Policing Bodies: Policy and Legal Barriers to SRHR for Adolescents

Felicita Hikuam
“Review, revise, amend or abolish all laws, regulations, policies, practices and customs that have discriminatory impact on women, youth, especially girls, without distinction of any kind, and ensure that the provisions of multiple legal systems comply with international human rights regulations and laws;”

“Enact and enforce laws and policies within the national political and legal framework to respect and protect sexual and reproductive health and rights of all individuals”

Addis Ababa Declaration on Population and Development beyond 2014
Why the law matters

Annual number of new HIV infections among adults aged 15–49

- historical trend
- current trend
- structural change*

*change to legal and policy environment

Source: Results for Development Institute, Costs & Choices: Financing the Long-Term Fight Against AIDS, An aids2031 Project, 2010.
The upside of the law

• Promotes recognition, protection and fulfillment of human rights;
• Obligates establishment of programmes and provision of services;
• Creates duties for service providers;
• Can shape community standards;
• Positive law enforcement practices can play a role in positive health outcomes, particularly for key populations; and
• Effective legal aid can make justice and equality a reality

The downside of the law

• Can reinforce inequalities;
• Punitive laws do not reduce HIV-related risk or improve SRH;
• Discourages people from getting tested or treated;
• Waste financial and other resources;
• Selectively, unfairly and ineffectively applied; and
• Can create a climate of impunity and fuel violence and harassment
“The law often seems abstract and distant, and it can be hard to comprehend. But for people living with HIV, for their families and communities, for key populations and those vulnerable to HIV, the law is neither abstract nor distant. It is police harassment or clean needles, prison cells or self-help groups—*the law is the torturer’s fist or the healer’s hand.*”

HIV and the Law Commission, 2012
• Progressive regional normative standards: SADC Key Populations HIV and SRHR Strategy and regional SRHR Strategy;
• Adjusting age of consent to medical treatment, contraception and marriage;
• SADC Model Law on Child Marriage;
• Challenging harmful cultural practices incl. FGM;
• Reform of laws that criminalise HIV transmission, exposure and/or non-disclosure;
• Increased access to justice through enactment of laws that provide for legal representation;
• Legal literacy training for service providers and affected communities;
• Strategic litigation through key court cases has strengthened jurisprudence on SRHR related issues;
• Efforts to better link and integrate HIV prevention services within SRHR; and
• Recognition of the potential for Africa to reap the demographic dividend through investments in SRHR for adolescents.
• Stigmatisation of adolescent sexuality;
• Limited enforcement of protective laws, including legal provisions guaranteeing gender equality, protection from violence and economic empowerment;
• **Challenges with age of consent to:**
  • Access to SRHR information, services and medical procedures;
  • Marriage; and
  • Sex;
• Harmful cultural practices incl. female genital mutilation;
• Criminalization of HIV transmission;
• Discriminatory laws on property and inheritance;
• **Limitations to provision of comprehensive sexuality education;**
• Access to justice is limited, slow and protracted;
• **Criminalisation of key populations;**
• Criminalisation of abortion;
• SRHR for young key populations; and
• **Pregnant learner retention and re-entry laws and policy**
Unfinished business:
Sexual debut and age of consent to SRHR services
Recommendations: Age of consent to SRHR services

• Set the age of consent to access to healthcare services based on an adolescent’s sufficient maturity to understand the risks, benefits and consequences of the treatment: specifically set the age of consent at 12 years for HIV testing, pre- and post-test counselling without parental consent.

• It also recommends that countries provide, in law, for health-care providers to respect the views and opinions of the adolescent or young person accessing a service and their right to confidentiality and should guide health-care providers on how they can assess this maturity.

• Age of consent to sex be harmonized for boys and girls and be aligned to the age of consent to access to contraception.

• Countries must reform laws to ensure that the age of consent for autonomous access to HIV and SRH services is equal to or lower than the age of consent for sexual relations.

• Set a legal minimum age of marriage at 18 years of age for both boys and girls with no exceptions.
Unfinished business: Criminalisation of sex work, same sex sex and drug use

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<th>Country or Region</th>
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\[ Determined / differs at sub-national level \]

Source: UNAIDS Global GAPIDS Update 2018
Unfinished business: **Criminalisation of sex work, same sex sex and drug use**

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Unfinished business: Pregnant Learner Retention and Re-entry Law and Policy

About half of countries (11 out of 23) have prevention, management and re-entry legislation and policies on learner pregnancy, but the majority of those countries that do have policies tend to approach learner pregnancy from a punitive perspective.
Unfinished business: **Comprehensive sexuality education**

Young people (15-24 years) comprehensive knowledge of HIV prevention

![Graph showing comprehensive knowledge of HIV prevention among young people across different countries](image)

*The survey in South Africa used different wording and included an additional question.
Source: Population-based surveys, 2012-2017

Source: UNAIDS Global AIDS Update 2018
Recommendations

• Invest in human rights programmes and interventions as recommended by UNAIDS;
• Adopt and enforce laws that protect and promote adolescent SRHR and support the right of all individuals to decide whether, when, and whom to marry and have sex with, and the right to access services that protect sexual and reproductive choice;
• Repeal and replace laws that create barriers to accessing the full range of SRH services for adolescents;
• Enact and enforce laws ensuring the right to comprehensive sexual health education;
Recommendations

• Limit the use of “conscientious objection” in healthcare where the health and lives of others are or may be at risk as a consequence;
• Outlaw child marriage, promote gender equality and women’s autonomy, liberalise abortion laws, and prohibit discrimination against people with diverse sexual orientations and gender identities and expression.
• Enforce civil laws - customary laws and practices might continue to perpetuate violations of individual rights even when the legal system supports SRHR;
• Provide access to SRHR information and services to adolescents regardless of their age or marital status.
Global Fund Human Rights Investment Cascade

HIV
HIV/TB
TB
Malaria
HSS

- Total No.
- Human Rights analysis
- HR programs
- HR programs with traceable budget
References and other sources

- ARASA and International HIV/AIDS Alliance Good Practice Guide on HIV and Human Rights
- ARASA HIV, TB and Human Rights Advocacy Training Manual
- UNAIDS: Fast-Track and human rights: Advancing human rights in efforts to accelerate the response to HIV
- UNAIDS, UNICEF. 2016. A Progress Report ALL IN To End The Adolescent AIDS Epidemic
- UNAIDS Data 2019
- UNFPA. 2017. Harmonizing the Legal Environment for Adolescent Sexual and Reproductive Health and Rights
- Gender Links: Audit of SRHR laws and policies in SADC
THANK YOU