POLICY BRIEF

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ADDRESSING THE LEGAL AND POLICY CHALLENGES TO ADOLESCENTS' ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH INFORMATION AND SERVICES IN RWANDA

HDI
HEALTH DEVELOPMENT INITIATIVE

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I. INTRODUCTION

Despite the multiple policy and programmatic measures implemented by the Government of Rwanda to reduce teenage and early pregnancies, research indicates that the rate is in fact increasing. According to the Ministry of Gender and Family Promotion, in 2016 alone, there were 17,500 pregnant 16-19 year-old girls.[1] In 2017, the rate slightly decreased to 17,337 but in the first 6 months of 2018, approximately 9,172 teenage pregnancies were recorded in health facilities.[2] The most recent Rwanda Demographic Health Survey (RDHS 2015) shows that by age 19, 21% of girls in Rwanda have begun childbearing.[3] In 2018, the Minster for Gender and Family Promotion raised the alarm about "increasing trend of teenage pregnancies."[4]

The increasing rate of unwanted and unplanned pregnancies among young people is indicative of the lack of access to reproductive health services. For instance, as the RDHS 2015 revealed, 65% of married girls and 88% of unmarried sexually active girls age 15-19 do not use any contraceptives[5]. It was reported that 93% of adolescent girls who are not using contraceptives have also not discussed family planning at a health care facility or with a health care worker.[6] A strong inverse relationship exists between early childbearing and education as 13% of adolescents without formal education started childbearing compared to only 9% of adolescents with primary education and 4% of adolescents with secondary education.[7]

Early pregnancy also disproportionately affects low-income girls who are more than twice as likely to start childbearing compared to their counterparts in the highest wealth quintile.[8] These statistics show that vulnerable groups such as those living in rural areas, have limited education and income and encounter greater challenges in accessing reproductive health information and services.

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[1] Adolescents and contraception: What is the Way Forward, The New Times, October 14, 2019 available at: https://www.newtimes.co.rw/lifestyle/adolescents-and-contraception-what-way-forward.
[2] Id.
[3] National Institute of Statistics of Rwanda et.al., Rwanda Demographic and Health Survey 2014-2015 73 (2016) available at: http://dhsprogram.com/pubs/pdf/FR316/FR316.pdf [hereinafter 2015 RDHS].
[4] The New Times, Nyirasafari raises red flag over increasing teenage pregnancies, September 19, 2018 available at: https://www.newtimes.co.rw/news/nyirasafari-raises-red-flag-over-increasing-teenage-pregnancies.
[5] 2015 RDHS, supra note 3, at 86 Tbl. 7.3.
[6] Maria Stavropoulou and Nandini Gupta-Archer, Adolescent girls' capabilities in Rwanda: The state of the evidence IV (2017) available at: https://www.gage.odi.org/sites/default/files/2018- 02/Rwanda%20Capabilities%20Report.pdf.
[7] 2015 RDHS, supra note 3, at 76.
[8] Id.

The limited access to safe abortion services also leads to mortality and morbidity. As the latest available data indicates, an estimated 60,000 abortions are carried out annually, almost all of which are unsafe.[9] Further, half of all abortions in Rwanda are performed by untrained individuals and are considered to be very high risk. An estimated 34% are provided by traditional healers and 17% are induced by the women themselves.[10] As a result, 24,000 women and girls develop complications, out of which one-third do not receive treatment.[11] In addition to the health consequences, Rwandan women and girls continue to face incarceration for procuring abortions. A study conducted by HDI, for instance, revealed that from all those incarcerated in the four prisons covered in the study, more than half are young girls below the age of 24.[12] Out of these, 18% are between the age 15-19.[13]

As research indicates, adolescents[14] in Rwanda encounter multiple impediments in accessing reproductive health information and services.[15] These include lack of information, refusal of health care providers to provide services to young people, lack of parental support, cost of services and limited youth-friendly services.[16] This policy brief focuses on the legal and policy aspects of these challenges, and discusses the significant progress, existing gaps and contradictions in Rwanda's legal and policy framework that regulate adolescents' access to sexual and reproductive health (SRH) information and services. The brief further highlights the international and regional commitments the government has made to respect, protect and fulfil the sexual and reproductive rights of adolescents and uses these as a basis to inform and make recommendations to law and policy makers on addressing these gaps and contradictions.

