PROVIDING SEXUAL AND REPRODUCTIVE HEALTH SERVICES FOR TEENAGERS AGED 12 TO 15 YEARS

FINDINGS FROM THE 'CONDOMS? YES! SEX? NO!' PROJECT

BACKGROUND TO THE PROJECT

This project was conceived following training workshops on the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Act 32 of 2007 [referred to as the SOA/The Act] conducted in 2010 for health care workers employed by the Provincial Department of Health in the Western Cape. During discussions, workshop participants reported different experiences in implementing the provisions of the SOA which criminalised consensual sexual intercourse between teenagers aged 12 to 15, and required anyone with knowledge of such an offence to make a police report. Health workers expressed different levels of approval or concern over these provisions, suggesting a range of experiences and attitudes regarding teenage sexuality and reproductive rights. The discussion that ensued highlighted that the conflicting responsibilities in the legislative framework around sexual and reproductive health care for teenagers created a real concern for health care workers who considered patient confidentiality to be an essential condition for effective healthcare, but who are also mandatory reporters under the law.

There was clearly much to be understood about how these conflicting provisions were being implemented in practice, and the GHJRU therefore embarked on a study to explore how health care workers who provide reproductive health care to teenagers manage these seemingly conflicting legal rights and duties. The full report of the findings of the project - entitled *'Condoms? Yes! Sex? No!'* - is available on our website at: www.ghjru.uct.ac.za/pdf/Condoms_Yes_Sex_No.pdf.

A CHALLENGING LEGAL FRAMEWORK

The provisions in question are part of the regulatory framework that shapes a particularly tricky aspect of reproductive health care service provision: services for adolescents. South Africa's 1996 Constitution and Bill of Rights protect the right to make decisions regarding reproduction and the right to access health care services for both adults and children. Several laws breathe life into these constitutional rights and make them accessible to children. The Choice on Termination of Pregnancy Act (Act 92 of 1996) allows that women and girls of any age can request a termination of pregnancy up to 12 weeks, and the National Health Act (Act 61 of 2003) mandates that all information concerning a patient is confidential.

The Children's Act (Act 38 of 2005) states that that children from the age of 12 may not be refused condoms and contraceptives, and that such provision must be kept confidential. On the other hand, the Sexual Offences Act (Act 32 of 2007), mandated that children may only freely consent to sex at 16 years of age, criminalized a very wide range of consensual sexual activity between adolescents aged 12 to 15 years old, including anything from kissing on the mouth, hugging, and sexual touching to sexual intercourse.

IN BRIEF:

This brief is based on findings from the 'Condoms? Yes! Sex? No!' research project, undertaken between 2010 and 2014 by the Gender, Health and Justice Research Unit in collaboration with the Western Cape Provincial Department of Health. The project aimed to document and analyse the experiences and challenges faced by health care workers providing sexual and reproductive health services to teenagers aged 12 – 15 years. The project also aimed to document best practices for providing sexual and reproductive health services to this specific age group.

This policy brief aims to inform policy makers, health systems role-players and civil society actors of some of the challenges faced by health care workers in the provision of sexual and reproductive health services to teenagers in this age group, and to make recommendations that will ensure greater and more consistent access to services for all adolescents.

This policy brief is one of two that emanate from the findings of the project. The other one – focusing on the legal changes to the Sexual Offenses Act as mandated by the Constitutional Court in the so-called Teddy Bear clinic case, highlight additional challenges that remain in the legislative context for sexual and reproductive health services for adolescents.

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The SOA also created mandatory reporting requirements for 'anyone' with knowledge of consensual sexual activity to report this to the police, who were required to refer the case to the National Prosecuting Authority for a decision on how to proceed. In practice, these conflicting laws meant that reproductive health care workers, when faced with a teenager who wanted to access contraception or other reproductive health services, were faced with a tricky choice between providing services, support and counselling for teenagers about their choices, but also reporting to police and social workers in order to enforce certain aspects of the law.

CHANGES TO THE LAW

The constitutionality of sections 15 and 16 of the SOA - the provisions relating to adolescents - were challenged by the Teddy Bear Clinic and RAPCAN, two civil society organisations providing services to children. While the intent of these provisions in the law was to protect teens from unwanted or ill-advised sexual activity, but in practice their implementation was much more problematic (illustrated, for example, by the much-publicised Jules High School case that saw three teenagers prosecuted for consensual sexual activity). The crux of the Teddy Bear Clinic's case was that these sections harmed the very adolescents they intended to protect, given that consensual sexual activity of the kind addressed by the Act is developmentally appropriate for adolescents, and criminalising such behaviour not only exposes them to the harshness of the criminal justice system, but also bars access to information and damages the development of a proper understanding of, and healthy attitude to, sexual behaviour.

