 1974).

26. Although her exclamation was made in the present tense, it referred to the past. Through out the interview, Mariamu would make reference to past events as if they were happening today. Although this is attributable to the old age, this assisted her in recalling past events and "reliving" them.

27. Cotran (1968) defines *ruracio* as "a payment of cattle, other livestock or other property rendered by or on behalf of the bridegroom to the father or the guardian of the bride, which is necessary for the validity of the marriage and to establish the affiliation or legal control of the issue of the union, and which may be repayable in whole or in part on the dissolution of the marriage" (Cotran, 1968:13.)

28. This was probably linked to the famine and disease affecting the Kikuyu herds at the turn of the century.

29. These statutes which were modelled on English legislation included the Indian Penal Code, Indian Transfer of Property Act of 1882, Indian Succession Act of 1867 and Indian Evidence Act of 1872.

30. The British found it necessary to "regularize the law of judicial procedure and the law of crimes; in particular, the penal law of the Muslim courts" whose punishments the British were not willing to enforce (Hailey, 1956:588).

31. In addition, Article 12(3) gave the Commissioner powers to make Ordinances and in so doing he was to "respect existing native laws and customs, except so far as the same may be opposed to justice and morality".

32. See cases of *Rex vs. Amkeyo* (1917, EALR, 14), *Gwao bin Kilimo v. Kisunda bin Ifuti* 1938 1 T.L.R. 403).

33. Other legislation included the Native Passes Ordinance (No. 12) of 1900 which controlled the movement of the indigenous people within the protectorate and which was in later years used to ensure the collection of taxes. Further, if one was found wandering without a pass and was begging for alms in the town centres he or she was liable to be charged under the Vagrancy Regulations (No. 2 of 1898 & No. 3 of 1900), and was repatriated to their home village. A new Ordinance introduced in 1920 required that any African Male aged 16 years and over be registered and carry the pass, and in 1923 was extended to boys aged 12 years in Nakuru District.

34. The Embu believed that female circumcision was necessary for pregnancy (Socio-Cultural Profiles, Embu, 1986).

35. For example the Embu believed that if a man had sexual intercourse with an uncircumcised girl he would die unexpectedly (Socio-Cultural Profiles, Embu, 1986).

36. The uncircumcised boys and girls were expected to respect the new initiates and disrespect meant that their parents were punished, and as in the case of the Embu, parents had to make porridge before the disrespectful youth was circumcised (SCP, Embu, 1986).

37. Examples of methods of regulation include post partum sexual abstinence, sexual abstinence during mourning and ritual ceremonies, polygamy, controlled sexual play

(*ngwiko*) for single initiates, and couples in monogamous marriages.

38. Due to their strong Christian beliefs both Mariamu and Mumbi were reluctant to sing these songs during the interview.

39. The term 'break a leg' is metaphorically used in Kikuyu language to refer to an unauthorised pregnancy, which in most cases is a pre-marital pregnancy.

40. It is not possible to verify whether it was actually in Nairobi that the training was carried out, or some other far away town.

41. A further problem was the lack of, or poorly recorded cases considered by the Native Courts and Tribunals (Read, 1972:181). By 1951 the reported cases the Native Courts and Tribunals whose published cases "occup[ied] a few slim volumes, containing brief judgements or extracts from judgements which cannot be added up to make any composite statement of customary law" (Read, 1972:182). In addition the reported cases from the English colonial courts did not contain cases determined purely on customary law. The creation of the Court of Review in 1951 as an appellate court for the Native Tribunals saw the first recording of cases on customary law even though this was at the appellate level.

42. See the cases of *Momanyi Nyaberi vs Omwonga Nyaboga* (1953, Vol. 1 Court of Review reports, 5); *Omwoyo Mairura vs. Bosire Anginde* (1958 Court of Review Reports, Vol. 6, 4); *Timina Olenja vs Elam Keya* (1961, Court of Review Reports, Vol. 10, 8).

43. Joan did not elaborate further whether in her example, the pregnant girl was in her immediate or extended family.

44. The Mau Mau was a nationalist movement that fought for independence and was formed by the Kikuyu communities living in central Kenya.

45. These were the 1902 Marriage Ordinance No. 30 which was applied to British subjects and other Europeans, and the Native Christian Marriage and Divorce Ordinance No. 9 which was introduced to apply to the African Christian converts.

46. The move to 'civilise African marriages in accordance with Christian (English) religious concepts was carried out in the enactment of the 1904 Native Christian, Marriage Ordinance enacted primarily for the Native Christians. This Ordinance was replaced in 1931 by the African Christian Marriage and Divorce Ordinance, which applied to the marriages of all Africans whether or not they professed the Christian faith.

47. The informants did not want their names revealed hence the use of pseudonyms.

48. Family life education is a compromise term since 'sex education' was taken to have

a pejorative meaning (Gabra, 1985:14).

49. In many cases those employed as house-girls have dropped out of school for reasons such as pregnancy, lack of school fees or poor performance in school. At times poverty causes some girls to withdraw from school in search of employment so as to support their families.

50. This has unfortunately led to abuse of young girls who work as maids for their relatives and are not paid for their services; at times their married female relatives accuse them of having sexual relationships with their husbands. Stories of violence on maids for this reason are often reported in the newspapers. Further these girls are also open to sexual abuse by either a male relative or an outsider and if a pregnancy results they are sent packing home.

51. The NCKK has since 1969 been in the forefront of carrying out family life education for the youth in various parts of the country. Between 1973 and 1976 the NCKK drafted a syllabus for family life and sex education for pre-adolescents (9-12 years) and adolescents (12-19 years), but this has not yet been included in the schools syllabus.

52. The majority of the clients visiting the centre are unmarried women aged above 20 years, although the numbers of those aged between 14-19 years steadily increased between 1989-1992 (Appendix B). According to Agnes the counsellor at the centre, most of the girls who visit the centre wanted information about their sexuality and reproductive capacities.

53. It should be noted that these files provided statistical information about the clients, (e.g. their choices, place of residence, age marital status). However due to confidentiality the researcher was not allowed access to more detailed information given by the clients.

54. The researcher attended this meeting which was a fund-raising event to raise funds to assist some of the clients who attend the centre and also to assist in running the centre.

55. At this point of the interview she reminded the researcher that the study should not be concerned with what used to happen in her youth, but rather what is going on today. The researcher explained to her the importance of what happened during her youth, so as to determine the changes that have occurred and possible solutions.

56. Perhaps this feeling resulted from the researcher's position as a lawyer and researcher, and many could have felt that they were not equipped to discuss anything which had to do with the 'regulation' which has connotations of 'law' with a lawyer.

57. These were Kagumo, Siriba, Kenya Teachers Technical and Kamagambo Colleges. There is a likelihood that the numbers have since increased but this information was

not available to the researcher.

58. This is a national examination sat at the end of primary school for purposes of entry into secondary school

59. Although the conflict began earlier, in this study the focus is on the debates that have been going on within the last two years (1993-1994). The current controversy, began to boil during the preparatory stages for the World Conference on Population and Development held in Cairo, Egypt in 1994. Although issues concerning solutions to curb the increase in adolescent sexuality and fertility were to feature in this conference, debates in Kenya on their inclusion in the Conference agenda were subsumed by other more controversial issues, for example legalisation of abortion and contraception.

60. Court of Appeal in *Virginia Edith Wambui Otieno vs Joash Ochieng Ougo and another*. (C.A., Civil Appeal No. 31 of 1987).

61. For example in *Karanja vs. Karanja* (1975 KLR, 307), one expert witness stated that customary law had changed and that women could now own land; the other stated that married women do not have title deeds to land, that only unmarried women were permitted to drive cars, and that all the property of a married woman belonged to her husband.

62. Whether this was the intention of the legislature has been considered by Cotran (1967).

63. In reference to a *Close-up* toothpaste advert where a woman with fresh breath and white teeth is seduced by a man.

64. Similar protection for under age males is offered by section 14 (3) which provides that "A male person aged under the age of twelve years is presumed to be incapable of having carnal knowledge".

65. Newspaper reports sometimes sensationalise abortion and infanticide cases, for example headlines such as "Dead baby found in girl's handbag" (Kenya Times, 14/3/1990 :1 &14) or "Unconscious Woman arrested for Abortion" (Kenya Times, 15/2/ 1990 :5) are common.

66. It is important to note here that these are not the only cases where political motivation is alleged by politicians who are faced with civil claims or are charged for committing criminal offences.

APPENDICES

APPENDIX A

DURATION OF FIELD RESEARCH IN KENYA

Duration of field research:

The process of data collection in Kenya was in two phases.

1.0 Phase one: Testing the ground

The first phase was conducted between June and September 1992 in which documentary research and preliminary discussions were held. Throughout the above period, cases from ten (10) district courts relating to offenses such as rape (defilement), sexual assault of minors, pregnancy compensation, abortions, infanticides etc. were collected.

