

AGE OF CONSENT: LEGAL REVIEW ZIMBABWE COUNTRY REPORT



FOREWORD

There is one barrier to health access and a major impediment to national and regional development across the globe that could be removed within a few days if only the policy decisions would be made. The removal of this barrier would promote gender equality, help end child marriage, reduce teenage pregnancy and girl dropout rates from secondary school, lower HIV incidence rates, and achieve the prerequisite for the demographic dividend. Let me explain.

As the Sustainable Development Goals (SDGs) become the world's compass towards development and a better life for all people on the planet, sub-Saharan Africa faces a potential demographic disaster that could undermine many of the SDGs.

Many sub-Saharan countries have some of the highest fertility rates in the world which, if unaltered, will see those countries' population, rising from 17 million to 43 million by 2050. Another country's population that is currently at 27 million will more than double to 65 million by 2050, with yet another going from 53 million to 137 million. Not one of these countries will have reached the population turnaround required as an inescapable prerequisite for achieving a demographic dividend by 2050.

With increases like these on the same available land area, with the same or less access to drinking water, potentially less arable land available due to global warming, and services and GDP increasing at a far slower rate than population, it will be impossible to achieve the SDGs and improbable to even maintain the human development index achieved thus far by 2017. These are not scenarios or 'maybes'. This is the inevitable future of the region unless something significant, such as the fertility rates, changes. Slowing and reversing population acceleration is essential to development in sub-Saharan Africa.

And yet, the world has a dark and shameful history of 'population control', legislating women's rights to decide on having children away and forcing and coercing sterilisation. These restrictions on agency and autonomy have no place in a democratic, sustainable development world in the 21st century and the vast majority of nations achieving the demographic dividend have not resorted to such dark methods.

Increasing gender equality, keeping girls in safe schools for longer, reducing sexual and gender based violence, and increasing the sexual and reproductive health knowledge of young people are also factors. And of course, it is the increased access to modern contraceptives and women making choices about their own reproductive health that have turned the tide.

So this research report turns its attention to this access to modern contraceptive methods, as well as all other sexual and reproductive health (SRH) services. There are many barriers for adolescents around the globe - the majority of citizens in many countries - to access SRH services. Distance from services, lack of transport, lack of available commodities, poverty, inherited beliefs, harmful practices, and hostile staff attitudes can all be barriers to access. But only one barrier is self-inflicted by countries. And this barrier could disappear tomorrow, creating massive access for adolescents. It is the barrier of legal restrictions on adolescents' access to SRH. The majority of countries in the region have placed arbitrary legal barriers to adolescent access by creating policies or laws with a number of parental consent and other restrictions, preventing adolescents from initiating their own healthcare.

In some cases, these have been gradually added to laws or policies with well-intentioned reasons to protect adolescents. In many cases, however, they reflect an idealised view of what older people think younger people should or should not be doing. Primarily, these idealised views revolve around sex. Older people, sometimes forgetting their own youth, think that the best protection for younger people is to abstain from sex until they are, perhaps 16, or even 18. Reality is, in many cases different, and by ignoring reality and locking adolescents out of the health system when it comes to sexual and reproductive health and rights (SRHR), adults are doing irreparable damage to their children and other children, as well as directly contributing to a looming demographic disaster for their nation.

Because this seems so obvious, recent global guidelines have called on countries to examine their current policies and consider revising them to reduce age-related barriers to access and uptake of all SRH services. To assist in this process, the SRHR Africa Trust (SAT) in collaboration with the Thomson Reuters Foundation, 20 global law firms, and UNICEF, has reviewed Age of Consent laws in 22 countries: Botswana, Kenya, Ivory Coast, Malawi, Morocco, Nigeria, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe, Brazil, Jamaica, India, Indonesia, Thailand, Vietnam, Canada, United Kingdom, France, Sweden, and Ukraine. The range of countries was chosen to highlight a spread of geography, cultures, development status, nonachievement, in-transition and achievement of the demographic dividend, and adolescent health outcomes. In addition, SAT and UNICEF also undertook an Ethical, Cultural and Social review in nine countries (seven being from the 22 countries above, plus two others - Uganda and Philippines) to look at ethical cultural and social barriers impacting adolescent access to health and services including SRH services.

The data revealed some game-changing recommendations apparent to SAT:

1. Desexualise SRHR services and treat them as you would any other health system access;
2. Base both access and restriction decisions on child and adolescent development, competence and maturity to make decisions about their own health;
3. Do not make the age of sexual consent older than 16 years, and do not distinguish between young men and young women;
4. Have statutory rape provisions in place to protect adolescents from predatory adults;
5. Put 'close in age' exceptions to the age of sexual consent in place so that young adolescents having consensual sex with one another do not have to go to jail – a travesty affecting young men aged 13-16 years.