[9] Guttmacher Institute Abortion in Rwanda (2013) available at https://www.guttmacher.org/sites/default/files/factsheet/fb-abortion-in-rwanda.pdf.
[10] Id.
[11] Paulin Basinga et.al., Unintended Pregnancy and Induced Abortion in Rwanda: Causes and Consequences 17 (2012) available at: https://www.guttmacher.org/sites/default/files/factsheet/fb-abortion-in-rwanda.pdf
[12] Health Development Initiative, Understanding the Causes, Practices and Consequences of Terminating Pregnancies: Experiences of Women Incarcerated for Illegal Abortion in Rwanda 14 available at: http://hdirwanda.org/wp-content/uploads/2019/01/A4_Women-Incarcerated-for-Abortion-Research.pdf.
[13] Id.
[14] While the WHO defines adolescents as those between the age of 10-19, for the purpose of this brief, we are using the term adolescents for those who have not attained the age of majority, that is 18.
[15] Rugigana Etienne, Policy Brief: National Study in Rwanda Family Planning barriers, Rwanda Public Health Bulletin 2019 (2019) at 32 available at: http://www.bioline.org.br/pdf?rp19007.
[16] Id.

II. PROGRESS, GAPS AND CONTRADICTIONS IN THE LEGAL AND POLICY FRAMEWORK REGULATING ADOLESCENTS' SRHR

1.1. Legal and policy frameworks recognizing adolescents' SRHR

It is commendable that the government of Rwanda has put in place multiple legal and policy frameworks that recognize the right of adolescents to access sexual and reproductive health information and services. Article 21 of the 2015 Revised Constitution, for instance, guarantees the right to good health for all Rwandans,[17] including adolescents. As elaborated by the World Health Organization (WHO), the right to health encompasses physical, mental and social wellbeing in regard to sexual and reproductive health.[18]

From a policy perspective, the National Youth Policy acknowledges that the main health challenge facing young people, including adolescents, is related to their lack of sexual and reproductive health information and services,[19] and recommends strong partnerships among different Ministries and civil society organizations to expand youth-friendly services. The Maternal, Newborn and Child Health Strategic Plan 2018-2024 aims to "ensure that all women, newborns, male and female children, and adolescents in Rwanda have universal access to quality integrated [reproductive, maternal, newborn, child and adolescent health] services in an equitable, efficient and sustainable manner" delivered through a right-based and multi-sectoral approach.[20]

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[17] The Constitution of the Republic of Rwanda of 2003 Revised in 2015, Official Gazette No. Special of 24/12/2015 Article 21 (2015).
[18] WHO, Sexual and reproductive health: Definition available at https://www.euro.who.int/en/health-topics/Life-stages/sexual-and-reproductive-health/news/news/2011/06/sexual-health-throughout-life/definition
[19] Republic of Rwanda, National Youth Policy, 14 & 28 (2015) available at http://muhanga.gov.rw/fileadmin/user_upload/National_Youth_Policy_2015.pdf
[20] Republic of Rwanda, Ministry of Health, Maternal Newborn and Child Health Strategic Plan (2018-2024) 38 (2018) available at http://www.moh.gov.rw/fileadmin/Publications/Strategic_Plan/Rwanda_MNCH_StrategicPlan_June_costed_v2Draft.pdf

Equally, one of the objectives of the National School Health Policy (2014) is to improve and enhance knowledge of students and teachers about sexual and reproductive health including gender-based violence, prevention of HIV and AIDS and physical and mental health and related needs.[21] To address teen pregnancy, the policy recommends that schools sensitize youth about early pregnancy and reproduction health choices and to establish a follow-up system to ensure that young women who dropped out of school due to pregnancy return to complete their studies. It must also be noted that one of the specific objectives of the National Youth Policy is to provide the youth with practical information regarding issues of adolescents' reproductive health.[22] Additionally the law on prevention and punishment of gender-based violence emphasises that pregnancy and delivery shall not constitute cause for depriving a student of her right to education.[23]

