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
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AGE OF CONSENT
LEGAL REVIEW
ACRONYMS

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

Vietnam’s Age of Consent to sexual intercourse is 16 years and any sexual intercourse with a person under the age of 16 years is illegal.

Persons between the ages 10-19 years have the right to access reproductive health services and take responsibility for their own decisions in this regard.

It also applies that persons aged 10-19 years are entitled to access contraceptive services, and contraceptive commodities without parental consent. However, persons 10 years of age or older can access emergency contraceptives without parental consent.

The law is silent on the Age of Consent for young people to access the following services and commodities: Antiretroviral Therapy (ART), Pre-exposure Prophylaxis (PrEP) and Post-exposure Prophylaxis (PEP), and Antenatal Care (ANC), but not for HIV testing.

In Vietnam, persons under 16 years require parental consent to access HIV testing. Legislation also facilitates access to ART. There are no age restrictions on access to ART, so parental consent is not a legal requirement.

Legislation enables access to PEP. It does not specify the Age of Consent. There is no prohibition on PEP. There are no age restrictions, so parental consent is not a legal requirement.
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 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 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 has 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 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), 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 HCT in adolescents aged 10–19 years.

Methodology

The Vietnam legal review was prepared by SAT and is based on research conducted by Rajah & Tann, LCT Lawyers Law Firm in Vietnam. The legal review focuses on the laws and policy support around the Age of Consent in relation to the various aspects relating to SRHR. The 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 in laws, policies, and regulations on these issues exist.

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.
Chapter Two: Age of Consent to sexual intercourse

Vietnam does not have an explicit Age for Consent law, however, Article 115 of the Penal Code No. 1999/QH10 makes it an offence for an adult to have sexual intercourse with a child under 16 years of age. For an adult to have sexual intercourse with a child under 13 years is considered to be statutory rape, even though the law in Vietnam does not include a legal definition of statutory rape. As the offence under article 115(1) only applies when an ‘adult’ commits it, then, and provided there is consent, there is no offence where sexual intercourse between two individuals both aged 13-15 years takes place. The law makes no distinction in the Age of Consent for males and females.

Legislation on age of Consent to sexual intercourse

According to Article 115(1) of Penal Code No. 1999/QH10: An adult is considered an individual aged 18 or over. Any adult having sexual intercourse with children aged from 13 to 16 years shall be sentenced to between one and five years of imprisonment.

Vietnam recently enacted Penal Code No. 100/2015/QH13, which will come into effect on 30 June 2016. The provisions therein do not introduce reforms that affect this answer. Article 145 of this new Penal Code prescribe the same provision as Article 115 of Penal Code No. 1999/QH10.

Definition of statutory rape

Vietnam does have a definition for statutory rape, however, rape is dealt with through the provisions of Article 111.1 of the Penal Code No. 1999/QH10 which defines and prohibits ‘rape’.

In addition to this general prohibition, Article 112(4) of the Penal Code No. 1999/QH10 provides that all cases of sexual intercourse with a child under the age of 13 years shall be deemed to constitute rape (irrespective of whether or not the victim child consents). There is no offence if both parties to the sexual intercourse are under 13. Under Articles 12 of the Penal Code, the age of criminal liability is as follows:

1. persons aged a full 16 years or older will be criminally liable for all crimes they commit
2. persons aged a full 14 years or older but under 16 will be criminally liable for very serious crimes intentionally committed or especially serious crimes.

Legislation and policy framework on statutory rape

Penal Code No. 1999/QH10 Article 111.1: Those who use violence, threaten to use violence or take advantage of the victim’s state of being unable to self-defend or resort to other tricks in order to have sexual intercourse with the victim against the latter’s will shall be sentenced to between two and seven years of imprisonment.

Article 112(4): All cases of having sexual intercourse with children under 13 years old are considered rape against children and the offenders shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment”.

(Vietnam recently enacted Penal Code No. 100/2015/QH13, which will come into effect on 30 June 2016. The provisions therein do not introduce reforms that affect this answer. Article 141 of this new Penal Code prescribe the same provision as Articles 111 and 112 of Penal Code No. 1999/QH10)

Exceptions on Age of Consent - For example ‘gay sex’

There are no exceptions.
Chapter Three: Access to contraception services and commodities

In Vietnam, a minor is any person aged of 10 years or younger. Under the National Guidelines for Reproductive Healthcare (NGRH) promulgated under Decision No. 4620/QD-BYT, an adolescent (i.e., an individual aged between 10-19 years) is entitled to access contraceptive services, including contraceptive commodities. This includes barrier methods, OTC drugs (e.g. Morning-after pill) and intrauterine devices (IUDs). They also have the right to make decisions on matters in connection with their reproductive and sexual health.

