RESEARCH BRIEF2: **MALAWI**

"SEEKING CLARITY ON WHAT WE ARE PRETENDING IS NOT THERE"

Service providers' knowledge on the law and policy framework governing adolescent HIV and sexual and reproductive healthcare in Malawi

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Many laws and policies shape the provision of adolescent HIV and sexual and reproductive health care (AHIV/SRH). These relate to ages of consent to medical treatment and sex, sexual behaviour, specific SRH services, and education around HIV/SRH concerns. There is little information about the inconsistencies in those national law and policy frameworks that regulate AHIV/SRH in Southern Africa, and the potential of ensuing conflicting duties of service providers. It is unclear if the current frameworks facilitate or obstruct comprehensive AHIV/SRH service provision (or both), what the legal duties of healthcare and other service providers are, or how the current law and policy frameworks influence the decisions that providers make when providing AHIV/SRH advice and care.

This research brief, 1 in a series of 5, presents findings from a mixed-methods study that the Gender, Health and Justice Research Unit conducted in Malawi, Mozambique, Namibia, Zambia and Zimbabwe. The study explored what service providers in adolescent, SRH and HIV NGOs know about the laws and policies on adolescent HIV and SRH services, and analyses the impact of conflicting laws and policies on adolescents' knowledge and the use of services.

Malawian data were collected through an online survey (n=21) and in-depth interviews (n=7) with representatives of organisations working on adolescent HIV and SRH.

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Adolescent HIV and SRH has been highlighted as a priority issue in Malawi.

Recent estimates of HIV prevalence among youth, aged 15 to 24, are 4.2% among women and 2.0% among men (UNAIDS 2013). Many adolescent girls experience sexual violence, with 38% saying that their sexual debut was against their will (Moore et al., 2007). Adolescents have relatively high knowledge about where to access contraception (Woog, Singh, and Browne 2015), but face numerous barriers mostly linked to providers' attitudes (Biddlecom et al., 2007). As a result, adolescents are 5 times more likely to seek SRH services at an NGO outreach service than a government clinic (Michaels-Igbokwe et al., 2015). 35% of women give birth before the age 18, and adolescents account for approximately 1 in 5 of patients seeking post-abortion care following an illegal abortion (Levandowski et al. 2012). While there is a comprehensive sexuality education curriculum, it tends to present sexuality in a negative light, focusing on abstinence, and does not provide much information on adolescents' rights with regards to SRH (UNESCO & UNFPA, 2012).

In recent years, Malawi has amended legislation and introduced new laws and policies to uphold SRH rights for Malawian women in particular (Human Rights Watch 2014). Following a 2007 Ministry of Health-led initiative to improve youth-friendly health services (YFHS) and enhance access to adolescent HIV and SRH services, YFHS exist in all districts in Malawi, and in both public and private health care facilities (USAID 2014).

The need for health professionals to be trained in adolescent sexual and reproductive rights in the region has been documented, but there is little evidence about the knowledge of providers in Malawi on this topic (Kangaude 2015).

What do NGO representatives working with adolescents know about the law and policy framework?

CONSENSUAL SEX

Most survey participants thought that they had high AHIV/SRH knowledge, but confusion among professionals about age of consent to sex was evident in the qualitative data. Although the law sets the age of consent to sex as 16, participants had a range of responses from age 14 to 18, and some thought that there was no law or policy. Several participants referred to the age to consent to marry as a proxy for consenting to sex, with either implicit or explicit reference to cultural assumptions that adolescents would not be having (consensual) sex when unmarried:

