

# 1. PREAMBLE

According to the 1996 census<sup>1</sup>, there are 8 834 816 million adolescents aged 10 to 19 years and 3 982 353 youth aged 20 to 24 years in South Africa. These groups comprised 21.8 % and 9.8 % of the total population respectively. The 12 817 169 adolescents and youth together comprise 31.6 % of the population.

This is a very diverse group of people.<sup>2</sup> There is also variation between individuals of the same age, depending on factors such as gender, level of physical, psychological and social development, and environmental and cultural factors.<sup>2</sup>

It is commonly believed that all their subgroups are characterised by relatively good health. However, a large proportion of deaths of adolescents and youth are preventable, such as those resulting from traffic incidents, assaults, HIV/AIDS and suicide. Some of these problems have more serious consequences for adolescents and youth than for older people, such as obstetric complications in very young mothers. Behaviour patterns that may compromise the health of young people such as unsafe sex, tobacco and other substance abuse are also preventable.

Preventing and responding to specific health problems in adolescents and youth comprises one strand that weaves through these policy guidelines. The other is the *promotion of healthy development of all young people*, whether they have or are at risk for "problems" or not. These may include aspects such as life skills, income generating opportunities, education, respect and being listened to, establishing a sense of self, identity and value, positive role models and assistance in maintaining or re-establishing relationships with families.<sup>3</sup> The focus of the promotion of healthy development is on the positive potential of young people as opposed to the "problems" that they manifest.

There are a range of fundamental socio-economic conditions that are essential for adolescent health, such as peace, shelter, education, food, income, a stable ecosystem, sustainable resources, social justice and equity.<sup>4</sup>

They can also have an impact on the effectiveness of interventions. Adolescents, for example, are unlikely to be receptive to information about the importance of safer sex practices if they are homeless and dependent on income derived from commercial sex. Despite their salience for the health of adolescents and youth, such fundamental conditions will not be addressed in these policy guidelines. They constitute components of national reconstruction and development, and are being addressed by other sectors. The involvement of other sectors is also necessary to address specifically the health needs of adolescents and youth. This is reflected in the team that has developed these policy guidelines, who are listed in Appendix A.

The process of developing these policy guidelines has been consultative; involving young people, the National Youth Commission, some Provincial Youth Commissioners, National and Provincial Health Departments, other National Departments, Non-Governmental and Community Based Organisations. <sup>5</sup>

These are the first national policy guidelines for adolescent and youth health in South Africa. Adolescent and youth health was not a government priority prior to 1994:

*In the past, the apartheid state violated not only the rights and opportunities of young people through its repressive and discriminatory policies. It also ignored the special needs and concerns of youth. Young people were left to find*

*their own way in a divided and volatile society - to varying degrees brutalised as master and servant alike.*

- President Nelson Mandela, 1997<sup>6</sup>

The principal aim of this framework is to inform efforts aimed at either preventing and responding to health problems or the promotion of healthy development.

The guidelines recognise that many programmes that impact on adolescent and youth health are based in other sectors such as education, welfare and correctional services. Such pro-programmes should be actively supported by the health sector.<sup>7,8</sup>

However, the framework presented in these policy guidelines may suggest ways in which such programmes should be complemented or improved.

The guidelines also recognise that responsibility for the implementation of national health policy lies with the provincial health departments and not the national Department of Health. Partly for this reason, an attempt has been made to avoid becoming too specific or detailed in programme recommendations. It will be necessary for the provincial health departments to use the general framework to develop their own policies in a manner that recognises their specific health priorities, policies and fiscal constraints.

This document has a further four sections. **Section 2** summarises key existing policy, legislative and treaty commitments that have a direct bearing on adolescent and youth health. Relevant legislation and policy documents for each health priority are listed in Appendix B.

**Section 3** reviews the six key *guiding concepts* for adolescent and youth health.<sup>7</sup>

**Section 4** presents five *general intervention strategies*.<sup>7</sup>

**Section 5** introduces the important *settings* in which the general strategies presented in Section 4 can be applied.

**Section 6** addresses *specific health priorities*.

The list of indicators provided for each health priority represents *examples* of the kinds of



indicators that might be appropriate to assess the impact of intervention strategies. Indicators should be specific both for people eg. age group, gender and for the systems, eg. health facility, school.<sup>8</sup>

In several places in these policy guidelines, data are disaggregated by racial categories as

defined in the Population Registration Act promulgated by the apartheid government. These racial categories were created and used for purposes of political and socio-economic oppression. Use of these racial categories in these guidelines is either to draw attention to groups that are particularly at risk on the basis of historical inequities, or because data are available only for specific subgroups of the population. It does not imply acceptance of their scientific or anthropological validity.

