



Spotlight Initiative

To eliminate violence against women and girls



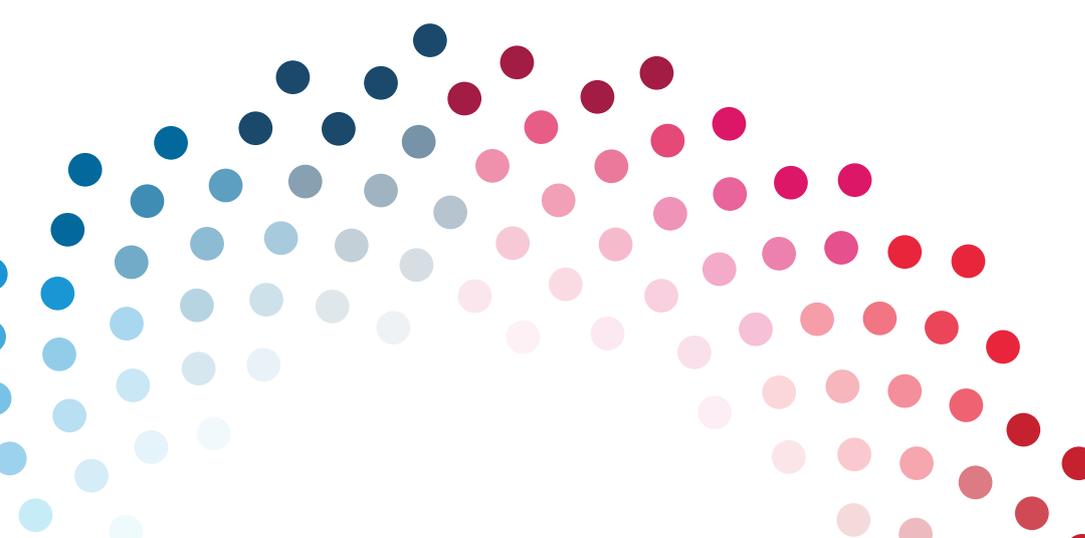
EMPOWERING YOUNG PEOPLE: Eliminating legal barriers that limit access to SRH information and services for young people

POLICY BRIEF

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Caribbean Observatory on
Sexual and Reproductive Health and Rights
Monitoring • Mobilising • Advocating



Young people aged 10-24 years account for a quarter of the Caribbean population. Across the region, adolescents aged 12-16 years continue to experience disproportionate policy and legal barriers in accessing health information and quality services that respond to their needs.¹ This, alongside inequitable gender norms, contributes to a lack of awareness and knowledge about basic human rights, puberty, and sexuality and may lead to risky sexual practices. These barriers can have serious implications for health, economic development, and poverty reduction.²

According to a UNFPA³, child sexual abuse is endemic in the region and large numbers of children are believed to be affected.⁴ The Caribbean has the second earliest age of sexual “debut” in the



UNICEF, UNFPA and WHO define ‘young person’ as those between the ages of 10-24 years of age.

world.⁵ Statistics show that the first sexual experience of young girls is frequently forced (42.8 % of girls younger than 12 years).⁶ Such abuse increases adolescents’ risk and vulnerability to HIV and sexually transmitted infections (STIs) and pregnancy. Providing adolescents with appropriate information and services to support healthy development and agency, including the right to informed decision-making about their bodies and consent (or not) to sex, will lead to empowerment and realization of their rights.

THE SITUATION: THE CURRENT SRH LEGAL LANDSCAPE

INNOVATIVE SERVICE MODEL IN JAMAICA

In 2019, the Jamaica Ministry of Health and Wellness introduced the Teen Hub, an innovative hub for HIV testing and counselling and other SRH services, including HIV prevention counseling, pregnancy testing and counseling on effective family planning methods. The uptake in services over the first two years has been sustained and thus the model has been expanded to additional locations.

Source: UNICEF. Country Office Annual Report 2019 Test Jamaica. Available at: <https://www.unicef.org/media/90536/file/Jamaica-2019-COAR.pdf>

Laws establishing the minimum age of sexual consent (‘Age of Consent Laws’) were enacted to protect Caribbean adolescents against sexual abuse and exploitation. However, in many countries, there are incongruences between the age of consent to have sex and the age at which young people can access SRH services without parental consent. Other countries lack legislation specifying the age for adolescents to have autonomous access to SRH services.

