AGE OF CONSENT: LEGAL REVIEW
ZAMBIA 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. Inaddition, 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

ACKNOWLEDGEMENT

The SRHR Africa Trust (SAT) wishes to acknowledge the individuals, organisations, and law firms that contributed to this report through their expertise, co-operation, and hard work.

Special thanks go to Corpus Legal Practitioners in Zambia that provided pro bono legal services to assist SAT with the underlying research for the review on the Age of Consent Legal Review in Zambia, working with Arnold & Porter Kaye Scholer LLP, and in particular to Catherine Young for coordinating the legal review in all the participating countries.

SAT also wishes to thank civil society organisations and partners who attended the Age of Consent Validation Meeting that met to discuss and validate the draft Advocacy Toolkit. The meeting critically reviewed the draft reports, analysing the data collected for its accuracy and merits.

SAT is grateful to UNICEF for co-funding the review of the Age of Consent laws, policy frameworks, Ethical, Social, and Cultural (ESC) impacts on sexual reproductive health and rights and HIV.

Last but not least, SAT thanks TrustLaw at the Thomson Reuters Foundation for their continued collaboration with SAT on health and rights and for brokering the partnerships between SAT and the law firms. TrustLaw is the Thomson Reuters Foundation's global pro bono legal programme, connecting law firms and corporate legal teams around the world with high impact NGOs and social enterprises working to create social and environmental change.

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ZAMBIA

AGE OF CONSENT LEGAL REVIEW

SRHR Africa Trust
GENDER EQUAL YOUTH HEALTH

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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

CONTENT PAGE

FOREWORD		i
ACKNOWLEDGEMENT		ii
DISCLAIMER		iv
ACRONYMS		vi
EXECUTIVE SUMMARY		viii
Chapter One:	Introduction	1
Chapter Two:	Age of Consent to sexual intercourse	3
Chapter Three:	Access to contraception services and commodities	5
Chapter Four:	Age of Consent and HIV testing	6
Chapter Five:	Age of Consent on Antiretroviral Therapy	7
Chapter Six:	Age of Consent and access to Pre-exposure Prophylaxis (PrEP) and Post-exposure Prophylaxis (PEP)	8
Chapter Seven:	Age of Consent and access to safe abortions and/or postabortion care	9
Chapter Eight:	Age of Consent on access to Antenatal Care (ANC)	10
Chapter Nine:	Age of Consent and access to HPV vaccines and cervical cancer screening and treatment	11
Chapter Ten:	Recommended intervention on legal and policy framework	12
Annex		13

EXECUTIVE SUMMARY

The Age of Consent to sexual intercourse in Zambia is 16 years and sexual intercourse with a person under the age of 16 years is illegal, however, an exception would exist if the couple is married under customary law. Gay sex is criminalised and there is no express exception that exists for gay sex.

Zambia does not place any age restriction on young people's access to contraception, hence parental consent is not a legal requirement, although parental consent may be required for persons under 16 in practice. National policy aims to facilitate young people's access to contraceptives.

The country does not have age restrictions for access to emergency contraceptives but parental consent may be required for those under 16 years. The Age of Consent to access to Antiretroviral Treatment is unclear but it is likely to be the same as for HIV testing i.e. 16 years.

Zambia does not have any prohibition on access to Pre-exposure Prophylaxis and Post-exposure Prophylaxis, however, the Age of Consent is likely to be the same as for HIV testing i.e. 16 years.

Abortion in Zambia is permitted under certain circumstances. The Age of Consent to a lawful abortion is not specified but is likely to be 16 years.

There is no legislation or policy enabling access to Antenatal Care (ANC). The Age of Consent is likely to be 16 years. Zambia has guidelines on the HPV vaccine and girls aged 9-10 are offered vaccines through school-based programmes. Out-of-school girls aged 10 years can access the vaccines. Parental consent is likely needed.

Persons under 16 years require parental consent to access HIV testing, except in the case of married, pregnant or parent-children. It is unclear but the Age of Consent for access to emergency contraceptives testing i.e. 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 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, HCT and linkages to prevention, treatment, and care.

HIV is the most severe in the Southern Africa 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.