We offer this report and its insights to policymakers, legislators, development agencies, international cooperating partners, and activists wherever they may be. A thinking and action tool is currently being designed to accompany this report. If you wish to receive it or an electronic copy of this report, please send an e-mail to ageofconsent@satregional.org. Please also feel free to share ways in which you may have used this report or the action tool to create positive change with us and with one another.

Our hope is that these resources will create dialogue and action that will remove all legal barriers to adolescent access to SRH services and allow attention and resources to focus on the remaining and more intractable barriers.

Jonathan Gunthorp



Executive Director - SAT

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ZIMBABWE

AGE OF CONSENT LEGAL REVIEW



ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
ANC	Antenatal Care
ART	Antiretroviral Therapy
EHP	Essential Health Package
GDP	Gross Domestic Product
HCT	HIV Counselling and Testing
HIV	Human Immunodeficiency Virus
HPV	Human Papillomavirus
MMC	Medical Male Circumcision
MPR	Multiple-perpetrator Rape
MSP	Multiple Sexual Partners
PLWHA	People Living with HIV/AIDS
PLWHIV	People Living with HIV
PEP	Post-exposure Prophylaxis
PrEP	Pre-exposure Prophylaxis
SRHS	Sexual and Reproductive Health Services
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNICEF	United Nations International Children's Fund
UNFPA	United Nations Population Fund
WHO	World Health Organization
YFS	Youth-friendly Services

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EXECUTIVE SUMMARY

Age of Consent for sexual intercourse in Zimbabwe is 16 years, while any sexual intercourse with a person under the age of 12 years is illegal. There are indications that the age limit is going to be raised to 16 years. Currently those aged 12-14 years can consent to sex if capable of doing so.

Gay sex between men is illegal. However, only men aged over 14 years can be charged with the offence. In Zimbabwe, access to contraceptives that are a form of barrier method are available to persons of any age without parental consent. Contraceptives that are a form of medication (such as emergency contraceptives) can only be provided to persons under 16 years of age with parental consent.

Guidelines provide for the treatment of children but they do not mention the Age of Consent. Therefore, the age of 16 applies.

There is no prohibition on Pre-exposure Prophylaxis (PrEP). The age limit is not clear although relevant discussions suggest that PrEP would be offered to women as young as 15 years but there is no mention of parental consent. Post-exposure Prophylaxis (PEP) can only be administered in specific circumstances. Individuals under 16 years of age would require parental consent to access PEP. There are guidelines but they do not specify the Age of Consent to access PEP.

Abortion is only permitted in very limited circumstances. Persons under 16 years of age would require parental consent to obtain a lawful abortion.

There is no legislation or policy enabling access to Antenatal Care (ANC). The Age of Consent is 16 years. According to the national policy, the Age of Consent for the Human Papillomavirus (HPV) vaccines is 10 years. In Zimbabwe, the Age of Consent for cervical screening is 16 years without parental consent. An individual younger than 16 years does not require parental consent if he/she is considered to be a 'mature minor'.

HIV test results will be reported directly to the patient from the age of 16 years, or on assessment of maturity by the health service provider if the individual is under the age of 16 years.

Chapter One: Introduction

The world's attention has moved beyond HIV and AIDS, yet it remains the leading killer of adolescents in Southern Africa, presenting a major impediment to healthy communities and a significant factor in the health and status of women and girls in the region.

According to a report by the Joint United Nations Programme on HIV/AIDS (UNAIDS) on prevention of HIV (2013), Eastern and Southern Africa is home to half the world's population living with HIV, even if the region is only 5% of the world's population. Today the region continues to be the most infected and affected by the HIV/AIDS epidemic, with 48% of the world's new HIV infections among adults, 55% among children, and 48% of AIDS-related deaths.

Research conducted in many parts of the world shows that several legal and human rights barriers hinder access to, and uptake of, HIV services for adolescents. Key among these barriers are Age of Consent legislation and policies. Recent global guidelines have, therefore, explicitly called on countries to examine their current policies and consider revising them to reduce age-related barriers to access and uptake of the overall SRH services, HIV Counselling and Testing (HCT) and to linkages to prevention, treatment, and care.

HIV is the most severe in the South African sub-region which includes Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe, with each having an adult HIV prevalence of over 10%. UNAIDS reports that Swaziland has the highest HIV prevalence in the world (26.0%), followed by Botswana (23.4%).