1.2. Addressing the gaps and contradictions in the policy framework

While the policy measures that affirm adolescents' sexual and reproductive health and rights are commendable, their visions and goals of reducing teenage pregnancies and expanding adolescents' access to sexual and reproductive health information and services cannot be achieved without addressing the barriers, gaps and contradictions in the legal and policy framework. As outlined below, these gaps and inconsistencies not only deny adolescents the capacity to consent to reproductive health services, they also leave them uncertain about the type of services they can legally access independently without authorization from a third-party such as their parents and guardians. Additionally, it leads to confusion among health care professionals as to when and which services they can provide to adolescents without facing legal consequences. Even the government, in the National Family Planning and Adolescents Sexual and Reproductive Health (FP/ASRH) Strategic Plan 2018-2024, has raised the same issue stating that "one concern among sexually-active adolescents is potential legal and regulatory conflicts around access and consent for SRH products and services."[24]

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[21] Republic of Rwanda Ministry of Education, National School Health Policy (2014).
[22] Id.
[23] See article 9 of the Law No. 58/2008 of 10/09/2020 on prevention and punishment of gender-based violence.
[24] Republic of Rwanda, Ministry of Health, National Family Planning and Adolescents Sexual and Reproductive Health (FP/ASRH) Strategic Plan (2018-2024) 23 (July 2018).

i) Which laws and policies have gaps, barriers and contradictions?

Law relating to Human Reproductive Health

The Human Reproductive Health Law, which was drafted in 2016, defines reproductive health as "a state of human, physical, mental and social well-being in all matters relating to the reproductive system and its functions and processes."[25] According to this legislation, key components of human reproductive health include:[26]

- Safe delivery services and care for newborns
- Family planning
- Preventions and treatment of sexually transmitted and other infections that are harmful to reproductive health
- Infertility prevention and treatment
- Prevention of gender-based violence and care for victims
- Raising awareness to effect change of attitude

It further recognizes that "every person has the right to access education and medical services related to human reproductive health"[27] and that "no person shall be denied such rights based on any form of discrimination."[28] However, contrary to these affirmations, the legislation provides: "every person having attained the majority age has the right to decide for oneself in relation to human reproductive health issues."[29] This clearly discriminates against adolescents by denying them the right to make decisions about their reproductive health since the age of majority in Rwanda is 18 years, as stipulated under article 113 (1) of Law N°32/2016 of 28/08/2016 governing persons and family. While imposing this restriction, the legislation is silent on how adolescents can access the reproductive health information and services that it affirms everyone has the right to access.

[25] Republic of Rwanda, Law Relating to Human Reproductive Health, Official Gazette No. 23 of 06/06/2016 Article 2 (3).
[26] Id., Article 3.
[27] Id., Article 8.
[28] Id., Article 5.
[29] Id., Article 7..

In addition, according to the WHO, safe abortion services are core aspects of reproductive health services and the Rwanda's National Family Planning and Adolescent Sexual and Reproductive Health Strategic Plan (2018-2024)[30] recognizes post-abortion care as a component of sexual and reproductive health services that should be available to all including adolescents.[31] Further, as discussed below, the Law Determining the Offences and Penalties in General recognizes that adolescents can legally obtain abortions. However, in contradiction to all of these, the law relating to Human Reproductive Health fails to recognize safe abortion and post-abortion care as key components of reproductive health services.

