FOREWORD

There is one barrier to health access and a major impediment to national and regional development across the globe that could be removed within a few days if only the policy decisions would be made. The removal of this barrier would promote gender equality, help end child marriage, reduce teenage pregnancy and girl dropout rates from secondary school, lower HIV incidence rates, and achieve the prerequisite for the demographic dividend. Let me explain.

As the Sustainable Development Goals (SDGs) become the world’s compass towards development and a better life for all people on the planet, sub-Saharan Africa faces a potential demographic disaster that could undermine many of the SDGs.

Many sub-Saharan countries have some of the highest fertility rates in the world which, if unaltered, will see those countries’ population, rising from 17 million to 43 million by 2050. Another country’s population that is currently at 27 million will more than double to 65 million by 2050, with yet another going from 53 million to 137 million. Not one of these countries will have reached the population turnaround required as an inescapable prerequisite for achieving a demographic dividend by 2050.

With increases like these on the same available land area, with the same or less access to drinking water, potentially less arable land available due to global warming, and services and GDP increasing at a far slower rate than population, it will be impossible to achieve the SDGs and improbable to even maintain the human development index achieved thus far by 2017. These are not scenarios or ‘maybes’. This is the inevitable future of the region unless something significant, such as the fertility rates, changes. Slowing and reversing population acceleration is essential to development in sub-Saharan Africa.

And yet, the world has a dark and shameful history of ‘population control’, legislating women’s rights to decide on having children away and forcing and coercing sterilisation. These restrictions on agency and autonomy have no place in a democratic, sustainable development world in the 21st century and the vast majority of nations achieving the demographic dividend have not resorted to such dark methods.

Increasing gender equality, keeping girls in safe schools for longer, reducing sexual and gender based violence, and increasing the sexual and reproductive health knowledge of young people are also factors. And of course, it is the increased access to modern contraceptives and women making choices about their own reproductive health that have turned the tide.

So this research report turns its attention to this access to modern contraceptive methods, as well as all other sexual and reproductive health (SRH) services. There are many barriers for adolescents around the globe - the majority of citizens in many countries – to access SRH services. Distance from services, lack of transport, lack of available commodities, poverty, inherited beliefs, harmful practices, and hostile staff attitudes can all be barriers to access. But only one barrier is self-inflicted by countries. And this barrier could disappear tomorrow, creating massive access for adolescents. It is the barrier of legal restrictions on adolescents’ access to SRH. The majority of countries in the region have placed arbitrary legal barriers to adolescent access by creating policies or laws with a number of parental consent and other restrictions, preventing adolescents from initiating their own healthcare.

In some cases, these have been gradually added to laws or policies with well-intentioned reasons to protect adolescents. In many cases, however, they reflect an idealised view of what older people think younger people should or should not be doing. Primarily, these idealised views revolve around sex. Older people, sometimes forgetting their own youth, think that the best protection for younger people is to abstain from sex until they are, perhaps 16, or even 18. Reality is, in many cases different, and by ignoring reality and locking adolescents out of the health system when it comes to sexual and reproductive health and rights (SRHR), adults are doing irreparable damage to their children and other children, as well as directly contributing to a looming demographic disaster for their nation.
Because this seems so obvious, recent global guidelines have called on countries to examine their current policies and consider revising them to reduce age-related barriers to access and uptake of all SRH services. To assist in this process, the SRHR Africa Trust (SAT) in collaboration with the Thomson Reuters Foundation, 20 global law firms, and UNICEF, has reviewed Age of Consent laws in 22 countries: Botswana, Kenya, Ivory Coast, Malawi, Morocco, Nigeria, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe, Brazil, Jamaica, India, Indonesia, Thailand, Vietnam, Canada, United Kingdom, France, Sweden, and Ukraine. The range of countries was chosen to highlight a spread of geography, cultures, development status, nonachievement, in-transition and achievement of the demographic dividend, and adolescent health outcomes. In addition, SAT and UNICEF also undertook an Ethical, Cultural and Social review in nine countries (seven being from the 22 countries above, plus two others - Uganda and Philippines) to look at ethical cultural and social barriers impacting adolescent access to health and services including SRH services.

The data revealed some game-changing recommendations apparent to SAT:

1. Desexualise SRHR services and treat them as you would any other health system access;
2. Base both access and restriction decisions on child and adolescent development, competence and maturity to make decisions about their own health;
3. Do not make the age of sexual consent older than 16 years, and do not distinguish between young men and young women;
4. Have statutory rape provisions in place to protect adolescents from predatory adults;
5. Put ‘close in age’ exceptions to the age of sexual consent in place so that young adolescents having consensual sex with one another do not have to go to jail – a travesty affecting young men aged 13-16 years.

We offer this report and its insights to policymakers, legislators, development agencies, international cooperating partners, and activists wherever they may be. A thinking and action tool is currently being designed to accompany this report. If you wish to receive it or an electronic copy of this report, please send an e-mail to ageofconsent@satregional.org. Please also feel free to share ways in which you may have used this report or the action tool to create positive change with us and with one another.

Our hope is that these resources will create dialogue and action that will remove all legal barriers to adolescent access to SRH services and allow attention and resources to focus on the remaining and more intractable barriers.

Jonathan Gunthorp

Executive Director - SAT
ACKNOWLEDGEMENT

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SAT wishes to thank Jerome Amir Singh (lead author), Faadiela Jogee and Samantha Chareka (co-authors) from the Centre for the AIDS Programme of Research in South Africa (CAPRISA), Durban, South Africa, and Dalla Lana School of Public Health, University of Toronto, Toronto, Canada for working on the ethical, cultural and social review. The ESC research and editorial support was provided by Faadiela Jogee and Samantha Chareka, CAPRISA.

SAT also wishes to thank civil society organisations and partners who attended the Age of Consent Validation Meeting that met to discuss and validate the draft Advocacy Toolkit. The meeting critically reviewed the draft reports, analysing the data collected for its accuracy and merits.

SAT is grateful to UNICEF for co-funding the review of the Age of Consent laws, policy frameworks, Ethical, Social, and Cultural (ESC) impacts on sexual reproductive health and rights (SRHR) and HIV.

Last but not least, SAT thanks TrustLaw at the Thomson Reuters Foundation for their continued collaboration with SAT on health and rights and for brokering the partnerships between SAT and the law firms. TrustLaw is the Thomson Reuters Foundation’s global pro bono legal programme, connecting law firms and corporate legal teams around the world with high impact NGOs and social enterprises working to create social and environmental change.
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## ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
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<tr>
<td>ANC</td>
<td>Antenatal Care</td>
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<tr>
<td>ART</td>
<td>Antiretroviral Therapy</td>
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<tr>
<td>EHP</td>
<td>Essential Health Package</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>HCT</td>
<td>HIV Counselling and Testing</td>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>HPV</td>
<td>Human Papillomavirus</td>
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<tr>
<td>MMC</td>
<td>Medical Male Circumcision</td>
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<td>MPR</td>
<td>Multiple-perpetrator Rape</td>
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<tr>
<td>MSP</td>
<td>Multiple Sexual Partners</td>
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<tr>
<td>PLWHA</td>
<td>People Living with HIV/AIDS</td>
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<tr>
<td>PLWHIV</td>
<td>People Living with HIV</td>
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<tr>
<td>PEP</td>
<td>Post-exposure Prophylaxis</td>
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<tr>
<td>PrEP</td>
<td>Pre-exposure Prophylaxis</td>
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<tr>
<td>SRHS</td>
<td>Sexual and Reproductive Health Services</td>
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<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
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<tr>
<td>UNICEF</td>
<td>United Nations International Children’s Fund</td>
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<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<td>WHO</td>
<td>World Health Organization</td>
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<td>YFS</td>
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EXECUTIVE SUMMARY

Ukraine the Age of Consent to sexual intercourse is not established by the current legislation. As a general rule, a person acquires ‘full civil capacity’ at the age of 18 (pursuant to the Civil Code of Ukraine). Although the Civil Code does not explicitly state the impact of a person’s civil status on his/her capacity to consent to sex, the acquisition of ‘full civil capacity’ nevertheless implies that an individual has capacity to consent to sex.

The definition of rape in Ukraine is captured in Article 152 of the Criminal Code. The definition provides for a general prohibition against rape. Aggravated punishment is, however, provided for where the victim of the rape is a person who has not reached puberty, is a minor aged 14-17 years (inclusive) and/or is an infant aged 13 years and under.

There are no gay sex exceptions in Ukraine. However, the legislation in effect requires that anyone between 14-17 years who engages in sexual intercourse with adults must have reached puberty. There are no age restrictions on access to contraceptive commodities that are a form of barrier method, such as condoms. However, there are restrictions regarding access to hormonal contraception methods as well as to intrauterine contraception or surgical contraception methods, all of which involve receipt of medical treatment (including the taking of medicines). The Civil Code stipulates the exceptions that a person who is 14 years or over must consent to medical treatment whereas the consent of the legal representatives is required for persons 13 years or under. sterilization shall be performed only on fully consenting adults persons aged 18 years and above.

HIV testing is available for individuals aged 14 or above without parental consent. HIV status will be reported directly to an adolescent aged 14 years and older. In the event that a person aged 13 years or under is found to be HIV positive, the medical staff who tested the young person must inform his or her parents or other legal representative of the HIV status. ART is provided according to the ART clinical protocols approved by the Ministry of Health.