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Issue	Law name	Law	Policy Name	Policy description
Consensual sex	Penal Code (2011)	• Criminalises consensual sex with a child under the age of 16	N/A	No policy documents establishing an age to consent to sex were found in the desktop and literature review
Marriage	Marriage, Divorce and Family Relations Act (2015)	• Sets 18 as the age to consent to marriage • Only two persons of the opposite sex can marry, and "sex" is defined as sex assigned at birth • Subject to Section 22(7) of the Constitution (below)	N/A	No policy documents establishing an age to consent to marriage were found in the desktop and literature review
	Constitution (1994)	• Allows for children between the ages of 15 to 18 to be married with parental/guardian/Minister/Court authorization		
	Gender Equality Act (2013)	• "A child may not be […] forced into marriage or be forced to be betrothed"		
Access to medical services, including AHIV/ SRH services	Constitution	• No law states the age of consent for contraception, condoms or HIV services • Age of majority in Malawi is also unclear, as the Constitution stipulates in Section 23 Rights of children "children shall be persons under sixteen years of age," whereas the Constitution states the age to vote is age 18.	Guidelines for Paediatric HIV Testing and Counselling (2007)	Sets the age of consent for HIV counselling and testing at 13
	Gender Equality Act (2013)	• "Every person" has a right to adequate sexual and reproductive health, including "the right to: a) access sexual and reproductive health services; b) access family planning services; c) be protected from sexually transmitted infection; d) self-protection from sexually transmitted infection; e) choose the number of children and when to bear those children; f) control fertility; and g) choose an appropriate method of contraception."	National Sexual and Reproductive Health and Rights Policy (2009)	Does not provide specific ages of consent to access contraception, only referring to people of "reproductive age"
			National Standards for Youth-Friendly Health Services (2007)	Outlines the basic services to be provided at the community (includes contraception), clinic and hospital levels for young people, but does not define 'young people'

Issue	Law name	Law	Policy Name	Policy description
			Malawi National Population Policy (2012)	• Acknowledges the high rate of adolescent pregnancy and states this is a result of child marriages and low education among pregnant girls • Acknowledges HIV infection being disproportionately higher in young women (15 to 24) than in young men • Identifies "scale up of health and social services that help address population challenges, particularly family planning, education, and general empowerment of youth and women" as a key objective of the policy
			National Youth Policy (2013)	Acknowledges HIV, STI and pregnancy prevention among youth as priority issues, and defines youth as all people age 10 to 35
Abortion	Penal Code (2011)	• Abortion is illegal in Malawi • Only permitted if a pregnant woman's life is threatened by the pregnancy • Women accessing abortion illegally may be charged with up to seven years in prison • Does not include whether the age of the woman is taken into account in deciding sentencing	National Sexual and Reproductive Health and Rights Policy (2009)	Includes access to post abortion care for "all women" (no age specified) and also states that "service providers in public and private sector shall provide or refer for safe abortion to the fullest extent of the laws of Malawi"
	The Termination of Pregnancy Bill (still awaiting Parliamentary endorsement)	• Would make legal abortion more accessible if passed into law (Migiro 2015)		
	Gender Equality Act (2013)	• Every person has a right to adequate sexual and reproductive health, including the right to "choose the number of children and when to bear those children" and "control fertility"		
Same-sex activity	Penal Code (2011)	• Same-sex sexual activity is criminalised • If convicted, maximum sentence is 14 years in prison for men and 5 years for women • No reference to adolescents or youth in these sections • Since 2012, there is a moratorium on the enforcement of this law (Amnesty International 2012)	National HIV Prevention Strategy (2015-2020)	Acknowledges men who have sex with men (MSM) as a key population in HIV prevention Defines minimum intervention packages to serve MSM Drivers of HIV infection of "young gay men" are mentioned but adolescent specific interventions are not discussed
	Marriage, Divorce and Family Relations Act (2015)	• States in Section 14 that only two persons of the opposite sex can marry • Stipulates that "sex" is defined as sex assigned at birth		