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 prioritised joint action to take stock of the current situation in countries with respect to Age of Consent for services including HIV, prevention 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 the United Nations Development Programme (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 globally 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 / polices and ESC factors that serve as potential barriers to adolescents accessing SRH services, including HIV prevention, care and treatment. The research explored implications for expanding SRHR services and HCT in adolescents aged 10–19 years.

Methodology

The Zambia legal review was prepared by SAT and is based on research conducted by Corpus Legal Practitioners in Zambia. 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 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 disenabling access to Pre-exposure Prophylaxis (PrEP) including Age of Consent, with and without parental consent
5. Policy framework and legislation enabling or disenabling access to Post-exposure Prophylaxis (PEP) including Age of Consent, with and without parental consent
6. Policy framework and legislation enabling or disenabling access to safe abortions and postabortion care including Age of Consent, with and without parental consent
7. Policy framework and legislation enabling or disenabling access to Antenatal Care (ANC) including Age of Consent, with and without parental consent
8. Policy framework and legislation enabling or disenabling 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

In Zambia, the Age of Consent to sexual intercourse is 16 years for both boys and girls, as a child has been defined to mean a person under the age of 16 years.

A child above the age of 12 years who 'carnally knows' another child commits an offence and is liable, to such community service or counselling as the court may determine, in the best interests of both children.

Legislation on Age of Consent to sexual intercourse

The Penal Code Chapter 87 of the Laws of Zambia (the Penal Code) Section 138(1) Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.

Section 131A defines child as a person below the age of 16 years.

Section 138(4) A child above the age of twelve years who commits an offence under section 138 (1) is liable, to such community service or counselling as the court may determine, in the best interests of both children.

Definition of statutory rape

There is no definition for statutory rape under the Zambian law. However the Penal Code prescribes the offence of defilement and provides in this regard that, any person who unlawfully and carnally knows any child commits a felony and is liable upon conviction to a term of imprisonment of not less than 15 years and may be liable to imprisonment for life.

Legislation and policy framework on statutory rape

The Penal Code - Section 138(1) states that 'Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.'

Legislation on exceptions for gay sex

Gay sex is illegal in Zambia at any age. Section 155 of the Penal Code criminalises the act of having 'carnal knowledge' of any person against the order of nature, which may include gay sex.

Section 158 of the Penal Code prohibits any person from committing an act of 'gross indecency' with a person of the same sex.

Section 158 (3) of the Penal Code provides that, where a child commits an act of gross indecency with another child of the same sex, the child is liable to such community service or counselling as the court may determine, in the best interest of the child.

Local counsel is not aware of any reported case where a person was prosecuted for having gay sex, but the National Prosecutions Authority have advised local counsel that, persons are prosecuted for engaging in gay sex in practice.

Legislation on sex

The Penal Code - Section 155 states that any person who has carnal knowledge of any person against the order of nature commits a felony and is liable upon conviction to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life. Provided that where a person has carnal knowledge of a child against the order of nature or permits a male person to have carnal knowledge of a male or female child against the order of nature, that person commits an offence and is liable upon conviction to imprisonment for not less than twenty five years and may be liable to imprisonment for life.

Section 158(1): provides that any male person who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or person to commit any act of gross indecency with him , or attempts to procure the commission of any such act by any male person+E7 with himself or with another male child or person, whether in public or private, commits a felony and is liable, upon conviction to imprisonment for a term of not less than seven years and not exceeding fourteen years.

Section 158(2): provides that, any female person who, whether in public or private, commits any act of gross indecency with a female child or person, or procures a female child or person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female child or person whether in public or private, commits a felony and is liable, upon conviction to imprisonment for a term of not less than seven years and not exceeding fourteen years.

Section 158(3): provides that, a child who whether in public or private, commits any act of gross indecency with another child of the same sex or attempts to procure the commission of any such act by any person with the child's self or with another child or person of the same sex, whether in public or private commits an offence and is liable to such community service or counselling as the court may determine in the best interests of the child.

Chapter Three: Access to contraception services and commodities

There are no legal age restrictions on access to contraceptive services and commodities per se. The Government has developed a number of policies to ensure access to family planning for young people to improve their health status. Adolescents and youth are entitled to access contraceptive services, including contraceptive commodities. Youths are defined as persons between the ages of 10-35 years, while adolescents are those between the ages of 10-19 years.