In October 2013, the Constitutional Court delivered judgment in the case, and found the provisions in question unconstitutional. Although the Teddy Bear Clinic case did find the sections 15 and 16 of the Sexual Offences Act unconstitutional and referred them back to the legislature to be redrafted within 18 months, this has not substantially changed the complexities of service provision in practice.

METHODOLOGY

The project made use of numerous methods to gather empirical evidence from a range of stakeholders, including interviews with nurses and counsellors at primary care facilities across the Western Cape. The project also reviewed laws, directives and policy documents, including the National Health Act, the Children's Act, the Termination of Pregnancy Act and the Sexual Offenses Act to provide the legal and policy framework within which these health care workers provided their services.

This policy brief summarises data gathered primarily from open-ended interviews with nurses providing sexual and reproductive health services in the rural and urban Western Cape. Consistent with its qualitative nature, the study utilised a small and non-representative sample. A total of 28 health care workers, identified by the manager at each facility, were interviewed for the project. Research sites included hospitals and clinics in the Cape Town metropole, Cape Winelands, West Coast and Overberg.

These data are supplemented by transcriptions of workshop discussions held with health care workers, stakeholders with experience in children's law, public health, sexual and reproductive health rights, and representatives from the Western Cape Provincial Department of Health. The purpose of these workshops was to gain in-depth insight into the experiences of these role-players in navigating the existing conflicting laws around teenage sexual and reproductive health.

FINDINGS

In general, the project found that health care workers (both in the research and workshop phases of the project) were unclear about their obligations under the different Acts outlined above. As a result, many could only explain "what we do here". A particularly confusing area of the law for health care workers was the age of consent for sexual relations, and the legal age at which teenagers are entitled to access contraceptives and termination of pregnancies. Most health care workers that we spoke to were not aware that they had an obligation to report consensual sex between teenagers to the police (under the now-overturned provision of the SOA), and many preferred to refer teenagers to a social worker instead. Some six months after the Teddy Bear Clinic judgment was handed down, few health care workers were aware of the case, or how it impacted their obligations as service providers.

Our results also clearly show the complex and often contradictory roles that nurses play in providing sexual and reproductive health care to teenagers: on the one hand they are expected to be providers and offer support, counselling, care and education about healthy and safe sexual behaviour. On the other hand, they are expected to act as law enforcers and report knowledge of illegal sexual activity and sexual abuse. Within this space, nurses struggled with confidentiality for their patients, many of whom were brought in to the clinic by a parent or family member, many of whom in need of information on teenage sexuality themselves. This created a sticky triad for nurses, who must protect confidentiality, provide information and also act in the best interests of the child.

Nurses felt that there are big differences between working with adults and teenagers, and spoke about the challenges of teaching and communicating with young adults about sex and sexuality: the "generation gap;" how emotional and sensitive teenagers can be; the importance of being gentle and having empathy. What emerged most clearly is that more guidance is needed for health care workers holding these competing roles and responsibilities.

Nurses' own values and attitudes (often as mothers themselves) shaped how they provide services to teens. While they recognised there are very good reasons for eliminating the need for parental consent for reproductive health care, especially in cases of domestic abuse, or where a child would otherwise avoid seeking health services, this limitation of a parent's role creates a critical gap in the responsibility for teaching teenagers to make informed and deliberate decisions about when, where, how and with whom to have sex. The nurses we interviewed expressed a strong sense of the burden they carried by being the only adult responsible for the reproductive health care decisions that their young patients make. Some felt conflicted between the course of action dictated by their professional training and what they felt was right as adults or as parents.

The study's findings clearly show how nurses are caught in the middle of the contradictory and conflicting positions vis-à-vis teenage sexuality and reproductive rights that have become embedded in the legal framework. While they are trained as health care providers, when it comes to teenage sexuality reproductive healthcare workers are expected to do far more than just provide medical treatment. These nurses are also a critical source of sexual and reproductive health education and serve as trusted confidantes on matters pertaining to sex. By virtue of its reporting requirement, the SOA assigns nurses an additional role: namely that of "law enforcer."