Issue	Law name	Law	Policy Name	Policy description
Sexual violence	Penal Code (2011)	• Defines rape and sexual offences • Defines rape as an act carried out against women and girls, not men or boys	N/A	No policy documents relating to specific services or rights of adolescents in need of healthcare after sexual violence were found in the desktop and literature review
	Domestic Violence Act (2006)	• Defines domestic violence as inclusive of sexual abuse, virginity testing and child marriage when the "complaintant" is a child of the "respondent" (no age given) • Stipulates police duties in response to domestic violence • Establishes an Anti-Domestic Violence Counsel which should include a representative working in children's rights		
	Child Care, Protection and Justice Act (2010)	• Mandates professional treatment of children who require protection (including "substantial risk…of sexual abuse" by a family member) • Defines child as someone below age 16		
Confidentiality of Adolescent information	Penal Code (2011)	• Does not state that service providers are required to report abortion, same-sex activity, or adolescent consensual sex •	Medical Council of Malawi's Code of Ethics (Revised, Sec. 5.6)	• All healthcare practitioners must keep patient information confidential and are prohibited from sharing it with third-parties, except for under specific circumstances: • where patient informed consent is given (minors are described as unable to give informed consent without guardian permission), • where required by law • "where public interest persuades a practitioner that his duty to the community overrides that to his patients" • anonymously when used for research or medical education • There is no information on healthcare practitioners reporting underage sex or breaking confidentiality to report sexual activity
	Child Care, Protection and Justice Act (2010)	• Obliges healthcare providers to report child sexual abuse • Compels family members, child care providers and members of the community to report the same, with varying penalties should they not report		

CONSENSUAL SEX (continued)

"I think, in Malawi, with my little knowledge I have, there is no law that says a teenager should start sex at this age…I think it's now a culture issue. Because our culture does not allow a child to go and start sex. generally Christian country and the religious moral will say no sex before marriage. Sex is only something which can be enjoyed after marriage. So there's no way the law can provide for minors having sex with minors."

MARRIAGE

Participants were more aware of the laws related to age of consent to marriage, even if they did not know exactly what the law said. This might be because the Marriage, Divorce and Family Relations Act, which legally set the age of consent to marriage at 18, was only passed in 2015 and therefore fresh in people's mind. The new Act's explicit mention of girls as especially negatively affected by child marriage led some participants to believe that

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the new age of consent only applied to them:

"Yeah, that's another challenge, whereby this age - if you are to look at it explicitly - it is mainly talking of the girl. The girl has to be 18 years. Only boy, because like culturally, boys were getting into this when they were already old, so we thought girls is the only one who are vulnerable, and we need the law to protect them. But, on boys, mainly it doesn't decide who you marry. And 18 can marry 15. There is no problem."

While incorrect in terms of the Marriage Act, this participant's opinion would still be correct in terms of the constitution, which allows marriage of a 15 year old with parental consent. However, none of the participants

ACCESS TO MEDICAL SERVICES INCLUDING AHIV/ SRH SERVICES

Most participants thought that adolescents had to be 18 to access contraception and HIV testing without parental permission. However, both in the survey and the interviews, participants also mentioned ages from 10 to 16. Participants' lack of knowledge about ages to access HIV and SRH services may reflect the inconsistencies in the legal and policy framework. Participants highlighted how given such inconsistencies, service providers relied on their own moral frameworks when making decisions about whether or not to provide services to adolescents:

> 👉 *Participants' lack of knowledge about ages to access HIV and SRH services may reflect the inconsistencies in the legal and policy framework*

"So we have the Gender Equality Act, that on the one hand recognizes sexual and reproductive rights…says that you must provide services but when you look at our Sexual Offenses legislation in the penal code it says that…anybody who has carnal knowledge of a girl sixteen or below commits an offense. [The law] supports this idea that…girls should not be getting engaged in sexual conduct and it is being interpreted by healthcare providers to mean that, you know if a girl's sixteen, or fifteen, [asking for] sexual reproductive health and commodities, the health provider will say: no - you know - you are not supposed to engage in any sexual conduct."

ABORTION

Interview participants were very aware that legal abortion access is highly restricted in Malawi but that post-abortion care is available, although most did not reference specific law or policy. One participant explained that because of the restrictive, well-known law that criminalises abortion, adolescents did not access post-abortion care, even though it was available.