However, as the Age of Consent to sexual intercourse is 16 years, it likely that access to any form of contraceptive, including barrier methods, would be denied to any person under this age unless there is parental consent.

It is easier for children under 16 years to access contraceptives without parental consent from a chemist or pharmacy than from a doctor in practice.

Legislation and policy framework on contraception and commodities

The Zambia Family Planning Guidelines and Protocols, March 2006 Page 2 – 'Facilitate access, especially for young girls, to all types of services dealing with Reproductive Health concerns, and specifically Family Planning without consent of spouse, parents/guardians or relatives as allowed by current legislation.'

Family Planning Services Integrated Family Planning Scale- up Plan 2013-2020, page 13 'Adolescents and youths: To more effectively target and serve adolescent and youths with quality accessible sexual and reproductive health information and services in and out of school. Page 17 states that Youth-friendly Service (YFS) points will be established in each district in existing government buildings such as sports complexes and administrative blocks. The rooms will be refurbished with family planning materials and necessary supplies. Peer educators trained to dispense pills and condoms will staff the service points.

The National HIV/AIDS/STI/TB Policy 2005, page 28 clause 6.4 speaks to improved availability of condoms and other barrier methods. To make condoms and other barrier methods available, accessible and affordable to all sexually active individuals throughout the country.

Condoms and other barrier methods are known to drastically reduce the risk of HIV infection. In order to promote the use of condoms and other barrier methods the Government shall; encourage the use of male and female condoms and other barrier methods in sexual relations, ensure that condoms are easily accessible to sexually active people through various distribution channels, ensure highest standards of condoms through quality control measures and adherence to registration and distribution requirements as provided under the Pharmacy and Adolescent Health Communication Strategy in Zambia 2013-2015 (page vi).

The Poison Act of the Laws of Zambia ensures that proper instructions and information on the use and disposal of condoms are provided in user-friendly relevant languages.

Access to emergency contraceptives

In Zambia, a young person may access emergency contraceptives at the age when the young person reaches the age of reproduction, which may vary.

There is no legal restriction on the age of access to emergency contraceptives. However, if a young person reaches the age of reproduction and is under the age of 16 years, parental consent may be required to access the emergency contraceptives in practice. However, emergency contraceptives are readily available to children of all ages who are sexually abused. There was no official source to confirm the common practice mentioned.

Chapter Four: Age of Consent and HIV testing

According to the Penal Code Section 2 and Section 13, a 'child' means a person under the age of 16 years. At 16 years of age, a young person can give consent to HIV testing without parental consent. In instances where the child is married, pregnant or is a parent themselves, the child is regarded as an emancipated minor and should not be denied access to HIV testing services.

The Zambia National Guidelines for HIV Counselling and Testing of Children, March 2011, page 3, Clause 2.3 notes that married, pregnant or parent children should be considered 'emancipated minors', who should not be denied access to HIV testing services. Children above 16 years should be considered to be old enough to give informed consent when seeking HIV testing services. Page 4 of the Guidelines notes that 16-18 year olds can give consent for testing and a child can give consent for HIV testing. According to the Penal Code Act, a child who has attained the age of 16 years is able to give informed consent.

Age of Consent to report HIV status directly to adolescents

The Zambia National Guidelines for HIV Counselling and Testing of Children provides that the Age of Consent for HCT is 16 years. At 16 years, the HIV status should be reported directly to an adolescent and under 16 years, the HIV status should be reported to his/her parents.

The HIV/AIDS/STI/TB Policy recognises that the United Nations Convention on the Rights of a Child (UNCRC) specifically refers to the fact that every child has the right to have his/her privacy respected and that the confidentiality of a child's HIV status should only be communicated to their parents if communication does not harm the rights of the concerned child. Examples of where communication would not harm the child's rights would be where the information is given under compulsion of the law, for example as material evidence in court proceedings, or where cultural and social traditions permit shared confidentiality in the family and the community.

However, Zambia has not yet domesticated the Convention and, therefore, the UNCRC is not binding. The Ministry of Health has informed local counsel that, the HIV status of a child under 16 years will be disclosed to the child's parent or guardianin practice, because the welfare of the child is of primary concern. Provided the disclosure is in the best interests of the child (taking into account the need to reduce stigma and denial, foster acceptance, and ensure continued care for the child such as the encouragement of shared confidentiality among others who may include family members and healthcare providers), the HIV status of a child under 16 years will be disclosed to the child's parents or guardians despite the child's right to confidentiality.