The process began with preliminary discussions held in June 1992 with three family life educators (FLEs), involved in work with adolescents and the youth. The purpose of the discussions was to gain insights from the FLEs who are the 'people in the field,' concerning the issues at stake namely those surrounding the regulation of sexuality and fertility among adolescent girls in Kenya.

In July 1992, efforts at holding further preliminary discussions with individuals who were mainly involved in youth programmes were constrained by bureaucratic red-tape and securing an appointment was at times impossible. Despite this, some discussions were held with individuals from the institutions such as the Centre for African Family Studies, and Marie Stopes (Nairobi office) who were conversant with the problems related to adolescent sexuality and fertility, most of whom relied on statistics, to illustrate the number of pregnancies or abortions among adolescent women. This information gave insights into the magnitude of the consequences of early motherhood or sexual activity, and was useful in formulating questions for the second phase.

One FLE for the National Youth Services agreed to arrange focus group discussions with his students, in which the students were provided with questions which generated discussions amongst them. However in these discussions, the researcher took a back-

bench position and let the students discuss the various issues. This was explained to be the normal procedure followed by the college because it was felt that this enabled the students to freely carry out discussions. Unfortunately, due to sudden illness on the day set for the discussions and consequent time constraints, the researcher was unable to carry out the proposed discussions or to arrange for any more interviews.

2.0 PHASE TWO

The second phase of the research was undertaken in July 1993 and December 1993 during which the in-depth interviews were carried out with the selected respondents. Despite the short-comings faced during the first phase of the research, the preliminary discussions enabled the researcher to revisit and re-formulate the research questions and likewise re-visit the methodology and methods utilised in gathering the required data. In addition, the researcher continued with the collection of newspaper articles and information from new studies which gave new insights into the study.

APPENDIX B - TABLES**TABLE 1.0: KENYA POPULATION SIZE, FERTILITY AND INFANT MORTALITY: 1948-1987**

	1948	1962	1969	1981	1987
Population (Millions)	5.4	8.6	10.9	16.9	21.8
Total fertility rate	6.0	6.8	7.6	7.9	7.7
Crude birth rate (/1000)	50	50	50	52	50
Crude death rate (/1000)	25	20	17	14	13
Infant mortality rate (/1000)	184	na	118	104	80
Annual growth rate (%)	2.5	3.0	3.3	3.8	3.7
Life expectancy (Years)	35	44	49	54	56

SOURCE: KELLY AND NOBBE, 1992:4

TABLE 2.0 OVERALL ENROLMENT OF GIRLS INTO SECONDARY SCHOOLS IN 1989 AND 1990 BY PROVINCE

Province	1989					1990			
	Form 1	Form 2	Form 3	Form 4	*Form 6	Form 1	Form 2	Form 3	Form 4
Central	14,915	14,127	12,875	12,453	2,789	15,776	15,883	13,933	15,228
Coast	4,260	3,933	3,464	3,293	459	4,012	3,779	3,366	4,763
Eastern	14,048	12,672	11,619	10,760	1,308	15,085	14,392	12,069	10,680
N.Eastern	157	172	159	145	-	186	162	168	163
Nyanza+	9,147	8,774	8,671	7,583	1,521	14,115	8,286	7,723	7,594
Rift Valley	12,646	11,503	11,471	9,703	2,139	13,590	12,858	11,541	10,398
Western	10,608	10,110	7,883	7,434	1,001	11,243	10,499	8,174	7,777
Nairobi	3,242	3,818	2,813	2,975	950	3,685	4,341	3,197	3,384
National Total	69,023	65,109	58,955	54,346	10,167	74,992	69,615	60,172	59,987

* In 1989 there was no form 5, the form 6 class was the last in the old education system

+ The Nyanza figures for 1989 were low because figures for Nyamira district were unavailable

SOURCE: CENTRAL BUREAU OF STATISTICS, NAIROBI, KENYA

TABLE 3.0 NUMBER OF CLIENTS ATTENDING CPM CENTRE AGED BETWEEN 14-19 YEARS: 1989 - 1993

Year	Marital Single	Status Married	Divorced/ separated	Total	Total of all clients
1989	19	0	0	19	117*
1990	93	0	0	93	425
1991**	89	2	1	92	440
1992+	103	0	1	104	697

* Out of the 117 clients 3 did not indicate their marital status

** The youngest client was 15 years old; + The youngest client was 13 years old

SOURCE: CRISIS PREGNANCY MINISTRIES (1992) NAIROBI KENYA

TABLE 4.0: PERCENT EVER PREGNANT AMONG GIRLS FROM VARIOUS SCHOOL DISTRICTS

School District	n=3119 sample size	Percent ever pregnant
Kiambu	364	5.5
Sth. Nyanza	360	7.5
Siaya	351	7.4
Nandi	206	9.7
Busia	174	6.9
Narok	177	6.2
Baringo	181	8.8
Murang'a	212	7.5
Machakos	225	2.2
Kakamega	141	6.4
Embu	213	5.2
Meru	228	5.7
Taita/Taveta	118	5.1
Kisii	169	10.7

SOURCE: YOURI, 1993:32.

TABLE 5.0: PREGNANCY OUTCOMES FOR VARIOUS SCHOOL DISTRICTS: 1992

School District n=222	Abortion	Delivery
Kiambu	55.6	27.8
Sth. Nyanza	43.3	40.0
Siaya	37.9	55.2
Nandi	37.8	63.6
Busia	54.5	45.5
Baringo	26.7	46.7
Murang'a	50.0	38.9
Machakos	30.0	40.0
Narok	60.0	30.0
Embu	45.5	45.5
Nyamira	46.7	5.3
Kisii	50.0	42.9
Total	42.8	45.0

SOURCE: YOURI, 1993:35.

TABLE 6.0: ADVICE THAT MAKES PARENTS USEFUL ON TEENAGE SEX ISSUES

Useful Advice n=7350	Percent
Advising on the disadvantages, implication and dangers of sexual practice in youth eg STDs and pregnancy	28.3
Advice on friendship and the sort of behaviour to avoid eg sexual practice, going out at night to discos	10.76 17.73
Sex is strictly for adult married people	11.34
Advice concerning sexual issues and boy-girl relationships	16.13 15.41
To work hard and give only priority to their education for their future life	
Others: eg to have discipline about life's problems	
Total	100.00

SOURCE: YOURI, 1992:24.

TABLE 7.0: WAYS IN WHICH TEACHERS COULD BE OF HELP

Ways n=8740	Percent
Advising on the consequences of sexual intercourse	53.89 19.11
Introducing sex education	14.99
Advising on good behaviour	1.37
Inviting health professional to schools	1.72
Don't know	8.92
Others	
Total	100.00

SOURCE: YOURI, 1993:24.

TABLE 8.0: FORMS OF PUNISHMENT FOR SEDUCTION

Tribe	Punishment
Embu	1 Bull, 1 He-goat (to be slaughtered for the girls father)
Kikuyu	1 Bull, 1 He-goat; thorough beating for a rapist; Goats, 1 ewe 2 rams; Peer punishment: fines and banishment from age group
Iteso	1 cow
Luo	1 Bull or heifer goat (for defloration)
Luhya	1 heifer

SOURCE: COMPILED FROM COTRAN, 1968.

TABLE 9.0: VARIATIONS IN THE PAYMENTS FOR PREGNANCY COMPENSATION BY DIFFERENT TRIBES

Tribe	Punishment
Kiambu Kikuyu	18 goats, 10 rams
Nyeri Kikuyu	20 goats, one bull, two rams and money for beer
Luhya	1 heifer and option of custody of the child
Kipsigis	1 heifer for cleansing only
Masai (mukogodo) <i>(for uncircumcised girl only)</i>	1 heifer, 1 blanket, honey or sugar; 1 ewe for the circumciser; circumcision fees
Luo	1 heifer
Kamba	1 goat
Rendille	Several cows

SOURCE: COMPILED FROM COTRAN, 1968.

BIBLIOGRAPHY

- Abel, R. (1970). 'Case Method Research in the Customary Law of Wrongs in Kenya'. East African Law Journal 6 (20), 53-59.
- Achola, M. (1989). 'Women's Reproductive Role and Their Participation in Economic Production'. Paper presented to Regional Conference on Sustainable Development and Women: Gender Relations Development and Change, 27th November - 2nd December 1989, Nairobi.
- Adelman, S. & Paliwala, A. (Eds.) (1993). Law and Crisis in the Third World. London: Hanszell.
- Advocates for Youth (1994). 'International Conference On Population and Development: Its the Adolescents Turn' Passages 8(3), 1.
- Afshar, H. (1987). 'Women, Marriage and the State in Iran'. In Afshar, H. 1987 (Ed.), Women State and Ideology, Studies from Africa and Asia (pp. 70-85). London: Macmillan.
- (Ed.) (1987). Women State and Ideology Studies From Africa and Asia. London: Macmillan.
- Aggarwal, V. & Mati, J. (1982). 'Epidemiology of Induced Abortion in Nairobi Kenya'. Journal of Obstetrics and Gynecology of East and Central Africa 1, 54-60.
- Ahlberg, B. (1994). Women, Sexuality and the Changing Social Order: the Impact of Government Policies On Reproductive Behaviour in Kenya. Pennsylvania: Gordon and Breach Science Publishers.
- Akong'a, J. (1988). 'Adolescent Fertility and Policy Implications in Kenya'. University of Nairobi, Institute of African Studies, Seminar Paper No 183.
- Akuffo, F. (1987) 'Teenage Pregnancies and School Dropouts: The Relevance of Family Life Education and Vocational Training to Girls' Employment Opportunities'. In Oppong, C. (Ed.), Sex Roles, Population and Development in West Africa (pp. 154-164). Portsmouth: Heinemann, James Currey.
- Allan, G. (1991). 'Qualitative Research'. In Allan, G. & Skinner, C. (Eds.), Handbook For Research Students in the Social Sciences (pp. 177-189). London: Falmer Press.
- & Skinner, C. (Eds.) (1991). Handbook For Research Students in the Social

Sciences. London: Falmer Press.

