



# Age of Consent and Adolescent and Youth Sexual and Reproductive Health and Rights

#UPROOT BRIEF FOR POLICYMAKERS

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This brief was produced by young people, aimed at policy makers, to contribute with information on the main legal and policy barriers that we face when trying to access HIV and other sexual and reproductive health services, the extent to which harmful laws and policies can affect our health and jeopardize the realisation of our rights, and to share our recommendations on how to keep striving for more enabling policies

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All views and opinions expressed in this brief do not necessarily reflect those of the organizations that supported and participated in the development of this brief. For more information on the #uproot agenda, please visit [www.theyouthpact.org/uproot](http://www.theyouthpact.org/uproot)





The age of consent to HIV testing and treatment and sexual and reproductive health services and rights remains an area of sexual and reproductive law that is often under-legislated and rife with uncertainty and ambiguity.

The lack of clear legislation has the potential to result in varied interpretations of the age of consent and the legal age at which young people can access information and services which directly impacts their ability and will to access available information and services. The onus is on legislators and policy makers to ensure that sexual and reproductive health and rights issues are adequately legislated on, and are in line with international human rights principles.

The Convention on the Rights of the Child categorises children as persons 0-18 years old while the United Nations and a number of its agencies including UNFPA, UNICEF and WHO, define adolescents as person who are 10-19 years, youth as persons 15-24 for statistical purposes[1] and young people as those between 10-24 years. Notably, it has been acknowledged that beyond statistical purposes the definition of youth may vary in different societies around the world.[2] These definitions will apply for the purpose of this brief, unless specified otherwise.

Ages of consent impact young people differently based on their age and their cultural and national realities. Setting ages of consent to sexual activity, medical treatment and marriage are often justified on the basis that they seek to protect children under a certain age from making decisions which may have consequences that they do not have the experience or capacity to fully understand, or to protect them from being taken advantage of due to uneven balance of power and authority.[3]

However, age-based consent laws that require minors to seek parental consent to access sexual and reproductive services go beyond the scope of providing protection, and may result in young people engaging in unsafe sexual behaviour because they are unable to access the information and medical support that they need to make informed and autonomous decisions.[4]

In order to protect the rights of children, including their right to sexual and reproductive health, policymakers must ensure that ages of consent are only imposed where they are necessary for the protection of children and adolescents: not set so low that they do not offer substantial protection, but are also not so high that they do not respect the agency and capacities of children, adolescents and youth.

Some countries do not have an age restriction for access to sexual and reproductive health (SRH) services and no explicit parental or other consent is required, however healthcare professionals may contact the child's parents where they believe the child is at risk[5], raising major concerns for the issues of confidentiality.

In other countries, the law sets a minimum age for legally accessing sexual and reproductive health services, criminalising children accessing these services below a certain age.[6]

In some countries, there is an absence of age of consent legislation. However, without clear guidance and the possibility of sanctions, healthcare providers can unilaterally decide to refuse a young person a particular service, openly discriminate against young persons who fall within key populations or opt to inform their parents, violating confidentiality. Other countries, though few, positively protect the right of a young person to access these services.[7]

It becomes increasingly necessary for laws and policies to provide adequate protection for the sexual and reproductive health and rights of adolescents and youth.

There are approximately 222 million women with an unmet need for contraception, 50 million of whom are under the age of 25.[8] Each year 20 million unsafe abortions result in the death of approximately 46,000 women,[9] and more than seven million girls under the age of 18 give birth each year.[10] Young people aged 15-24 continue to be one of the age groups most impacted by HIV.[11]

This brief is aimed at policymakers, to provide them with an overview of the impact of age of consent requirements on the rights and health outcomes of adolescents and young people, identify the instruments which promote the revision, reform and repeal of these laws and policies where necessary, and provide key recommendations.



# INTERNATIONAL HUMAN RIGHTS POSITION

International human rights instruments have established a number of standards which seek to be all-encompassing and aim at addressing the myriad of issues that affect adolescent and youth sexual and reproductive health and rights.

The World Health Organization has defined sexual health as 'a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence.' [12]

They also note that reproductive health "implies that people are able to have a responsible, satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so." [13]

In exploring the nature of sexual and reproductive rights which are noted as human rights that relate to sex, sexuality and reproduction, a number of existing human rights instruments set the foundation upon which these rights are enshrined.

**The Universal Declaration of Human Rights (UDHR)** enshrines the right of everyone to a standard of living adequate for the health and well-being of the person and his or her family, including medical care [14], noting that children are entitled to special care and assistance. [15]

Similarly, Article 24 of the **Convention on the Rights of the Child (CRC)** recognizes the right of all persons under the age of 18 years to the highest attainable standard of health and calls on States to abolish traditional practices that may jeopardize the health of children.

The Convention rests on four main principles which ought to be contemplated when examining the rights of the child.