In 2011, there was an estimated 1.2 million adolescents aged 10-19 years old living with HIV, more than half of all HIV positive adolescents globally. Eastern and Southern Africa now have 10.5 million children who have lost one or both parents to AIDS.

The risk of becoming infected with HIV is higher for girls and young women and currently, HIV prevalence among young women aged 15-24 years stands at 4.8%, which is two and a half times higher than among men of the same age. In Swaziland, 15.6% of young women are HIV positive, compared to 6.5% of young men.

In Zimbabwe, HIV and AIDS remain a major public health threat in the country with a prevalence of 15% among the adult population. The introduction of Antiretroviral Therapy (ART) has revolutionised the care and management of HIV and AIDS and has transformed the disease from being a life-threatening infection into a chronic and manageable condition. The national ART programme continues to decentralise, therefore, more people are now able to access services closer to their homes. The Government remains committed to offering ARVs free of charge to persons living with HIV.

The advocacy campaign 'All In To #EndAdolescentAIDS' was launched as a global platform for action and collaboration for social change in February 2015 by global leaders and civil society partners. This global agenda provides opportunities for ensuring that existing and new strategies and programmes on HIV prevention, treatment and care are effectively implemented to benefit young people. These include the 2012 guidance on Pre-Exposure Oral Prophylaxis (PrEP) for serodiscordant couples, men, and transgender women who have sex with men at high risk of HIV transmission, as well as the 2013 guidance for HCT and care for adolescents living with HIV and young key population policy briefs.

All In To #EndAdolescentAIDS works through four workstreams. As part of workstream 1, global partners have prioritized joint action to take stock of the current situation in countries with respect to Age of Consent for services including HIV, by carrying out a systematic desk review of Age of Consent laws and a mapping of the processes led and outcome of reforms undertaken by countries to address this barrier. Through the All In To #EndAdolescentAIDS, many agencies and global partners including United Nations Development Programmes (UNDP), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the PACT and AIDS Alliance have already initiated actions on data collection to inform their policy advocacy efforts at global and specifically within the 25 focus countries. This review will inform the development of a source or toolkit for learning on this theme and capacity building of experts and policymakers worldwide.

Why Age of Consent review?

Several global bodies, including UNICEF and WHO, are currently undertaking a number of initiatives to change the global guidelines with regard to adolescent access to a range of HIV prevention services, including Age of Consent and informed consent, confidentiality, availability, accessibility, and acceptability. Adherence and quality must inform these services.

The SRHR Africa Trust (SAT) in collaboration with UNICEF worked with participating local law firms, and a consultant to conduct the Age of Consent research. The three areas of the research included the following:

1. Age of Consent legal review
2. Ethical, Social, Cultural (ESC) desktop review
3. Youth attitudes survey

Therefore, the main goal of the project was to conduct research on “Age of Consent” laws, regulations, and policies, as well as ESC factors, in relation to adolescents. This entailed collecting country experiences to address Age of Consent laws / policies and ESC factors that serve as potential barriers to adolescents accessing SRH, including HIV prevention, care and treatment. The research explored implications for expanding SRHR services and HCT in adolescents aged 10–19 years.

Methodology

The Zimbabwean legal review was prepared by SAT and is based on research conducted by Gill, Godlonton and Gerrans Law Firm in Zimbabwe. The legal review focuses on the laws and policy support around the Age of Consent in relation to the various aspects relating to SRHR. The review looks at all the relevant national laws (including nationally recognised customary or religious laws), regulations, and policies exploring the ages for girls and boys separately, where relevant, including where contradictions exist in laws, policies, and regulations on these issues exist.

The review specifically looked at the following:

1. Age of Consent to sexual intercourse including the age for statutory rape
2. Age of Consent to access modern contraceptives, with and without parental consent
3. Age of access to emergency contraceptives, with and without parental consent
4. Policy framework and legislation enabling or disabling access to Pre-exposure Prophylaxis (PrEP) including Age of Consent, with and without parental consent
5. Policy framework and legislation enabling or disabling access to Post-exposure Prophylaxis (PEP) including Age of Consent, with and without parental consent
6. Policy framework and legislation enabling or disabling access to safe abortions and postabortion care including Age of Consent, with and without parental consent
7. Policy framework and legislation enabling or disabling access to Antenatal Care (ANC) including age of consent with and without parental consent
8. Policy framework and legislation enabling or disabling access to HPV vaccines and cervical cancer screening and treatment, including Age of Consent, with and without parental consent
9. Age of Consent to access HIV testing without parental consent.