Abortions may be performed in certain circumstances, regulated by a number of legal acts: the Civil Code of Ukraine, the Law of Ukraine “Basic Laws of Ukraine on Healthcare” and orders of the Ministry of Health of Ukraine. Abortions can only by performed on women 13 years or younger in healthcare institutions at the request of women during a pregnancy term that has not exceeded 11 weeks. An abortion performed on a woman aged 13 or younger can only be carried out with the consent of her legal representatives while an abortion performed on a woman aged 14 or over requires her advance consent. In addition, where the woman is aged 17 or under, the advance consent of her legal representatives will be required if the proposed abortion is to take place for non-medical reasons in the 12th-22nd week of pregnancy.

Girls aged 14 years or older can receive Antenatal Care (ANC). Girls aged 13 years or younger can receive ANC if there are medical indications and their parents give the consent. There is no prohibition in the Ukraine on HIV Post-exposure Prophylaxis (PEP). Consent considerations are stipulated in the Civil Code consent to medical treatment of 14 years old. There is no specific prohibition on Pre-exposure Prophylaxis (PrEP). PrEP may be provided to young people without parental consent if the patient is aged 14 years or older as applied in the general rules on consent to medical treatment.

According to the Recommendations of the National Council of Experts of Ukraine concerning vaccination against oncogenic strains of Human Papilloma Virus (HPV) vaccination is recommended for girls aged above 12 before the sexual life have started.
Chapter One: Introduction

The world’s attention has moved beyond HIV and AIDS, yet it remains the leading killer of adolescents in Southern Africa, presenting a major impediment to healthy communities and a significant factor in the health and status of women and girls in the region.

According to a report by the Joint United Nations Programme on HIV/AIDS (UNAIDS) on prevention of HIV (2013), Eastern and Southern Africa is home to half the world’s population living with HIV, even if the region is only 5% of the world’s population. Today the region continues to be the most infected and affected by the HIV/AIDS epidemic, with 48% of the world’s new HIV infections among adults, 55% among children, and 48% of AIDS-related deaths.

Research conducted in many parts of the world shows that several legal and human rights barriers hinder access to, and uptake of, HIV services for adolescents. Key among these barriers are Age of Consent legislation and policies. Recent global guidelines have, therefore, explicitly called on countries to examine their current policies and consider revising them to reduce age-related barriers to access and uptake of the overall SRH services, HIV Counselling and Testing (HCT) and to linkages to prevention, treatment and care.

HIV is the most severe in the Southern Africa sub-region which includes Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe, with each having an adult HIV prevalence of over 10%. UNAIDS reports that Swaziland have the highest HIV prevalence in the world (26.0%), followed by Botswana (23.4%).

In 2011, there was an estimated 1.2 million adolescents aged 10-19 years old living with HIV, more than half of all HIV positive adolescents globally. Eastern and Southern Africa now have 10.5 million children who have lost one or both parents to AIDS.

The risk of becoming infected with HIV is higher for girls and young women and currently, HIV prevalence among young women aged 15-24 years stands at 4.8%, which is two and a half times higher than among men of the same age. In Swaziland, 15.6% of young women are HIV positive, compared to 6.5% of young men.

The advocacy campaign ‘All In To #EndAdolescentAIDS’ was launched as a global platform for action and collaboration for social change in February 2015 by global leaders and civil society partners. This global agenda provides opportunities for ensuring that existing and new strategies and programmes on HIV prevention, treatment and care are effectively implemented to benefit young people. These include the 2012 guidance on Pre-exposure Oral Prophylaxis (PrEP) for serodiscordant couples, men, and transgender women who have sex with men at high risk of HIV transmission, as well as the 2013 guidance for HCT and care for adolescents living with HIV and young key population policy briefs.

All In To #EndAdolescentAIDS works through four workstreams. As part of workstream 1, global partners have prioritised joint action to take stock of the current situation in countries with respect to Age of Consent for services including HIV prevention by carrying out a systematic desk review of Age of Consent laws and a mapping of the processes led and outcome of reforms undertaken by countries to address this barrier. Through the All In To #EndAdolescentAIDS, many agencies, and global partners including the United Nations Development Programmes (UNDP), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the PACT and AIDS Alliance have already initiated actions on data collection to inform their policy advocacy efforts globally and specifically within the 25 focus countries. This review will inform the development of a source or toolkit for learning on this theme and capacity building of experts and policymakers worldwide.

Why Age of Consent review?

Several global bodies, including UNICEF and WHO, are currently undertaking a number of initiatives to change the global guidelines with regard to adolescent access to a range of HIV prevention services, including Age of Consent and informed consent, confidentiality, availability, accessibility, and acceptability. Adherence and quality must inform these services.
The SRHR Africa Trust (SAT) in collaboration with UNICEF worked with participating local law firms, and a consultant to conduct the Age of Consent research. The three areas of the research included the following:

1. Age of Consent legal review
2. Ethical, Social, Cultural (ESC) desktop review
3. Youth attitudes survey

Therefore, the main goal of the project was to conduct research on “Age of Consent” laws, regulations, and policies, as well as ESC factors, in relation to adolescents. This entailed collecting country experiences to address Age of Consent laws / polices and ESC factors that serve as potential barriers to adolescents accessing SRH services, including HIV prevention, care and treatment. The research explored implications for expanding SRHR services and HTC in adolescents aged 10–19 years.

Methodology

The Ukraine legal, ethical, cultural and social review was prepared by SAT and is based on legal review research conducted by Alzinger Law Firm and the ethical, cultural, and social review by Jerome Amir Singh, Centre for the AIDS Programme of Research in South Africa (CAPRISA), Durban, South Africa, and Dalla Lana School of Public Health, University of Toronto, Toronto, Canada.

The ethical, cultural and social review focuses on the norms and practices around the Age of Consent in relation to the various aspects relating to SRHR. The legal review looks at all the relevant national laws (including nationally recognised customary or religious laws), regulations, and policies exploring the ages for girls and boys separately where relevant, including where contradictions exist in laws, policies, and regulations on these issues.

The review specifically looked at the following:

1. Age of Consent to sexual intercourse including the age for statutory rape
2. Age of Consent to access modern contraceptives, with and without parental consent
3. Age of access to emergency contraceptives, with and without parental consent
4. Policy framework and legislation enabling or disenabling access to Pre-exposure Prophylaxis (PrEP) including Age of Consent, with and without parental consent
5. Policy framework and legislation enabling or disenabling access to Post-exposure Prophylaxis (PEP) including Age of Consent, with and without parental consent
6. Policy framework and legislation enabling or disenabling access to safe abortions and postabortion care including Age of Consent, with and without parental consent
7. Policy framework and legislation enabling or disenabling access to Antenatal Care (ANC) including Age of Consent, with and without parental consent
8. Policy framework and legislation enabling or disenabling access to HPV vaccines and cervical cancer screening and treatment, including Age of Consent, with and without parental consent
9. Age of Consent to access HIV testing without parental consent.

The ethical, social and cultural component of the study seeks to highlight social and cultural factors, and the ethical dimensions thereof, that impact on adolescent health in the following contexts:

1. Age of Consent for sex and sexual debut.
2. Homosexuality and transgender expression.
3. Access to Sexual and Reproductive Healthcare Services, including autonomous HIV counselling and testing [HCT] and contraception access.

Ukraine’s analysis was conducted through a desk review of publically accessible sources in English, including works published by international agencies such as UNICEF, WHO, UNAIDS, UNHRC, and the World Bank, Ukraine Government reports, and non-governmental research outputs.
Country overview

Ukraine encompasses 603,550 km² making it the largest country in Europe besides Russia.¹ Ukraine’s population is estimated to be 42.5 million, 46% of which are male (19,541,181) and 54% female (22,940,505).² Approximately 14% of the population is aged between 0-14 years and roughly 12% of Ukrainians are aged between 15-24 years.³ Ukrainians account for 78% of the total population, Russians comprise of approximately 17%, 0.6% are Belarussian, 0.4% are Bulgarians, 0.3% Hungarian, 0.5% are Crimean Tatars, 0.3% comprise of Romanians and Poles respectively. Ukrainian is the most prevalent language spoken (67%) followed by Russian (24%).⁴ 76.5% of Ukrainians are Ukrainian Orthodox (50.4% Kyiv Patriarchate and 26.1% Moscow Patriarchate), 8% are Ukrainian Greek Catholic, 7.2% are Ukrainian Autocephalous, 2.2%, are Orthodox Roman Catholic and Protestant respectively, 0.6% are Jewish and the remaining religions account for 3.2% of the population.⁵ In Ukraine, 68.8% of the population lives in urban areas, with 55% of Ukraine’s urban population living in small cities of up to 50,000 inhabitants and in big cities with more than one million inhabitants.⁶

Country context

- Ukraine is a lower middle income country with a GDP of $131.8 billion.⁷
- Ukraine’s population estimate as of January 2016 is 42.545 million.⁸
- Females comprise approximately 54% of the population.⁹
- Males comprise approximately 46% of the population.¹⁰
- Adolescent fertility rate is is 25 births per 1,000 women aged between 15-19 years.¹¹
- Ukraine’s contraceptive prevalence rate is estimated to be 66.7%.¹²
- Ukraine shoulders the second largest HIV epidemic plaguing the Eastern European and Central Asian region.¹³
- As of 2015, approximately 19% of people living with HIV (PLWHIV) in the Eastern European and Central Asian region hailed from Ukraine.¹⁴
- Ukraine accounts for approximately 25% of the total amount of AIDS-related deaths in the Eastern European and Central Asian region.¹⁵
- As of 2015 there are an estimated 137,390 PLWHIV in Ukraine.¹⁶
- The HIV prevalence is approximately 322.5 per 100 thousand.¹⁷
Chapter Two: Age of Consent to sexual intercourse

The Age of Consent to sexual intercourse is not established by the current legislation of Ukraine. As a general rule, a person acquires ‘full civil capacity’ at the age of 18 years (pursuant to the Civil Code of Ukraine). Although the Civil Code does not explicitly state the impact of a person’s civil status on his/her capacity to consent to sex, the acquisition of ‘full civil capacity’ nevertheless implies that an individual has capacity to consent to sex.