The principle of **Non-discrimination** [17] provides protection for children against discrimination because of their or their parents'/guardian's "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". This principle has also been interpreted more broadly to protect adolescents from discrimination on the basis of their sexual orientation, gender identity and health status including HIV/AIDS and mental health. [18]

The **best interests of the child** [19] principle attempts to ensure that in the development and implementation of all laws, policies and actions concerning children, the main consideration should always rest on the best interest of the child.

The **right to life, survival and development** [20] principle focuses on the importance of protection of children's inherent right to life, promoting their general health and wellbeing.

Finally, the **respect for the views of the child** [21] principle is centred on a child's right to express their opinions on all matters which affect them, stressing the need to provide them with necessary guidance to respect, protect and promote their rights.

The **Committee on Economic, Social and Cultural Rights** has noted that States have an obligation to ensure that adolescents have full access to appropriate information on sexual and reproductive health that is non-discriminatory, non-biased, evidence-based and takes into account the evolving capacities of children and adolescents [22], regardless of whether or not they have parental consent, and with respect for their privacy and confidentiality.[23]

**Through the 2016 Political Declaration on HIV/AIDS, States have committed to reviewing and reforming legislation, including age of consent laws and policy provisions and guidelines that restrict access to services among adolescents and reinforce stigma and discrimination.**[24] As young people grow and mature, their decision-making capacities evolve and this directly impacts how they make independent decisions in relation to their health. While their rate of development is heavily dependent on their backgrounds and peculiar circumstances, it is necessary that all young people are sufficiently equipped with relevant knowledge and empowered to gain skills and experience to exercise their rights, including their right to health. Supportive laws and policies must be implemented and children, parents and health workers must have adequate rights-based guidance on consent, assent and confidentiality[25] to ensure that the right to health can be fulfilled for all young people.

In exploring appropriate ages of consent and the provision of sexual and reproductive health information and services, it is essential that policymakers appreciate the views of children and young people and their ability to participate in law-making processes and make decisions about their health, wellbeing and life, noting their evolving capacity, age and maturity.

## SITUATIONAL ANALYSIS

In several countries in Latin America and the Caribbean many young people who have attained the age of consent but who have not yet reached the age of majority[26] require parental consent to access HIV and sexual and reproductive health services. A study in the region found that nine countries still require parental consent for minors to access HIV testing services and to receive their test results. Notably, some countries developed policies which allowed minors to access HIV testing without parental consent, including Guyana which allows access at any age, and Trinidad and Tobago which afforded this right to adolescents from 14 years old.[27] Other countries, such as Mexico and Panama require that adolescents are accompanied by a parent or a person responsible for their care to obtain their test results. [28]

In the Western and Central African region, the situation in Senegal presents a clear example of the impact of age of consent laws in young people's access to SRH services. In Senegal, Article 12 of the HIV/AIDS law sets 15 years as the age of consent to HIV testing.[29]

In addition, there are no laws which positively protect the rights of adolescents to SRH, which has resulted in Senegalese youth being hesitant to uptake services because of the uncertainty on whether or not they are legally allowed to do so under 18 years of age.[30]

The fact that the age of majority is 18 years old, and there are no clearly defined laws clarifying the age of access to SRH services reinforces societal norms that consider young people's sexuality as taboo, and stigmatises sexually active young people, especially young key populations and hindering their access to SRH services.[31]

In East and Southern Africa, Zimbabwe's laws establish that adolescents who are 16 years old or under, who are deemed sufficiently mature on assessment by the health service provider, can access HIV tests and results without parental consent.[32] While the legislation contemplates instances where a parent is unable or unwilling to give consent, it provides means through which a healthcare worker can gain approval from hospital authorities or to give treatment without parental consent, if it is considered in the best interest of the child.

In many Asia-Pacific countries, young people under 18 are considered too young to give their consent, and national laws and policies tend to prevent them from HIV testing and accessing other services without parental and sometimes spousal consent, instead of protecting their individual human rights. UNICEF has underlined that the impact of parental consent requirements for HIV testing for adolescents under 18 can be a severe discouragement for adolescents to get tested.[33]

The World Health Organisation (WHO) has encouraged States to reform norms on age of consent to allow independent HIV testing and preserve the right of adolescents to make their own health related decisions, based on their evolving capacities.[34]



Some countries in Asia and the Pacific have HIV testing laws in place that recognize the evolving capacities of people under 18 to make independent health-related decisions.[35]

In 2014, Thailand's Medical Council removed the restriction which prevented anyone under 18 years from having a HIV test without parental permission. Thailand's National AIDS Program also developed operational guidelines to address disclosure of test results and to regulate the referral mechanism to access HIV treatment. These measures seek to help youth who are at risk of acquiring HIV to access treatment much sooner once they have tested positive for HIV, also helping providers to strengthen youth-friendly services.

