

Age of Consent for HIV Testing and Counseling in Nigeria



KEY FACTS

1. In 2014, 380,000 children in Nigeria aged 0-14 were living with HIV.²
2. One out of every three young people between 15 and 24 newly infected with HIV in 2009 lived in South Africa or Nigeria.³
3. As of 2014, Nigeria had approximately 1.7 million AIDS orphans.²

REFERENCES

1. WORLD HEALTH ORGANIZATION, HIV AND ADOLESCENTS: GUIDANCE FOR HIV TESTING AND COUNSELING AND CARE FOR ADOLESCENTS LIVING WITH HIV – RECOMMENDATIONS FOR A PUBLIC HEALTH APPROACH AND CONSIDERATIONS FOR POLICY-MAKERS AND MANAGERS (2013).
2. Nigeria, UNAIDS.ORG, <http://www.unaids.org/en/regionscountries/countries/nigeria/> (last accessed September 2, 2015).
3. UNICEF, OPPORTUNITY IN A CRISIS: PREVENTING HIV INFECTION FROM EARLY ADOLESCENCE TO YOUNG ADULTHOOD 6 (2011).

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ISSUE

Age of consent laws and policies have been identified as a “key barrier” to uptake of HIV/AIDS services by adolescents.¹ This AIDS Law Brief (ALB) analyzes the legal environment in Nigeria relating to the age of consent for HIV Testing and Counseling (HTC) and compares the current Nigerian legal framework with guidance in the WHO’s 2013 report titled *HIV and Adolescents: Guidance for HIV Testing and Counseling and Care for Adolescents Living with HIV: Recommendations for a Public Health Approach and Considerations for Policy-Makers and Managers*.

SUMMARY

- **The statutory age of consent for health care services in Nigeria is 18**
- **Nigeria’s National Guidelines for HTC allow children to independently consent to HTC if they are married, pregnant, parents, or sexually active and if a provider determines that the child is mature enough to independently consent and the test is in the best interest of the child**
- **Nigeria’s national guidelines for HTC require consent of a parent or legal guardian for children who do not qualify as mature minors (consent of a caregiver who is not a legal guardian is not sufficient)**

KEY FINDINGS

1. **Nigeria’s 2011 National Guidelines for HIV Counseling and Testing permit certain “mature minors” to consent to HTC**

Nigeria’s 2011 National Guidelines for HIV Counseling and Testing (“National HTC Guidelines”) state on page 38 that a child under the age of 18 generally must have permission from a parent or legal guardian to undergo an HIV test. This same section also states that **children under the age of 18 who are “married, pregnant, parents, or sexually active” can be considered “mature minors” and can independently consent to an HIV test**, if a counselor deems them to be capable of granting consent and determines that the test is in the best interest of the child. This mature minor exception is not recognized in Nigerian statutory law. The National HTC Guidelines appear to recognize the lack of clear legal guidance regarding age of consent for HTC by stating “*laws and policies... should specify the age and circumstances under which minors may consent or assent to HIV testing.*” The National HTC Guidelines do not expressly permit a caregiver, who is not a legal guardian, to consent to HTC on behalf of a child who does not qualify as a mature minor.

2. Nigeria's Child's Rights Act requires that the child's best interest be the primary consideration for actions involving children

Section 1 of Nigeria's Child's Rights Act requires that every action taken concerning a child must primarily consider the child's best interest. The Child's Rights Act does not expressly address at what age children can independently consent to HTC or other health care services.

3. National Health Act requires that health information be kept confidential, but confidentiality for mature minors is unclear

Nigeria adopted a National Health Act in 2014 that contains provisions relevant to issues surrounding HIV testing and age of consent, but it does not directly address age of consent for HTC. Under Section 26, "all information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment is confidential." However, the same section states that in the case of a minor, a parent or guardian may request disclosure of health information.

CONSIDERATIONS

Our analysis identified four areas of Nigerian law relating to age of consent for HTC that could be clarified or strengthened to better align with the WHO guidance. First, the legal age at which a person may independently consent to HIV testing and counseling is unclear. The statutory age of majority in Nigeria for consenting to health services is 18 years old. The National HTC Guidelines state that children under the age of 18 who are married, pregnant, parents or sexually active can independently consent to HIV-testing and counseling, if the counselor deems the child to be sufficiently mature and the test to be in the child's best interest. This "mature minor" exception is not recognized in Nigerian statutory law. To align with WHO guidance, **Nigeria could consider establishing a lower statutory age of consent threshold for HTC or revising the National HTC Guidelines to establish a lower age of consent for HTC without a subjective maturity requirement.**

Second, it is not clear whether a minor who is determined to be sufficiently mature to independently consent to HTC is also able to independently consent to HIV treatment. To be consistent with WHO guidance, **Nigeria could consider clarifying in law or express policy that a child deemed sufficiently mature to independently consent to HTC is also sufficiently mature to independently consent to HIV treatment.**

Third, the National HTC Guidelines state that a parent or legal guardian's consent is required for a child under 18 who does not qualify as a mature minor. Requiring a parent's or legal guardian's consent, as opposed to a caregiver's consent, may reduce access to HTC for orphans and vulnerable children who may not have a clear "legal" guardian. To be consistent with WHO guidance, **Nigeria could consider adding caregivers to the list of persons authorized to consent to HTC and HIV treatment on behalf of a child.**

Fourth, the recently passed National Health Act suggests that parents and guardians may be able to unilaterally request the disclosure of a minor's health information and does not state whether this ability applies to "mature minors" are able to independently consent to HTC. **Nigeria could consider clarifying that a parent or guardian cannot independently request the disclosure of a mature minor's health information.**

WHO RECOMMENDATIONS FOR HTC AGE OF CONSENT¹

1. Age of consent for HTC should be lower than the age of majority (p. 20).
2. Minors deemed sufficiently mature to independently consent to HTC should be allowed to independently consent to HIV treatment (p. 12).
3. Age of consent laws should recognize the role of non-traditional caregivers (p. 13).
4. Testing results of minors should be kept confidential (pp. 19 and 46).
5. The guiding principle for age of consent laws and policies should be the best interest of the child (p. 13).

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