Pursuant to the Civil Code, an individual may however acquire ‘full civil capacity’ before she/he turns 18 years in the following cases:

- at the age of 16 years in case of working under a labour agreement (on the basis of the decision of guardianship authorities and the consent of parents (guardian or adoptive parents)/by court decision);
- at the age of 16 years in case of being a mother or father of a child (on the basis of the decision of guardianship authorities and parental consent (guardian or adoptive parents)/by court decision);
- at the age of 16 years in case of conducting the business activity (with the consent of parents or a guardian); or
- in case of marriage.

Moreover, according to the Criminal Code of Ukraine, sex with a person who has not attained ‘puberty’ is prohibited. The Criminal Code imposes criminal sanctions on any individual aged 16 years and over who breaches this prohibition. The Supreme Court has clarified that persons aged 13 years or under are deemed to not have attained ‘puberty’, whereas the ‘puberty’ of persons aged 14 years to 17 years (inclusive) shall be determined on the basis of a forensic medical examination.

Legislation on Age of Consent to sexual intercourse

The civil code of Ukraine:

Art. 34: An individual shall acquire full civil capacity at the age of 18 years. In case of marriage a minor under 18 years of age shall acquire full civil capacity upon the date of registration of the marriage. In case of termination or annulment (unless it was the result of unlawful behaviour of the minor) of the marriage the acquired full civil capacity shall remain.

Art. 35: An individual may acquire full civil capacity at the age of 16 or 17 years if the individual is working under a labour agreement or if an individual has become a mother or a father of a child. Such full civil capacity shall be granted on the basis of a decision by guardianship authorities and with parental consent (guardian or adoptive parents) or by a court decision. Full civil capacity may also be granted to an individual of age 16 or 17 years who would like to carry out business activity. Such an individual may be registered as an individual entrepreneur subject to the provision of written parental consent (adoptive parents or guardians) or the written consent of guardianship authorities. In this case the individual acquires the full civil capacity upon the date of the state registration. In case of termination of the labour agreement or business activity the acquired full civil capacity shall remain in place.

The criminal code of Ukraine:

Art. 155 - Sexual intercourse with a person who has not attained puberty: Sexual intercourse with a person who has not attained puberty by a person aged 16 years and over is punishable by a term of restraint or imprisonment of up to 5 years. If the same actions are committed by the father, mother, stepfather, stepmother or guardian of a person who has not attained puberty, or by a person entrusted with duties on rearing a victim who has not attained puberty or if such actions result in sterility or harsh consequences for a person who has not attained puberty, the actions shall be punishable by a term of imprisonment of between 5 and 8 years with the potential for disqualification of the perpetrator from holding certain positions or practising certain professions for up to 3 years after completion of the term of imprisonment.
Art. 156 - Corruption of minors: Committing sexual abuse of a person under 16 years old is punishable by a term of restraint or imprisonment of up to five years. The same actions committed against an infant under 14 years old or by the father, mother, stepfather, stepmother or guardian of a person under 16 years old, or by person entrusted with duties on rearing a victim who is under 16 years old, shall be punishable by a term of imprisonment of between 5 and 8 years with the potential for disqualification of the perpetrator from holding certain positions or practising certain professions for up to 3 years after completion of the term of imprisonment.

The Resolution of the Plenum of Supreme Court of Ukraine No. 5 dd. 30.05.2008:

Determination of puberty shall be made in respect of persons aged 14 years and over, but under 18 years. Whether or not an individual has reached puberty shall be determined by reference to a forensic medical examination, the performance of which is mandatory in cases where any such individual (i.e. an individual aged 14-17 years (inclusive)) is the alleged victim under Art. 155 of the Criminal Code of Ukraine. Persons under the age of 14 years are presumed to not have attained puberty.

Age of Consent for sex and sexual debut

Ukraine has no explicit legal Age of Consent. However, the country’s Criminal Code states that sexual intercourse with a ‘sexually immature’ person is punishable.\(^{18}\) The Code does not define “sexual maturity” or “sexually immature”, although sexual immaturity has been historically presumed in those under 14 years of age. A child is one that has not come of age, children aged 14-18 years are considered juveniles and those under 14 years are minors.\(^{19}\) The Criminal Code states that sexual intercourse and debauched acts with sexually immature persons\(^{20}\) and persons under the age of 16 years are punishable by law.\(^{21}\) Hence the legal Age of Consent appears to be 16 years of age.

Sexual debut in Ukraine usually occurs by 18 years of age.\(^{22,23}\) Some contemporary literature suggests that sexual debut amongst Ukrainian adolescents occurs between the ages of 14 and 15 years.\(^{24,25,26,27,28}\) Therefore, early sexual debut amongst Ukrainians seems to be socially acceptable,\(^{29}\) especially amongst Ukrainian youth. However, religious and moral barriers to premarital intercourse persist.\(^{30}\) Approximately 85% of Ukrainians belong to a various Christian denominations.\(^{31}\) Premarital sex is offensive to Christian morality,\(^{32}\) although Christian traditions condone marriage upon the attainment of puberty.\(^{33}\) Therefore, from a traditional Christian perspective, sexual intercourse between married adolescents is permissible.

Definition of statutory rape

There is no direct definition for statutory rape in Ukraine’s legislature. Article 152 of the Criminal Code of Ukraine defines ‘rape’ and provides for a general prohibition against rape. Aggravated punishment is, however, provided for where the victim of the rape is a person who has not reached puberty, is a minor (aged 14-17 years inclusive) and/or is an infant (aged 13 years or under).

Legislation and policy framework on statutory rape

The criminal code of Ukraine:

Art. 152 - Rape: 1. Rape means sexual intercourse with physical abuse, threat of physical abuse or using the helpless state of the victim and is punishable by a term of imprisonment of from 3 to 5 years. Rape which has been committed repeatedly, or by a person who had committed crimes against sexual freedom and sexual integrity of another person, as stipulated by art. 153-155 of Criminal code of Ukraine, is punishable by a term of imprisonment of between 5 and 10 years. Rape which has been committed by a group of persons or against a minor (aged 14-17 years old (inclusive)) is punishable by a term of imprisonment of between 7 and 12 years. Rape resulting in harsh consequences or committed against an infant (aged 13 or under) is punishable by a term of imprisonment of between 10 and 15 years.
Child marriage

The marriageable age in Ukraine is 17 years for females and 18 years for males. Although child marriage is rare in Ukraine, early marriage (<18 years) remains a reality for some Ukrainians. According to Ukraine’s Multiple Indicator Cluster Survey (MICS), an estimated 0.4% of adolescent girls in Ukraine married before reaching 15 years of age, 11% of women between 20-49 years married before turning 18 years of age, and 6.5% of adolescent girls aged between 15-19 years of age are currently married or in a union. The practice is more common in rural areas (14.5% prevalence) and small towns (12.2% prevalence) than in urban cities (8.3% prevalence). Only 2.9% of Ukrainian men between 20-48 years of age married before turning 18 years of age and 0.3% of male adolescents between 15-19 years of age are currently married or in a union.

Early marriage appears to be linked to lower levels of education and early pregnancy, adolescent marriage is significantly more prevalent in girls with a secondary education (16.6%) than a tertiary education (8.6%).

Adolescent marriage seems to be predicated on traditional gender roles. Socially, marriage is fundamental for Ukrainian women. Consequently, early marriage is endorsed by young women.

In Ukraine, child marriage is pervasive in the Roma community. It is estimated that approximately 400,000 Roma reside in Ukraine, with approximately 150,000 residing in the East of Ukraine. Marriages amongst the Roma are rarely registered because of the incidence of child marriage, which is unlawful in Ukraine. Child marriage amongst the Roma is considered a natural and traditional practice. Traditional patriarchal constructs of sex and gender roles perpetuate this practice as emphasis is placed on preserving young Roma girls chastity by their families and community. Child marriage is seen as a way of maintaining the girl’s virginity before marriage as girls are socialised to play the role of an obedient and subservient wife and pressure is placed on these girls to get married young. This is compounded by the socio-economic pressure that Roma face as a highly marginalized and ostracized group plagued by poverty, and inadequate education, quality housing and reproductive health services, all of which contribute to child marriage.