# KEY RECOMMENDATIONS TO POLICYMAKERS

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Access to evidence-based comprehensive sexual and reproductive health information which is appropriate to the age and circumstances of the child should be available to all children, adolescents and young people.

The WHO has recommended that where necessary, policymakers should consider setting the minimum age of consent for HIV testing and counselling at 12 or 14 years,[36] and UNFPA has encouraged that the age of consent to medical treatment and contraceptives without parental consent be set at 12 years.[37]

UNICEF has recommended that domestic laws should not dictate a minimum age for access to medical information, counselling and testing without parental consent but instead should contain explicit provisions requiring universal access, in particular for sexual and reproductive health, guaranteeing the privacy and confidentiality of adolescent's information which would provide even greater access to young people.[38]

**Policymakers must review, and reform accordingly, those laws and policies that are posing obstacles for children, adolescents and young people to access sexual and reproductive health and rights information and services.**

These efforts must include working closely with the most affected communities, and young people themselves to assess the impact that such laws and policies have on their sexual and reproductive health outcomes.

Discussions around the sexual and reproductive health of adolescents ought to focus on their capacity, psychological maturity and experience, and each situation must be assessed individually, instead of using age as the determining factor to conclude whether a child has the capacity to consent to or reject treatment and care.[39]

**In legislating in this area, policymakers must ensure that they are seeking to protect young people and not merely policing their sexuality, which will ultimately limit their autonomy and impede their access to sexual and reproductive health information and services.[40]**

**The opinions of children and adolescents must be recognised and given due weight in alignment with their capacity, as it is essential when considering what is in their best interest in health-related issues.**

While appreciating the capacity of children, there is need to be mindful of the impact that power imbalances may have on their decision making abilities, and ensure that they are provided with the necessary support in the form of impartial, appropriate and sensitive information and counselling to make decisions about their health.



Inadequate provision of accessible and acceptable HIV testing, counselling and treatment services has been identified as one of the main reasons for the high rate of adolescent HIV-related deaths around the world.[41]

Accordingly, legislators have the responsibility to ensure that the age of consent to HIV testing and treatment is not higher than the age of consent to sex and that the age of consent to HIV testing is the same as the age of consent to access other HIV prevention and treatment services to ensure that once an adolescent has tested for HIV, he or she is able to be linked to appropriate services.[42]

**Policymakers must consider the peculiar vulnerabilities of adolescents including those of emancipated minors who live without the support and supervision of a parent or guardian, and would accordingly be unable to access any information or services which require parental consent.**

**Countries must work to remove legal, regulatory and social barriers to reproductive health information and care for adolescents and establish programmes which support the education and counselling of adolescents in the areas of gender relations and equality, violence against adolescents, responsible sexual behaviour, responsible family-planning practice, family life, reproductive health, sexually transmitted infections including HIV. [43]**

UNICEF has noted the importance in differentiating access to medical information, counselling and testing which international standards have established that no minimum age should be set and access to medical treatment which may involve parental consent and should provide the possibility to waive the minimum age when the child demonstrates adequate maturity and understanding. In all cases, confidentiality is an essential element to be considered in protecting young people's right to access sexual and reproductive health and rights information and services.[44]

Ideally where the age of consent to HIV testing and treatment exists in legislation, it should be separate from consent to other forms of medical treatment in order to broaden access to testing and treatment services.[45]

Where laws do not openly address the age for the provision of access to contraceptives or HIV testing, laws concerning the age of consent to medical treatment can be interpreted broadly to allow for access to preventive measures such as contraception or for diagnostic procedures such as HIV testing.

It is noted that when policymakers seek to set a minimum age for medical treatment without parental consent, the laws must also provide for mechanisms which allow healthcare providers to waive the minimum age where the adolescent demonstrates adequate maturity and an understanding of the implications of the medical decision.[46].

In all situations where policymakers seek to establish ages of consent they should ensure that this age is cognizant of the status of human beings under 18 years of age as rights holders, accepting the evolving capacity and maturity of the child. The maturity standard must be clear and easy to apply by healthcare professionals. Additionally the age of consent must be non-discriminatory in its approach, and apply to all young people, irrespective of sex, gender or sexual identity.[47]

The development of legislation must follow a rights-based approach and must make it clear that adolescents

have a right to access all services, including preventative and curative services.[48]

It is important that provisions in legislation explicitly state that health service providers must respect the views and opinions of the adolescent accessing a service. The law should be cautious not to give health service providers with a loophole to refuse medical treatment, and must provide them with clear guidance on how to assess the adolescent's maturity and right to confidentiality regarding their sexual and reproductive rights. [49]

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Policymakers are poised to champion the sexual and reproductive rights of adolescents and should make efforts to remove arbitrary age restrictions which limit adolescents access to essential information and services.

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