

Age of Consent for HIV Testing, Counseling and Treatment in Tanzania



KEY FACTS

1. In 2012, approx. 2.1 million adolescents (ages 10-19) were living with HIV worldwide.¹

2. Globally, between 2005 and 2012, HIV-related deaths among adolescents increased by 50%, while the overall number of HIV-related deaths fell by 30%.²

3. In 2014, between 550,000 and 1.8 million AIDS orphans were living in Tanzania.³

ISSUE

Age of consent laws and policies have been identified as a “key barrier” to uptake of HIV/AIDS services by adolescents.¹ This AIDS Law Brief (ALB) summarizes age of consent laws in Tanzania relating to HIV Testing and Counseling (HTC) and compares the current Tanzanian 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 statutory age of consent for independently consenting to HTC and HIV treatment in Tanzania is 18**
- **Tanzania Ministry of Health & Social Welfare (“MOHSW”) and National AIDS Control Programme guidelines permit minors who are married, parents or sexually active to independently consent to HTC**
- **Tanzanian statutory law is not clear regarding what types of non-legal guardians can consent to HTC on behalf of a minor**
- **Tanzania statutory law permits disclosing health information of minors to the minor’s parents/guardians**

KEY FINDINGS

1. The Statutory Age of Consent for HTC and Treatment is 18, With No Statutory Exceptions

The age of majority for independently consenting to medical care in Tanzania is 18. Tanzania’s 2008 HIV & AIDS (Prevention and Control) Act (“HIV & AIDS Act”) provides that every “person residing in Tanzania may on his own motion volunteer to undergo HIV testing.” The HIV & AIDS Act also states that “a child or person with inability to comprehend the result may undergo HIV testing after a written consent of a parent or recognized guardian.” The statute does not define the term “recognized guardian,” but does distinguish between “legal” guardians and “recognized” guardians.

2. Ministry of Health Guidelines Permit Certain Mature Minors to Independently Consent to HTC

Tanzania MOHSW’s *Standard Operating Procedures for HIV Testing and Counselling* conflict with the HIV & AIDS Act by allowing persons under eighteen to independently consent to HTC if the child: (1) is married; (2) has children; or (3) is sexually active. In addition to the MOHSW standards, the National AIDS Control Programme has issued two sets of guidelines bearing on the ability of minors to independently consent to HTC: (1) *National Guidelines for Voluntary Counseling and*



Testing (2005), and (2) *National Guidelines for the Management of HIV and AIDS* (2012). Both sets of National AIDS Control Programme guidelines permit certain “mature minors” to independently consent to HTC. The 2012 guidelines state that minors must receive consent from a “guardian or close relative” for Provider Initiated Counseling and Testing, but provide an exception for “mature minors.” The 2012 guidelines do not define “mature minor” or state whether mature minors can independently consent to Voluntary Counseling and Testing. The 2005 guidelines, however, state that adolescents who are “married, have children or practice unsafe sex shall be categorised as ‘mature minors’ and permitted unrestricted access to [Voluntary Counseling and Testing] programmes.” When read together, the National AIDS Control Programme guidelines establish a mature minor exception for voluntary and provider-initiated HTC, which is not recognized in Tanzanian statutory law.

3. The Results of a Child’s HIV Test May Be Disclosed to the Child’s Parent/Guardian and to the Child’s Spouse or Sexual Partner

The HIV & AIDS Act states that the “results of an HIV test shall be confidential and shall be released only to the person tested,” but this general rule has certain key exceptions. Notably, “the results of an HIV test may be released [...] in the case of a child, [to] his parent or recognized guardian.” In addition, the results of an HIV-test may be disclosed to a “spouse or a sexual partner of an HIV tested person.”

CONSIDERATIONS

Tanzania could consider taking a number steps to clarify the ability of minors to seek out HTC and, if necessary, HIV treatment. First, to align with WHO recommendations, **Tanzania could consider amending the HIV & AIDS Act to clearly allow children younger than 18 to independently consent to HTC.** Second, to ensure that orphans and vulnerable children have access to HTC, **Tanzania could consider clarifying the types of caregivers without legal guardianship status who can consent to HTC and HIV treatment on behalf of children under their care.** Tanzania could clarify these rights by either amending the HIV & AIDS Act to clarify the term “recognized caregiver” or by MOHSW issuing clear interpretative guidance on this issue. Third, to ensure that children who learn their HIV status have access to HIV care and treatment, **Tanzania could consider defining in law the age of consent for seeking HIV/AIDS medical treatment and/or medical care generally at some age below 18.** For example, the South African Children’s Act allows a child to independently consent to medical care, including antiretroviral therapy, if (a) the child is age 12 or older; and (b) the child is of “sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment.” Fourth, to facilitate adolescents seeking HTC and HIV treatment, **Tanzania could consider clarifying that health information of mature minors cannot be disclosed without the minor’s consent.**

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WHO RECOMMENDATIONS FOR HTC AGE OF CONSENT¹

1. Age of consent for HTC should be lower than the age of majority (p. 20).
2. Minors deemed sufficiently mature to 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. UNAIDS, GLOBAL REPORT: UNAIDS REPORT ON THE GLOBAL AIDS EPIDEMIC 2013, 18 (2013).
2. WHO, HIV AND ADOLESCENTS: GUIDANCE FOR HIV TESTING AND COUNSELLING AND CARE FOR ADOLESCENTS LIVING WITH HIV – RECOMMENDATIONS FOR A PUBLIC HEALTH APPROACH AND CONSIDERATIONS FOR POLICY-MAKERS AND MANAGERS, viii (2013).
3. United Republic of Tanzania: HIV and AIDS estimates (2014), UNAIDS.ORG, <http://www.unaids.org/en/regionscountr/ountr/ountr/unitedrepublicoftanzania> (last accessed September 13, 2015).

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