Most countries across the region have existing laws that impede the availability of and accessibility to SRH services, including contraceptives, and effective HIV prevention, testing, care, treatment, and support for young people below 18 years. However, often policies exist that give health providers latitude to act within the best interest of the child.



Countries allows access to HIV testing without parental consent:

Guyana: at any age
Trinidad and Tobago: from 14 years old



Countries have national SRH policies to deal with SRH issues:

Belize, Guyana, Suriname and Trinidad and Tobago

Source: Caribbean Family Planning Affiliation. Enabling Environment: Legislation, Policies and Plans on SRHR and GBV – Desk Review for the Caribbean Observatory on SRHR and GBV, March 2022

1 PAHO. Improving adolescent health in the Caribbean, 6 November 2021. Available at: https://www3.paho.org/hq/index.php?option=com_content&view=article&id=15577:improving-adolescent-health-in-the-caribbean&Itemid=0&lang=en#gsc.tab=0 Accessed on 21 June 2023.

2 Ibid.

3 UNFPA Legislative Analysis of Sexual and Reproductive Health and Rights in the English- and Dutch-speaking Caribbean, 2023.

4 UNFPA Legislative Analysis of Sexual and Reproductive Health and Rights in the English- and Dutch-speaking Caribbean, 2023.

5 Ibid.

6 UNICEF, Sexual Abuse against Girls and Boys in the Caribbean, Available at https://www.unicef.org/easterncaribbean/ECAO_Sexual_Abuse.pdf

In countries without an expressed policy to provide services to adolescents without parental consent, service providers require proof that adolescents seeking services are at least 18 years old, and deny access to those who are younger out of fear of potential legal liability and uncertainty.⁷ In short, adolescents are free to consent to sex at 16 years, but are precluded from autonomously consenting to receive SRH services to meet their sexual health

needs. An option discussed is to raise the legal age of sexual consent – often from 16 to 18 to align with age of autonomous consent for services, however there is no evidence that raising the age of consent around sex delays sexual activity among adolescents. Instead, it impedes sexually active adolescents below 18 years of age from accessing services they need to protect themselves at an earlier age.

Minimum age for consent to sexual activity



Minimum age to access SRH services without parental consent



In Montserrat, there are no restrictions in law on the minimum age to access SRH services without parental consent. In all countries, there are exceptions

for married people below 18 years, who are allowed to access SRH services without parental consent.

The option of the Gillick Competence Test

Another exception is that in Guyana, they use the Gillick Competence Test and Frazer Guidelines, which enable minor adolescents to access SRH services, within the Medical Guidelines. Saint Lucia uses it within the HIV and STI Guidelines. The United Kingdom House of Lords decision of *Gillick v West Norfolk and Wisbech Area Health Authority*, offers apt guidance on the issue, which may be legislatively crystallized in the countries lacking specific provisions.⁸ The decision outlines principles which have come to be referred to as ‘the Gillick Competency test’; advocating that autonomous access to SRH services may be provided where the minor adolescent:

1. Will understand the medical advice provided;
2. Cannot be persuaded to inform their parents that they are seeking SRH services;
3. Is very likely to begin or to continue having sexual intercourse with or without contraceptive treatment;
4. Is likely to suffer (mentally, physically or both) unless they receive contraceptive advice or treatment; and
5. Require contraceptive advice, treatment or both without parental consent, to fulfill their best interest.

7 UNICEF. Country Office Annual Report 2019 Test Jamaica. Available at: <https://www.unicef.org/media/90536/file/Jamaica-2019-COAR.pdf>

8 UNFPA Legislative Analysis of Sexual and Reproductive Health and Rights in the English- and Dutch-speaking Caribbean, 2023.

Antigua and Barbuda, Saint Lucia and St. Vincent and the Grenadines have legislated provisions, specifying the age at which adolescents may have autonomous access to SRH services; 16 years in all cases. Guyana and Saint Lucia allow health providers to grant access to SRH information and services to minors below the age of 16 with, as well as

without parental consent, through the application of the Gillick Competency Test. In Grenada and St. Vincent and Grenadines adolescents require medical prescriptions for emergency contraception. Another exception is within the Status of Children Legislation which allows a blood test to be done to prove paternity without parental consent.