Bride kidnapping and abduction for forced marriage

Abductions of young girls for the purposes of coerced marriage is practiced in Ukraine amongst the Roma community. Adolescent girls as young as 12 years old are inveigled, captured, and carried away by several perpetrators. Thereafter, the abducted girl is taken to the home of the intended groom where she is typically coerced into accepting the intended groom’s marriage proposal. In Eastern Europe, bride kidnapping or abduction for the purposes of forced marriage is often viewed as a traditional cultural practice. However, many experts disagree because while arranged and early marriage is considered a traditional practice, the act of abducting and raping young girls is not. Bride kidnapping is a brutal form of violence against young girls and women that facilitates early sexual debut and strips girls of their basic human rights.

Ethics reflections and recommendations

The Ukrainian Government has a moral obligation to stop child marriages in the country, and to end of the kidnapping and abduction of adolescent girls for forced marriages. Authorities should address these challenges by meaningfully engaging with the Roma community at a grassroots level and educating them about child rights and local laws. However, to do so successfully, the Ukrainian Government will have to earn the trust and respect of the Roma, who face ongoing systemic discrimination from the state and Ukrainian society. Accordingly, engagement by authorities may be viewed with suspicion by the Roma, especially if the engagement is interpreted as an attempt to undermine the Roma way of life. The Government should thus strive to integrate the Roma into Ukrainian society, in parallel with any engagement effort to end child marriages and bride abductions.
**Country experiences in addressing the barriers**

The main challenges facing Roma in Ukraine include the lack of personal documents, difficulties accessing quality education and employment, inadequate housing conditions and misconduct by the police toward Roma. The Ukrainian Government has recognized the need to address these issues and has adopted a Strategy on the Protection and Integration of the Roma national minority into Ukrainian Society up to 2020, and a National Action Plan (NAP) on Implementation of the Strategy. However, it has been claimed that these initiatives have failed to integrate a strong anti-discrimination approach in these policy documents or to respond to the specific needs of Roma women. In addition, these initiatives do not provide strategic objectives, clear indicators, a budget or effective mechanisms for their implementation and evaluation that ensure the effective participation of Roma. To this end, the Roma were not involved or consulted in the drafting the Strategy or the NAP. These shortcomings may make it challenging for authorities to engage with the Roma to, amongst other issues, end child marriages and bride kidnapping.

**Homelessness**

There are no official statistics on the total number of children living and/or working on the streets of Ukraine, but estimates vary from 40,000 to 300,000. The street environment is particularly risky, rendering street adolescents vulnerable to sexual and labour exploitation, violence, and trafficking. Street children often form groups with other street children in order to survive and, to be accepted. In doing so, street children often adopt the behaviors of the group, which may include, amongst others, glue sniffing, illicit drug use, and trading sex for drugs or money. Such youth are often acutely lonely, with their need for affection and acceptance leading them to early initiation of sexual activity, which may often be associated with violence.

**Injection drug-use**

A 2008 study of young IDUs on the streets in Ukraine found that the average age of sexual debut was 15 years of age. The majority of males aged 15 to 19 years who are officially registered as living with HIV in Ukraine contracted the virus through injecting drug use (65%) while most of the girls of the same age contracted HIV through unprotected heterosexual contacts (89%). IDU may thus play a facilitative role in early sexual debut in Ukraine as IDU is associated with risk-taking, including overlapping sexual activity and drug use.

**Ethics reflections and recommendations**

An important strategy to prevent children ending up on the street is to support at-risk families. This necessitates prolonged social investment and grass roots engagement with vulnerable communities. While the Ukrainian Government, civil society, and international aid agencies have been responsive to the plight of street children, injection drug users, and other vulnerable categories of adolescents (see below, paragraph 3, page 15) – to a certain degree and with varying degrees of success – more needs to be done to proactively address the root causes of homelessness and substance abuse in so far as these factors impact on early sexual debut.

**Country experiences in addressing the barriers**

Political instability, high levels of corruption, high levels of sovereign debt, and Ukraine’s dysfunctional social welfare system will continue to negatively impact on Ukraine’s ability to tackle its plethora of social issues, including dedicated programmes aimed at preventing early sexual debut amongst adolescents.
Homosexuality and transgender expression

The total number of Ukrainian adolescent MSM between 10-19 years of age is estimated to be 20,000, which constitutes approximately 10.5% of Ukraine’s total MSM population. However, in light of the paucity of MSM statistics, it is believed that there is a large underreporting of MSM cases in Ukraine and throughout Eastern Europe. In fact, it is estimated that 40% of heterosexual transmissions are actually MSM or PWID. Underreporting could be due to stigma and discrimination, which triggers reticence amongst individuals to declare themselves as MSM. Among adolescent MSM, 92% report engaging in oral sex, 66% engage in active anal intercourse, 65.5% report passive anal intercourse, 71% report heterosexual intercourse, with 53% having engaged in heterosexual intercourse in the previous six months. More than 23% of adolescent MSM claim to have heterosexual sexual partners. 25% engage in unprotected sex with commercial sex partners and 28% with regular sex partners. The reported reason adolescent MSM did not use condoms with commercial partners was because clients did not want to; with regular partners, respondents thought it reduced sensuality, found it unnecessary, or did not consider it at all. An estimated 10% of adolescents engaged in MSM activity with a mean of 3.2 partners, with 49% of MSM adolescent reporting having experienced forced sex. Nationwide, the MSM HIV prevalence in Ukraine is estimated at 6.4%.

Ukraine, like the majority of countries in Eastern Europe, is relatively intolerant of homosexuality and the country has demonstrated consistently negative attitudes towards homosexuality. There appears to be increased intolerance towards homosexuals in recent years, with the majority of Ukrainians believing that homosexuality can never be justified and claiming that they could not stand to live next door to a homosexual person. Of 20 European countries surveyed, Ukraine had the highest average scores in regard to homosexuality disapproval. Despite its decriminalization of homosexuality upon independence, at a societal level, Ukraine remains intolerant of homosexuality, with members of the LGBTI community being the victims of social ostracism, discrimination, hate crimes, and hate speech. Such homophobia and intolerance is compounded by religious perspectives. Christianity prohibits homosexuality. Ukrainian religious leaders have gone on record opposing LGBTI rights in Ukraine, describing homosexuality as a “disease”, “alien to Ukrainian culture”, and “comparable to that of murder.” Thus, members of the LGBTI community in Ukraine face significant social, religious, and moral barriers to their acceptance.

Exceptions for gay sex

There are no exceptions. However, note that the legislation in effect requires that anyone between 14-17 years who engages in sexual intercourse with adults must have reached puberty.

Ethics reflections and recommendations

Ukraine is a signatory to several human rights instruments that forbids unfair discrimination, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Despite ratifying the above instruments, Ukraine’s parliament has been hostile to legislative reforms that seek to grant LGBTI individuals greater protection. Furthermore, as noted earlier, the country’s religious leaders have openly denounced homosexuality. This is troubling as religious morals undoubtedly plays an indirect role in shaping Ukraine’s laws through its elected representatives. Given that Ukraine is a secular democracy, Ukraine’s Government and parliament should do more to promote and protect the rights of LGBTI individuals, in line with the country’s ratification of human rights instruments. Healthcare workers should be given sensitivity-training and reminded that they have an ethical (and legal) duty to provide care to any person in need and that this duty supersedes the healthcare professional’s personal moral biases regarding sexual orientation and lifestyle choice. Furthermore, policymakers, officials, and health professionals ought to note that they have a legal and ethical obligation to always act in the best interests of a child, regardless of that child’s sexual orientation.
Country experiences in addressing the barriers

Until homosexual acts were decriminalized in Ukraine 1991, Article 22 of Ukraine’s Criminal Code deemed non-violent homosexual sex between adults to be a crime. Notwithstanding its repeal, Article 22 has seemingly cast over a shadow over legislative reforms in Ukraine in relation to the LGBTI rights. No mention of sexual orientation was found in any post-independence Ukrainian legislation, until the passage in late 2015 of bill No. 3442, “On amendments to the Labor Code of Ukraine”, which bans workplace discrimination based on a range of characteristics, including race, disability, sexual orientation, and gender identity. Enacted to satisfy one of the preconditions of Ukraine securing visa-free travel to European countries who are members of the Schengen visa scheme, this legislative progress may be short-lived, with conservative parties already vowing to counter the new law. Such hostile, homophobic reactions on the part of parliamentarians to Ukrainian LGBTI’s being granted basic human rights highlights that discrimination at all levels of society, including the country’s political leadership, remains a major threat to Ukraine’s LGBTI community. Furthermore, the repeated failure of Ukrainian authorities to protect the rights to freedom of expression and peaceful assembly of LGBTI people in Ukraine, to date, illustrates that the country has a long way to ago in respect to realising the rights of its LGBTI community.
Chapter Three: Access to contraception services and commodities

There are no age restrictions on access to contraceptive commodities that are a form of barrier method, e.g. condoms. However, there are restrictions regarding access to hormonal contraception methods as well as to intrauterine contraception or surgical contraception methods, all of which involve receipt of medical treatment (including the taking of medicines).

Contraceptive means which are a form of medical treatment require:

i. for persons aged 14 years or over, his or her informed consent, or
ii. for persons aged 13 years or under, the consent of his/her legal representatives (parents; adoptive parents; a guardian).