Chapter Two: Age of Consent to sexual intercourse

The Age of Consent to sexual intercourse is set at 16 years for both males and females who are unmarried. The Criminal Law (Codification and Reform) Act currently provides that, the Age of Consent to sexual activity for married couples is 12 years. However, the Government announced in 2015 that the Age of Consent to sexual activity was being raised from 12 to 16 years, to align the Criminal Law (Codification and Reform) Act with the Constitution. The Act is yet to be amended.

Sexual intercourse between young persons who are both over 12 years but under 16 years only becomes an offence upon the recommendation by a probation officer that either of them should be charged. There have been cases where a person aged between 12 and 16 years has been convicted for having sexual intercourse with another person aged between 12 and 16 years, although in each case the probation officer would have to determine whether the conviction was appropriate.

Legislation on Age of Consent to sexual intercourse

According to **Section 61 (1) of the Criminal law (Codification and Reform) Act [Chapter 9:23]**: ‘young person’ means a boy or girl under the age of 16 years. ‘Extra-marital sexual intercourse’ means sexual intercourse otherwise than between spouses. **Section 70(1) of the Criminal law (Codification and Reform) Act [Chapter 9:23]** Any person who (a) has extra-marital sexual intercourse with a young person; or (b) commits upon a young person any act involving physical contact that would be regarded by a reasonable person to be an indecent act; or (c) solicits or entices a young person to have extra- marital sexual intercourse with him or her or to commit an act with him or her involving physical contact that would be regarded by a reasonable person to be an indecent act; shall be guilty of sexual intercourse or performing an indecent act with a young person, as the case may be, and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

Criminal Law (Codification & Reform Act) [Chapter 9:23] Section (64) Competent charges in cases of unlawful sexual conduct involving young or mentally incompetent persons (1). A person accused of engaging in sexual intercourse, anal sexual intercourse or other sexual conduct with a young person of or under the age of 12 years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, and not with sexual intercourse or performing an indecent act with a young person, or sodomy. (2) A person accused of engaging in sexual intercourse, anal sexual intercourse or other sexual conduct with a young person above the age of 12 years but of or under the age of 14 years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, and not with sexual intercourse or performing an indecent act with a young person or sodomy, unless there is evidence that the young person (a) was capable of giving consent to the sexual intercourse, anal sexual intercourse or other sexual conduct; and (b) gave his or her consent thereto.

Section 70 (2a) of the Criminal law (Codification and Reform) Act [Chapter 9:23]: Where extra-marital sexual intercourse or an indecent act occurs between young persons who are both over the age of 12 years but under the age of 16 years at the time of the sexual intercourse or the indecent act, neither of them shall be charged with sexual intercourse or performing an indecent act with a young person except upon a report of a probation officer appointed in terms of the Children’s Act [Chapter 5:06] showing that it is appropriate to charge one of them with that crime.

Definition of statutory rape

Zimbabwe’s current legislation states that sex with a person aged 12 years or under will be deemed to be rape, regardless of whether the person consented. Sex with a person aged 13 or 14 years will be deemed to be rape unless there is evidence that the young person was capable of consenting, and consented. There is no provision that sex with a person aged 15 is considered to be, although it is prohibited under S.70 (1).

However, as explained, the Government announced in 2015 that the Age of Consent was being raised from 12 to 16. Once the Criminal Law (Codification & Reform) Act has been amended, sex with someone under the age of 16 will be statutory rape unless both parties are under 16.

Legislation and policy framework on statutory rape

Criminal Law (Codification & Reform Act) [Chapter 9:23] Section (64) (1) Competent charges in cases of unlawful sexual conduct involving young or mentally incompetent persons

1. *A person accused of engaging in sexual intercourse, anal sexual intercourse or other sexual conduct with a young person of or under the age of 12 years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, and not with sexual intercourse or performing an indecent act with a young person, or sodomy.*
2. *A person accused of engaging in sexual intercourse, anal sexual intercourse or other sexual conduct with a young person above the age of 12 years but of or under the age of 14 years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, and not with sexual intercourse or performing an indecent act with a young person or sodomy, unless there is evidence that the young person*
 - a. *was capable of giving consent to the sexual intercourse, anal sexual intercourse or other sexual conduct; and*
 - b. *gave his or her consent thereto.*

Exceptions on Age of Consent -For example 'gay sex'

The Criminal Law (Codification and Reform) Act prohibits anal sexual intercourse and any other 'indecent acts' between men. Where a young male aged over 14 years engages in consensual sexual conduct with a young man aged 14 years or under, only the older man will be charged with sodomy. There are no legislative provisions relating to sex between two women.

Legislation and policy framework on exceptions for gay sex

The Criminal Law (Codification & Reform Act) [Chapter 9:23] S.73(1) states that any male person who, with the consent of another male person, knowingly performs with that other person anal intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy.