Clearly, the absence of appropriate, uniform training and guidance for health care workers on the content of law and their role as educators, counsellors and service providers leads to inconsistent approaches among the participants, and undermines the provision of quality, compassionate health care to teens.

RECOMMENDATIONS

Our research has shown that many health care workers feel uncomfortable speaking to adolescents about sexuality and sexual and reproductive health. When they do, they often adopt judgmental attitudes that reflect their own moral ideas about a 'healthy' and 'decent' sexuality for teenagers. Especially in conservative contexts, adolescents often adopt unhealthy sexual behaviours due to social pressure and poor information, and often do not seek the guidance of health care workers.

At the same time, adolescents, especially girls, are vulnerable to sexual violence and abuse, and health care workers play an important role in identifying these cases and providing support to the survivor. This requires complex and sensitive health care provision at the intersection of the health and criminal justice system, in close collaboration with the Department of Social Services. In order to navigate these different roles, health care workers require ongoing training about their roles and responsibilities under the various laws, as well as strategies to initiate and maintain effective working relationships with the various sectors involved.

In order to create adolescent-friendly, comprehensive sexual and reproductive health care services that are sensitive to adolescents' needs and attentive to their vulnerabilities, we recommend the following:

- ***Improve training of health care workers providing sexual and reproductive health services to teenagers***

  Nurses providing sexual and reproductive services to teenagers need to be trained to understand the Acts and policies that guide their service provision. It is crucial that nurses understand the differing roles

that are assigned to them under the Sexual Offenses Act and the Children's Act, as well as the obligations detailed in the National Health Act and Termination of Pregnancy Act. Such training should be incorporated into health professions education at Nursing Colleges and tertiary institutions, as well as professional development courses and trainings offered by the Department of Health. Nurses be supported in seeking training by providing study leave and appropriate alternative staffing to cover their services.

- ***Reinforce the framework of ethical and professional care in sexual and reproductive health service provision.*** It is critical that nurses providing services to adolescents do so in a professional and non-judgmental manner. The values and role of all personnel involved in sexual and reproductive health service provision for adolescents, including nurses, counsellors, admin and security staff, should be clarified to emphasise these professional obligations.
- ***Encourage intersectoral collaboration to improve sexual and reproductive health for adolescents.*** All stakeholders emphasised the need for collaboration between the health care sector, the education sector, and the criminal justice system including the police to ensure that adolescents receive comprehensive and consistent guidance on sexual and reproductive health. To improve these collaborations, we recommend that:
    - The outreach of facility-based staff into schools should be strengthened. To avoid resistance, school governing bodies should be invited to information sessions at health facilities to learn about the advantages of sexual and reproductive health education for adolescents.
    - The health facility should have direct contact with a designated representative of the local South African Police Service (SAPS), to assist with cases of suspected or confirmed sexual violence. Similarly, members of the local SAPS should be trained in the provisions of the Acts covering adolescent sexual and reproductive health care, as well as the new regulations that are to replace Section 15 and 16 of the Sexual Offenses Act.
- ***Design youth-friendly sexual and reproductive health services and clinics.*** Health facilities should ensure that their services are accessible and acceptable to teenagers. This can be achieved by:
    - Providing youth-specific services, including contraception services, HIV counselling and testing, and advice on termination of pregnancies once a week at a specified time.
    - Having designated youth-friendly staff, who expresses their willingness to work with youth, and have expertise in adolescent sexual and reproductive health care.
    - Ensuring that every health facility provides safer sex resources for opposite sex and same sex couples, for instance condoms, dental dams and lubricant.
- ***Provide clear, practice-focused guidance for health care workers to use in the clinic setting***. It is essential to provide nurses with the tools for assessing age of consent, as well as guidance on how to work and communicate with teenagers about health, sex, sexuality and violence. Nurses should be provided a decision tree/guide for making decisions on when to report, who to report to, and how best to act in the best interests of the child. Such a guide is available on the Unit's website.

CONCLUSION

The findings from the Conflicting Laws project suggest that health care workers are not adequately equipped to provide navigate the conflicting roles and obligations in providing sexual and reproductive health services to adolescents aged 12 – 15 years. The legislation and policy documents that regulate the provision of sexual and reproductive health services to teenagers in this age group must be clearly aligned and encourage healthy sexual behaviour, all the while recognising the particular vulnerabilities to sexual violence that these teenagers face.

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