The law does not specifically prescribe the minimum age at which a person may access contraception. However, the Civil Code recognises that individuals aged 6 years or older have civil act capacity (i.e., being able to establish and perform civil rights and obligations through his/her acts) with respect to for their daily-life needs. For such daily-life needs, the law does not stipulate any requirements for parental consent. The scope of the term ‘daily-life needs’ is also undefined under law, but it is very likely that it includes the entitlements of Decision No. 46220/QD/BYT.

The law is not clear on the question of consent, nevertheless, taking into consideration both the NGRH and the Civil Code, individuals 10-19 years are likely to be able to access contraceptive services and contraceptive commodities, and in light of the Civil Code, they can do so without parental consent. The above answer excludes cases of sterilisation (e.g., vasectomies).

Legislation and policy framework

The Vietnam National Guidelines for Reproductive Healthcare (NGRH), Section IV (6) stipulates that adolescents (individuals 10-19 years old) have the following expectations and rights:

- Have good growth in height and weight
- To not be sick
- To have the ability to avoid drugs and alcohol
- To develop good character and be respected by everyone
- To have the have to be fully and accurate informed about reproductive health and sexual health
- To have the right to access reproductive health services and sexual health services of consistent quality
- To have the right to equal treatment and respect, without coercion or violence
- To have the right to make decisions and take responsibility for their own decisions in matters relating to reproductive health and sexual health

The Civil Code, Article 17 states: ‘Civil act capacity’ means the capacity of an individual to establish and perform civil rights and obligations through his/her acts.

Article 20.1 of the Civil Code: Persons who are between full six years old and under full eighteen years old must have the consent of their representatives at law when establishing and performing civil transactions, except those transactions necessary to meeting their daily-life needs suitable to their age group or otherwise provided for by law.

Young people’s access to emergency contraceptives

The age at which young persons can access emergency contraceptives is not expressly clear under Vietnamese law. As explained in the answer to question 4, the ‘civil act capacity’ provision in the Civil Code (6 years of age) is a general principle and is not specific to which type of transactions it applies (e.g., purchase of contraception) - hence, the interpretation drawn with respect to “daily life needs” includes contraceptives. Note that the wording of the NGRH implies that those aged 10 years and above have the right to access contraception, which could possibly include emergency contraceptives, it does not actually prohibit those under 10 from accessing emergency contraceptives. Assuming that the NGRH includes the right to access emergency contraceptives, the minimum age of consent is 10 years (without parental consent).
Chapter Four: Age of Consent and HIV testing

Persons who voluntarily seek HIV testing must be at least 16 years of age and have full civil act capacity, thereby being able to establish and perform civil rights and obligations through his/her acts. Otherwise, written parental or guardian consent is required. For tested persons who are minors, the results will be announced to his/her parents or guardians.

Legislation and policy framework on HIV testing

Article 27 of the Law on HIV/AIDS Prevention and Control:

1. HIV testing shall only be conducted on the basis of voluntariness of persons to be tested.
2. Persons who voluntarily seek HIV testing must be full 16 years or older and have full civil act capacity.
3. HIV testing of persons less than 16 years old or persons who have lost their civil act capacity may only be conducted when there is written consent of his/her parent or guardian.

Article 17 of the Civil Code: Civil act capacity’ means the capacity of an individual to establish and perform civil rights and obligations through his/her acts.

Article 30 of the Law on HIV/AIDS Prevention and Control:

1. Positive HIV test results shall only be informed to the following persons: (a) Tested persons; (b) Spouses of tested persons, parents or guardians of tested persons who are minors or have lost their civil act capacity;
2. Persons defined in Clause 1 of this Article shall keep confidential HIV positive test results, except for the case specified at Point a, Clause 1 of this Article.

Article 3 of Circular No. 01/2010/TT-BYT providing the responsibilities and order of notification of HIV positive test results issued by the Ministry of Health:

1. When a tested person is under 16 years or has lost his/her civil act capacity or has no or incomplete civil act capacity, the person responsible for returning HIV positive test results shall counsel and then return test results to the father, mother or guardian of the tested person. Test results may be notified to the tested person only when such notification is agreed in writing by his/her father, mother or guardian and the tested person has received counselling.
2. When the tested person is full 16 years or older, the person responsible for returning HIV positive test results shall counsel and then return test results to the tested person.