Section 64(4) states, If, in the case of a male person who engages in anal sexual intercourse or other sexual conduct with a young male person of or under the age of 14 years, or with a mentally incompetent adult male person, there is evidence that the young or mentally incompetent person (a) was capable of giving consent to the anal sexual intercourse or other sexual conduct, and (b) gave his consent thereto; the first-mentioned male person alone shall be charged with sodomy.

Chapter Three: Access to contraception services and commodities

In Zimbabwe, there is no legislation that specifies the age limit below which parental consent is required to receive medical treatment. However, the common practice is that parental consent is required to provide medical treatment to a child under 16 years. In addition, since a child under the age of 16 years cannot consent to sexual intercourse in practice, it is presumed that a child under the age of 16 years does not need contraceptives.

The common practice regarding Age of Consent to medical treatment was verbally confirmed to local counsel by both SAfAIDS, a local non-profit organisation, and a local doctor.

Pharmacies in Zimbabwe require the parents and/or guardians to be present, or a written order signed by the parents or guardians before any medication can be dispensed to a child under 16 years, and this includes contraceptives which are a form of medication. Any person above the age of 16 years can, without parental consent, access medical treatment including contraceptives.

In addition, there is a Government initiative under which contraceptives are available without a prescription, and without parental consent, at Government hospitals to children aged between 16 and 18 years.

There are, however, no age restrictions regarding access to contraceptives that are in the form of the barrier methods, such as condoms, that are readily available over the counter, without parental consent being required.

According to section 76 of the Children's Act [5:06], an order may be made by the magistrate where the parent or guardian has unreasonably refused to consent to the medical treatment or surgery of a minor child.

Legislation and policy framework

Chapter 15:03 of the Medicines and Allied Substances Control (General) Regulations, 1991. No person shall sell any medicine to any person apparently under the age of 16 years — (a) in the case of a household remedy or a medicine listed in Part I of the Twelfth Schedule, except upon production of a written order signed by the parent or guardian of the child known to such person; (b) in the case of any other medicine not referred to in paragraph (a) except upon production and in terms of a prescription issued by a medical practitioner, dental practitioner or veterinary surgeon.

Children's Act [5:06] Section (76) (1) Where the consent of a parent or guardian is necessary for the performance of any dental, medical, surgical or other treatment upon a minor and the consent of the parent or guardian is refused or cannot be obtained within a period which is reasonable in the circumstances, application may be made to a magistrate of the province where the minor is or is resident for authority to perform the treatment. (2) A magistrate to whom an application in terms of subsection (1) is made may— (a) after due inquiry and after affording the parent or guardian concerned a reasonable opportunity of stating his reasons for refusing to give the necessary consent or without affording such person such opportunity if his whereabouts are unknown or if in the circumstances it is not reasonably practicable to afford him such opportunity; and (b) if satisfied that any dental, medical, surgical or other treatment is necessary or desirable in the interests of the health of the minor; by order in writing authorize the performance at a hospital or other suitable place upon the minor concerned of such dental, medical, surgical or other treatment as may be specified in the order. (3) Where authority for the performance of any treatment has been given in terms of subsection (2), the person legally liable to maintain the minor concerned shall be liable for the cost of the treatment.

Children's Act [Chapter 5:06] section 2: "minor" means a person under the age of 18 years.

Also see: General Law Amendment Act[Chapter 8:07] section 15: (1) On and after the 10th December, 1982, a person shall attain the legal age of majority on attaining eighteen years of age.

Young people's access to emergency contraceptives

Emergency contraceptives would be considered a form of medical treatment and, therefore, individuals aged under 16 would require parental consent to access them in practice.

Legislation and policy framework

Chapter 15:03 Medicines and Allied Substances Control (General) Regulations, 1991. No person shall sell any medicine to any person apparently under the age of 16 years — (a) in the case of a household remedy or a medicine listed in Part I of the Twelfth Schedule, except upon production of a written order signed by the parent or guardian of the child known to such person; (b) in the case of any other medicine not referred to in paragraph (a) except upon production and in terms of a prescription issued by a medical practitioner, dental practitioner or veterinary surgeon.

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Children's Act [Chapter 5:06] Section 2:

'minor' means a person under the age of 18 years.

Also see: **General Law Amendment Act [Chapter 8:07] Section 15:**

1. *On and after the 10th December, 1982, a person shall attain the legal age of majority on attaining eighteen years of age.*

Chapter Four: Age of Consent and HIV testing

A child who is aged 16 years or above can consent to HIV testing whereas children under 16 may consent to HIV testing if:

- a. they are married, pregnant or a parent; or
- b. they can demonstrate that they are mature enough to make a decision on their own.