Allot, A. (1950). 'The Extent of the Operation of Native Customary Law: Applicability and Repugnancy.' Journal of African Administration, 2(3), 4-11.

----- (1959). 'Unity of African Law.' Journal of African Administration, 11(2), 72-80.

Althusser, L. & Balibar, E. (Eds.) (1970). Reading Capital (translated by Brewster, B.). London: NLB.

Amaduime, I. (1987). Male Daughters, Female Husbands: Gender and Sex in an African Society. London & New Jersey: Zed Books.

Anfred, S. (1994). 'Gender, Power and Knowledge.' In Women and Law in Southern Africa Changing Families, Changing Laws (pp. 26-35). Working Paper No. 9, Harare: WLSA.

Armstrong, A. (1992). Struggling over Scarce Resources: Women and Maintenance in Southern Africa. Harare: WLSA & University of Zimbabwe Press.

Armstrong, A., Beyani, C., Himonga, C., Kabeberi-Macharia, J., Molokomme, A., Ncube, W., Nhlapo, T., Rwezaura, B., & Stewart, J., (1993). 'Uncovering Reality: Excavating Women's Rights in African Family Law.' International Journal of Law and the Family 7, 314-369.

Baker, J. & Khasiani S., (1990). 'Induced Abortion in Kenya: Case Histories' (Nairobi, unpublished report).

Barker, G. & Rich, S. (1992). 'Influences On Adolescent Sexuality in Nigeria and Kenya: Findings From Recent Focus-Group Discussions' Studies in Family Planning Vol. 23(3) pp. 199-210.

Balmer, D. H. (1992). 'The Phenomenon of Adolescence: An Experimental Inquiry' (Mimeo, Department of Psychology, University of Nairobi).

Barrett, M., (1988). Women's Oppression Today: the Marxist/Feminist Encounter (revised edition). London, New York: Verso.

Barrett, M. (1987). 'Marxist-Feminism and the Work of Karl Marx' in Phillips, A. (Ed.) (1987) Feminism and Equality (pp. 44-61). Oxford: Basil Blackwell.

Bartlett, K. (1990). 'Feminist Legal Method.' Harvard Law Review 103(4), 829-887.

Bell, C. & Roberts, H. (1984). Social Researching: Politics, Problems and Practice.

- London: Routledge & Kegan Paul.
- Bentzon, A. W. (1986). 'Comments On Women's Law in Scandinavia.' International Journal of the Sociology of Law 14, 249-251.
- Brooke, N. J. (1954). 'Changing Character of Customary Courts.' Journal of African Administration 16, 67-73.
- Brophy, J. & Smart, C. (1985). Women in Law . London: Routledge.
- Bruce-Chwatt, L. (1976). 'Female Circumcision and Politics.' World Medicine, January, 14, 44-50.
- Bujra, J. (1982). 'Postscript: Class and the State'. In Sumner, C. (Ed.) Crime Justice and Underdevelopment (pp. 145-161). London: Heinemann.
- (1986). 'Urging Women to Redouble their Efforts...Class, Gender and Capitalist Transformation in Africa.' In Robertson, C. & Berger, I. (Eds.), Women and Class in Africa (pp. 117-140). New York, London: Africana.
- Burns, T., Baumgartner, T. & Deville, P. (1985). Man, Decisions, Society: The Theory of Actor-System Dynamics for Social Scientists. New York: Gordon and Breach Science Publishers.
- Calvert, P. (1991). 'Using Documentary Sources', Allan, G. & Skinner, C. (Eds.) Handbook For Research Students in the Social Sciences (pp. 117-127). The Falmer Press: London.
- Center for Population Options & International Center for Adolescent Fertility (1992a). Adolescent Fertility in Sub-Saharan Africa. Washington DC.
- (1992b). 'Female Genital Mutilation: A Continuing Violation of the Human Rights of Women.' In CPO/ICAF, Passages, 1-6.
- (1994). The World's Youth: A Special Focus On Reproductive Health, CPO/ICAF, Washington.
- Chanock, M. (1989). 'Neither Customary nor Legal: Africa Customary Law in an era of Family Reform'. International Journal of Law and the Family, 3, 72-88.
- Chodorow, N. (1978). The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender. Berkeley, Los Angeles & London: University of California Press.

- Christensen, A., Dahl, T., Eckhoff, T., & Eriksson, L. (1988). Methodology of Women's Law. Working Paper No. 27. Oslo: Women's Law Institute.
- Church of Scotland (1930). Memorandum prepared by the Mission Council of the Church of Scotland on Female Circumcision (Mimeo).
- Cohen, S. (1972). Folk Devils and Moral Panics: The Creation of the Mods and Rockers. London: Macgibbon & Kee.
- Cotran, E. (1968). The Restatement of African Customary Law: Kenya - Marriage (vol. 1). Nairobi, Oxford University Press.
- (1988). Casebook On Kenya Customary Law. Nairobi: University of Nairobi Press & Professional Books.
- Dahl, T. S. (1986a). Women's Law: Methods, Problems, Values Working Paper No. 5. Oslo: Women's Law Institute.
- (1986b). 'Taking Women's Law As A Starting Point: Building Women's Law.' International Journal of Sociology of Law, 14, 239-247.
- (1988a). Women's Law: An Introduction To Feminist Jurisprudence. Oslo: Norwegian University Press.
- (1988b). 'Towards An Interpretative Theory of Women's Law'. In Christensen, *et al* Methodology of Women's Law Working Paper No. 27 (pp. 1-22). Oslo: Women's Law Institute.
- (1992). The Muslim Family: A Study of Women's Rights in Islam. (Trans Walford R.). Oslo: Norwegian University Press.
- Davin. D. (1987). 'Gender and Population'. In Afshar, H. (Ed.). Women State and Ideology, Studies from Africa and Asia (pp. 111-129). London: Macmillan.
- Dawson, T. (Ed.) (1993). Women, Law and Social Change: Core Readings and Current Issues (2nd Edition). Toronto: Canadian Legal Studies Series, Captus Press.
- Delgado, R. & Stephanic, J. (1989). 'Why Do We Tell the Same Stories? Law Reform, Critical Librarianship and the Triple Helix Dilemma'. Stanford Law Review, 42, 207.
- Douglas, G. (1991). Law, Fertility and Reproduction. London Sweet and Maxwell.
- Driberg, J. (1934). 'The African Conception of Law.' Journal of Comparative

Legislation and International Law, 16, 230-245.

- Dube, L. (1989). 'Seed and Earth: the Symbolism of Biological Reproduction and Sexual Relations of Production.' In Dube, L. & Ardener, S. (Eds.) Visibility and Power: Essays On Women in Society and Development (pp. 22-53). Bombay: Oxford University Press,
- & Ardener, S. (Eds.) (1989). Visibility and Power: Essays On Women in Society and Development. Bombay: Oxford University Press.
- Duncan, S. (1994). "Disrupting the Surface of Order and Innocence': Towards a Theory of Sexuality and the Law.' Feminist Legal Studies, 2(1), 1-28.
- Dworkin A. (1983). Right Wing Women: The Politics of Domesticated Females. London: Women's Press.
- Echemeta, B. (1988). The Joys of Motherhood. London, Heinemann.
- Elam, Y. (1973). The Social and Sexual Roles of Hima Women. Manchester: Manchester University Press.
- Engels, F. (1972). Origin of the Family: Private Property and the State. New York: Pathfinder.
- Eshiwani, G. (1985). 'Women's Access to Higher Education in Kenya: A Study of Opportunities and Attainment in Science and Mathematics Education.' Journal of Eastern Africa Research and Development, 15, 91-110.
- Ferguson, A. (1988). School Girl Pregnancy in Kenya: Report of A Study of Discontinuation Rates and Associated Factors. Nairobi: Ministry of Health Division of Family Health/GTZ.
- & Gitonga, J., & Kabira, D. (1988). Family Planning Needs in Colleges of Education: A Report of 20 Colleges in Kenya. Nairobi: Ministry of Health, Division of Family Health-GTZ Support Unit and Family Planning Association of Kenya.
- Finch, J. (1984). 'It's great to have someone to talk to': the ethics and politics of interviewing Women.' In Bell, C. and Roberts, H. (Eds.). Social Researching: Politics, Problems and Practice (pp. 70-87). London: Routledge Kegan Paul.
- Firestone, S. (1979). The Dialectic of Sex: The Case For Feminist Revolution. London: Womens Press.
- Fitzpatrick, P. (1983). 'Law, Plurality and Underdevelopment.' In Sugarman, D. (Ed.)