LINK TO ADOLESCENT FERTILITY AND HIV INFECTIONS

Declining rates in adolescent fertility and HIV incidence in selected countries suggest a correlation with autonomous access to SRH services. For example, Guyana which use the Gillick Competency Test and Fraser Guidelines, experienced steep

decline in adolescent fertility rate. Jamaica's sharp declines in fertility rate and new HIV infections may be attributed to the country's extensive work to integrate comprehensive sexuality education into the HFLE curriculum.

TRENDS IN ADOLESCENT FERTILITY RATE AND NEW HIV INFECTIONS IN SELECTED COUNTRIES⁹

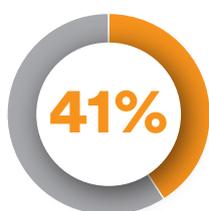
Country	 Trend in Adolescent Fertility Rate	 Trend in new HIV Infections in adolescents
Bahamas	47.8 in 2000, ↘ declined to 25.1 in 2021	21 in 2010, ↘ declined to 8 in 2022
Belize	67.17 as of 2020	37 in 2010, ↘ declined to 26 in 2022
Guyana	102.3 in 2000, ↘ declined to 64.6 in 2022	18 in 2010, ↘ declined to 15 in 2022
Jamaica	74.8 in 2000, ↘ declined to 32.0 in 2021	240 in 2010, ↘ declined to 153 in 2022
Suriname	80.5 in 2010, ↘ declined to 55.2 in 2022	11 in 2010, ↗ increased to 13 in 2022

IMPLICATIONS

Violation of human rights, high rates of early sexual debut & adolescent pregnancies

The lack of access to autonomous SRH services constitutes a violation of human rights of children, guaranteed through international law, such as the Convention on the Rights of the Child.¹⁰ In the Dominican Republic, Jamaica, Suriname and Trinidad

and Tobago, more than two in five students among school-going adolescents ever had sex.¹¹ The global school-based student health surveys (GSHS) in the Dominican Republic (2016), Suriname (2016), Jamaica (2017), and Trinidad and Tobago (2017) indicate that:



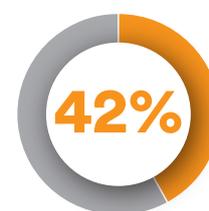
of students ever had sex, ranging from 26.4% in Trinidad and Tobago to 48.1% in Jamaica.



had ≥2 sexual partners, among those sexually active.



had an early sexual debut (≤14 years).



had not used birth control the last time they had sex.

⁹ IndexMundi 2021. Available at: <https://www.indexmundi.com/> Accessed on 20 July 2023.

¹⁰ United Nations Convention on the Rights of the Child, Article 5; UN Committee on the Rights of the Child (CRC) (2013), General Comment No 15: on the Rights of the Child to the Enjoyment of the Highest Attainable Standard of Health (Article 24 of the Convention) para. 31

¹¹ Pengpid S, Peltzer K. Prevalence and Correlates of Sexual Risk Behavior among School-Going Adolescents in Four Caribbean Countries. Behavioral Sciences. 2020; 10(11):166. Available at: <https://doi.org/10.3390/bs10110166>. Accessed on 29 July 2023

Exacerbated vulnerabilities

Young people have increased vulnerabilities to HIV infection. The extent of the risk varies by age, with boys and girls experiencing different peak periods of vulnerability and subsequent increases in infection rates.¹² Young men and women from within key populations, such as men who have sex with men (MSM) and transgender people appear to be significantly more at risk of infection than their older counterpart.¹³ HIV prevalence in the Caribbean is 1.2% among the general population in 2022, but much higher among key populations. The regional median HIV prevalence is 39.4% among transgender people, 11.8% among gay men and other MSM, and 2.6% among sex workers.¹⁴

The region has a significant sex work industry and young people constitute a big proportion of those engaged in selling sex or suffering sexual exploitation.¹⁵ Early sexual debut in the region contributes to increased risk for young girls and boys, who may find themselves engaging in transactional sex, organized sex work or may be victims of trafficking for

the purposes of sex work. These children are at tremendous immediate and long-term risk and require social and legal protection. The UN Convention on the Rights of the Child (CRC) indicates that children and adolescents under the age of 18, who exchange sex for money, goods or favors are “sexually exploited” and cannot be defined as sex workers.¹⁶

Young people with disabilities are often overlooked with respect to their SRHR and these issues are compounded by even greater barriers (physical accessibility and lack of sign language and interpreters) into accessing relevant information, education, and services to meet their diverse needs.¹⁷ They are also increasingly vulnerable to sexual abuse and exploitation and few programmes or interventions have been crafted to respond to their complex challenges. The misconception that adolescents, with and without disabilities, lack the capacity to make autonomous decisions about their health is a major barrier to adolescents with/without disabilities when they attempt to access SRH information and services.¹⁸