Legislation and policy framework on reporting HIV status to a young person

The Penal Code Section 2 and Section 131 - A child means a person below the age of 16 years.

According to the National HIV/AIDS/STI/TB Policy, January 2005, page 5, clause 2.6, In the context of HIV testing, every child has a right to have his/her HIV test result maintained confidentially. Therefore confidentiality should be upheld and protected at all times.

Page 25 states that confidentiality of children's HIV status must be strictly maintained and communicated to the child, parents, guardians or prospective foster parents only if the communication does not harm the rights of the concerned child. Page 3, clause 2.3, In Zambia, HIV Counselling and Testing Consent of a parent/ guardian is required if the child is below 16 years. However married, pregnant or parent-children should be considered emancipated minors who should not be denied access to HIV Counselling and Testing services.

Chapter Five: Age of Consent on Antiretroviral Therapy

This study did not establish any guidelines dealing specifically with the Age of Consent to HIV treatment. The Zambia National Guidelines for HIV Counselling and Testing of Children does not apply directly to Antiretroviral Treatment (ART) treatment, but does recognise that children testing HIV positive should be referred to an ART clinic for the commencement of ART treatment. Given that (as discussed above on HIV testing) these Guidelines provide that (except in the case of emancipated minors) parental consent is required for a child under 16 years to undergo HIV testing, Local counsel's view is that parental consent would also be required for a child under 16 years to undergo ART treatment.

An emancipated minor (a married, pregnant or parent child) is likely to be provided with ART treatment without parental consent.

Legislation and policy framework on access to Antiretroviral Therapy

Zambia does not have any restrictions on the use of ART. The Policy- Guidelines for Antiretroviral Therapy for HIV Infection in Infants and Children in Zambia recommen d early initiation of ART in infants and children, and provides that:

a. *all HIV infected children under 24 months should receive treatment regardless of immunological or clinical stage,*
b. *for children who are 24 months or older, clinical and immunological thresholds should be used to identify children who need to start ART. However, these guidelines do not discuss the Age of Consent to such treatment.*

Policy

Guidelines for Antiretroviral Therapy for HIV Infection in Infants and Children in Zambia, Second Edition, 2010 provide the requisite policy framework for ART in the country. Page 13, clauses 5.0,5.1, Page 16, clause 6.0, Page 57, clause 14, Page 59 clause 14.2 and Page 60, clause 14.2.2

The Guidelines for Antiretroviral Therapy for HIV Infection in infants and Children in Zambia state that Zambia has adopted a public health approach to support and facilitate wider access to ART. The Guidelines recognise that the decision making process for initiation of ART in infants and children relies on age, clinical and/or immunological assessment. The Guidelines recommend that early initiation of ART in infancy and childhood dramatically reduces risk of death and disease progression and therefore without effective treatment, an estimated one third of infected infants will have died by one year of age, and about half will have died by two years of age. Further, the Guidelines state that the decision on when to start ART should involve the evaluation of the social environment of the child needing therapy. The Guidelines also recommend the universal treatment for all HIV infected Zambian infants and young children under 24 months irrespective of immunological or clinical stage. For children who are 24 months or older, clinical and immunological thresholds are used to identify children who need to start ART.

The Zambia National Guideline for HIV Counselling and Testing of Children, March 2011, Page 3, clause 2.3 and Page 4, clause 2.5. The National Guidelines for HIV Counselling and Testing for Children state that consent in children is different with adults in the sense that children do not consent but should be given an opportunity to assent in addition to the parent's/guardian's consent. The application of the term 'informed consent' varies according to the child's age. Informed consent refers to making a decision which is based on accurate and up-to-date facts about HIV and AIDS presented to the parent/guardian. In all cases, the overriding consideration should be in the best interest of the child. The welfare of the child must be of primary concern when considering HCT for the child. The counsellor should use discretion to postpone testing if they feel that it is not in the best interest of the child. The HIV Guidelines also recommend that children who have been sexually abused should be managed in line with the ART Guidelines as indicated above.