Age of Consent to report HIV status directly to adolescent

For tested persons who are minors, the results will be announced to his/her parents or guardians.

Legislation and policy framework

Regulations: Article 30 of the Law on HIV/AIDS Prevention and Control:

1. Positive HIV test results shall only be informed to the following persons:
   a. Tested persons;
   b. Spouses of tested persons, parents or guardians of tested persons who are minors or have lost their civil act capacity;
2. Persons defined in Clause 1 of this Article shall keep confidential HIV positive test results, except for the case specified at Point a, Clause 1 of this Article.
Article 3 of Circular No. 01/2010/TT-BYT providing the responsibilities and order of notification of HIV positive test results issued by the Ministry of Health:

1. When a tested person is under 16 years or has lost his/her civil act capacity or has no or incomplete civil act capacity, the person responsible for returning HIV positive test results shall counsel and then return test results to the father, mother or guardian of the tested person. Test results may be notified to the tested person only when such notification is agreed in writing by his/her father, mother or guardian and the tested person has received counselling.

2. When the tested person is full 16 years or older, the person responsible for returning HIV positive test results shall counsel and then return test results to the tested person.
Chapter Five: Age of Consent on access to Antiretroviral Therapy (ART)

The State will facilitate access to ART to HIV infected individuals through programmes and projects suitable to the relevant socio-economic conditions.

Age of Consent on Antiretroviral Therapy (ART)

There are no rules regarding parental consent to ART. The law also does not prescribe any Age of Consent. Due to this silence in the law, no sanctions have been promulgated in the event a party fails to require parental consent. This matter would be subject to practice and interpretation by the relevant establishments administering ART.

However, the law does give priority to children aged between 6-16 years in the provision of State-sponsored ART. Article 39(2) of the Law on HIV/AIDS Prevention and Control provides that individuals aged under 6 shall be provided with ART free of charge. However, children under 6 years are not given any priority or special treatment under Article 39(3) (in contrast to children aged 6-16 years).

Local counsel’s interpretation of the interplay between these provisions is that Article 39(2) regulates circumstances in which HIV infected persons can get ART free of charge, including those under 6 years of age. After these individuals are provided with ART, the priority for other individuals will apply as listed in Art. 39(3). Accordingly, local counsel’s understanding is that individuals under Article 39(2) are prioritised, after which the priority for individuals under Article 39(3) will be applied.

Legislation and policy framework

In Article 39 of the Law on HIV/AIDS Prevention and Control:

1. HIV infected people shall be facilitated by the State to have access to ART through programmes and projects suitable to socio-economic conditions.
2. People who have been exposed to or infected with HIV due to occupational accidents, people who have been infected with HIV due to risks associated with medical techniques, HIV infected pregnant women and HIV infected children under six shall be provided ART free of charge by the State.
3. ART paid with the State budget or sponsored by domestic and foreign organisations and individuals shall be provided free of charge to HIV infected people at HIV/AIDS treatment establishments in the following priority order:
   a. HIV infected children of between 6-16 years old;
   b. HIV infected people who actively participate in HIV/AIDS prevention and control;
   c. HIV infected people meeting with particularly difficult circumstances;
   d. Other HIV infected people.
Chapter Six: Age of Consent and access to Pre-exposure Prophylaxis (PrEP) and Post-exposure Prophylaxis (PEP)

HIV Pre-exposure Prophylaxis (PrEP)

There is no prohibition on PrEP. There are no specific age restrictions against the use of HIV medicines, including PrEP. However, they may only be obtained through prescription by medical doctors having the required training in HIV/AIDS treatment.

Young people's access to PrEP

Vietnamese law is silent on the Age of Consent to access PrEP and matters regarding parental consent for PrEP. In other words, the matter of whether a young person may legally access PrEP is currently unregulated under law. Also, due to this silence in the law, no sanctions have been promulgated in the event a party fails to require parental consent. This matter would be subject to practice and interpretation by the relevant establishments administering PrEP. However, note the consent requirements for HIV testing is 16 years.

Legislation and policy framework on PrEP

There is no specific legislation or policy that specifically enable PrEP use in Vietnam, including on Age of Consent matters.