- Legality, Ideology and the State (pp. 159- 182). London, New York: Academic Press.
- (1984a). 'Law and Societies' Osgoode Hall Law Journal, 22(1), 115-138.
- (1984b). 'Traditionalism and Traditional Law' Journal of African Law, 28 (1&2), 20-27.
- (Ed.) (1991). Dangerous Supplements. London: Photopress.
- Foucault, M. (1978). The History of Sexuality: Volume 1: An Introduction (translated by Hurley, R.). London: Penguin Books.
- Flax, J. (1990). 'Post-Modernism and Gender Relations in Feminist Theory.' In Nicholson, L. (Ed.) Feminism/Post-Modernism (pp. 39-62). New York, London: Routledge.
- Fraser, N. & Nicholson, L. (1990). 'Social Criticism Without Philosophy: An Encounter Between Feminism and Post-Modernism.' In Nicholson, L. (Ed.). Feminism/Post-Modernism (pp. 19-37). New York, London: Routledge.
- Friedmann, H. (1992). 'The WHO Adolescent Program'. Paper presented at the First Inter-African Conference on Adolescent Health, Present and Future, 24th-27th March 1992, Nairobi.
- Gachuhi, M. (1980) . 'Teenage Pregnancies: the Psycho-Social and Economic Consequences'. Paper presented at the Centre for African Family Studies Seminar on Adolescent Fertility Management, 23rd - 31st October Nairobi.
- Ghai, Y. & McAuslan, P. (1970). Public Law and Political Change in Kenya. Nairobi: Oxford University Press.
- Gillmore, M. (1993). 'Babies On Benefit'. BBC Panorama (Transcript). 20th September.
- Goodhart, A. (1951). 'The Importance of a Definition of Law.' Journal of African Administration, 3(3), 106-109.
- Griffiths, J. (1986). 'What is Legal Pluralism?.' Journal of Legal Pluralism and Unofficial Law Vol. 24 pp. 1- 53.
- Gulliver, P. (1963). 'Social Control in an African Society.' In Harvey, W. (Ed.) (1975) Introduction to Legal Systems in East Africa (pp. 364-371). Nairobi, Heinemann.

- Gyepi-Gabrah, B. (1985). Adolescent Fertility in Kenya. Boston: Pathfinder Fund.
- Hailey, A. (1938). An African Survey. London: Oxford University Press.
- (1956). An African Survey: A Study of Problems Arising in Africa South of the Sahara. London, Toronto: Oxford University Press.
- Hanmer, J. (1993). 'Women and Reproduction.' In Richardson, D. & Robinson, V. (Eds.) Introducing Women's Studies, Feminist Theory and Practice (pp. 224-249). London: Macmillan.
- Harding, S. (1987). Feminism and Methodology: Social Science Issues. Milton Keynes: Open University Press.
- (1988). 'What Causes Gender Privilege and Class Privilege?' (unpublished paper).
- Harlow, V., Chilver, E. & Smith, A. (Eds.) (1965). History of East Africa. London: Oxford University Press.
- Harris, O. & Young, K. (1986). 'Engendered Structures: Some Problems in the Analysis of Reproduction'. In Kahn, J. & Llobera, J. (Eds.). The Anthropology of Pre-Capitalist Societies (pp. 109-147). London: Macmillan.
- Hart, H. (1991). Law, Liberty and Morality. Oxford, New York: Oxford University Press.
- Hartmann, H. (1981). 'The Unhappy Marriage of Marxism and Feminism : Towards A More Progressive Union.' In, Sargent L. (Ed.). The Unhappy Marriage of Marxism and Feminism: A Debate on Class and Patriarchy (pp. 1-41). Boston: Southend Press.
- Harvey, W. (Ed.) (1975). Introduction to Legal Systems in East Africa. Nairobi: Heinemann.
- Haug, F. (1987). Female Sexualisation: A Collective Work of Memory. London: Verso.
- Hay, M. (1982). 'Women as Owners, Occupants and Managers of Property in Colonial Western Kenya.' In Hay, M. & Wright, M. (Eds.). African Women and the Law: Historical Perspectives. Boston: Boston University Papers On Africa VII pp. 110-123.
- & Wright, M. (Eds.) (1982). African Women and the Law: Historical Perspectives. Boston: Boston University Papers On Africa VII.

- & Stichter, S. (Eds.) (1984). African Women South of the Sahara. London: Longman.
- Hellum, A. (1989). 'Law and Modern Technology' in Sajo, A. & Petrik, F. (Eds.). High Technology and Law: A Critical Approach (pp. 19-35). Budapest: Institute of Political and Legal Studies, Hungarian Academy of Sciences.
- Henn, J. K. (1988). 'The Material Basis of Sexism: A Mode of Production Analysis.' In Stichter, S. & Parpart, J. (Eds.) Patriarchy and Class: African Women and the Workforce (pp. 27-53). Boulder: Westview.
- Hewitt, G. (1971). The Problems of Success: A History of the Church Missionary Society 1910-1942 (Vol.1). London: SCM Press .
- Hooks, B. (1984). Feminism and Theory: From Margin to Center. Boston: Southend Press.
- Hosken, F. P. (1982). The Hosken Report: Genital and Sexual Mutilation of Females (3rd ed). Massachusetts: Women In News.
- Huntingford, G. (1950). 'Nandi Work and Culture.' Colonial Research Studies No. 4, (pp. 111-119). London: HMSO.
- Institute of African Studies, (IAS) Socio-Cultural Profiles: Bungoma (1986); Busia (1986); Embu (1986); Kajiado (1986); Kisii (1984); Machakos (1986); Marsabit (1987); Murang'a (1986). University of Nairobi.
- International Planned Parenthood Foundation (IPPF) (1992). A Review of the Family Planning Association of Kenya Youth Programme. London: IPPF.
- International Women's Human Rights (IWHR). (1994). Sexual and Reproductive Rights and Health As Human Rights: Concepts and Strategies. New York: IWHR.
- Jaggar, A. (1988). Feminist Politics and Human Nature. Maryland: Roman and Littlefield Publishers Inc.
- & Rothenburg, P. (1984). Feminist Frameworks: Alternative Theoretical Accounts of the Relation between Women and Men (2nd (Ed.)). McGraw-Hill Book Co., New York.
- Jeffreys, S. (1990). Anti-climax: A Feminist Perspective on the Sexual Revolution. London: The Women's Press.
- Jones, C. (1991). 'Qualitative Interviewing.' In Allan, G. & Skinner, C. (Eds.).

Handbook For Research Students in the Social Sciences (pp. 203-214).
London: The Falmer Press.

Judicial Advisers Conference (1953). 'The Study, Recording and Development of Native customary Law.' Journal of African Administration (special supplement).

Kabagame, J. (1980). 'Adolescent Fertility - Problems of Management in Contemporary Society.' Paper presented at the Centre For African Family Studies Seminar On Adolescent Fertility Management, 23rd-31st October, Nairobi.

Kabeberi-Macharia, J. (1993). 'Family Law and Gender in Kenya.' In Stark, B. (Ed.) Family Law and Gender Bias: Comparative Perspectives International Review of Comparative Public Policy (special ed.), 4, 193-207.

----- (1994a). 'Access To Contraceptive and Abortion Information in Kenya.' In Coliver, S. (Ed.) The Right to Know: Health, Human Rights and Family Planning Information (Article XIX, forthcoming).

----- (1994b). 'The Social and Legal Construction of Sexuality in Kenya.' Paper presented at the African Law Association Conference in Heidelberg Germany 2nd November, 1994.

----- & Kibwana, K. (1992). 'A Study On Kenya's Implementation of the United Nations Convention On the Elimination of All Forms of Discrimination Against.' Report prepared for UNICEF (Kenya), Nairobi.

Kabira, W. (1989). 'Women and Folklore'. Paper presented to Regional Conference on Sustainable Development and Women: Gender Relations Development and Change, 27th November - 2nd December, Nairobi.

----- (1992). 'Gender Ideology: The Cultural Context'. Paper presented at the Seminar on Women and the Democratisation Process in Kenya, 31st January - 1 st February, Nairobi.

Kahn, J. & Llobera, J. (Eds.) (1986). The Anthropology of Pre-Capitalist Societies. London: Macmillan.

Karani, F. (1989). 'Education Policies and Women's Education'. In Mbeo, M. & Ombaka, O. (Eds.) Women and Law in Kenya (pp.23-28) Nairobi: Public Law Institute.

