

# RIGHTS VERSUS PROTECTION: MARRIAGE, SEXUAL CONSENT AND MEDICAL TREATMENT

## BACKGROUND

- ▶ We need to ensure a balance between protecting adolescents (age 10-19 years) from harm and respecting their agency and right to sexual and reproductive health (SRH).
- ▶ Laws related to age of marriage, age of consent to sex and age of consent to services are intended to protect young people but need to incorporate adolescents' agency and context of their lives.
- ▶ Adolescents' agency needs to be at the centre of efforts to develop and implement legislation that impacts their lives.



## WHAT ARE THE LAWS ON MINIMUM AGE OF MARRIAGE?

The legal age of marriage should be 18, as it is a potentially life-long contract. The harmful impacts of forced and arranged child marriage are well documented.

However, **treating all unions under the age of 18 years as forced and invalid can have harmful consequences.** Enforcement of laws can cause harm to the girls we are intending to protect.

There needs to be recognition, reflected in legislation, that in some cases, such as early pregnancy, if the couple would like to marry, it may be in the best interests of the young person to marry.



### TAKE ACTION

- Enact legislation to prohibit forced marriage and remove exemptions that allow non-consensual child marriage.
- Carefully enforce age of marriage legislation to recognise the agency of older adolescents of similar age to consent to marriage under the age of 18, with allowance of court approved exemptions.



## WHAT ARE THE LAWS ON THE LEGAL AGE OF CONSENT TO SEX?

Where premarital sex is prohibited and criminalised, unmarried young people face considerable barriers to access sexual and reproductive health (SRH) information and services.

High age of consent to sex **fails to recognise the agency of adolescents**, including girls, with respect to their sexuality and SRH, and does not reflect normal adolescent development, or the reality of adolescents' lives.

Punitive laws and other actions to prevent adolescents from engaging in sexual activity are **not effective at reducing premarital sex**, but rather increase the likelihood of risky behaviour and poor SRH outcomes.

Stigmatising (or criminalising) adolescent sexual activity may **contribute to child marriage**, as young people may seek (or be coerced into) marriage as a way of legitimising an intimate relationship and/or avoiding social or legal sanctions.



**TAKE ACTION**

- Ensure age of consent to sex is set at an age that recognises many young people commence sexual activity during adolescence, so that consensual sexual activity between adolescents who are similar in age is not criminalised.



## WHAT AGE CAN YOUNG PEOPLE SEEK INDEPENDENT ACCESS TO SRH SERVICES?

Any adolescent, who is responsible enough to seek SRH services, should have access to services. However, many face age restrictions or parental consent requirements.

The Committee on the Rights of the Child (CRC) advises that adolescents should be presumed competent to receive SRH services.<sup>2</sup>

Even if laws or regulations exist that support provision of services to 'mature minors', they may not be implemented by health providers who fear ramifications from parents: or the community, or who are unaware of their legal obligations.

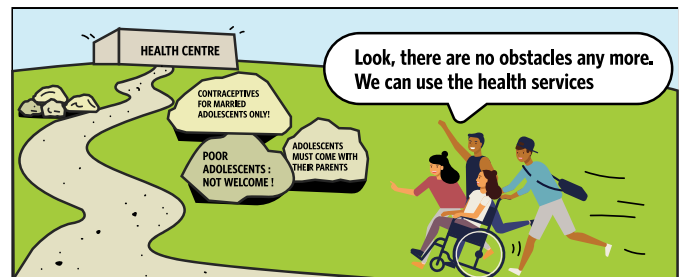


**TAKE ACTION**

- Remove mandatory requirements for parental consent and ensure legal presumption of competency to access preventive and time-sensitive SRH counselling, commodities and services.
- Develop clear policies, regulations and implementation guidance to support health workers to provide confidential SRH services to adolescents.



**At least 13 countries have enacted, or are proposing, legislation to allow adolescents to access HIV testing independently of their parent or guardian. Fewer countries allow adolescents under 18 independent access to contraceptives.**



Source: Adapted from WHO 2012

<sup>1</sup> UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence Para 40

<sup>2</sup> UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence Para 39

For more information, see the full report United Nations Population Fund 2021. 'My Body is My Body, My Life is My Life: Sexual and reproductive health and rights of young people in Asia and the Pacific.'