There is no prohibition on PrEP with Vietnamese law being silent on the Age of Consent to access PrEP and matters regarding parental consent for PrEP. However, the law on HIV/AIDS Prevention and Control confers the general right on persons to access medical treatment and healthcare - accordingly, young persons are likely permitted to access PrEP when offered. Also, due to this silence in the law, no sanctions have been promulgated in the event a party fails to require parental consent. This matter would be subject to practice and interpretation by the relevant establishments administering PrEP.
Legislation and policy framework on access to PEP

There is specific legislature for access to PEP, however, there are no Age of Consent laws.

There are laws specific to HIV/AIDS such as: Article 4 of the Law on HIV/AIDS Prevention and Control:

1. **HIV infected people have the following rights:**
   a. To live in integration with the community and society;
   b. To enjoy medical treatment and healthcare
   c. To have general education, learn jobs and work;
   d. To have their privacy related to HIV/AIDS kept confidential;
   e. To refuse medical examination and treatment when having treatment for full-blown AIDS;
   f. Other rights as provided for by this law and other relevant laws.

2. **HIV infected people have the following obligations:**
   a. To apply measures to prevent the transmission of HIV to other people;
   b. To inform their HIV positive test result to their spouse or fiancé;
   c. To observe instructions on treatment with ARVs;
   d. Other obligations as provided by this law and other related laws.

*Article 36(1) of the Law on HIV/AIDS Prevention and Control: “HIV exposed persons shall be provided with counselling and prophylactic treatment guidance to prevent HIV infection”*

*Article 15.1 of Decree No. 108/2007/ND-CP: “HIV medicines must be prescribed for HIV infected or -exposed persons by medical doctors who have completed training in HIV/AIDS treatment according to regulations of the Minister of Health.”*
Chapter Seven: Age of Consent and access to safe abortions and/or postabortion care

The Law on People’s Health No. 21-LCT/HDNN8 expressly recognises the right of women to have access to abortion. Decision No. 4620/QD-BYT, which promulgated the NGRH, regulates safe practices in abortions for women and adolescents. There is no regulation on parental consent. Since section IV(6) of the NGRH grants adolescents aged from 10-19 years certain rights including access to reproductive services, which could be interpreted to include abortion, it can according to local counsel be assumed that abortion is available from age 10. The NGRH also grants those aged 10-19 years the right to take responsibility for their own decisions in matters relating to reproductive health so it can, according to local counsel’s interpretation, be considered that individuals aged 10-19 years do not require parental consent to access abortion services.

Changes in law are due to be implemented in this area. Under the draft Law on Population, voluntary abortion will only be accepted if the foetus is under 12 weeks old. Otherwise, the person must have appropriate reasons for the abortion such as if the person was raped or if there is evidence the birth will be harmful to the mother.

Legislation and policy framework

In the National Guidelines for Reproductive Healthcare (Refer to Chapter 3 on access to contraception above, Column E for Section IV (6) of NGRH governing expectations and rights of adolescents.)

Article 44 of the Law on People’s Health:

1. Women have the right of abortion according to expectations, to be served the medical examination and treatment of gynaecological diseases, to be monitored the health during pregnancy, to be served medical care as childbearing in the health facilities.

2. The Ministry of Health is responsible for strengthening and development of networks of neonatal and obstetric specialty in the medical facilities to ensure health services for women.

3. Strictly prohibit medical facilities and individuals to do the abortion operation, to remove the IUD without permits issued by the Ministry of Health or Health Department level.
Chapter Eight: Age of Consent and access to Antenatal Care (ANC)

In Section II (A) of the NGRH promulgated under Decision No. 4620/QD-BYT guidelines are provided on access to Antenatal Care (ANC). There is no regulation concerning Age of Consent or parental consent to ANC. Also, due to this silence in the law, no sanctions have been promulgated in the event a party fails to require parental consent. This matter would be subject to practice and interpretation by the relevant establishments administering ANC.

Section II (A) of the National Guidelines for Reproductive Healthcare:

No English version of the NGRH is available. In summary, however, section II (A) of the NGRH is divided into four sub-sections: (i) counselling for pregnant women, (ii) diagnosis prior to birth, (iii) detailed instructions for ANC and (iv) management of pregnancy.