Katigo, J. (1992). 'The Psychology of Reproduction Among the Youth in Kenya'. Paper presented at the First Inter-African Conference on Adolescent Health, Present and Future, 24th-27th March, Nairobi.

- Kayongo-Male, D. & Onyango, P. (1986). The Sociology of the African Family. London: Longman.
- Kekovole, J. (1991). 'Family Planning Association of Kenya: Youth Fertility Management Survey: Basic Report, Findings and Recommendations'. Report prepared for the Family Planning Association of Kenya, Nairobi.
- Kelley, A. & Nobbe, C. (1992). Kenya: the Demographic Turning Point? Hypotheses and a Proposed Research Agenda. World Bank Discussion Papers No 107. Washington DC.
- Kenyatta, J. (1978). Facing Mount Kenya. Nairobi: Heinemann.
- Kettle, B. (1986). 'The Commoditisation of Women in Tugen Social Organisation'. In Robertson, C. & Berger, I. (Eds.) Women and Class in Africa (pp. 47-60). New York, London: Africana.
- Khasiani, S. (1992). 'Reproductive Rights Among Women in Kenya.' Paper presented at the Seminar on Women and the Democratisation Process in Kenya, 31st January - 1 st February, Nairobi.
- Kibwana, K. (1992). 'Law and Status of Women in Kenya: Example of Laikipia District.' Institute of Development Studies, University of Nairobi, Working Paper No. 481.
- Kigundu, J. (1986). 'Foreword'. In Rogo, K. (Ed.) Adolescent Fertility in Kenya (pp. 1-4). Nairobi: Kenya Medical Association, Ministry of Health/GTZ.
- Kimani, L. (1985). Guiding the Youth to Cope with the Complexities of a Changing Society. Nairobi: Personal Growth Centre.
- Kinoti, H. (1983). Aspects of Gikuyu Traditional Morality. Ph.D. Thesis, University of Nairobi.
- Kinyanjui, K. (1978). 'Education and Formal Employment Opportunities for Women. In Kenya: Some Preliminary Data'. In Pala, A. *et al* The Participation of Women in Kenya Society (pp. 16-33). Kenya Literature Bureau, Nairobi.
- Kiragu, K. (1991). Factors Associated With Sexual and Contraceptive Behaviour Among School Adolescents in Kenya: The 1989 Nakuru District Adolescent Fertility Survey Ph.D. Thesis, John Hopkins University.
- Koso-Thomas, O. (1992a). 'Harmful Traditional Practices Related To Adolescent Health in Sub-Saharan Africa' Paper presented at First Inter-African

Conference on Adolescent Health, Present and Future, 24th-27th March, Nairobi.

----- (1992b). The Circumcision of Women: A Strategy For Eradication. London: Zed Press.

Kuhn, A. & Wolpe A. (Eds.). (1990). Feminism and Materialism. London: Routledge & Kegan Paul.

Kumah, O., Odallo, D., Shefner, C. Muturi, N., Karueru, J., Gachanja, F., Mwanzia, N. (1992). Kenya Youth IEC Needs Assessment. Nairobi: Family Planning Association of Kenya.

Kuria, K. (1976). 'Legal and Ethical Implications of Family Planning in Africa with Particular Reference to English Speaking Africa'. Paper Presented at a Seminar On Women and Development, 29th-30th October, Maseru.

Kwawu, J. (1992). 'Analysis of Youth Needs'. Paper Presented Centre For African Family Studies Workshop For Family Life Educators 6th July, Nairobi.

Lacey, N., Wells, C. & Meure, D. (Eds.) (1990). Reconstructing Criminal Law: Critical perspectives on crime and the criminal process . London: Weidenfeld and Nicolson.

Lema, V. (1987). Knowledge, Attitude and Use of Contraception With Relation To Sexual Knowledge and Behaviour Amongst Adolescent Secondary School Girls in A Cosmopolitan City in Africa. M.Med. Thesis, University of Nairobi.

----- (1989). 'Factors Associated With Adolescent Sexuality Amongst Secondary School Girls in Nairobi, Kenya'. Journal of Obstetrics and Gynecology of Eastern and Central Africa, 8(1), 38-44.

----- (1990a). 'Sexual Behaviour, Contraceptive Practice and Knowledge of Reproductive Biology Among Secondary School Girls in Nairobi, Kenya'. East African Medical Journal, 67(1), 86-94.

----- (1990b). 'The Determinants of Sexuality Among Adolescent School Girls in Kenya'. East African Medical Journal March, 68, 191-198.

----- & Makhokha, A., Sanghvi, H., & Wanjala, S. (1991). 'A Review of The Medical Aspects of Adolescent Fertility in Kenya'. Journal of Obstetrics and Gynecology of Eastern and Central Africa, 9(1), 37-43.

----- & Njau, W. (1991). Abortion in Kenya: A Traditional Approach To Unwanted Pregnancy. Nairobi: Centre for the Study of Adolescence.

- & Kabeberi-Macharia, J. (1990). A Review of Abortion in Kenya. Nairobi: English Press.
- Levi-Strauss, C. (1956). 'The Family'. In Shapiro, H. (Ed.) (1971). Man, Culture and Society (pp. 261-285). London: Oxford University Press.
- Likimani, M. (1985). Passbook Number F.47927: Women and Mau Mau in Kenya London: Macmillan.
- Littleton, C. (1987). 'In Search of a Feminist Jurisprudence'. Harvard Women's Law Journal, 10, 1-7.
- Lovet, M. (1989). 'Gender Relations, Class Formation and Colonial State in Africa'. In Parpart and Staudt (Eds.) Women and the State in Africa (pp. 23-47). Boulder: Lynne Rienner .
- Low, D. & Smith, A. (1976). History of Africa Vol. III. Oxford: Clarendon Press.
- Low, D. A. (1965). 'British East Africa: The establishment of British rule 1895-1912'. In Harlow V., Chilver, E. & Smith, A. (Eds.). History of East Africa (pp. 1-56). London: Oxford University Press.
- Maboreke, M. (1990). 'Introducing Women's Law'. In Stewart, J. & Ncube, W. (Eds.) Women and Law in Southern Africa (pp. 1-6). Harare: Zimbabwe Publishing House.
- Macfarlane, A. (1980). 'Modes of Reproduction' Journal of Population and Development, 100-115
- Mackinnon, C. (1986). 'Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence.' Signs, 8, 635-660.
- Mcdonough R. & Harris R. (1978). 'Patriarchy and Relations of Production'. In Kuhn, A. & Wolpe, A. (Eds.) Feminism and Materialism (pp.11-40). London: Routledge and Kegan Paul.
- Mcfadden, P. (1992). 'Sex, Sexuality and the Problem of AIDS in Africa'. In Meena, R. (Ed.). Gender in Southern Africa: Conceptual and Theoretical Issues (pp. 157-195). Harare: SAPES .
- (1994). 'Gender Power and Sexuality'. In Women and Law in Southern Africa Changing Families, Changing Laws Working Paper No 9, (pp. 56-66). Harare: WLSA.
- McClellan, S. (1989). 'Women, Rights and Reproduction'. In McClellan, S. (Ed.) Legal Issues in Human Reproduction (pp. 213-229). Aldershot: Gower

Publishers.

- (Ed.) (1989). Legal Issues in Human Reproduction Aldershot: Gower Publishers.
- Makhoha, A. (1980). 'Maternal Mortality in Kenyatta National Hospital 1972-1977' East African Medical Journal, 57, 451-6.
- Malinowski, B. (1926). Crime and Custom in Savage Society. London: Kegan Paul Trench, Trubner & Co.
- Maranga, J. (1988). 'Incidence of Induced Abortion in Kenyatta National Hospital, Nairobi'. Faculty of Nursing, University of Nairobi.
- Mati, J. (1989). 'A Review in Adolescent Health'. Journal of Obstetrics and Gynecology of Eastern and Central Africa Vol. 8(1). pp. 19-23.
- Mayer, P. (Ed.). (1970). Socialisation: The Approach from Social Anthropology. London: Tavistock.
- Mbeo, M. & Ombaka, O. (Eds.). (1989). Women and Law in Kenya. Nairobi: Public Law Institute.
- Mbilinyi, M. (1985). 'Struggles Concerning Sexuality Among Female Youth in Tanzania' Journal of Eastern Africa Research and Development, 15, 111-123.
- (1988). 'Runaway Wives in Colonial Tanganyika: Forced Labour and Forced Marriage in Rungwe District 1919-1961'. International Journal of Sociology of Law , 16, 1-29.
- (1992). 'Research Methodologies in Gender Issues'. In Meena, R. (Ed.). Gender in Southern Africa: Conceptual and Theoretical Issues (pp. 31-69). Harare SAPES.
- Mbiti, J. (1971). African Religions and Philosophy. Nairobi: Heinemann.
- Mbugua, W. (1992). 'Some Methodological Issues in Adolescent Health Research'. Paper presented at the First Inter-African Conference on Adolescent Health, Present and Future, 24th-27th March 1992, Nairobi.
- Mead M. (1930). Growing Up in New Guinea: A Study of Adolescence in Primitive Societies. London: Penguin Books.
- Meena, R. (Ed.). (1992). Gender in Southern Africa: Conceptual and Theoretical Issues. Harare: SAPES.