Law establishing medical professional liability insurance

The Law No 49/2012 Establishing Medical Professional Liability Insurance contains provisions that recognize the fundamental rights of people that seek medical care including their right to consent to or refuse a medical service or procedure. This legislation stipulates that health care professionals have the duty to ensure respect for a person's life, privacy and dignity when discharging their duties, and that no one should be subjected to any form of discrimination when accessing health care consultation and services.[32] Additionally, the law requires the health care provider to obtain the consent of the person who is seeking the health service for all cases and recognizes the right of a person to refuse to undergo a certain examination or treatment. However, when it comes to obtaining consent before providing health services to a minor, Article 11 provides:[33]

[30] World Health Organization, Reproductive health strategy to accelerate progress towards the attainment of international development goals and targets 22 (2004) available at https://apps.who.int/iris/bitstream/handle/10665/68754/WHO_RHR_04.8.pdf?sequence=1
[31] Republic of Rwanda, Ministry of Health, National Family Planning and Adolescent Sexual and Reproductive Health (FP/ASRH) Strategic Plan (2018-2024) 11 (2018).
[32] Law N° 49/2012 of 22/01/2013 Establishing Medical Professional Liability Insurance, article 3 & 4
[33] Id., Article 11.

The health professional who intends to provide healthcare services to a minor… must endeavor to inform his/her parents or his/her representative or his/her guardian and obtain their prior consent.

In case of emergency and in the absence of his/her parents, legal representative or guardian[who can give] their consent, the opinion of another competent health professional shall be required before making a decision.

Law No. 49/2012, Article 11
Establishing Medical Professional Liability Insurance

Since this regulation covers all medical services, including sexual and reproductive health services such as contraceptives, abortion, and HIV/AIDS testing and treatment, it can impede adolescents' access to these services in two ways. One, requiring the consent of a parent or a guardian will discourage adolescents from seeking the services due to the stigma and taboo associated with adolescents' sexuality which make it difficult, and in most cases impossible, to discuss these issues openly with parents let alone ask them to give consent to access these services. Two, in the absence of parental consent or in emergency situations, requiring the health professional to consult another health care provider when it is not medically necessary, puts an additional burden on adolescents and creates an unnecessary delay in the provision of the health service including in emergency situations. This is particularly relevant in Rwanda, where the number of practicing health care professionals is very limited and many health care facilities are staffed by only a few providers.

Further, as discussed below, this provision contradicts the country's HIV/AIDS testing and treatment policies, which allow adolescents age 12 and above to access testing without parental consent. It is also contrary to the article on the provision of abortion services for adolescents in the Law Determining the Offences and Penalties, which provides that in situations where the parents or guardians refuse to provide consent, the opinion of the adolescent will prevail, and he/she does not require the consultation of a second health care provider.

HIV/AIDS Prevention, testing, and treatment

The 2016 National Guidelines for Prevention and Management of HIV and Sexually Transmitted Infections (STIs) allow any person aged 12 and over to provide his or her own verbal consent for HIV testing. While this is commendable, the guideline further provides that for the same age group:

The counsellor should assess each child's capacity to consent to [HIV testing services].[34] In order to consent to an HIV test, a child must be able to:

1. Understand information about the benefits, risks and social implications of HIV testing

2. Act accordingly (i.e. agree or refuse to test) based on that understanding

3. Understand and cope with his or her own seropositivity

This leaves room for the health care provider to deny services to an adolescent of age 12 and above or require parental consent based on the provider's assessment of the adolescent's capacity, which might be informed by personal bias about whether those in this age group have the capacity to give consent.

Anyone who is younger than 12 would still require the consent of their parent or guardian to access HIV testing.[35] Notably, the guideline recognizes that the issue of consent might be a barrier to accessing HIV testing for those who are younger than 12; however, it does not offer a recommendation on how this barrier can be mitigated. Further, the guideline is silent about whether those who are 12 and above can consent to treatment if they tested positive. In addition, before it was amended, Article 55 of the Law No. 54/2011 relating to the rights and the protection of children allowed health care providers to provide adequate care to 12 and above adolescents who are infected or affected by HIV even if they are not accompanied by a parent or a guardian.

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[34] Republic of Rwanda Ministry of Health, National Guidelines for Prevention and Management of HIV and STIs 16 (Edition 2016) available at: https://aidsfree.usaid.gov/sites/default/files/rw_national_guidelines_hiv.pdf.
[35] Id.