For (iii), which covers ANC, the sub-section sets out the guiding procedures for how ANC is to be approached:

1. Questions to be asked (key details, medical history of individual and her family, gynaecological history, martial history, contraception, etc.)
2. Body checks (areas to be checked)
3. Obstetric checks (areas to be checked and key indicators)
4. Tests to be carried out (urine protein, haemoglobin, etc.)
5. Tetanus immunisation
6. Supply of essential drugs
7. Health education (nutrition, hygiene, etc.)
8. Record-keeping and ANC appointment arrangements
9. Conclusion (reminders)
Chapter Nine: Age of Consent and access to HPV vaccines and cervical cancer screening and treatment

HPV vaccines Vietnam’s Law on Prevention and Control of Infectious Diseases expressly makes it a right for everyone to use vaccines to protect their own health and the health of the community. While there are no regulations that expressly address the HPV vaccine, it is presumed that such right allows individuals to access the HPV vaccine. There is no regulation concerning parental consent to the HPV vaccine. There is also no Age of Consent regulation on the use of vaccines.

Cervical cancer screening: There are currently no regulations enabling or disenabling access to cervical cancer screening. Also, due to the silence in the law, no sanctions have been promulgated in the event a party fails to require parental consent in order to administer an HPV vaccine or cervical cancer screening to a minor. This matter would be subject to practice and interpretation by the relevant establishments administering HPV vaccines or cervical cancer screening (as the case may be).

Article 28 of the Law on Prevention and Control of Infectious Diseases:

1. Everyone has the right to use vaccines and medical bio-products to protect the health of their own and their community.
2. The State shall support and encourage citizens to voluntarily use vaccines and medical bio-products.
Chapter Ten: Contradictions and inconsistencies

As per question 16, only individuals aged 16 years or older and with civil act capacity may voluntarily seek HIV testing. Otherwise, written parental consent is required.

However, Vietnamese law remains silent on matters of parental consent and minimum requirements for ART and PEP. There is no legal obligation on the relevant health establishment or doctor to request for parental consent prior to administering ART or PEP, nor sanctions applied for a failure thereof.

Therefore, if ART and PEP is administered post-testing, its administration is only possible if the individual is at least 16 years of age or if he/she had obtained written parental consent.
# Chapter Eleven: Recommended intervention on legal and policy framework

<table>
<thead>
<tr>
<th>Area</th>
<th>Category of regulation</th>
<th>Required intervention</th>
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</thead>
<tbody>
<tr>
<td>Age of sexual intercourse</td>
<td>L</td>
<td>LR</td>
</tr>
<tr>
<td>Definition of statutory rape</td>
<td>L</td>
<td>LR</td>
</tr>
<tr>
<td>Exceptions on Age of Consent - For example ‘gay sex’</td>
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<td>N/A</td>
</tr>
<tr>
<td>Young people’s access to contraceptive services</td>
<td>L R</td>
<td>LR (Amend Civil Code) Government To Pass New Regulations (Amend NGRH)</td>
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<tr>
<td>Young people’s access to emergency contraceptives</td>
<td>L R</td>
<td>LR (Amend Circular No. 01/2010/TT-BYT)</td>
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<tr>
<td>Policy framework and legislation on access to Antiretroviral Therapy (ART)</td>
<td>L</td>
<td>LR</td>
</tr>
<tr>
<td>Policy and legislation on young people’s access to PEP</td>
<td>L</td>
<td>LR (Amend The Law On HIV/AIDS Prevention And Control) Government To Pass New Regulations (Amend NGRH)</td>
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<td>Policy and legislation on young people’s access to PreP</td>
<td>N/A</td>
<td>LR Government To Pass New Laws That Supplements Statute</td>
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<td>Policy framework and on access to Antenatal Care (ANC)</td>
<td>R</td>
<td>LR</td>
</tr>
<tr>
<td>Policy framework and legislation on access to HPV vaccines and cervical cancer screening and treatment</td>
<td>L</td>
<td>LR (Amend The Law On Prevention And Control Of Infectious Diseases With Regards To HPV) Government To Pass New Regulations (Amend NGRH)</td>
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<td>Policy framework and/or legislation on access to safe abortions and/or postabortion care</td>
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<td>Age of Consent to access HIV testing without parental consent</td>
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<td>LR</td>
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<tr>
<td>Legal and policy framework on the Age of Consent HIV status will be reported directly to an adolescent</td>
<td>L R</td>
<td>LR</td>
</tr>
<tr>
<td>Addressing various policy and legislation inconsistencies</td>
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<td>N/A</td>
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</tbody>
</table>
Annex

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 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 if it 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.