- Meillassoux, C. (1986). Maidens Meal and Money: Capitalism and the Domestic Community. Cambridge: Cambridge University Press.
- (1989). 'The Pregnant Male' in Dube, L. & Ardener, S. (Eds.). Visibility and Power: Essays On Women in Society and Development (pp. 15-21). Oxford University Press, Bombay.
- Merry, S. (1988). 'Legal Pluralism'. Law and Society Review , 22(5), 869-890.
- Middleton, J. (1965). 'Kenya: Changes in the African Life 1912-45'. In Harlow V., Chilver, E. & Smith , A. (Eds.). History of East Africa (pp. 333-392). London: Oxford University Press.
- Mies, M. (1986). Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour. London: Zed Books.
- Migot-Adholla, S. (1986). 'The Art of Condemning the Victims: Some Reflections on Adolescent Fertility in Kenya'. In Rogo, K. (Ed.). Adolescent Fertility in Kenya (pp. 43-47). Nairobi: Kenya Medical Association & Ministry of Health/GTZ.
- Miles A. Finn, G. (Eds.) (1989). Feminism in Canada. (2nd ed) Montreal: Black Rose Books Ltd.
- Mitchell, J. (1973). Women's Estate. Handsworth: Penguin Books.
- Mohanty, C. (1986). 'Under Western Eyes: Feminist Scholarship and Colonial Discourses'. Feminist Review , 61-80.
- (1991). 'Cartographies of Struggle: Third World Women and the Politics of Feminism'. In Mohanty, C. & Torres, L. (Eds.) Third World Women and the Politics of Feminism (pp. 1-47). Indianapolis: Indiana University Press.
- Mohanty, C. & Torres, L. (Eds.). (1991). Third World Women and the Politics of Feminism Indianapolis: Indiana University Press.
- Moore, S. (1978). Law As Process: An Anthropological Approach. London: Routledge & Kegan Paul.
- Morris, H. (1970). Some Perspectives of East African Legal History. Uppsala: Scandinavian Institute of African Studies, .
- & Read, J. (1972). Indirect Rule and the Search for Justice: Essays in East African Legal History. Oxford: Clarendon Press.

- Mumia, J. (1986). 'Adolescent Fertility at Eldoret District Hospital: It's Effects on Uasin Gishu District Demography'. In Rogo, K. (Ed.). Adolescent Fertility in Kenya pp. 20-27. Nairobi: Kenya Medical Association , Ministry of Health/GTZ.
- Muriuki, G. (1974). A History of the Kikuyu: 1500-1900. Nairobi, London, New York: Oxford University Press.
- Muthoni, P. (1987). Youth, Today and Tomorrow A Guide To Family Life Education For Youth. Nairobi: Kenya Episcopal Conference.
- National Christian Council of Kenya (1976). Draft Syllabus on Family Life Education and Sex Education for Pre-Adolescents and Adolescents. Nairobi: NCKK .
- Ndeti, K. & Ndeti, C. (1977). Cultural Values and Population Policy in Kenya. Nakuru: Kenya Literature Bureau .
- Nicholson, L. (Ed.) (1990). Feminism/Post-Modernism. New York & London: Routledge.
- Nielsen, J. (1993). 'Introduction To Feminist Methods'. In Dawson, T. (Ed.). Women, Law and Social Change: Core Readings and Current Issues (2nd Edition), (pp. 493-497). Toronto: Canadian Legal Studies, Captus Press.
- Njau, W. (1992). 'Traditional Sex Education in Africa: The Case of Kenya'. Paper presented the First Inter-African Conference on Adolescent Health, Present and Future, 24th-27th March 1992, Nairobi.
- (1994). Factors Associated With Pre-Marital Teenage Pregnancy and Child-Bearing in Kiambu and Narok Districts of Kenya Ph.D. Thesis, University of Nairobi.
- Nukunya, G. (1992). Tradition and Change: The Case of the Family. Accra: Ghana University Press.
- O'Donovan, C. (1985). Sexual Divisions in Law . London: Widenfeld & Nicholson.
- Oakely, A. (1986). 'Interviewing Women: A contradiction in terms'. In Oakely, A. (1986) Telling the Truth about Jerusalem (pp. 230-253). Oxford: Basil Blackwell.
- (1986). Telling the Truth about Jerusalem. Oxford: Basil Blackwell.
- Obbo, C. (1980). African Women and their Struggle For Economic Independence.

London: Zed Books.

- (1986). 'Stratification and Lives of Women in Uganda'. In Robertson, C. & Berger, I. (Eds.). Women and Class in Africa Africana (pp. 178-194). New York, London: Africana.
- O' Brien M. (1989). Reproducing the World: Essays in Feminist Theory. Boulder: Westview Press.
- Ocholla-Ayayo, A. (1992). 'Social and Cultural Factors Influencing Sexual Behaviour Among Kenyan Youth'. Paper Presented at the First Inter-African Conference on Adolescent Health, Present and Future, 24th-27th March 1992, Nairobi.
- Ojwang. J. & Mugambi, J. (1989). The S. M. Otieno Case: Death and Burial in Modern Kenya. Nairobi: Nairobi University Press.
- Okeyo, A. (1989). 'Toward A New Theory and Method in the Study of Women in Africa'. In Mbeo, M. & Ombaka, O. (Eds.). Women and Law in Kenya (pp. 3-11) . Nairobi: Public Law Institute.
- Okoth-Ogendo, H. (1987). 'The Law in Family Planning'. Paper presented at the Kenya Medical Association Meeting on Resource Persons, September, 1987.
- (1989). 'Customary Law in the Kenyan legal system: An old debate revisited'. In Ojwang. J. & Mugambi, J. (Eds.) The S. M. Otieno Case: Death and Burial in Modern Kenya (pp. 135-147). Nairobi: Nairobi University Press.
- (1992). 'The Legal and Policy Regime of Adolescent Health in English Speaking Africa' Paper presented at the First Inter-African Conference on Adolescent Health, Present and Future, 24th-27th March 1992, Nairobi.
- Oluande, K. 'Adolescent Pregnancy in Kenya: A Study of Mothers at the Pumwani Maternity Hospital in Nairobi'. In Rogo, K. (Ed.). Adolescent Fertility in Kenya (pp. 28-34). Nairobi: Kenya Medical Association & Ministry of Health/GTZ.
- Olsen, F. (1988). 'The Sex of Law' (Unpublished).
- Ombaka, O. (1989). 'The Kenyan Legal System and Prospects For the Woman Question'. In Mbeo, M. & Ombaka, O. (Eds.). Women and Law in Kenya (pp. 31-39). Nairobi: Public Law Institute.
- Ongwae, K. & Ndege, K. (1993). 'Assessment of Contraceptive Needs of Young

Adults and the Potential of CBD Agents to meet these Needs'. Report for GTZ Family Planning Project. Nairobi.

- Oppong, C. (Ed.). Sex Roles, Population and Development in West Africa. Portsmouth: Heinemann, James Currey.
- Oucho, J. (1987). 'The Social and Economic Consequences of Adolescent' Fertility. Paper presented at the Kenya Medical Association Seminar on Adolescent Medicine, 9th-11th April, Kisumu.
- Pala, A., Awori, T. & Krystal, A. (Eds.). (1978). The Participation of Women in Kenya Society. Nairobi: Kenya Literature Bureau.
- Paliwala, A. (1993). 'Family transformation and family law: Some African developments in financial support on relationship breakdown'. In Adelman & Paliwala (Eds.) Law and Crisis in the Third World (pp. 270-300). London: Hanszell publications.
- Parpart, J. (1986). 'Class and Gender in the Copperbelt: Women in Northern Rhodesian Copper Mining Communities 1926-1964 '. In Robertson, C. & Berger, I. (Eds.) Women and Class in Africa (pp. 141-160). New York, London: Africana.
- & Staudt, K. (Eds.). (1989). Women and the State in Africa. Boulder: Lynne Rienner.
- Program for Appropriate Technology in Health & Maendeleo Ya Wanawake (PATH/MYWO). (1993). Qualitative Research Report On Female Circumcision in Four Districts in Kenya . Nairobi: PATH/MYWO.
- Perl, S. (1979). 'Meeting the Sexuality Related Needs of Adolescents: A Developmental and Comprehensive Approach'. Paper presented at the World Congress On Sexology, November, London.
- Petchetsky, R. (1990). 'Feminist Perspectives on Reproductive Rights since 1985' . Paper presented at the 4th International Interdisciplinary Congress on Women, 3-7 June, Hunter College, New York.
- Phillips, Anne. (Ed.) (1987). Feminism and Equality. Oxford: Basil Blackwell.
- Phillips, A. (1945). Report On Native Tribunals in Kenya. Nairobi: Legal Department .
- (Ed.) (1953). Survey of African Marriage and Family Life. London: Oxford University Press.