Pursuant to Article 284 of the Civil Code, a person who is 14 years or over must consent to medical treatment (whereas the consent of the legal representatives is required for persons 13 years or under). Sterilization shall be performed only on fully consenting adults aged 18 years or over.

Moreover, Ukrainian legislation provides that only an adult aged 18 years or over has the right to (i) receive full and accurate information on his/her health status, and (ii) refuse medical treatment.

Legislation and policy framework


Article 43 - Consent to medical intervention: Informed patient shall be provided prior to use of any diagnostic, preventative and/or treatment methods on the patient. A medical intervention in respect of a person under the age of 14 years requires the consent of their legal representatives. If the legal representative refuses to consent to the proposed medical treatment and such refusal potentially causes drastic consequences for the patient, the treating doctor shall notify the guardianship authority.

Civil code of Ukraine

Art. 284 - The right to medical treatment:

3. The medical treatment of a person who has reached the age of 14 years shall be provided on the basis of his/her consent.
4. A competent adult may refuse the medical treatment.

Art. 285 - The right to receive information on health status: 1. An adult (a person aged 18 years and over) is entitled to receive full and accurate information on his/her health status as well as to review the respective medical documents regarding his/her health.

Art. 242 - Legal representation: Parents (including adoptive parents) are legal representatives of their infants (a person aged 13 years or under) and minors (persons aged 14-17 years old (inclusive)). A guardian is a legal representative of an infant or incapacitated individual. In other cases the legal representative may be another person, as provided for by law.

Art. 281 - The right to life: 5. Sterilization may be performed only on a fully consenting adult (a person aged 18 years and over).

Free access to contraception in Ukraine is available, albeit sporadically, via HIV/AIDS campaigns and manufacturer promotions. The most commonly used contraceptive amongst adolescent 15-19 years of age, is the male condom, with an estimated 97% of female adolescent between 15-19 years of age using male condoms as their primary contraceptive, followed by the pill at 11.8%. Condoms are accessible via purchase from pharmacies and clinics, and from friends/relatives. Contraceptive pills are frequently accessed through purchase from hospitals, clinics and pharmacies, and freely accessible from some service providers.
Still, it is estimated that a meagre 15% of Ukrainian female adolescents 15-19 years of age make use of contraception. The unmet need for contraception for adolescent females between 15-19 years of age is approximately 14% in Ukraine. The high price of contraceptives inhibits access to adolescents. The fact that adolescents have to visit hospitals and clinics to access contraceptives also serve as an access barrier as adolescents face stigma and discrimination and are sometimes subject to the religious morals of older health providers. Some adolescent populations face particularly challenging barriers in accessing SRHS. According to UNICEF, there are approximately 123,500 most-at-risk adolescent youths in Ukraine, of which an estimated 90,000 are SYB, 13,000 are MSM, 15,000 are PWID and 5,500 are FSW. Incarcerated adolescents may also be considered most-at-risk adolescent youths. These contexts overlap as street children often turn to sex work, engage in IDU, and are detained / incarcerated.

Access to Emergency contraceptives

Access to emergency contraceptives, is easily provided the appropriate consent has been obtained from the person’s legal representatives in circumstances where she is aged 13 years or under.

There is no Ukrainian regulation providing that emergency contraceptives must be designated as either prescription-only or over-the-counter medicines. Reference must instead be had to the general criteria by which the legal classification of medicines is generally determined (pursuant to the Order of MOH dd. 17.05.2001 No. 185 - On Approval of Criteria Regarding Medicinal Products Categories Dispensing). Based on data contained in the State register of medicinal products, local counsel’s understanding is that all emergency contraceptives of which they are aware are supplied as prescription-only medicines. In circumstances where emergency contraceptives are supplied as prescription-only medicines, a prescription is required in order for any person (regardless of age) to obtain such contraceptives. Moreover, the product label instructions for medical use of certain medicinal products including emergency contraceptives specify that such medicines may not be taken by women under 16 years. Off-label prescription to a person under 16 would in principle be permissible, provided it (i) is in line with the methods of treatment approved by the Ministry of Health of Ukraine, and (ii) is safe for the patient.

Legislation and policy framework

The Order of Ministry of Health of Ukraine No. 360 dd. 19.07.2005 “On the Procedure for Dispensing of Medicinal Products and Medical Devices from Pharmacies and Their Structural Subdivisions.

Art. 3: Prescription-only medicinal products may be dispensed from pharmacies upon the prescription of medical specialists.

The Law of Ukraine ‘Basic Laws of Ukraine on Healthcare” dated 19.11.1992 No. 2801-XII (Art. 43) (see answer to question 4 above)

Civil Code of Ukraine (Art. 284-285 & 242) (see answer to question 4 above)

Street-Based Youth (SBY)

Ukraine has the highest HIV prevalence in Europe. HIV prevalence is concentrated amongst FSW, MSM, and PWID, who collectively make up the most-at-risk-populations of which adolescents are disproportionately represented. Incidentally, Ukraine has the highest rate of HIV amongst adolescents and young people living in Eastern and Central Europe. It is estimated that 19% of new yearly infections are contributed by female adolescents between 15-19 years of age. In 2007 adolescents between 13-19 years of age comprised approximated 6% of PWID, 18% of FSW, and adolescent males 15+ years of age constituted 12% of MSM populations. Evidence suggests that adolescents are more prone to engaging in risky sexual activity, than their older counterparts. An estimated 150,000 SBY between 15-24 years of age are living and working on the streets of Ukraine. 44% of SBY are either double or single orphans. Moreover, evidence suggests that homeless orphans are at a higher risk of HIV infection, with HIV prevalence amongst SBY that are homeless and orphaned being an estimated 28%. One multicity survey found that HIV prevalence is an estimated 18.4% amongst Ukrainian SBY. In a cross-sectional survey of 805 adolescent SBY, 73.5% engaged in vaginal intercourse, approximately 43% of respondents were adolescents 10-14 years of age, 76% of the sexually active adolescents had early sexual debut (<15 years), and 26% of adolescents engaged in anal sex. An estimated 10% engaged in MSM activity with a mean of 3.2 partners, 53% engaged in unprotected sex with...
their last causal partner, and 52% of girls experienced forced intercourse, of which 71% experienced forced intercourse in the previous year of the survey. 49% of MSM adolescents experienced forced sex, while 75% of female and 22% of male adolescent PWID engaged in transactional sex. Despite these alarming statistics highlighting the need for adolescents in Ukraine to have access to SRHS, there are a number of barriers preventing SBY from accessing health and social services. These include the lack of funds for dedicated programmes aimed at SBY, the cost of services, stigma and discrimination from healthcare providers, inability to seek care due to employment, long waiting hours to access services, lack of transport, sceptical attitudes towards quality of health services, and minority status.

**People who inject drugs (PWID)**

It is estimated that 50,000 Ukrainian adolescents inject drugs: approximately 35,000 males and 15,000 females. Adolescents between 14-19 years of age constitute an estimated 11.6% of the total PWID population in Ukraine. An estimated one third of female adolescents inject drugs, amongst school-going adolescents between 15-17 years of age, with 14,121 admitting to having used illicit injectable drugs, and 12,886 reporting to have used illicit injectables drugs more than three times. A survey conducted on most-at-risk-adolescents revealed that, of the sample of adolescents IDU's surveyed, 15% initiated IDU before they turned 15 years of age and 86% before turning 18 years of age. 33% injected drugs daily, with the majority of adolescent IDU engaging in unsafe needle practices. To this end, 66% shared needles with 3 to 5 partners in the month prior to the survey. IDU is credited for being the main contributor to Ukraine's HIV epidemic. Not only do adolescent IDU increase their vulnerability to infection via unsafe needle practices, a substantial number of adolescents also engage in risky sexual behavior, which doubles their vulnerability to HIV infection. One study showed that of a sample of adolescent IDU, 80% had intercourse and of those reporting in the previous year, close to half had three or more sex partners in the preceding three months.

**Female sex workers (FSW)**

The estimated number of adolescents FSW 14-19 years of age in Ukraine ranges between 10,400 and 14,880, constituting approximately 16% of the entire FSW population in Ukraine. A 2010 study found that an estimated 60% of adolescent FSW practiced unsafe sex as compared to 40% in adult FSW, highlighting how low health literacy concerning HIV prevention impacts on adolescent FSW. The majority of street-based adolescent FSW are thought to have practiced risky sexual behaviour prior to turning 15 years of age. Moreover, a considerable amount of adolescent FSW engage in over-lapping risky behaviour which doubles the risk of HIV infection. Condom use is meagre and safe-sex is unlikely with casual and regular partners. More often than not, clients insist on unsafe-sex practices. Furthermore, sex with condoms costs less than without. It is estimated that 9% of Ukrainian FSW are infected with HIV. Safe-sex measures are low and inconsistent, especially amongst female adolescent IDU-FSW selling sex for drugs. Additionally, one bio-behavioural study revealed that FSW-IDU are subjected to more sexual and economical violence than regular FSW. These women are usually unwillingly compelled to try experimental drugs so others can gauge their safety before their use. Stigma and discrimination typically prevent such women from accessing health services. Moreover, FSW-IDU are often met with stigma and discrimination, which hinders their access to health and shelter services as women's shelters often refuse to accept such women, let alone provide them with services.