In addition, if a parent or caregiver cannot or will not give consent for a child under 16 years, the attending health worker can seek approval from hospital authorities or minister to give treatment without parental consent if it is in the best interest of the child.

Legislation and policy framework on HIV testing

Zimbabwe National Guidelines on HIV Counselling and Testing Chapter 2.2.2 (IV) states that any child who is aged 16 years or above, or is married, pregnant or a parent, who requests HIV testing is considered able to give full informed consent. The consent of a parent or caregiver is required before performing an HIV test on a child who is below 16 years of age.

A child under the age of 16 who is a mature minor may provide informed consent for HIV testing. A mature minor is a child or adolescent who can demonstrate that he or she is mature enough to make a decision on their own. If a parent or caregiver will not or cannot give consent for a child below 16 years of age, the health worker can exercise the 'best interest of the child' principle and seek approval from the person in charge of the clinic or hospital to perform the HIV test.

Age of Consent to report HIV status directly to adolescents

Test results will be reported directly to the patient from the age of 16 years, or on assessment of maturity by the health service provider if the child is under the age of 16 years.

Zimbabwe National Guidelines on HIV Counselling and Testing Section 2.5 provide that informing children of their HIV status will depend on a thorough assessment of the child's ability to understand HIV and AIDS issues and their level of maturity. If the parent or caregiver refuses to have the results disclosed to a child under 16 years, then the principles of mature minor and acting in the best interest of the child should apply. Specifically The counsellor should specifically determine whether 1) The child is mature enough to cope with the results of the HIV test; 2). The child has other people who can provide him or her with psychological and emotional support; 3) Knowledge of the results will benefit the child's care and treatment.

Chapter Five: Age of Consent and access to Anti-retroviral Therapy (ART)

The guidelines for ART and treatment of HIV in Zimbabwe provide for treatment of children, but do not mention Age of Consent. In practice, a child under the age of 16 will still require parental or guardians consent as with any other medical treatment. Prevention of mother-to-child transmission has also been well-administered in Zimbabwe. HIV positive pregnant women are given nevarapine during of their pregnancy.

Legislation and policy framework on access to ART

Guidelines for Antiretroviral Therapy and treatment of HIV in Zimbabwe (2013) include:

1. Principles of Antiretroviral Therapy.
2. Initiation of Antiretroviral Therapy in adults and adolescents.
3. Recommended treatment regimens for adults and adolescents.
4. Preventing mother-to-child transmission of HIV.
5. Antiretroviral Therapy in children.
6. Monitoring patients on Antiretroviral Therapy.
7. Preventing opportunistic infections.
8. Post-exposure Prophylaxis (PEP).

These guidelines are regularly updated as new information and evidence become available. Guidelines are available at www.nac.org.zw. Also see information on the Age of Consent.

Chapter Six: Age of Consent and access to Pre-exposure Prophylaxis (PrEP) and Post-exposure Prophylaxis (PEP)

Pre-exposure Prophylaxis (PrEP)

Pre-exposure Prophylaxis is not offered in Zimbabwe yet but there is no prohibition on the provision of PrEP. Several studies are underway to test whether Truvada should be offered as a Pre-exposure Prophylaxis (PrEP) in Zimbabwe.

Young people's access to PrEP

Discussions regarding PrEP in Zimbabwe so far suggest that it will be aimed specifically at high-risk populations such as sex workers and young women aged 15-24, but these discussions have not yet covered Age of Consent. It is, therefore, difficult to determine at what age PrEP would be available without parental consent.

Post-exposure Prophylaxis

HIV Post-exposure Prophylaxis (PEP) is highly controlled in Zimbabwe. PEP is permitted in specific circumstances. A person would only be able to access it if it was an issue of sexual assault, or if a health professional has been exposed as part of their work. It is prohibited except in specific circumstances.

In sexual assault cases, parental consent is not required. A victim is required to file a police report and thereafter, they would be able to access the rape kit which includes the PEP kit. It is always assumed that the perpetrator is HIV positive. The PEP project is being run through the Victim Friendly Unit and there are specific police officers who have been trained to deal with this. This is a matter of common practice, and there is no legislation or written guidance codifying this approach.

PEP is also available to health professionals who have been exposed as part of their work. Nothing is mentioned in the guidance about the Age of Consent but local counsel infer that a person under 16 will require parental consent to receive PEP. PEP is prohibited except in specific circumstances.