- & Morris, H. (1971). Marriage Laws in Africa. London: Oxford University Press.
- Phoenix, A. (1991). Young Mothers. Cambridge: Polity Press,
- Pospisil, L. (1971). Anthropology of Law: A Comparative Theory of Law. New York, London: Harper & Row,
- Radcliffe-Brown, A. & Forde, D. (Eds.) (1956). African Systems of Kinship and Marriage. London: Oxford University Press.
- Read, J. (1972). 'Customary law under colonial rule'. In Morris, H. & Read, J. Indirect Rule and the Search for Justice: Essays in East African Legal History (pp. 167-212). Oxford: Clarendon Press.
- Rich, A. (1976). Of Women Born: Motherhood As Experience and Institution. New York: Norton Publishers.
- Richardson, D. (1993). 'Sexuality and Male Dominance'. In Richardson, D. & Robinson, V. (Eds.) Introducing Women's Studies Feminist Theory and Practice (pp. 74-98). London: Macmillan.
- & Robinson, V. (Eds.) (1993). Introducing Women's Studies, Feminist Theory and Practice. London: Macmillan.
- Robertson, C. & Berger, I. (Ed.) (1986). Women and Class in Africa. New York, London: Africana.
- Robinson, R. (1949). 'The Administration of African Customary Law'. In Journal of African Administration, 1(1), 158-176.
- Rogo, K. (1986). Adolescent Fertility in Kenya. Nairobi: Kenya Medical Association, Ministry of Health/GTZ.
- Rwezuara, B. (1992). 'From Native Law and Custom To Customary Law: The Changing Political Use of Customary Law in Modern Africa'. University of Hong Kong. (Unpublished).
- Sachs, A. & Welch, G. (1990). Liberating the Law: Creating Popular Justice in Mozambique. London: Zed Books.
- Sadiq, N. (1990). 'The UNFPA Contribution: Theory To Action Programmes in Development'. Development: Journal of Society For International Development, (1), 7-12.
- Sajo, A. & Petrik, F. (Eds.) (1989). High Technology and Law: A Critical Approach.

Budapest: Institute of Political and Legal Studies.

Sargent, L. (Ed.) (1981). The Unhappy Marriage of Marxism and Feminism: A debate on class and patriarchy. Boston: Southend Press.

Scales, A. (1986). 'The Emergence of Feminist Jurisprudence: An Essay'. The Yale Law Journal, 95, 1373-1403.

Seidman, A. & Seidman, R. (1984). 'The Political Economy of Customary Law in the Former British Territories of Africa'. Journal of African Law, 28(1&2), 44-55.

Seidman, R. (1973). 'Law and Stagnation in Africa'. Zambia Law Journal, 5, 39-40.

Sen, G. (1984). 'Subordination and Sexual Control: A Comparative View of the Control of Women'. Review of Radical Political Economics, 16(1), 133-142.

Sen, I. (1994). 'Sex Selection in India and the Struggle Against Amniocentesis'. Paper presented at the Institute of Women Law and Development Conference 'From Basic Needs to Basic Rights'. Kuala Lumpur, Malaysia, 24th-29th October.

Senanayake, P. (1990). 'Young Women and Reproduction: Offering Options and Choices'. Development: Journal of Society For International Development, 1, 24-28.

Shapiro, H. (Ed.). (1956). Man, Culture and Society. London: Oxford University Press

Sheridan, A. (1980). Michel Foucault and the Will To Truth. London: Tavistock Publishers.

Shorter, A. (1978). African Culture and the Christian Church: An introduction into Social and Pastoral Anthropology. London: Geoffrey Chapman.

Smart C. (1984). The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations. London: Routledge & Kegan Paul.

----- (1986). 'Feminism and Law: Some Problems of Analysis and Strategy', International Journal of the Sociology of Law, 14, 109-23.

----- (1991). 'Feminist Jurisprudence'. In Fitzpatrick, P. (Ed.) Dangerous Supplements (pp. 133-58). London: Photopress.

----- & Smart B. (1978). 'Women, Sexuality and Social Control: An Introduction'. In Smart C., Smart B. (Eds.) Women, Sexuality and Social Control

- (pp.1-6). London: Routledge & Kegan Paul.
- & Smart B. (Eds.) (1978). Women, Sexuality and Social Control. London: Routledge & Kegan Paul.
- Snyder, F. (1982). 'Colonialism and the Legal Form: The Creation of Customary Law in Senegal'. In Sumner, C. (Ed.) Crime Justice and Underdevelopment (pp. 90-121). London: Heinemann.
- Southall, A. (1969). Social Change in Modern Africa. London: Oxford University Press.
- Spencer, P. (1970) 'The Function of Ritual in Socialisation of Samburu Moran'. In Mayer, P. (Ed.) Socialisation: The Approach From Social Anthropology (pp. 127-157). London: Tavistock.
- Stark, B. (Ed.) (1993). Family Law and Gender Bias: Comparative Perspectives International Review of Comparative Public Policy. (Special ed.), 4.
- Stewart, J. & Ncube, W. (Eds.) (1990). Women and Law in Southern Africa. Harare: Zimbabwe Publishing House.
- Stitcher, S. & Parpart, J. (Eds.) (1988). Patriarchy and Class: African Women and the Workforce Boulder, London: Westview Press.
- (1988). 'The Middle Class Family in Kenya: Changes in Gender Relations'. In Stitcher, S. & Parpart, J. Patriarchy and Class: African Women and the Workforce (pp. 177-203). Boulder: Westview Press.
- & Parpart, J. (1988). 'Introduction: Towards A Materialist Perspective on African Women'. In Stitcher, S. & Parpart, J. Patriarchy and Class: African Women and the Workforce (pp. 1-26). Boulder: Westview Press.
- Stroebel, M. (1984). 'Women in Religion and in Secular Ideology'. In Hay, M. & Stichter, S. (Eds.) African Women South of the Sahara (pp. 85-100). London: Longman.
- Suda, C. (1990). 'Gender Hierarchy, Male Ideology and Female Participation in the Rural Economy: Insights From Laikipia District in Kenya'. Paper presented at the National Seminar on Women in the Development Process. July 30-August 1, Nairobi.
- Sugarman, D. (1983). Legality, Ideology and the State. New York: Academic Press.
- Sumner, C. (Ed.) (1982). Crime Justice and Underdevelopment. London: Heinemann.

- Tamanaha, B. (1993). 'The Folly of the 'Social Scientific' Concept of Legal Pluralism'. Journal of Law and Society, 20(2), 192-217.
- Tambiah, Y. (1994). 'Sexuality and Human Rights'. Paper presented at the Institute of Women in Law and Development Conference 'From Basic Needs to Basic Rights'. Kuala Lumpur, Malaysia, October.
- Tobias, C. (1989). 'Respect for Diversity: The Case of Feminist Legal Thought'. Cincinnati Law Review, 58, 175-82.
- Tong R. (1984). Women Sex and the Law. Maryland: Rowman and Littlefield.
- (1989). Feminist Thought: A Comprehensive Introduction. Hyman, London: Union.
- (1992). Feminist Philosophies, Problems, Theories, and Applications. London: Prentice Hall.
- Vock, J. (1988). 'Demographic Theories and Women's Reproductive Labour'. In Stitcher, S. & Parpart, J. Patriarchy and Class: African Women and the Workforce (pp. 81-93). Boulder: Westview.
- Vickers, J. (1989). 'Memoire of an Ontological Exile: The Methodological Rebellions of Feminist Research'. In Miles A. and Finn, G. (Eds.) Feminism in Canada (2nd ed.), (pp.49-65). Montreal: Black Rose Books Ltd.
- Wamahiu, S. (1992). 'The Situation of the Female Child in Kenya'. Report prepared for the Kenya Alliance for the Advocacy for Children's Rights, Nairobi.
- & Njau, W. (1992). 'Towards the Development of Gender Studies in Kenya'. Paper presented at the Gender Studies Workshop, July. Makerere University, Kampala, July.
- Wanjohi, R. Fr. (1992). 'The Catholic Church's Views On Provision of Contraceptives and Family Life Education To Adolescents'. Paper presented at the First Inter-African Conference on Adolescent Health, Present and Future, 24th-27th March, Nairobi.
- Wanzira, B. (1992). 'Role of Circumcision in the Culture of the Bamasaaba in relation to Family Life Education for the Youth'. Paper presented at the First Inter-African Conference on Adolescent Health, Present and Future, 24th-27th March, Nairobi.
- Weeks, J. (1986). Sexuality. London, New York: Ellis Horwood & Tavistock Publications.