However, during the revision of the legislation in 2018, this provision was removed. The current law merely affirms special protection to children "infected and affected by an incurable disease".[36] This affects the delivery of HIV services to adolescents as it creates confusion regarding if the law reform implies that health care providers are no longer permitted to provide HIV testing and treatment to adolescents who are 12 years and older without parental consent. It also casts doubt on the validity of the 2016 National HIV Guidelines discussed above, which predate this legislation.

Access to safe abortion services

The Law Determining the Offences and Penalties in General specifies the conditions under which abortion services can be provided legally.[37] Per Article 125, there is no criminal liability if the pregnant person who has the abortion is below the age of 18.[38] Before a minor can obtain an abortion, the law requires the person who has parental authority over the minor to file the request before a medical doctor and provide the child's birth certificate. When there is a disagreement among those who have the parental authority or when they disagree with the minor, the wish of the minor will prevail. The same requirements are affirmed under the Ministerial Order, which was issued to guide implementation of these provisions and determine the conditions to be satisfied for a medical doctor to perform an abortion.[39] However, while it is commendable that the revised law enshrines provisions aimed at facilitating adolescent's access to safe abortion services, there is still limited evidence regarding whether they have managed to expand adolescents' access to the service; some implementation challenges can be envisaged. For instance, neither the Law Determining the Offences and Penalties nor the implementing Ministerial Order provide guidance on the process the health care provider should follow to ascertain the position of the parents particularly when the parents disagree with the minor's decision to terminate the pregnancy.

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[36] Law N° 71/2018 of 31/08/2018 Law relating to the protection of a child, Article 20, Official Gazette no. 37 of 10/09/2018.
[37] Law N° 68/2018 of 30/08/2018 Determining Offences and Penalties in General, Official Gazette no. special of 27/09/2018, Article 125
[38] Id.
[39] Ministerial Order No 002/MOH/2019 of 08/04/2019 Determining Conditions to be Satisfied for a Medical Doctor to Perform an Abortion, Official Gazette no 14 of 08/04/2019

Therefore, rather than taking into consideration the statement of the minor regarding the parents' position and deeming it to be sufficient, a health care provider might adopt a more restrictive approach and ask the minor to provide evidence showing the position of the parents. This creates an additional burden and can discourage adolescents from seeking the service and defeat the purpose of the law, which is to ensure that adolescents can safely terminate pregnancies without putting their lives and health at risk.

Exception to the criminalization of sexual relations among adolescents

Article 133 of the Law No. 68/2018 of 30/08/2018 Determining Offences and Penalties provides that any person who performs sex related acts on a child commits the crime of child defilement and can be subject to life imprisonment depending on the age of the child.[40] However, though the law does not specifically set the age of consent to sex, it provides that children who are at least 14 years old and above are exempted from criminal sanctions if they engage in sexual acts "without violence or threats."[41] If minors who are between the ages of 14-17 engage in sexual acts with those that are below 14, they can still face punishment in accordance with the law. This law has two implications. One, it recognizes that adolescents who are at least 14 years old can engage in sexual activities, which implies that they will need sexual and reproductive health services. However, due to barriers in the laws and policies discussed above, such as the Law Establishing the Medical Professional Liability Insurance, these adolescents will not be able to access these services and may be exposed to grave consequences such as early pregnancies and STIs. Additionally, while the 2016 National Guidelines for Prevention and Management of HIV allow adolescents age 12 and above to access to HIV testing, not adopting the same age for exception from criminal liability for sexual activity can cause an issue. For instance, if a 12 year-old engages in a sexual relation with a 14 year-old without coercion or threat, he or she might be reluctant to seek HIV testing and treatment service due to the fear of exposing the 14 year-old to potential prosecution.

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[40] Law N° 68/2018 of 30/08/2018 Determining Offences and Penalties in General, Official Gazette no. special of 27/09/2018 article 133

[41] Id.

ii) Impact of the gaps and conflicts

One critical component of expanding adolescents' access to sexual and reproductive health information and services is creating an enabling legal and policy environment. However, it is clear from the aforementioned legal and policy framework that Rwanda lacks consistent guidance on adolescents' right to independently make decisions about their sexual and reproductive lives. This impedes adolescents' access to essential sexual and reproductive health information and services.