**Incarcerated adolescents**

Ukraine’s prison population as of January 2016 amounts to approximately 70,000 inmates, of which 0.7% are estimated to be adolescents. A 2011 bio-behavioural survey recorded a HIV prevalence rate of 33% amongst females, 10% amongst males, and 2.2% amongst adolescent prisoners aged 15-19. A cross-sectional behavioural survey of 805 street-based adolescents revealed that slightly more than 50% had been incarcerated or placed in juvenile detention. Incarceration and police brutality of SBY was more prevalent amongst male adolescents than females. Further, a baseline national study revealed that an estimated 50% of adolescents that live and work on the streets of Ukraine have been incarcerated or detained. A national evaluation report revealed that an estimated 31% of adolescent street-based FSW living and working on the streets, were incarcerated or detained.

Existing HIV services in Ukrainian state penitentiary institutions are plagued by lack of funding; shortage and
delay of drug supplies; deficit of specialists and competent staff to effectively perform services such as HTC; lack of informational materials on HIV awareness and transmission for prisoners; failure to recognize risky behaviour of inmates; placement of contraception (only in conjugal rooms); and excessive HIV diagnosis turnaround times.\textsuperscript{126}

**Ethics reflections and recommendations**

The majority of harm-reduction services in Ukraine are directed at adults.\textsuperscript{127} Such an approach fails to acknowledge and meet the needs of adolescents who find themselves in such situations.\textsuperscript{128} Furthermore, residential IDU treatment facilities are targeted towards males.\textsuperscript{129} It is rare to come across facilities and competent staff willing to accommodate females who inject drugs.\textsuperscript{130} Most significantly, such facilities are unwilling to accept children.\textsuperscript{131} Ukrainian civil legislation provides that minors aged 14 and above can autonomously access medical health services.\textsuperscript{132} This includes syringe exchange programmes (SEP).\textsuperscript{133} Yet, it is not uncommon for services providing SEP to avoid documenting the age of patients accessing services.\textsuperscript{134} This is due to the fact that SEP could be misconstrued as encouraging IDU.\textsuperscript{135} Ukraine’s Criminal Code stipulates that the encouragement of a minor to use any drugs or other intoxicating substances, is punishable for five to twelve years.\textsuperscript{136} Such ambiguity deters adolescents from utilizing, and service providers from offering, harm reduction services.\textsuperscript{137} Furthermore, the non-documentation of adolescent IDUs serves as a barrier to determining how many adolescents are accessing such services.\textsuperscript{138} Ukraine’s Government, with the support of international partners, should dedicate resources to addressing the needs of the country’s adolescent IDU population. Furthermore, Ukrainian harm reduction service providers should address their bias towards adults and males by focusing on females and adolescents.

The Ukrainian Government needs to do more to educate adolescent (and adult) sex workers about the dangers posed by multiple sex partners, unprotected sex, IDU, and should facilitate their access to SHRS. To this end, health professionals should be reminded that their professional ethics duties supersede personal moral biases, and that stigmatising and discriminatory behaviour is not in the best interests of adolescent sex workers.

Given the high levels of detention and incarceration amongst Ukrainian adolescents, the Ukrainian Government should do more to facilitate adolescents’ access to SRHS in detention centres. Doing so would be in the best interests of detained and incarcerated Ukrainian children. Given that homelessness, sex work, IDU, and incarceration often overlap in Ukraine, authorities should ensure a continuum of care for vulnerable adolescents by facilitating access to SRHS in all these contexts.

**Child labour**

As of 2014/2015 an estimated 182,714 (4.4\%) Ukrainian children between 5-14 years of age were child labourers, including in the worst forms of child labour practices, such as recruitment for armed conflict, begging, human trafficking, pornography, and other forms of commercial exploitation of a sexual nature.\textsuperscript{139} Approximately 5\% of 7-14 year old Ukrainian children simultaneously juggle school and work.\textsuperscript{140} The International Labour Organisation (ILO) has previously found that Ukrainian child labourers are subjected to substantially longer working hours, with Ukrainian child labourers within the 13-14 years of age range working longer hours than adults, at 41 hours per week, whilst child labourers within the 15-16 years of age range worked 56 hours a week.\textsuperscript{141}

**Ethical implications and recommendations**

If adolescents are engaged in labour practices, it follows that they will likely be unable to access SRHS, especially if their working hours and the operating hours of SRHS correspond. Ukraine’s relatively high prevalence of child labour may accordingly serve as a major barrier to adolescents accessing SRHS. Authorities should consider ways of reducing or eliminating child labour, and facilitating access to SRHS for adolescent labourers. This may include the provision of community-based youth friendly SRHS mobile clinics with extended operating hours to cater for adolescent laborers.
Country experiences in addressing the barriers

Previously the requirement of parental consent posed a significant barrier to adolescents accessing SRHS, HIV services, harm reduction services, and drug treatment in Ukraine. However, the amended Civil Code of Ukraine provides that children aged 14 and above can autonomously consent to medical care, including HCT. Minors under 14 years of age necessitate consent from a parent, guardian or legal representative and the party providing consent is entitled to be present during the procedure and has the right to be informed of the minor’s results.

Ukraine’s National AIDS Programme (NAP) prioritizes youths and adolescents as an important target group for HIV preventative services, specifically including homeless SBY that are in dire need of assistance, as a high-risk group. In 2009 the Ministry of Health (MoH), mandated orders instituting interim standards “of medical care for adolescents and youth, including HCT and “youth-friendly clinics,” with HIV prevention as a major objective.”

USAID’s RESPOND Project, funded by the PEPFAR, assists Ukrainian-led programmes aimed at reducing the spread of HIV infection amongst the most-at-risk-youth populations. The project endeavors to enhance the quality of HIV services available to the targeted population. Street Smart is an offshoot of RESPOND that was launched by USAID and strives to assist adolescent and youth that are vulnerable to HIV infection, such as SYB, by addressing the need for HIV preventative interventions.

Ukraine has made vast strides in developing adolescent and youth friendly services (YFS) within the country’s health system. YFS falls under the responsibility of the state sector and endeavors to address the critical healthcare issues and needs of the Ukrainian youth. Ukraine’s first youth-friendly clinic (YFC) was founded in 2005 through a joint initiative between the country’s MoH and UNICEF, culminating in a network of YFCs spread over nine regions in Ukraine. As of 2012, there were 91 YFC throughout Ukraine, of which 31 are certified.

SEP plays an important role in facilitating adolescent access to SRHS, including HIV prevention services. Ukraine is among the handful of countries across Eastern Europe that manages pharmacy-based SEP, with twenty-two pharmacies across 8 cities distributing new syringes, condoms and educational materials. Pharmacy-based SEP significantly provide much more comprehensive services, particularly to people who inject drugs. This is vital considering the stigma and discrimination drug users face on a regular basis.

Moreover, the All-Ukrainian Association on Harm Reduction provides assistance and support to organisations and institutions addressing harm reduction in Ukraine. In addition, the organisation advances, endorses and realizes novel approaches to HIV prevention. Further, the Open Society Institute’s International Harm Reduction Development Programme (IHRD) along with the Canadian International Development Agency (CIDA) provides grants to Ukrainian harm reduction projects looking to implement gender-responsive programmes for women, the aim being to improve existing work of organisations backed by several donors instead of developing harm reduction programmes specifically for women. Projects integrated SRHR into harm reduction programmes by offering HCT, SRHS and gender-specific counselling and information and drug treatment.

UNICEF Canada and the International Centre for Infectious Diseases (ICID) are spearheading an innovative HIV project in Ukraine which strives to assist female adolescents >14 years of age and young women in the country, particularly, adolescent females belonging to the most-at-risk groups, such as SYB PWID and FSW, who have an increased risk of contracting HIV. The purpose of the project is to create YFS, including HIV preventative services.

The Penitentiary Initiative (PI) is a community-based organisation operating in Nikolaev, Ukraine. PI has been actively working with Ukrainian prisons for fifteen years disseminating HIV prevention information to prisoners and prison staff, providing HIV treatment and care services to prisoners as well as support to prisoners that are HIV positive including vulnerable high risk groups such as MSM and PWID. Organisations such as PI are crucial, especially since the distribution of HIV treatment in Ukraine’s prisons relied solely on grants from the Global Fund, which was not tenable. Such services should also focus on adolescent inmates, if this is not already the case.
amfAR’s MSM Initiative delivers financial and technical backing to community organisations in low and middle income countries that strive towards combatting the spread of HIV and its impact among MSM.\(^\text{160}\) The MSM Initiative has awarded grants to PI making it possible for the organisation to deliver HIV information, education, treatment and prevention services to prisons.\(^\text{161}\) Likewise, amfAR’s GMT Initiative offers financial and technical assistance to community-based advocates and research teams to research interventions aimed at reducing the spread of HIV in GMT.\(^\text{162}\) The GMT Initiative has been a long-term initiative partner of PI.\(^\text{163}\)

Gay Alliance Ukraine is an all-Ukrainian Public Organisation registered with the Ukrainian Ministry of Justice, it has a number of regional representative offices throughout several of Ukraine’s regions and has successfully implemented various HIV/AIDS projects directed towards the MSM community.\(^\text{164}\) Furthermore, the organisation seeks to address homophobia and champion basic human rights, and publishes a newspaper for MSM disseminating information on LGBT news and events via its website.\(^\text{165}\)

NGO Gay-Alliance, is based in Kiev, Ukraine focusing on the development and strengthening of gay and bisexual men in the LGBT community, reducing homophobia and transphobia in Ukraine, and providing SRHS and HIV preventative services to Ukrainian MSM.\(^\text{166}\) NGO Gay-Alliance provides condoms, and HCT freely to the public. Not only are services free, the privacy, confidentiality and anonymity of patients are ensured.\(^\text{167}\)
Chapter Four: Age of Consent and HIV testing

HIV testing is available for individuals aged 14 or above without parental consent.

