

# Age of Consent for HIV Testing, Counseling and Treatment in Uganda



## KEY FACTS

1. Approximately 150,000 Ugandan children aged 0-14 were HIV positive in 2014.<sup>1</sup>
2. The HIV prevalence rate in Uganda for persons aged 15-49 is 7.3% (2014).<sup>1</sup>
3. In 2012, approximately 2.1 million adolescents (ages 10-19) lived with HIV worldwide.<sup>2</sup>
4. Globally, between 2005 and 2012, HIV-related deaths among adolescents increased by 50%, while the overall number of HIV-related deaths fell by 30%.<sup>2</sup>

## KEY LAWS & POLICIES

1. HIV and AIDS Prevention and Control Act
2. Children Act
3. HIV Testing and Counseling Policy
4. National Antiretroviral Treatment and Care Guidelines

## ISSUE

This AIDS Law Brief (ALB) assesses the legal environment in Uganda relating to the age of consent for HIV testing, counseling and treatment and compares the current Ugandan legal framework with recommendations in the WHO's 2013 report titled *HIV and Adolescents: Guidance for HIV Testing and Counseling and Care for Adolescents Living with HIV: Recommendations for a Public Health Approach and Considerations for Policy-Makers and Managers*.

## SUMMARY

- **The HIV and AIDS Prevention and Control Act governs the age of consent for HIV testing and counseling (HTC) in Uganda.**
- **A child 12 years of age or older may independently consent to HTC.**
- **HTC for children younger than 12 may only be done with the consent of the child's parent, guardian, next of kin, caretaker or agent.**
- **Pre and post-test counseling must be provided in connection with HIV-testing.**
- **A child's HIV status may not be disclosed without the child's consent, unless an exception applies.**
- **Ugandan law does not expressly allow children to independently consent to HIV treatment.**

## KEY FINDINGS

1. **A child 12 years of age or older may independently consent to HTC after counseling**

Section 9 of the HIV and AIDS Prevention and Control Act states that "A person may take a voluntary HIV test if he or she gives his or her informed consent." Section 10 of the Act further provides that a person is not capable of giving consent if he or she is a "minor" and defines minor as "a person who is below the age of 12 years." The Uganda HIV Testing and Counseling Policy adopted by the Ministry of Health similarly states, "children 12 years and above can assent on their own for HTC. Approval of the parent or guardian shall not be mandatory." Section 3 of the Act states that a "health unit which carries out an HIV test shall in all cases provide pre and post-test counselling to a person undergoing an HIV test."

2. **HTC for children younger than 12 may only be done with the consent of the child's parent, guardian, next of kin, caretaker, or agent**

Section 9 of the HIV and AIDS Prevention and Control Act mandates a "parent, guardian, next of kin, caretaker, or agent" to provide informed consent for children younger than 12. Section 1 of the Act defines "guardian" as a "person who has the legal responsibility for providing the care and management of a person who is incapable...due to age." The Act does not define "next of kin," "caretaker," or "agent."

### 3. A child's HIV status may not be disclosed without the child's consent, unless an exception applies

The HIV and AIDS Prevention and Control Act also regulates disclosure of HIV test results. The Act provides that “results of an HIV test shall be confidential and shall only be disclosed or released by a medical practitioner or other qualified officer to the person tested.” This provision, however, is qualified by several exceptions. For one, the Act permits disclosure to the parent or guardian of a minor (i.e., within the meaning of the Act, a child younger than 12). The Act also permits disclosure to a parent or guardian of a person of “unsound mind,” a legal administrator or guardian (with the consent of the person tested), a person’s sexual partner, and medical practitioners. Moreover, although the Act does not require persons older than 12 to disclose test results to a parent or guardian, the 2010 Uganda Testing and Counseling Policy recommends providers encourage children and adolescents to disclose results to “significant persons for support.” In addition, the 2009 National Antiretroviral Treatment and Care Guidelines for Adults, Adolescents, and Children states “Every effort should be made by the counselor to convince the minor about the need to involve the parents/guardians.”

### 4. A child may only be tested for HIV without consent under limited circumstances

Section 11 of the HIV and AIDS Prevention and Control Act permits medical providers to test for HIV without obtaining consent if consent is “unreasonably withheld.” Testing without consent is also permissible “in an emergency due to [a patient’s] grave medical or psychiatric condition,” or where the provider “reasonably believes that such a test is clinically necessary or desirable in the interest of that person.” Moreover, the Act states that certain people “shall be subjected” to HIV tests, including alleged perpetrators of sexual offenses, victims of sexual offenses, pregnant women, partners of pregnant women, and those required to receive an HIV test pursuant to a court order.

### 5. Ugandan statutory law does not expressly allow children under 18 to independently consent to HIV treatment

The standard age of majority in Uganda is 18. Although the HIV Prevention and Control Act names 12 as the age of consent for HTC, the Act does not expressly allow children younger than 18 to independently consent to HIV treatment.

## CONSIDERATIONS

In light of the WHO Guidance, Uganda could consider adopting reforms to facilitate adolescents’ access to HIV testing, counseling, and treatment. First, however, it should be acknowledged that Uganda has set the age of independent consent to HTC well below the normal age of majority, which should facilitate adolescents’ access to HTC. **Uganda could consider adopting legislation that expressly permits children older than 12 to independently consent to HIV treatment. Uganda could also consider further clarifying who may provide consent for a child’s HTC and HIV treatment when the child cannot independently consent.**

## WHO RECOMMENDATIONS FOR HTC AGE OF CONSENT<sup>2</sup>

1. Age of consent for HTC should be lower than the age of majority (p. 20).
2. Minors who can independently consent to HTC should be allowed to independently consent to HIV treatment (p. 12).
3. Age of consent laws should recognize the role of non-traditional care givers (p. 13).
4. Testing results of minors should be kept confidential (pp. 19 and 46).
5. The guiding principle for age of consent laws and policies should be the best interest of the child (p. 13).

## REFERENCES:

1. *Uganda: HIV and AIDS Estimates (2014)*, UNAIDS.ORG, <http://www.unaids.org/en/regionscountries/countries/uganda> (last accessed August 10, 2015).
2. WORLD HEALTH ORGANIZATION, *HIV AND ADOLESCENTS: GUIDANCE FOR HIV TESTING AND COUNSELING AND CARE FOR ADOLESCENTS LIVING WITH HIV – RECOMMENDATIONS FOR A PUBLIC HEALTH APPROACH AND CONSIDERATIONS FOR POLICY-MAKERS AND MANAGERS* (2013).

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*Authors:* Jeff Lane, Maddie Haller, Amy Hagopian, Sallie Sanford, Zahara Nampewo, and Aaron Katz. This AIDS Law Brief was prepared by the University of Washington and Makerere University and has been supported by the President’s Emergency Plan for AIDS Relief (PEPFAR) through the Centers for Disease Control and Prevention (CDC) under the terms of Cooperative Agreement Number U48-DP001911. The findings and conclusions are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention. This AIDS Law Brief does not constitute legal advice.