Legislation and policy framework on access to PEP

Guidelines for Antiretroviral Therapy and treatment of HIV in Zimbabwe (2013)

The following types of exposures should be considered for Post-exposure Prophylaxis:

1. *Needle-stick injury or injury with a sharp object used on a patient*
2. *Mucosal exposure of the mouth or eyes by splashing fluids.*
3. *Broken skin exposed to a small volume of blood or secretions such as may occur with sexual abuse.*
4. *Sexual assault (rape)*

Zimbabwe National Guidelines on HIV Counselling and Testing section 2.8.1 states that PEP should be started as soon as one hour after exposure, preferably within 36 hours and no later than 72 hours following the exposure. HCT should be offered to both the source patient/client and the exposed person.

Guidelines for ART and treatment of HIV in Zimbabwe (2013) and the Zimbabwe National Guidelines on HIV Counselling and Testing. The guidelines do not state an Age of Consent. Guidelines are available at www.nac.org.zw

Chapter Seven: Age of Consent and access to safe abortions and/or postabortion care

Abortions are illegal in Zimbabwe as the law prohibits the intentional termination of pregnancy. There are, however, exceptions when abortions are permitted. The Termination of Pregnancy Act, being the Act which legalises abortions in certain circumstances, does not make reference to age in its limitations, but mentions conditions under which legal and safe abortions can be performed. As discussed above, anyone under 16 years requires parental /guardian consent before undergoing medical procedures.

In the event that it is not possible to obtain this consent in cases of a minor that is under the age of 18 years, an application to the Magistrate can be made. The Magistrate, after hearing the parties' reasons, will then make a decision on whether to grant the order for an abortion or not. (Section 76 Children's Act.)

Recent case law has made it clear that failure by the police/prosecutor/magistrate or any other authority to prevent an unwanted pregnancy resulting from rape is actionable.

Legislation and policy framework on safe abortion and postabortion care

Section 60 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] Unlawful termination of pregnancy:(1) Any person who (a) intentionally terminates a pregnancy; or (b) terminates a pregnancy by conduct which he or she realises involves a real risk or possibility of terminating the pregnancy; shall be guilty of unlawful termination of pregnancy and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both. (2) It shall be a defence to a charge of unlawful termination of pregnancy for the accused to prove that (a) the termination of the pregnancy occurred in the course of a 'Caesarean section', that is, while delivering a foetus through the incised abdomen and womb of the mother in accordance with medically recognised procedures; or (b) the pregnancy in question was terminated in accordance with the Termination of Pregnancy Act [Chapter 15:10].

Section 4 of the Termination of Pregnancy Act [Chapter 15:10] provides the circumstances under which an intentional termination of pregnancy shall not be deemed to be unlawful and they are as follows:

- a. *where the continuation of the pregnancy so endangers the life of the woman concerned or so constitutes a serious threat of permanent impairment of her physical health that the termination of the pregnancy is necessary to ensure her life or physical health, as the case may be; or*
- b. *where there is a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will permanently be seriously handicapped; or*
- c. *Where there is a reasonable possibility that the foetus is conceived as a result of unlawful intercourse.*

*Section 5 of the **TERMINATION OF PREGNANCY ACT [Chapter 15:10]** sets out the conditions that must be fulfilled in order to terminate a pregnancy for one of the permitted reasons. Section 76 of the Children's Act referred too under the section on access to contraception.*

Mildred Mapingure v Minister of Home Affairs, Minister of Health and Child Welfare & Minister of Justice, Legal and Parliamentary Affairs SC 22/14 confirms that the failure by the police and doctor to prevent an unwanted pregnancy resulting from rape is actionable.

Chapter Eight: Age of Consent on access to Antenatal Care (ANC)

In Zimbabwe, there is no legislation or policy framework specifically enabling Antenatal Care (ANC). The Constitution contains a right to healthcare which can be interpreted to include the right of women to access maternal healthcare, regardless of age. Thus if a young person requires ANC, they should be able to access it, with their parents/guardians consent if under 16 years, or with the Magistrate's consent in instances where parental consent is refused/unavailable.

Legislation and policy framework

Under Section 76 of the Constitution of Zimbabwe, Amendment number 20 (Act 1 of 2013) provides for the Right to Healthcare; (1) Every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services. (2) Every person living with a chronic illness has the right to have access to basic healthcare services for the illness. (3) No person may be refused emergency medical treatment in any health-care institution.

Chapter Nine: Access to HPV vaccines, and cervical cancer screening and treatment

The Human Papillomavirus (HPV) vaccines and cervical screening both constitute medical treatments and a person's ability to access them will be subject to the already mentioned Age of Consent (see response to question 4 for more information). However, the Age of Consent may differ in practice.