Legislation and policy framework on HIV testing


2. Testing of individuals aged 14 years and older is provided on a voluntary basis, conditional on the provision of a well-informed consent by the individual, such consent given after he or she received pre-test HIV counselling, which informs about the peculiarities of HIV testing, its results and possible consequences. Testing is provided in a confidential manner, which guarantees non-disclosure of any personal information, including information on personal health status.

Age of Consent to report the HIV status direct to adolescents

HIV status will be reported directly to an adolescent aged 14 years and older. In the event that a person aged 13 years or under is found to be HIV positive, the medical staff who tested the young person must inform his or her parents, or other legal representatives of the HIV status.

Legislation and policy framework


3. In case HIV is detected in children under 14 years and individuals officially recognized as legally incapable, authorized medical staff must inform the parents or other legal representatives of such individuals about that finding. In such cases parents or other legal representatives of such HIV-positive individuals should be provided with relevant counselling to help them make well-informed decisions relating to treatment, care and support of persons they take care of, and to properly protect their other legal interests and rights.

4. An individual who tested positive, or in the case of an individual under age 14 years the parents or authorized representatives of an individual who tested positive, must provide a written signed statement to the authorized medical staff who conducted the HIV testing, confirming that they have been informed of how to maintain the health of the HIV positive individual, prevent HIV transmission, of guarantees regarding human rights and freedoms of PLHIV, and of criminal responsibility for deliberately putting another person at risk of HIV infection and/or infecting another person with HIV.
Chapter Five: Age of Consent and access to Anti-retroviral Therapy (ART)

In Ukraine there are no restrictions on the use of ARTs. ART is provided free of charge according to the ART clinical protocols approved by orders of the Ministry of Health of Ukraine. Treatment of infants and minors with ARTs will be subject to the general requirements discussed above i.e. persons aged 13 years or younger require parental consent to receive ART. If the parents of an HIV-positive infant (aged 13 years or under) refuse to consent to medical monitoring of the infant or if the parents do not follow the applicable treatment procedure and medical monitoring, the healthcare organisation shall apply to the Service of Children Affairs and prosecution service to ensure the infant’s constitutional right to health and life.

Legislation and policy framework on access to ART

i. Civil Code of Ukraine (Article 284).


iii. The Instruction On the Procedure for Providing the Medical and Social Treatment approved by the orders of Ministry of Health of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Ukraine for Family Youth and Sports, State Department of Ukraine for Execution of Punishments and Ministry of Labor and Social Policy of Ukraine No. 740/1030/4154/321/614a dd. 23.11.2007.

iv. The order of Ministry of Health of Ukraine No. 585 dd. 10.07.2013 On the Procedure for Organisation of Medical Treatment to the Patients with HIV/AIDS.

v. The order of Ministry of Health of Ukraine No.740/1030/4154/321/614a dd. 23.11.2007 On Measures for Preventing the Mother-to-Child Transmission of HIV, for Organisation of Medical Treatment and Social Supporting the Children with HIV and Their Families.

vi. The order of Ministry of Health of Ukraine No. 551 dd. 12.07.2010 ‘Clinical Protocol of Providing the HIV Antiretroviral Therapy in Adults and Children.’

vii. The order of Ministry of Health of Ukraine No. 92 dd. 24.02.2015 ‘Unified Clinical Protocol of Primary, Secondary (specialized) and Tertiary (high specialized) Medical Treatment for Children.’

viii. The order of Ministry of Health of Ukraine No. 382 dd. 02.06.2009 ‘On Approval of Temporary Standards on Provision of Medical Treatment for Teenagers and Young People.’
Chapter Six: Age of Consent and access to Pre-Exposure Prophylaxis (PrEP) and Post-Exposure Prophylaxis (PEP)

There are no specific prohibitions on Pre-exposure Prophylaxis (PrEP) and Post-exposure Prophylaxis (PEP) in Ukraine, general rules on consent to medical treatment are apply. PrEP and PEP may be provided to young people without parental consent if the patient is aged 14 years or older.

Legislation and policy framework on access to PEP and PrEP

i. Civil Code of Ukraine (Article 284).


iii. The Law of Ukraine “On Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Legal and Social Protection of People Living with HIV” No.1972-XII dd. 12.12.1991 p. 10 Art. 4 - The state ensures the free access to Post-Exposure HIV Prophylaxis for individuals, who have been exposed to HIV as a result of sexual abuse, professional duties performance, or other incidents, including appropriate consultancy, in line with the procedure approved by a special authorized healthcare central executive body.

iv. The order of Ministry of Health of Ukraine No. 1980/24512 On the Procedure of Urgent Post Exposure HIV Prophylaxis for Employees During the Performance of Their Professional Duties: An urgent PEP therapy shall be provided to the employees, which conduct diagnostic HIV tests, provide the medical treatment and social services to people living with HIV. Moreover, such employees shall be included into the List of categories of medical specialists and other persons who are subject to obligatory health insurance in case of HIV infection as a result of professional duties performance as well as in case of disability or death caused by the diseases due to the HIV infection.
Chapter Seven: Age of Consent and access to safe abortions and/or post-abortion care

Abortions are lawful in Ukraine and are regulated by a number of legal acts; the Civil Code of Ukraine, the Law of Ukraine ‘Basic Laws of Ukraine on Healthcare’ and orders of the Ministry of Health of Ukraine.

Abortions may be performed in healthcare institutions at the request of women during a pregnancy term that has not exceeded 11 weeks. An abortion performed on a woman aged 13 years or younger can only be carried out with the consent of her legal representatives while an abortion performed on a woman aged 14 years or over requires her advance consent. In addition, where the woman is aged 17 years or under, the advance consent of her legal representatives will be required if the proposed abortion is to take place for non-medical reasons in the 12th-22nd week of pregnancy.

Legislation and policy framework on safe abortion and post care

Civil code of Ukraine

Art. 281 - Right to life: 6. Pregnancy can be terminated upon a woman’s wish if the term of the pregnancy has not exceeded eleven weeks. In circumstances established by law, abortion can be performed during weeks twelve to twenty-two of the term of a pregnancy. The list of circumstances that allow abortion during the twelfth to twenty-second week of pregnancy is established by law.


Art. 50 - Voluntary abortion: Abortion can be performed in healthcare institutions upon the request of a woman whose pregnancy has not exceeded 11 weeks. In the cases established by law, abortion can be performed during weeks twelve to twenty-two of pregnancy. The list of circumstances that allow abortion during the twelfth to twenty-second week of pregnancy is established by law.

The Order of Ministry of Health No. 423 dd. 24.05.2013, On Approval of a Comprehensive Healthcare to the Pregnant Woman, During Unwanted Pregnancy, of Primary Records and Instructions for Filling Them Out

Art. 1.8: The procedure of artificial termination of an unwanted pregnancy of a pregnant women aged 13 years or under, or of a disabled person, may be carried out at the request of such person’s legal representatives. An abortion performed on a pregnant woman aged 14 years or more may only be carried out with her consent in accordance with article 284 of the Civil Code of Ukraine.

Art 3.1: Termination of an unwanted pregnancy is performed according to the List of grounds for termination of pregnancy between 12 and 22 weeks, approved by the Cabinet of Ministers of Ukraine on February 15, 2006 № 144 (hereinafter - List). Termination of an unwanted pregnancy for any non-medical reason which is mentioned in the List is provided upon the request of the pregnant woman or her legal representatives (if she is a minor or is disabled), and with documentary evidence to confirm that one or more of the grounds set out in the List applies.
Chapter Eight: Age of Consent on access to Antenatal Care (ANC)


The law does not specifically stipulate whether or not parental consent is required for the provision of ANC. However, pursuant to Ukrainian law, parental presence is required in any Obstetric-Gynaecologic care involving routine examination of a girl aged from 14 to 18 years, if there are medical indications for such examination. Thus, in the researcher’s opinion, parental presence is also required for the provision of ANC. Local counsel’s understanding is that girls aged 13 years and under also have the right to obtain ANC. As there are no specific regulations for the provision of ANC for girls aged 13 years and under, the general rules applicable to girls aged 14-18 years are applied, i.e. the presence of parents is required.

Legislation and policy framework


‘Article 58. The medical care provision for pregnant women and newborns’
Healthcare facilities support every woman with a qualified medical supervision of the pregnancy, inpatient medical care at delivery and medical care of mother and newborn child.