- (1992). Sex, Politics and Society: The Regulation of Sexuality Since 1800. (2nd ed.). New York: Longman.
- Welbourne, F. (1961). East African Rebels: A study of independent churches. London: SCM Press Ltd.
- Westermann, D. (1934, 1969). The African: Today and Tomorrow. London: Dawsons of Pall Mall.
- White, L. (1984). 'Women in the Changing African Family'. In Hay, M. & Stichter, S. (Eds.). African Women South of the Sahara (pp. 53-68). London: Longman.
- Whiting, B. & Edwards C. (1988). Children of Different Worlds: The Formation of Social Behaviour. Cambridge, Massachusetts: Harvard University Press.
- Widerberg, K. (1988). 'Female Sexualization - Learning Subordination Through the Body: A New Method and A New Knowledge?'. Working Paper No. 10, University of Oslo.
- Wilson, G. (1968). Luo Customary Law and Marriage Laws. Nairobi: Government Publishers.
- Wishik, H. (1986). 'To Question Everything: The Inquiries of Feminist Jurisprudence'. Berkeley Women's Law Journal, 64-77.
- Women and Law in Southern Africa (1994). Changing Families, Changing Laws. Working Paper No 9, Harare: WLSA.
- Women's Bureau (1990). 'Women of Kenya: A Statistical Data Sheet'. Nairobi: Women's Bureau.
- Woodman, G. (1991). 'Folk Law' Newsletter No.20, p.34, September. Commission On Folk Law and Legal Pluralism.
- Worthman, C. & Whiting, J. (1987). 'Social Change in Adolescent Sexual Behaviour, Mate Selection and Premarital Pregnancy Rates in Kikuyu Community'. Ethnos, 15(2), 145-165.
- Young, I. (1981). 'Beyond the Unhappy Marriage: A Critique of the Dual Systems Theory'. In Sargent L. (Ed.) The Unhappy Marriage of Marxism and Feminism: A debate on class and patriarchy (pp. 43-69). Boston: Southend Press.
- Youri, P. (Ed.) (1993). Female Adolescent Health and Sexuality in Kenyan Secondary Schools. Nairobi: AMREF.

NEWSPAPER ARTICLES

(KENYAN).

DAILY NATION:

24th September 1975, 'Parents who sell young girls to old men will be hit hard by the law' p. 4

11th March 1976, 'Teacher made girls pregnant' p. 4

14th October 1982, 'Kenyan Women say no to circumcision' p. 11

12th January 1984, 'Chief warns parents over female circumcision, p. 3

4th September 1984, 'Hands off school girls, Adongo warns teachers' p. 4

14th September 1984, 'Two jailed over forced circumcision' p. 3

4th November 1985, 'Marriage plot exposed' p. 1

29th December 1985, 'School girl marriages banned' p. 3

2nd January 1986, 'We don't want to wed, girls tell DC' p. 20

10th December 1986, 'Extend sex order to others-KNUT' p. 5

2nd February 1987, '4 due in court over girls' pregnancies' p. 3

5th February 1987, 'Schoolgirl 16 resists forced marriage deal' p. 3

28th March 1988, 'Early marriages criticised' p. 4

23rd October 1988, 'Circumcisers an 'AIDS risk' p. 6

20th March 1990, 'MP denies pregnancy claim' p. 22

7th May 1990, 'Schoolgirl's wedding foiled' p. 19

11th May 1990, 'Would-be bride to go back to school' p. 20

14th August 1990, 'Circumcision rite leads to girls death' p. 7

24th January 1991, 'Circumcisers to be registered' p. 5

19th June 1991, 'DO Return girls to school' p. 5

25th September 1991, 'Parents protest over cash' p. 5

27th September 1991, 'Parents reject sex scandal headmaster' p. 3

16th January 1992, 'Pregnancies among schoolgirls decried' p. 5

20th March 1992, 'Civic man 50,'made girl, 12 pregnant' p. 3

1st May 1992, 'Circumcision rites that bedevil Meru' (Friday magazine). p. I

12th June 1993, Female circumcisers warned by Ministry p. 3

20th July 1993, 'Sex case Pastor fined' p. 3

25th August. 1993, 'Grandpa made kin pregnant' p. 13

28th December 1993, 'Heads with girls 'protected' p. 3

28th December 1993, 'Female circumcision takes centre stage in the US' p. 4

25th January 1994, 'Girl recovering' p. 3

31st January 1994, 'Dangerous love' p. 3

25th March 1994, 'Girl mums can now go back to school' p. 5

10th December, 1994, 'Carey cautions on sex education' p. 3

12th December 1994, 'Mass action plan over 'sex' lessons' pp. 1 & 2

13th December 1994, 'State to rethink 'sex' education' pp. 1 & 2

20th December 1994, 'Muslims say no to 'sex' education' p. 3

KENYA TIMES

18th December 1989, 'Teacher, student affairs decried' p. 3

16th September 1992, 'Abducted Student, DC orders arrest' p. 5

STANDARD.

28th February 1983, 'Pregnant student commits suicide' p. 3

29th October 1990, 'Leaders urged to help end female circumcision' p. 4

29th August 1989, 'Sex Teacher interdicted' p. 3

31st October 1989, 'Complain, Harassed Girls told' p. 3

15th November 1989, 'Teacher on rape charge' p. 6

6th December 1989, 'Teacher had doubtful morals' p. 2

13th December 1989, 'Sex lessons ruled out: Moi backs church over morals' pp. 1 & 2

3rd May 1995, 'School girl drop-out on the increase' p. 3

SUNDAY NATION

2nd August 1984, 'Women rounded up' p. 4

17th June 1990, 'Child brides rile PC' p. 2

2nd December 1990, '21 teachers sacked over pregnancies' pp. 1 & 2

23th June 1991, 'DO saves girl from marrying man, 100' p. 3

17th October 1993, 'Teachers and rapists: the grim scenario' (Lifestyle magazine). p. 8

27th March 1994, 'One rite, too many wrongs: Why female circumcision flourishes in this country despite the efforts to eradicate it' (Sunday Magazine). p. iv

3rd April 1994, 'What it takes to curb this practice' (Lifestyle Magazine). pp. 4 & 5

11th September 1994, 'Are women belittled in adverts?' (Lifestyle Magazine). pp. 4 & 5

SUNDAY STANDARD

27th October 1985, 'I am pregnant, the news single girls dread to give', p. 8

22nd September 1991, 'Pupils say they are victimised over affair' p. 4

WEEKLY REVIEW

16th December 1994, 'Sex War: Why Parents Oppose Education Plan' pp. 4-10

Kenya Catholic Secretariat Newsletter (1985). Vol. 14(12).

(ENGLISH).

SUNDAY TIMES : 11th July, 1993 'Wedded to Welfare' pg 11-14

OFFICIAL DOCUMENTS / REPORTS

Colonial Administration

Colonial Annual Reports 1929, HMSO.

Colonial Annual Reports 1930, HMSO.

Colonial Office 1925 Education Policy in British Tropical Africa: Memorandum Submitted to the Secretary for State for the Colonies by the Advisory Committee on Native Education in the British Tropical African Dependencies, cmd. 2374, HMSO, London.

Colonial Office 1931 Papers Relating to the Health and Progress of Native Populations in Certain Parts of the Empire No. 65, HMSO, London.

East Africa Royal Commission (EARC). 1953-55 HMSO.

Education Department Reports, 1925, 1927 & 1929.

Kenya Government

Government of Kenya, 1965 African Socialism and its application to Planning in Kenya Sessional Paper No. 1 Government Printers Nairobi.

Government of Kenya/Ministry of Economic Planning 1966 Kenya Population Census 1962 Vol. 11, African population.

Government of Kenya, Five Year Development Plan for 1974-1978 Government Printers, Nairobi.

Government of Kenya, Five Year Development Plan for 1989-1993 Government Printers, Nairobi.

Government of Kenya, 1984 Population guide-lines Sessional paper No. 4.

Government of Kenya, 1984 Kenya Contraceptive Prevalence Survey, First report Nairobi Central Bureau of Statistics.

Government of Kenya/UNICEF, 1989 Situation Analysis of Children and Women in Kenya.

Government of Kenya, 1989 National Council for Population Development Report of Second leaders Conference on Population.

Government of Kenya, 1989 National Council for Population Development Kenya Demographic and Health Survey, Nairobi.

Government of Kenya / Ministry of Education, 1989 Secondary School Population and Family Life Education - Teacher's guide for Form 1 Nairobi.

Government of Kenya / Ministry of Education, 1989 'Christian approaches to sex, marriage and the family" In Christain Religious Education Form 4 Teachers Guide Kenya Literature Bureau Nairobi.

Government of Kenya / UNICEF, 1990 Socio-economic Profiles of Kwale, Kitui, Embu, Baringo, Kisumu and South Nyanza districts; Nairobi City; Mombasa and Kisumu Municipalities.

Government of Kenya / National AIDS Control Programme 1992 Preliminary Data on HIV cases among Adolescent and Young Persons in Kenya.

PARLIAMENTARY DEBATES

House of Commons, Official Report 5th Series Parliamentary Debates 1929-30 Vol. 233 Column 582-615.

OTHER OFFICIAL REPORTS

World Bank

World Bank, 1989 Kenya: Role of Women in Economic Development, Washington D.C.

World Bank, 1993 Development Report: Investing in Health Washington D.C.