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

According to the study, there is no legislation that specifically enables the use of Post-exposure Prophylaxis (PEP) in Zambia. However, the Zambia National Guidelines for HIV Counselling and Testing of children provides for access to PEP for children who have been sexually abused.

The Managing Opportunistic Infections, Reference Manual, March 2009, Edition 3.0 also provides for the administration of PEP to employees of the Ministry of Health i.e. occupational exposure. The employees are, however, not to be given PEP if 72 hours has elapsed since the time of exposure. Equally, PEP is not to be exposed to employees who refuse to test for HIV or test positive at the initial test.

Local counsel have been advised by the Ministry of Health that PEP can also be administered to a person who has been exposed to HIV through drug use or consensual sex. The Guidelines do not indicate the Age of Consent for PEP treatment. In local counsel's view, as set out above in relation to ART treatment, it is likely that a person aged under 16 would require parental consent to access PEP.

Legislation and policy framework

The Managing Opportunistic Infections, Reference Manual, March 2009, Edition 3.0, Page 11-17 states that 'If exposure is considered high risk: refer to closest VCT centre immediately and arrange for shortened version of pre-test counselling and HIV rapid test for exposed employee. If this is likely to take longer than one hour, give first dose of PEP before referring.

Zambia National Guidelines for HIV Counselling and Testing of children, Clause 2.5 HIV Counselling and Testing should be done as part of standard care to determine management of a sexually abused child. Infected children should be managed as per Paediatric Antiretroviral Treatment guidelines, those testing negative and have been sexually abused must access Post-exposure Prophylaxis as soon as possible preferably not later than 72 hours after exposure.

HIV Pre-exposure Prophylaxis (PrEP)

The legal review of the Age of Consent on access to HIV Pre-exposure Prophylaxis (PrEP) was not able to identify any form of prohibition or any legislation enabling PrEP. In the absence of any legislation specifically providing for PrEP, the study was not able to determine the likely position on Age of Consent.

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

The Termination of Pregnancy Act, Chapter 304 of the Laws of Zambia provides for the termination of pregnancy by registered medical practitioners subject to provisions of the Act. In the Penal Code, Chapter 87 of the Laws of Zambia makes it an offence for a person to procure an abortion unless medical practitioners have concluded that the continuation of the pregnancy would put the life of the mother at risk or result in risk of injury to the physical or mental health of the mother or any of her existing children, amongst other conditions.

The review did not identify any legislation that specifically provides for the age of access to abortions and the age below which parental consent would be required.

Further, research did not identify any legislation specifically providing for the Age of Consent to access medical treatment generally. However, given that the Penal Code defines a 'child' as a person aged under 16, local counsel are of the opinion that parental consent will be required for persons aged under 16 to be given medical treatment, including an abortion and postabortion care.

Legislation and policy framework on access to safe abortions and/or postabortion care

The Termination of Pregnancy Act Chapter 304 of the Laws of Zambia, Section 3 Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if he and two other registered medical practitioners, one of whom has specialised in the branch of medicine in which the patient is specifically required to be examined before a conclusion could be reached that the abortion should be recommended, are of the opinion, formed in good faith-

a. that the continuance of the pregnancy would involve-
i. risk to the life of the pregnant woman; or
ii. risk of injury to the physical or mental health of the pregnant woman; or
iii. risk of injury to the physical or mental health of any existing children of the pregnant woman; greater than if the pregnancy were terminated; or

b. that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

The Penal Code Section 151 Any person who with intent to procure the miscarriage of a woman or female child, 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, commits a felony and is liable upon conviction to imprisonment for a term not exceeding seven years.

Section 152 (1) Every woman being pregnant who with intent to procure her own miscarriage, unlawfully administers to herself any kind of poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used, commits a felony and is liable upon conviction to imprisonment for a term of fourteen years. Section 152(2) Any female child being pregnant who with intent to procure her own miscarriage, unlawful administers to herself any poison or other noxious thing or uses any force of any kind commits an offence and is liable to such community service or counselling as the court may determine, in the best interests of the child; provided that where a female child is raped or defiled and becomes pregnant the pregnancy may be terminated in accordance with the Termination of Pregnancy Act.

Section 153. Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman or female child, whether she is or is not with child, commits a felony and is liable upon conviction, to imprisonment for a term not exceeding fourteen years.

