

# Age of Consent for Voluntary Medical Male Circumcision in Tanzania



## KEY FACTS

1. In 2014, approximately 1.5 million people lived with HIV in Tanzania.<sup>1</sup>
2. In 2014, HIV prevalence amongst 15-49 year olds in Tanzania was 5.3%<sup>1</sup>

## KEY LAWS

Law of the Child Act

## REFERENCES

1. *United Republic of Tanzania: HIV and AIDS Estimates* (2014), UNAIDS.ORG, <http://www.unaids.org/en/regionscountries/countries/unitedrepublicoftanzania/> (last accessed September 13, 2015).

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## ISSUE

This AIDS Law Brief examines the state of the law in Tanzania regarding the age of consent for voluntary medical male circumcision (VMMC). This Brief identifies ambiguities in relevant Tanzanian laws and policies, compares those laws and policies with laws in other African countries and recommendations from international organizations.

## SUMMARY

- **Tanzanian law does not specify the age of consent for medical or surgical procedures, including VMMC**
- **A 2009 Ministry of Health and Social Welfare report on the state of VMMC states that minors cannot independently consent to VMMC**
- **Tanzanian law does not state whether non-legal guardian can consent to VMMC on behalf of a child**

## KEY FINDINGS

### 1. Tanzanian law does not specifically identify the age of consent for VMMC

Tanzanian law does not explicitly state how old a person must be to consent to VMMC. The age of majority in Tanzania is 18. Tanzania's Law of the Child Act states that "a person below the age of 18 shall be known as a child." Thus, anyone who is 18 or older can independently consent to medical procedures. It is likely that the age of consent for VMMC is the age of majority—18 years old. Official publications from the Tanzanian government support this inference. The National Institute for Medical Research and Ministry of Health and Social Welfare published a 2009 report titled *SITUATION ANALYSIS FOR MALE CIRCUMCISION IN TANZANIA*, which stated that minors cannot consent to VMMC. Tanzanian statutory law does not state whether a non-legal guardian can consent to VMMC on behalf of a child.

### 2. Laws in South Africa, Kenya, Lesotho, and Nigeria permit minors to consent to certain HIV services

South Africa expressly established 16 as the age at which a child can independently consent to VMMC. South Africa's Children's Act of 2005 provides that "circumcision of male children older than 16 may only be performed...if the child has given consent to the circumcision." Moreover, under the South African Children's Act a child may consent to a surgical procedure if he or she is (a) 12 or older, (b) demonstrates "sufficient maturity and has the mental capacity to understand the benefits, risks, social, and other implications of the treatment," and (c) is duly assisted by a parent or guardian.

A number of other African countries permit minors to consent to certain medical interventions. In Kenya, a minor may consent to HIV testing if he or she is “pregnant, married, a parent, or engaged in behaviour that puts them at high risk of contracting HIV.” Regarding VMMC in particular, the Kenyan Ministry of Public Health and Sanitation is currently evaluating its legal, regulatory, and supervisory mechanisms to ensure that “male circumcision services are accessible and provided safely without discrimination.” In Lesotho, children 12 or older may independently consent to medical treatment if they are “of sufficient maturity” and have “the mental capacity to understand the benefits, risks, social and other implications of the treatment or operation.” Finally, the age of consent to “various health interventions” in Nigeria is 16.

### **3. International institutions recommend that countries examine their consent laws to address age-related barriers to HIV services**

The WHO, UNAIDS, United Nations Children’s Fund, Global Commission on HIV and the Law, United States Agency for International Development, and Southern African Development Community advise that countries with high HIV prevalence assess and possibly amend their consent laws to facilitate access to VMMC. Recommendations regarding changes to age of consent laws for VMMC include: (1) ensuring laws and regulations require that providers obtain informed consent before performing VMMC; (2) ensuring laws and regulations clearly establish the age of consent for VMMC; (3) consider lowering the age at which boys may independently consent to VMMC; and (4) ensuring laws and regulations protect minors who do not wish to be circumcised.

## **CONSIDERATIONS**

**Tanzania could consider amending its laws and policies to reduce ambiguities regarding age of consent for VMMC.**

First, **Tanzania could consider clarifying that providers must obtain informed consent prior to performing VMMC, including the assent of adolescent boys.** In addition, **Tanzania could consider clarifying the age of consent for VMMC in the law.** This could be accomplished in several ways. Tanzania could consider adopting legislation that defines the age of consent for VMMC specifically, or Tanzania could consider defining the age of consent for surgical procedures generally. Moreover, in the event non-surgical VMMC becomes available among adolescent men, Tanzania could consider defining ages of consent for both surgical and non-surgical VMMC.

**Tanzania could consider defining in law that minors can independently consent to VMMC at some age younger than 18.** Tanzania could consider adopting legislation establishing a lower age of consent for VMMC than the age of majority (for example, that the age of consent for VMMC is 16). Tanzania could also consider adopting legislation providing that a minor may independently consent where he shows sufficient maturity, similar to that noted above in South Africa.

Finally, **Tanzania could consider defining who may consent to VMMC on behalf of a boy who is not able to independently consent to VMMC.** Tanzania could consider allowing certain non-legal caregivers to consent on behalf of boys in certain circumstances.

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