

THE BURDEN OF JUSTICE ON MINORS

The case for improving timely access to safe abortions for minors

Key messages

- In child defilement cases, minors are subjected to waiting periods for DNA sample collection and results before being eligible to get an abortion, leading to delays in accessing safe abortion for minors which may result in psychosocial and medical complications, including unsafe abortion.
- To achieve timely access to safe abortions for minors, it is recommended that DNA sample collection be made optional for pregnant minors seeking abortion services.
- It is recommended that the standard operating procedures (SOPs) of the Isange One Stop Centres (IOSC) be amended to clearly state that DNA sample collection is optional for pregnant minors seeking abortion services.

Required waiting periods for DNA test results impede access to sexual and reproductive health services, including safe abortion for minors

Article 125 of the Law N°68/2018 of 30/08/2018 cites pregnancy as a result of child defilement¹ among the grounds for legal abortion and article 4 of the Ministerial Order No 002/MoH/2019 allows legal abortion to be performed within 22 weeks of gestation. However, access to abortion services is subject to visiting an Isange One Stop Centre and undergoing DNA sampling to support the prosecution of cases of gender-based violence (GBV). Based on field reports, eight weeks seems to be the most frequently required waiting time from the moment the girls have presented themselves at IOSCs, though other waiting times seem to be practiced throughout Rwanda.



¹ Article 4 of the Law N° 69/2019 of 08/11/2019 amending Law N° 68/2018 of 30/08/2018 determining offences and penalties in general defines child defilement as any acts including insertion of a sexual organ into the sexual organ, anus or mouth of the child; insertion of any organ of the human body into a sexual organ or anus of a child or performing any other act on the body of a child for the purpose of bodily pleasure.

Reports of girls being asked to come back more than once have also been reported and contribute to further delays and extension of gestation time of the pregnancy. A waiting time for DNA sampling, and subsequent time to receive results, is a common practice neither provided for by law nor by any other regulation. In addition, in practice, DNA samples are mostly not used in child defilement cases that are brought to court.

Victims of child defilement experience this waiting period as a barrier to access safe abortions. The waiting period for DNA sampling and test results does not take into consideration the fact that the majority of adolescents seek abortion at or after 13 weeks of pregnancy and are more likely than older women to delay abortion care because they do not recognize signs of pregnancy, thus significantly reducing the window within which they can obtain a safe abortion (*IPAS, 2019*).

In this situation, pregnant minors are left with two options: continue with the pregnancy until they receive the test results after the required waiting period or seek unsafe abortion. Each of the two options pose a challenge to the mental and physical health of minors, as girls aged 15–19 years are twice as likely to die during childbirth than women over the age of 20 because their bodies have not yet fully developed (*UNFPA, 2013*).

A. Evidence

Findings from research on the provision of services to under 18-year-old victims of GBV at seven IOSCs revealed that 24.4% of minors seeking services at IOSC were pregnant and 50.4% of those pregnant requested a safe abortion; 30.5% were not successful in their request (*Oxfam, 2019*). While it is unknown if delays caused by DNA sampling requirements were the sole driver of the delays, anecdotal evidence and evidence from health programs and services suggest this is a key contributor.

Research findings from a survey conducted on IOSC service delivery revealed that those interviewed singled out distance from the community to IOSC (14.9%) and stigma associated with abortion (13.3%) among the major barriers when reporting GBV to IOSC (*MIGEPROF, 2019*).

Program partners tell devastating personal stories that depict a health system with extremely complicated processes which aggravate the neglect, abuse and suffering experienced by some of the poorest and most vulnerable minors when they try to access safe abortion services to manage the consequences of sexual violence. In 2023, multiple teenage girls who described being defiled and sought to terminate the resultant pregnancies from these assaults within the public health system were misinformed about how to obtain services, resulting in extremely harmful delays. The delays involved procedures at IOSC, the Rwanda Investigation Bureau (commonly referred to

as RIB) and the various medical tests and/or examinations they were subject to, and denial of 'permission' from health workers. In the cases described, the affected minors did not get access to abortion services and experienced delays in other services multiple times. They were often told to come back repeatedly (due to conscientious objectors at the hospital) and for a variety of questionable reasons. In at least two cases, the delay was purportedly to wait for a DNA sample to pursue the perpetrator of the defilement. In at least three cases, provider delays and mistreatment pushed the pregnancies beyond the gestational period of 22 weeks after which the pregnancies could no longer be terminated. Their socioeconomic and educational circumstances have been gravely harmed as a result.

B. Critical root causes

Pregnancy of minors has been equated in Rwanda with child defilement, and this leads to the situation where all minors seeking abortion services are automatically classified as GBV cases since consensual sexual relations between minors are not culturally acceptable, albeit some research findings reveal some minors engage in consensual sexual relations (*Society for Family Health, 2022*). This forced label of "child defilement" creates an overreporting of GBV cases, child defilement in particular, besides forcing all pregnant minors to report to IOSC and undergo DNA sampling. This drives the delay of access to safe abortion services for minors.

Possible solutions

There are two possible solutions to address the root causes:

- Increase the capacity for timely DNA sample collection and processing; or
- Make DNA sample collection explicitly optional for pregnant minors seeking abortion services.

While an increased forensics capacity would likely significantly reduce the test result waiting periods, it would result in costs related to training clinicians in taking quality samples and increasing laboratory capacity to analyse samples. It is likely that these costs would make this solution politically not feasible, especially since DNA samples are rarely used as evidence in child defilement cases brought to court. Therefore, making DNA sampling expressly optional is the recommendation that will be discussed below.

A. Impact of the proposed solution

If DNA sampling and waiting times are explicitly made optional, minors' access to timely abortion services would be improved, averting unintended and risky pregnancies and reducing unsafe abortions. In addition, it is useful to note that making DNA sample collection voluntary would not prevent child defilement prosecution, as article 9 of the Law N° 15/2004 relating to evidence provides that evidence based on a legal issue or on a fact can be proved using written evidence, testimony, presumption or circumstantial evidence, admission of a party, or any other material evidence. Optional DNA testing would also reduce the workload of IOSC, health care staff and laboratories since not every minor will choose to undergo DNA sampling, therefore reducing costs related to staffing and logistical challenges (*de Londras et al., 2022*).

B. Regulatory pathway

To explicitly make DNA sampling voluntary, the standard operating procedures (SOPs) of the IOSCs will need to be amended by the Ministry of Gender and Family Promotion, the lead ministry responsible for amending the SOPs, in collaboration with other public agencies involved in the IOSC's service provision, including the Ministry of Health, the National Public Prosecution Authority and the Rwanda Investigation Bureau.

C. Cost considerations

Amending IOSC's SOPs to make DNA sample collection optional would incur no additional costs in either the short or long term.

Failure to address the root cause will contribute to government expenditure on post-abortion care for minors following unsafe abortions and other costs for the medical, financial and social support of minors who are forced to continue with a pregnancy.

Recommendations

The following actions are recommended:

- Make DNA sampling voluntary for minors seeking abortion services. DNA sampling should remain an optional service offered to minors by IOSC.
- Amend the SOPs of the IOSC by clearly stating that DNA sample collection is optional for pregnant minors seeking abortion services.

References

All references verified on 7 September 2023.

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