> *Interview participants were very aware that legal abortion access is highly restricted in Malawi, although most did not reference specific law or policy*

Few participants understood that they were not obligated to report illegal abortions. One participant stated that 'criminal activity' must be reported:

(Interviewer: "So is there an obligation on health care providers or other people to report [abortion]?")

"I think it should be there, because if it's the law, the minister of health should have accepted, should be protecting it…. And usually, sometimes, it is because the community…reports it and then the clinic just confirms that this really happened. So, the clinic is under pressure to say…this one seems to have aborted."

No one explicitly discussed the Medical Council of Malawi's Code of Ethics with reference to serving adolescents who have had abortions.

SAME-SEX ACTIVITY

All participants who were asked correctly knew that Malawian law criminalises same-sex activity between adolescents (regardless of the adolescents' ages). Besides the law that criminalises same-sex activity, participants could not conceive how other laws or policies might impact LGBTI adolescents, including, for example, deterring them from accessing to health services more generally. As one participant pointed out:

"To seek clarity on something that we are pretending is not there is a challenge."

Service providers who work directly with LGBTI individuals were aware of MSM as a key population in the National HIV Prevention Strategy. However, they also pointed out that the criminalisation of same-sex activity, combined with the legal majority age of 18, restricted service provision to only adults, even though there is no specific law that criminalises working with LGBTI adolescents:

"We work with people from the age of 18, because of the laws of Malawi and because of what people think about [our organisation] as a sexual rights organisation. That, […] we are there to recruit the youngsters into homosexuality. So, we try as much as possible to go by the definition of law in Malawi as to who is a child. Anybody who is under the age of 18 is regarded to be a child, so we have been trying to not get involved with the youngsters because of that fear."

No one explicitly discussed the Medical Council of Malawi's Code of Ethics in reference to serving LGBTI adolescents.

> *The criminalisation of same-sex activity, combined with the legal majority age of 18, restricted service provision to only adults, even though there is no specific law that criminalises working with LGBTI adolescents*

Conclusion

Many laws and policies governing adolescents' access to HIV and SRH are contradictory or vague at best when it comes to specifying ages of consent.

As a result, many professionals working with, and providing advice to adolescents, have very limited knowledge about the provisions in the legal framework. Professionals seemed more concerned with what adolescents should not do, according to the law and their own moral codes, than enabling adolescents to achieve their rights.

For example, providers knew more about laws that criminalised specific activities (ie. terminations of pregnancy, same-sex activity), but were often unsure about the ages at which adolescents are allowed to consent to sex, or access HIV and SRH services.

This has important implications for adolescents' access to information around these issues –if professionals working with, and in support of, adolescents do not possess the knowledge, it is unlikely that adolescents themselves will be informed. Those that are aware of their rights under the law might at times have to work against providers' lack of knowledge and misinformation.

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RECOMMENDATION FOR SERVICE PROVIDERS AND POLICY MAKERS

* Laws should be aligned to be consistent for each of the areas identified in this research brief. Policy documents should be specific and consistent about ages to access HIV and SRH services. This specificity should embrace a rights-based approach and be inclusive to enable service providers at NGOs and in health facilities to serve clients of all ages.

* NGO healthcare service providers working with adolescents need to increase their knowledge of the legal and policy framework governing adolescent HIV and SRH, in order to offer inclusive SRH services, and educate adolescents about their rights, enabling them to make their own informed decisions about sexual activity, HIV and SRH.

* Cultural norms about adolescent sexuality play an important role in adolescent access to services. Priority should be given to assisting NGO and healthcare service providers to understand their role in adolescent sexual and reproductive healthcare through pre-service and in-service training and values clarification.

* Providers need to know their obligations under the existing legal and policy framework with regards to mandatory reporting. Trainings on this should emphasise a rights-based approach to avoid reporting of adolescents in cases where it is not legally mandated.

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