High cost of inaction

If young people’s need to access SRH information and services are not met by providing comprehensive sexuality education (CSE) and youth-friendly SRH services, including contraceptives, the Caribbean will continue to see high rates of teenage pregnancy, new HIV infections and other STIs, childhood sexual abuse and exploitation, which will increase health expenditure. A study¹⁹ identified the significant costs of implementing treat all – a policy of the World Health Organization indicating that all people living with HIV initiate antiretroviral treatment. A study showed that the estimated costing for HIV rapid testing is USD 22,500.00 in 2023 and USD 32,500.00 in 2027. Urgent action is needed to eliminate social and legal barriers to reduce

adolescents’ risk and vulnerability to HIV and the attendant costs for lifelong antiretroviral treatment and wrap-around services. Costs associated with maternal health are equally compelling Guyana. In 2019, the estimated budget for the Family Health Care programme of the Ministry of Public Health, Guyana was \$1,668,625,000 (USD8,002,998), representing 0.7% of the total budget for the Ministry. Direct costs associated only with normal pregnancies estimated for 2019 were \$248,568,646 (USD1,192,176).²⁰ As adolescent mothers face higher risk of pregnancy complications, the true costs of associated health care for adolescent pregnancy is likely understated, and provides compelling evidence of the cost of inaction.

12 Ibid

13 PANCAP. Caribbean Youth Advocacy Framework on Sexual and Reproductive Health and Rights, 2017.

14 UNAIDS Global AIDS Update 2023. Available at: https://www.unaids.org/sites/default/files/media_asset/2023-unaids-global-aids-update_en.pdf Accessed on 18 July 2023

15 Ibid

16 PAHO (2013). Reaching Poor Adolescents in Situations of Vulnerability with Sexual and Reproductive Health.

17 PANCAP. Caribbean Youth Advocacy Framework on Sexual and Reproductive Health and Rights, 2017.

18 United Nations General Assembly (2017), Report of the Special Rapporteur on the Right of Persons with Disabilities, Doc. A/72/133, Available at: https://digitallibrary.un.org/record/1301518/files/A_72_133-EN.pdf

19 PANCAP. Advancing to Treat All in the Caribbean: An Economic Analysis, 2019

20 UNFPA. Socio-economic consequences of Adolescent Pregnancy in Guyana, 2021

Global and regional commitments

Prioritizing SRHR for young people is supported by global and regional commitments, for example, the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs) to which governments across the region committed. Target 3.7 says that member states must take significant steps to ensure universal access to SRH services, including for family planning, information and

education, and the integration of reproductive health into national strategies and programmes by 2030. Impact target number 6 of the Regional Plan of Action for Women's, Children's and Adolescents' Health encourages Member States to aim for a 10% reduction in the age-specific fertility rate of girls aged 10-19 years.

RECOMMENDATIONS FOR DECISION-MAKERS

Eliminating legal barriers to young people's access to SRH information and services is key to young people's health, will empower them and reduce their risks of HIV, STIs and adolescent pregnancy. If decision-makers do no act, the Caribbean will see increased social and economic burden and little progress towards the sustainable development goals.

1. Examine why there has been limited progress in reducing adolescent pregnancy, HIV and STI infections and abuse among adolescents to understand the role of social and legal barriers that limit access to SRH information and services for young people.
2. Develop new or revise existing policies to make them comprehensive, and to guarantee the provision of SRH information and services to vulnerable adolescents to prevent or eliminate incongruence and legal liability for service providers.
3. Where applicable, enact or modify legislation specifying the age at which adolescents may have autonomous access to SRH services.
4. Enact a law that clearly sets out the minimum age of consent to sexual activity and ensures its alignment with the age of consent to access SRH services with a provision to include the Gillick Competency Test.
5. Harmonize the minimum age of consent for both adolescent boys and girls, where applicable.
6. Enact legislation to guarantee that the age for access to SRH services should be considered without restrictions in terms of age, marital status, and third-party authorization requirements.
7. Collaborate with UN partners such as UNFPA and UNICEF to develop youth friendly spaces and deliver youth friendly services to meet the SRH needs of in-school and out-of-school adolescents and youth.

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