HPV vaccines

There is a policy framework in place, although not yet codified, that enables access to the HPV vaccines and sets the Age of Consent at 10 years, which can also be inferred from practice. The Ministry of Health introduced a pilot study in 2014 which targeted over 4000 girls aged 10 years and under. In 2016, the Government plans to have a nationwide roll-out of the vaccines at schools. The Ministry of Education also supports this project and is assisting the Ministry of Health in increasing access to the vaccines by advocating for legislation governing the HPV vaccination. This is still in the pilot study stage and it is not clear what the Age of Consent will be or how it will be implemented.

VIAC testing and pap smears

Cervical cancer is the most common cancer amongst women in Zimbabwe. As a result, there have been many initiatives to educate women on the cancer. The women who are able to afford pap smears, have them done privately by their gynaecologists. There is no age restriction on private pap smear tests. However, to counter the price issue, the Ministry of Health has introduced a new method of testing. This is known as VIAC testing, which uses a vinegar solution to detect the cervical cancer cells in the cervix and womb. This is offered for free or for a very minimal fee at certain medical institutions for people over the age of 16 years, without the need for parental consent. However, girls younger than 16 who are sexually active, will require their parents'/guardians' consent before undergoing this procedure.

Legislation and policy framework

The vaccines is being introduced nationwide in 2016. It will be aimed at girls between the ages of 9 - 12 years and below as they are presumed not to be sexually active and without the HPV virus. There is currently no codified policy in place.

Chapter Ten: Recommended intervention on legal and policy framework

Area	Category of regulation	Required intervention
Age of sexual intercourse	L	LR
Definition of statutory rape	L	LR
Exceptions on Age of Consent - For example 'gay sex'	L	LR
Young people's access to contraceptive services	L	LR
Young people's access to emergency contraceptives	L Practice Guidelines	LR
Policy framework and legislation on access to Antiretroviral Therapy (ART)	G	N/A
Policy and legislation on Young people's access to PEP	G Pr	N/A
Policy and legislation on Young people's access to PrEP	G	N/A
Policy framework and on access to Antenatal care (ANC)	L	LR
Policy framework and legislation on access to HPV vaccines, and cervical cancer screening and treatment	Pr	Government To Pass New Regulation
Policy framework and/or legislation on access to safe abortions and/or postabortion care	L Case Law	LR
Age of Consent to access HIV testing without parental consent	G	Government To Pass New Regulation
Legal and policy framework on the Age of Consent HIV status will be reported directly to an adolescent	Policy	PR
Address various policy and legislation inconsistencies	L G	LR Minister to Sign Off New Guidelines

Legislation



Guidelines



Practice



Law Reform



Policy Reform



Annex

KEY QUESTIONS FOR THE LEGAL REVIEW

1. At what age may sex between consenting individuals legally take place? (Age of Consent to sexual intercourse) Indicate if there are different ages for males and females?
2. Is there a definition of statutory rape? Please define.
3. Are there exceptions to question (1)? For example gay sex?
4. At what age may a young person access contraceptive services including contraceptive commodities? Please specify with and without parental consent if the answers are different.
5. May a young person access emergency contraceptives (e.g. the 'morning-after pill')? At what age? Please specify if there are different ages with and without parental consent.
6. policy framework and legislation enabling or disabling access to Antiretroviral Therapy (ART), including Age of Consent with and without parental consent.
7. Specify whether there is any prohibition on HIV Post-exposure Prophylaxis (PEP), including age of consent with and without parental consent.
8. If there is no prohibition in question 7, would young people be legally able to access PEP if it was offered? At what ages? Please specify if there are different ages with and without parental consent.
9. Is there any legislation or policy specifically enabling PEP use in country? Please specify if it deals with ages of consent and give details.
10. Specify whether there is any prohibition on HIV Pre-exposure Prophylaxis (PrEP), including age of consent with and without parental consent.
11. If there is no prohibition in question 10, would young people be legally able to access PrEP if it was offered? At what ages? Please specify if there are different ages with and without parental consent.
12. Is there any legislation or policy specifically enabling PrEP use in the country? Please specify if it deals with ages of consent and give details.
13. Please state whether there is policy framework and/or legislation enabling or disabling access to safe abortions and/or postabortion care, including Age of Consent with and without parental consent.
14. policy framework and legislation enabling or disabling access to Antenatal Care (ANC), including Age of Consent with and without parental consent.
15. policy framework and legislation enabling or disabling access to HPV vaccines, and cervical cancer screening and treatment, including Age of Consent with and without parental consent.
16. What is the Age of Consent to access HIV testing without parental consent?
17. What is the Age of Consent at which the HIV status will be reported directly to an adolescent and legal/policy requirements to report the status to her/his parents?
18. Please explain any inconsistencies between the answers above.



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