Order of the Ministry of Health of Ukraine dd. 15.07.2011 № 417 - On the Organisation of Outpatient Obstetric-Gynaecologic Care in Ukraine

4.3. Girls aged above 14 years and all women (upon their informed consent) who have applied to medical institution are provided with the routine examination in consulting rooms.

4.4. The routine examination of girls aged above 18 years (upon certain medical indications, girls aged above 14 years are examined in the presence of the parents of the girl) is provided by the midwife, general family medicine practitioner, paediatrician, obstetrician-gynaecologist doctor, the doctor – children and adolescents gynaecologist.
Chapter Nine: Access to HPV vaccine, and cervical cancer screening and treatment

Human Papillomavirus (HPV) vaccination is mentioned in the order of Ministry of Health of Ukraine dd. 11.08.2014 № 551 and is included to the list of recommended vaccinations. It is recommended for the prevention of cervical intraepithelial neoplasia grade 2-3 and cancer of the cervix, vagina, vulva, genital warts (men and women) and other diseases caused by Human Papilloma Virus.

According to the Recommendations of the National Council of Experts of Ukraine concerning vaccination against oncogenic strains of HPV (http://www.mif-ua.com/archive/article/4501) vaccination is recommended for girls aged above 12 years before the sexual life have started.

For the vaccination of adolescents under 18 years’ parental consent is required. Vaccination of girls aged from 18 to 25 years may be provided without additional examination. The decision to vaccinate women aged from 25 to 55 years shall be made by a doctor after examination. Gynaecologist must explain to the patient the advantages of vaccination and the risks of possible HPV infection, even in cases involving the presence of a mild form of dysplasia.

According to Ukrainian legislation cervical screening is performed at least once in every 3 years to women aged from 18 years (or from the start of sexual activity) to 60 years.

Legislation and policy framework

Regulation on organisation and provision of prophylactic vaccinations, approved by the order of Ministry of Health of Ukraine No. 595 dd.16.09.2011

8. To ensure the timely performance of preventive vaccination physician, assistant, junior specialist in medical education: orally or in writing invite to healthcare institution individuals for vaccination (at vaccination of minors also parents or other legal representatives are invited) on the day specified for the vaccination…

Instructions for filling forms of primary records N 063-2 /0 Informed consent and assessment of the health of a person or a child by a parent or other legal representative of the child to the vaccination or tuberculin diagnostics

12. Paragraphs 1-9 are to be filled by individuals aged above 18 years personally or by one of the parents or other legal representative of the child (aged under 18 years) whom it is proposed should be vaccinated in the presence of a medical representative (doctor, junior specialist with medical education).

The order of the Ministry of Health of Ukraine No. 236 dd. 02.04.2014

‘On Approval and Implementation of Medical and Technological Documents for Standardization of Medical Care in Dysplasia and Cervical Cancer.’

Doctors perform preventive gynaecological examinations of women aged above 18 years (or from the start of sexual activity) to 60 years, at least once a year and cytological cervical screening at least once in 3 years.

Doctors are also obliged to provide information to patients regarding cervical cancer prevention.
Chapter Ten: Contradictions and inconsistencies

Ukrainian legislation has some inconsistencies with respect to the Age of Consent to medical treatment. Thus, the Article 284 of the Civil Code establishes that an individual aged 14 years has the right to choose a doctor and a method of treatment offered by the doctor. Nevertheless, according to the same article, the right to refuse treatment is acquired since the age of 18 years. Individual obtains the right on complete and reliable information about his\her health only since the age of 18 years.

Article 43 of The Law of Ukraine ‘Basic Laws of Ukraine on Healthcare’ states that the medical intervention in relation to persons under the age of 14 years requires the consent of their legal representatives. However, the parental consent to vaccination shall be required until the patient is 18 years. In connection with the above some changes of Ukrainian legislation are expected with regard to lowering the age of obtaining complete and reliable information about the health and the age of refusal to medical treatment.
Chapter Eleven: Conclusion

Authorities, policymakers, scientists, civil society should engage with relevant Ukrainian communities regarding the social and cultural factors that facilitate early sexual debut and child marriages, and the health risks implicit therein. Such engagement should include focused campaigns in communities where early sexual debut is deemed socially acceptable, with the aim being to change such norms and values. Furthermore, authorities should take tangible measures to sensitize health professionals regarding their ethical duties in respect of all patients, including homosexual and transgender adolescents. To this end, health professionals should be reminded that their professional ethics duties supersede personal moral biases. Authorities should work towards gender equality, and devise strategies to encourage and facilitate adolescent access to SRHS in all contexts, including detention / incarceration, homelessness, sex work, and IDU. Authorities, civil society actors, and community leaders must actively work towards increasing awareness amongst adolescents to the dangers posed by early sexual debut, especially in the context of sex work and IDU. Authorities should also work towards reducing institutionalized discrimination against MSM. To this end, they should actively work towards dispelling the myth that homosexuality and transgender expression is “alien to Ukraine”. They should recall that Ukraine is bound by international human rights instruments and obliged to uphold the rights of all people, including MSM.

A limitation of this work is that data sources were limited to publically-accessible documents in English, and not based on original qualitative or quantitative research. Relevant studies may have been missed if they were not included in the databases reviewed for this report.
## Chapter Twelve: Recommended intervention on legal and policy framework

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<tr>
<th>Area</th>
<th>Category of regulation</th>
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<td>Age of sexual intercourse</td>
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<td>LR</td>
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<tr>
<td>Definition of statutory rape</td>
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<td>Young people’s access to contraceptive services</td>
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<tr>
<td>Policy framework and legislation on access to Antiretroviral Therapy (ART)</td>
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<td>Policy and legislation on young people’s access to PEP</td>
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<td>Legal and policy framework on the Age of Consent HIV status will be reported directly to an adolescent</td>
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<tr>
<td>Address of various policy and legislation inconsistencies</td>
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<td>LR</td>
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</tbody>
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<th>Reference</th>
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Annex 1

KEY QUESTIONS IN ESC REVIEW

i. Age of Consent for sexual intercourse: From an ESC perspective, what is considered to be the permissible Age of Consent for sexual intercourse / activities, and/or what are the permissible circumstances for adolescents to engage in sexual intercourse / activities? Indicate if different ages for heterosexual adolescents (males and females), and if applicable, homosexual adolescents (males and females).

ii. Adolescent homosexuality and transgender expression: From an ESC perspective, how is (i) adolescent homosexuality, and (ii) transgender expression, viewed in the local context? Specify if different for males and females.

iii. Contraception access and use: From an ESC perspective, how is contraception access / use amongst adolescents viewed in the local context? Specify if different for males and females.

iv. Access to sexual and reproductive health services: What are the potential ESC factors that hinder or facilitate adolescents accessing sexual and reproductive health services? Specify if different for heterosexual adolescents (males and females), and/or homosexual adolescents (male and female).

v. Autonomous HIV testing: What are the potential ESC factors that hinder or facilitate adolescents accessing HIV testing without parental consent? Specify if different for male and female. In each country-specific case study, research will focus on:

vi. How ESC factors impact on adolescent health in the above contexts, regardless of the enactment of relevant national laws (including nationally recognized customary or religious laws), regulations, and policies in relation to the respective contexts.
Annex 2

KEY QUESTIONS FOR THE LEGAL REVIEW

1. At what age may sex between consenting individuals legally take place? (Age of Consent to sexual intercourse) Indicate if there are different ages for males and females?
2. Is there a definition of statutory rape? Please define.
3. Are there exceptions to question (1)? For example gay sex?
4. At what age may a young person access contraceptive services including contraceptive commodities? Please specify with and without parental consent if the answers are different.
5. May a young person access emergency contraceptives (e.g. the ‘Morning-after pill’) At what age? Please specify if there are different ages with and without parental consent.
6. Policy framework and legislation enabling or disenabling access to Antiretroviral Therapy (ART), including Age of Consent, with and without parental consent.
7. Specify whether there is any prohibition on HIV Post-exposure Prophylaxis (PEP), including Age of Consent, with and without parental consent.
8. If there is no prohibition in question 7, would young people be legally able to access PEP if it was offered? At what ages? Please specify if there are different ages with and without parental consent.
9. Is there any legislation or policy specifically enabling PEP use in the country? Please specify if it deals with Ages of Consent and give details.
10. Specify whether there is any prohibition on HIV Pre-exposure Prophylaxis (PrEP), including Age of Consent, with and without parental consent.
11. If there is no prohibition in question 10, would young people be legally able to access PrEP was offered? At what ages? Please specify if there are different ages with and without parental consent.
12. Is there any legislation or policy specifically enabling PrEP use in the country? Please specify if it deals with Ages of Consent and give details.
13. Please state whether there is policy framework and/or legislation enabling or disenabling access to safe abortions and/or postabortion care, including Age of Consent, with and without parental consent.
14. Policy framework and legislation enabling or disenabling access to Antenatal Care (ANC), including Age of Consent, with and without parental consent.
15. Policy framework and legislation enabling or disenabling access to HPV vaccines and cervical cancer screening and treatment, including Age of Consent, with and without parental consent.
16. What is the Age of Consent to access HIV testing without parental consent?
17. What is the Age of Consent at which the HIV status will be reported directly to an adolescent and legal/policy requirements to report the status to her/his parents?
18. Please explain any inconsistencies between the answers above.