As elaborated above, some regulations deny those below the age of 18 the right to make decisions and access services independently. For instance, the Law relating to Human Reproductive Health limits the "right to decide for oneself in relation to human reproductive health issues" to those who have attained the age of majority which is 18. The regulation is silent on when and how those who are below this age can access the services it recognizes as key components of reproductive health including delivery care, family planning and prevention and treatment of sexually transmitted infections including HIV/AIDS. Similarly, the Law Establishing Medical Professional Liability Insurance requires the health care professional to obtain the consent of a parent or a guardian and in their absence, seek the opinion of a second health care professional before providing the health service to those below the age of 18. This regulation determines the compensation entitled to a patient in case of an injury due to negligence of a medical professional and as such, non-compliance with the regulation can put a health care professional at risk of liability.

To the contrary, the 2016 National Guidelines for Prevention and Management of HIV and Sexually Transmitted Infections allows those who are 12 years and older to consent to testing even when they are not accompanied by a parent or a guardian. It does not also require the health care provider to seek the opinion of another health care professional before providing the service.

In addition, while the Law Determining Offenses and Penalties in General and the Ministerial Order that determines conditions to be fulfilled for a medical doctor to perform abortion require the health care professional to seek consent from a parent/guardian before providing an abortion to a minor, they explicitly provide that the opinion of the minor will prevail in case the parents refuse to give consent. Here as well, the health care provider is not required to consult another professional before performing the abortion. These gaps and contradictions leave adolescents unsure about when and how they can exercise their right to access reproductive health services. In the absence of harmonized and clear provisions, health care providers can also refuse to provide services to minors for fear of legal repercussions. Even when not required, they can impose additional restrictions such as the need to obtain authorization from a parent or a guardian.

Requiring authorization from a parent and a guardian can be an additional impediment in a country like Rwanda, where the issue of adolescents' sexual and reproductive health is not openly discussed. If adolescents are required to obtain authorization from a parent or a guardian, it is highly likely that they will forgo the service rather than disclose to their parents that they are sexually active and require reproductive health services. Adding this type of requirement has a role in delaying a critical, and sometimes lifesaving, health intervention. For instance, an emergency contraceptive is only effective when taken within 72 hours, and if adolescents are required to obtain authorization from a parent or a doctor is required to consult another doctor before providing the contraceptive method as per the professional insurance, the delay may mean that the emergency contraceptive will no longer be a viable option.

Therefore, unless the issues highlighted above—the gaps and contradictions in each legislation and policy—are addressed and adolescents are able to access the full range of reproductive health services without third party authorization, they will continue to experience violation of their sexual and reproductive rights which may result in early pregnancies, STIs, unsafe abortions, etc. It is useful to note that the United Nations Population Fund observed that complications from pregnancy and childbirth are the leading cause of death among adolescent girls and further stressed that early pregnancy is a consequence of little or no access to school, information or health care services.[42]

[42] United Nations Population Fund, Adolescent pregnancy, available at https://www.unfpa.org/adolescent-pregnancy.

III. EXPANDING ADOLESCENTS' ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES IS A HUMAN RIGHT

Rwanda has signed multiple international and regional human rights instruments and commitments including the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol);[43] the United Nations Convention on the Rights of the Child (UNCRC);[44] the African Charter on the Rights and Welfare of the Child[45] and the International Covenant on Economic, Social and Cultural Rights agreeing to ensure that adolescents' right to access sexual and reproductive health information and services is respected, protected and fulfilled. The treaties Rwanda has ratified have the force of the law as provided under article 168 of the Constitution of 2003 as revised in 2015. Treaties monitoring bodies including the African Commission on Human and People's Rights[46] have repeatedly directed states' parties, including Rwanda, to ensure that adolescents have access to the full range of information and services including comprehensive sexual education, quality maternal health services, contraceptives, safe abortion and post-abortion care and STI prevention and treatment.[47] Additionally, they have recognized that failure to ensure access to SRH information and services violates adolescents' right to health, life, equality, non-discrimination, right to information and freedom from cruel, inhuman and degrading treatment among other things.