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

The study did not identify any specific policy framework or legislation enabling or disenabling access to Antenatal Care (ANC). However, the Convention on the Elimination of Discrimination against Women (CEDAW) has a bearing on the access to ANC by women in that it prohibits discrimination against women in the field of healthcare in order to ensure access to healthcare services, which in local counsel's view include ANC.

In practice, government clinics provide free antenatal services. Hence, an inference can be drawn that although it appears that there is no legislation enabling access to ANC, such services are, in fact, accessed in practice.

As stated previously, local counsel were not aware of any legislation specifically providing for the Age of Consent to access medical treatment, but were of the view that parental consent would be required for a person aged under 16 to access medical treatment, including ANC.

The CEDAW Convention creates the obligation on all parties to 'take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure access to healthcare services, including those related to family planning. Zambia has ratified the Convention and is yet to domesticate it, however, most of the laws in Zambia have been reviewed to ensure compliance with CEDAW.

Chapter Nine: Age of Consent and access to HPV vaccines and cervical cancer screening and treatment

The Human Papillomavirus (HPV) vaccines are relatively new in Zambia. The vaccines were introduced on 27 May 2013. The vaccination programme is using a school-based strategy that targets all girls in Grade 4 (aged 9 or 10 years), while out-of-school girls aged 10 years may access the vaccines from health centres and through community-based strategies.

Local counsel noted that a Cervical Cancer Prevention Programme has been implemented in Zambia since 2005. The programme has trained nurses and doctors to screen for and treat cervical precancerous conditions and incorporates digital photography into telemedicine in its training, diagnostic, and quality assurance programme. Local counsel were unable to obtain a copy of the said programme.

As stated previously, local counsel are not aware of any legislation specifically providing for the Age of Consent to access medical treatment, but are of the view that parental consent would be required for a person aged under 16 to access medical treatment, including the HPV vaccines and cervical cancer screening or treatment.

Legislation and policy framework on access to HPV vaccines and cervical cancer screening

The Zambian page on the World Health Organization's (WHO) website states that The Human Papillomavirus (HPV) vaccines have been introduced for the first time in the immunisation programme in Zambia. The vaccines were introduced on 27 May 2013 on pilot basis in Chongwe, Kafue and Lusaka districts to pave way for scale-up to the rest of the country.

HPV Vaccination To Prevent Cervical Cancer Guidelines for Vaccinators, issued by the Ministry of Community Development Mother and Child Health, also alludes to the vaccination programme targeting all school-going girls in Grade 4 and out-of-school girls aged 10 years. The Ministry of Community Development Mother and Child Health has identified two vaccination strategies: School-based vaccination targeting Grade 4 girls and out-of-school girls aged 10 years old.

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 Constitution	LR
Young people's access to contraceptive services	P	LR PR Minister To Sign Off New Practice
Young people's access to emergency contraceptives	Pr	LR PR Minister To Sign Off New Practice
Policy framework and legislation on access to Antiretroviral Therapy (ART)	P	LR Minister To Sign Off New Practice
Policy and legislation on young people's access to PEP	P	LR Minister To Sign Off New Practice
Policy and legislation on young people's access to PreP	N/A	LR Minister To Sign Off New Practice
Policy framework and access to Antenatal Care (ANC)	Pr	LR Minister To Sign Off New Practice
Policy framework and legislation on access to HPV vaccines and cervical cancer screening and treatment	P	LR Minister To Sign Off New Practice
Policy framework and/or legislation on access to safe abortions and/or postabortion care	L	LR
Age of Consent to access HIV testing without parental consent	L P	LR Minister To Sign Off New Practice
Legal and policy framework on the Age of Consent where HIV status will be reported directly to an adolescent	L P	LR Minister To Sign Off New Practice
Addressing various policy and legislation inconsistencies	N/A	N/A

Legislation Law Reform L Policy P Practice Pr Law Reform LR Policy Reform PR

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 disenabling 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 disenabling access to safe abortions and/or postabortion care, including Age of Consent, with and without parental consent.
14. policy framework and legislation enabling or disenabling access to Antenatal Care (ANC), including Age of Consent, with and without parental consent.
15. policy framework and legislation enabling or disenabling 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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