



Spousal Consent to HIV Services and Sexual and Reproductive Health Services 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



INTRODUCTION

Many countries continue to have laws and policies which require third party consent, which adversely impacts the sexual and reproductive health and rights of individuals.

Spousal consent laws are the legal obligation for a woman or girl to ask permission from her husband to access a service. These laws violate women's rights, including their right to health, by preventing them from making autonomous decisions about their sexual and reproductive health, and instead giving the decision-making responsibility to their spouses.

The lack of an enabling legal and policy environment that empowers women to exercise their rights has a serious impact on their health and well-being, and acts as a barrier, preventing adolescent girls and women from taking charge of their own health.

It is estimated that in 29 countries women are required to gain the consent of a spouse or a partner to access sexual and reproductive health services.[1] In many cultures the belief that women should not be allowed to make certain decisions about their health without the input of their spouses impacts how programmes and interventions are able to reach women and girls.

This brief is aimed at policymakers, to provide them with an overview of the impact of spousal consent laws and policies on the rights and health outcomes of adolescent girls and young women, identify international human rights law instruments which promote their repeal, and provide key recommendations.

SITUATIONAL ANALYSIS

Women, especially adolescent girls and young women, are disproportionately affected by HIV and AIDS. 18.6 million girls and women were living with HIV in 2015 which accounted for 51 percent of people living with HIV worldwide.[2] Globally young women are twice as likely to acquire HIV as their male counterparts.[3]

The impact of the HIV epidemic among women and girls is closely tied to gender inequalities and violence against women as a cause and consequence of HIV. Approximately 75 percent of young women aged 15–19 report they do not have a final say in decisions about their own health.[4]

A number of countries have legal and cultural barriers which impact access to services for women and girls. In some countries, women must have a male guardian, who is usually her father or husband who consents to decisions which would otherwise be made by her, including decisions regarding their own healthcare.[5]

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SPOUSAL CONSENT AND INTERNATIONAL LAW

Spousal consent laws violate principles of personal privacy and autonomy and the right to health care, which are enshrined in international law, and accordingly represent a threat to women's lives and health.

Article 1 of The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Spousal consent for access to sexual and reproductive services and commodities, whether they exist in laws, policies or guidelines for healthcare facilities, amount to a violation of the notion of non-discrimination enshrined in the Convention and international human rights instruments, which is replicated in many national Constitutions.[6]

The CEDAW Committee has openly stressed that States should move to eliminate barriers that women face in access to health-care services, including preliminary authorization by a spouse.[7]

The UN Human Rights Office of the High Commissioner has flagged concerns around spousal consent especially for women living with HIV where their spouses have consented to them being sterilized without their knowledge. Lack of information about HIV transmission and treatment makes women living with HIV vulnerable to forced sterilization

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especially where laws remove the decision making capacity from the women.[8]

Human rights instruments broadly recognise that all women, including those who are most vulnerable because of their age, sexual orientation or HIV status have the same rights in relation to their right to health and must be given access safe and affordable contraception. Women should be free to choose or deny family planning services, including abortion or sterilization.[9]

THE IMPACT OF SPOUSAL CONSENT LAWS AND POLICIES ON ADOLESCENT GIRLS AND YOUNG WOMEN

In a number of countries discriminatory social and cultural norms are translated into laws which repress the autonomy of young women and further exacerbate women's vulnerability to HIV, and undermine the response to the epidemic.[10]

Assessments in Burundi, Burkina Faso, Cameroon, Chad, DRC, Gabon, Nigeria and Senegal in 2016 linked women's and girls vulnerability to HIV to laws and policies that maintain traditional gender roles, and women in key populations had limited access to services.[11]

Similarly, a 2017 study on sexual and reproductive health and rights among young people in Kenya, Uganda, Myanmar, Bangladesh and Ethiopia found young women often lacked the freedom to access contraceptives, especially in instances where parental or spousal consent was required because they were under the legal age of consent.[12]

In order to end the global HIV epidemic and to secure greater access for women and girls to sexual and reproductive health, it is essential that policymakers tackle the restrictive legislative landscape and the pervasive gender inequality, and harmful cultural practices that continue to put adolescent girls and young women at increased risk. This includes repealing all laws, policies and guidelines that require spousal consent to access HIV and other SRH services.

Policymakers must guarantee implementation of protections outlined in legislation, and ensure that these laws promote the provision, availability and accessibility of information, contraception, testing, prevention and treatment services for women in all their diversity.

COMMITMENTS TO WOMEN AND GIRLS THROUGH THE 2016 POLITICAL DECLARATION ON HIV/AIDS

The 2016 Political Declaration on HIV/AIDS states that women and girls are still disproportionately affected by the HIV epidemic. It adds that the ability of women and girls to protect themselves from HIV is compromised by gender inequalities, including unequal power relations in society between women and men, and boys and girls, and unequal legal, economic and social status, insufficient access to health-care services, including sexual and reproductive health, and all forms of discrimination and violence in the public and private spheres.[13]

The legal requirement for women and girls to gain spousal consent to access services is one such way in which laws discriminate against women, and ultimately impact their fundamental human rights and health outcomes.

Through the Political Declaration, States have committed to eliminate gender inequalities and gender-based abuse and violence by increasing the capacity of women and adolescent girls to protect themselves from the risk of HIV infection.[14] In addition, States have pledged that they will ensure that women can exercise their right to have control over, and decide freely on matters related to their sexuality, including their sexual and reproductive health, free of coercion, discrimination and violence, and take all necessary measures to create an enabling environment for the empowerment of women.[15]

States reaffirmed their commitment to eliminate discriminatory laws and harmful social norms that perpetuate the unequal status of women and girls, as these can seriously impact their health and well-being and increase their vulnerability to HIV.[16]

Spousal consent laws are inimical to these commitments, and must be removed to ensure that the rights of women and girls, including their sexual and reproductive rights are respected, protected and fulfilled.

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