Particularly, recognizing that adolescents have the right to make autonomous decisions regarding their reproductive health, the UNCRC and United Nations Special Rapporteur on Health have called governments to incorporate in their legal frameworks the presumption that adolescents are competent to seek and access preventive and time sensitive commodities and services.[48] Importantly, the African Commission has

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[43] Rwanda ratified the Maputo Protocol on 25/06/2004.
[44] Rwanda ratified the Convention on the Rights of the Child on 19/09/1990.
[45] Rwanda ratified the African Charter on the Rights and Welfare of the Child on 11/05/2001.
[46] Rwanda ratified the International Covenant on Economic, Social and Cultural Rights on 12/12/1975.
[47] U.N. CRC Committee, General Comment 15: The right of the child to the enjoyment of the highest attainable standard of health, paras. 56, 69-70, U.N. Doc. CRC/C/GC/15 (2013) [hereinafter CRC Committee Gen. Comment No. 15]; See ACHPR, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [hereinafter ACHPR, General Comment 2].
[48] U.N. CRC, General Comment No. 20 on the implementation of the rights of the child during adolescence, para. 39 (2016); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, Dainius Puras, para. 60, U.N. Doc. A/ HRC/32/32 (2016) [hereinafter Dainius Puras on Right to Health].

clarified that states should take the necessary measures to ensure that the consent of third parties—including parents and guardians—is not required when adolescents seek contraceptives and safe abortion services. Similarly, the UNCRC has stated that states should not impose any "barriers to commodities, information and counselling on sexual and reproductive health and rights, such as the requirement for third-party consent or authorization."[49]

Further, the WHO High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents emphasized that laws and policies that support third-party consent requirements, such as parental authorization, restrict access to sexual and reproductive health and rights services, or deny individuals' autonomy, agency and choice.[50] This indicates that, Rwanda, as a state party to these instruments, should recognize, across all the laws and policies, that when adolescents come to facilities requesting services, it means that they have already identified their need for such services and taken the initiative to seek them out. This, therefore, should be taken as evidence of their capacity to make decisions about their own health.

In line with these obligations under the human rights instruments, during the periodic review of Rwanda by treaty monitoring bodies, the government has been directed to address any barriers that impede adolescents' access to SRH information and services.[51] For instance, in 2019, the African Committee of Experts the Rights and Welfare of the Child stated its concern regarding the high teenage pregnancy rate in Rwanda and stressed that this can be addressed by ensuring the availability of reproductive health services. In this regards, the Committee recommended that the government of Rwanda sensitize adolescents —including those that are out of schools—on different contraceptive methods, including emergency contraceptives, and ensure that the options

[49] U.N. CRC, General Comment No. 20, para. 31.
[50] Report of the High-Level of WHO Working Group on the Health and Human Rights of Women, Children and Adolescents Leading the Realization of Human Rights to Health and through Health, available at https://apps.who.int/iris/bitstream/handle/10665/255540/9789241512459- eng.pdf; jsessionid=5E743AE5D6934677658E88EC1CAEBAAC?sequence=1.
[51] Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Second Periodic Report of the Republic of Rwanda on the Status of Implementation of the African Charter on the Rights and Welfare of the Child, para. 35 (Sept, 2019).

are available to all adolescents. Similarly the UNCRC, concerned about the high rate of teenage pregnancies recommended that the government strengthen reproductive health education for all adolescents; improve access to confidential reproductive health services including contraceptives; and ensure that safe abortion and post-abortion care are available for adolescent girls "without the need for the consent of and to be accompanied by a parent or legal guardian."[53]

Finally, expanding youth and adolescents' access to sexual and reproductive health services will enable Rwanda to meet its commitments under the Sustainable Development Goals (SDGs), which calls upon states to ensure universal access to sexual and reproductive health care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes by 2030.[53]

It will further facilitate the country's endeavour to achieve the SDGs on ensuring access to education, gender equality and reducing poverty as many girls drop of out school due to pregnancies, which ultimately impacts their future economic and social opportunities and deny them the right to equally participate in the society.

[52] U.N. CRC, Concluding Observations on the combined fifth and sixth periodic report of Rwanda, para. 36 U.N. Doc. CRC/C/RWA/CO/5-6 (2020).
[53] See Sustainable Development Goals, Goal 3.7 available at https://sustainabledevelopment.un.org/sdg3..

Rwanda is also a signatory to the Addis Ababa Declaration on Population and Development beyond 2014, which calls upon African governments to achieve universal access to sexual and reproductive health services by providing an essential package of comprehensive sexual and reproductive health services including through the primary health care systems for women and men, with particular attention to the needs of adolescents and other vulnerable groups.

Further, the country has commitment to implement the Maputo Plan of Action For the Operationalization of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2016-2030, which, among others, calls on states to remove "legal, regulatory and policy barriers limiting adolescent and young people's access to SRH commodities, programmes and services."[56]

[54] Id., Goal 4, 5 and 1.
[55] Africa Union, Addis Ababa Declaration on Population and Development in Africa beyond 2014, para. 34 ECA/ICPD/MIN/2013/4 (2013) available at https://www.unfpa.org/sites/default/files/resource-pdf/addis_declaration_english_final_e1351225_1.pdf
[56] Africa Union, Maputo Plan of Action For the Operationalization of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2016-2030 4 (2015) available at http://srjc.org.za/wp-content/uploads/2019/10/MAPUTO-PLAN-OF-ACTION-2016-2030.pdf.

IV. RECOMMENDATIONS

The Government of Rwanda is called upon to revise the aforementioned laws and policies to ensure that age based restrictions do not prevent adolescents from making decisions about their sexual and reproductive lives and accessing the full range of reproductive health information and services. This means that, in line with the recommendations and obligations under international and regional human rights instruments, standards and commitments, instead of specifying a particular age at which adolescents can access reproductive health services independently, the legal framework should allow access to all adolescents that come to health facilities seeking services without requiring parental consent. In particular, the government should:

- Amend article 7 of the law N° 21/05/2016 of 20/05/2016 relating to human reproductive health:

  To allow all adolescents to access the reproductive health services without needing authorization from a parent or guardian;

  To recognize safe abortion and post-abortion care as essential components of reproductive health services.

- Amend article 11 of the law N° 49/2012 on medical professional liability insurance, with the view to allow all adolescents to seek health care services, without prior parental/ guardian consent or authorization from a second health care professional.

- Ensure that the Ministerial Order that will be issued as the guide to implement Article 20 of the Law N° 71/2018 of 31/08/2018 Law relating to the protection of a child allows all adolescents to consent to STI, including HIV, testing and treatment without needing authorization from their parents or guardians.

- Ensure that the criminal sanctions under Law No.68/2018 of 30/08/2018 Determining Offences and Penalties regarding sexual relations among minors is not an impediment to their access to reproductive health services.

- Issue a comprehensive guideline to health care professionals on providing sexual and reproductive health services to adolescents, including:

    Directing them not to refuse services to adolescents that present at health care facilities seeking reproductive health services including contraceptives, abortion and post-abortion care and HIV/AIDS testing and treatment;

    Clarifying that authorization from a parent or a guardian will not be required for adolescent to receive reproductive health information and services.

- Undertake awareness raising activities targeting both in school and out of school adolescents to ensure that they are aware of their sexual and reproductive rights; the laws and policies that regulate these services; and where and how they can access information and services.

- Adopt and implement strategies and programmes targeting different stakeholders, including parents, communities, health care providers and law enforcement bodies, to fight stigma against adolescents who

First Lady Jeannette Kagame:

"Policy & legal reforms addressing age of marriage, consent to sexual activities & access to #SRH information & services should be treated as a matter of urgency.

Young people's participation, in the planning and delivery of #SRH and rights services and information, at all levels, should be promoted."


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