# 2. CURRENT LEGAL, POLICY & TREATY FRAMEWORK

## 2.1 The Constitution of the Republic of South Africa

Section 2 of the Constitution of the Republic of South Africa, 1996 ("the Constitution") states that the *Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.*

The first constitutional provision referred to above makes South Africa a constitutional state and therefore the development of any policy guidelines must take place within the constitutional and legal framework.

The Constitution provides for the right of access to health care services and for other health-related rights:

- ☉ Section 24 provides that everyone, children included, *has the right to an environment that is not harmful to their health or wellbeing.* The State therefore has an obligation to ensure that its conduct, whether by way of legislation or policies, does not create an environment that is harmful to people's health. In fact the State must promote, through its conduct, an environment that is not harmful to people's health.
- ☉ Section 27 provides that everyone has the right to have access to
  - (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) *social security, including if they are unable to support themselves and their dependants, appropriate social services.*
- ☉ Section 27 further requires the State to take reasonable legislative and other

measures to achieve the progressive realisation of the rights referred to above.

- ☉ Section 28 provides that every child has the right
  - (a) to basic nutrition, shelter, basic health care services and social services;
  - (b) not to be required or permitted to *perform work or provide services that place at risk the child's wellbeing, education, physical or mental health or spiritual, moral or social development.*

These adolescent and youth health policy guidelines are one of the measures aimed at achieving the realisation of the rights contemplated in these sections in so far as the rights apply to adolescents and the youth.

The Constitution further provides for the signing of international agreements by the national executive and that the international agreements are binding on the Republic upon signature and satisfaction of prescribed requirements. Some of the most significant international agreements relating to children are:

- ☉ Convention on the Rights of the Child;
- ☉ African Charter on the Rights and Welfare of Children; and
- ☉ Protocol on Health in the Southern African Development Community.

These agreements will receive further attention below.

## 2.2 United Nations Convention on the Rights of the Child and the National Programme of Action for Children in South Africa

South Africa is a signatory to the **Convention on the Rights of the Child** ("the Convention") and must therefore comply with the provisions of

the Convention. Some of the provisions relating to health matters follow hereunder.

Article 3: *States parties to the Convention shall ensure that institutions, services and facilities responsible for the care or protection of children conform to standards established by competent authorities, particularly in the areas of safety and health.*

- ☉ Article 19: States parties shall take all appropriate legislative and other measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.
- ☉ Article 23: States parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. States that parties shall promote exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children.
- ☉ Article 24: States parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

Further, Article 24 provides States that parties shall ensure that children are informed of and are supported in the use of basic knowledge of child health and nutrition, the advantage of breast feeding, hygiene and environmental sanitation. Measures shall be taken to develop preventive health care, guidance for parents and family planning education and services and the prevention of accidents. Measures shall also be taken to abolish traditional practices which are prejudicial to children.

The Convention requires State parties to make the principles and provisions of the Convention widely known by active means to adults and children alike. State parties are also required to submit reports to a Committee established under the Convention on measures they have adopted which give effect to the rights recognised in the Convention and on the progress made on the enjoyment of those rights.



The **National Programme of Action for Children in South Africa** (NPA) is the instrument by which South Africa's commitments to children in terms of the Convention is expressed. It is a mechanism for identifying all plans for children developed by government departments, NGOs and other child-related structures, and for ensuring that all these plans converge in the framework provided by the Convention, the goals of the 1990 World Summit on Children and the Reconstruction and Development Programme.<sup>9</sup>

Included in the identified policy priorities of the NPA are programmes with obvious relevance to adolescents and youth such as HIV/AIDS, injury prevention and mental health services.

### 2.3 African Charter on the Rights and Welfare of Children

South Africa signed the Charter in 1997. One of the provisions of the Charter is Article X1V.

Article X1V provides that *every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health*. The Article further provides that State parties shall take measures to *ensure the provision of necessary medical assistance and health care to all children*.

### 2.4 Protocol on Health in the Southern African Development Community

South Africa signed the Protocol in August 1999. Article 17 of the Protocol specifically deals with Childhood and Adolescent Health and provides that *in order to provide for appropriate child and adolescent health services essential for the growth and development of children, Stateparties shall develop policies with regard to child and adolescent health and to co-operate in improving the health status of children and adolescents*.

### 2.5 The White Paper for the Transformation of the Health System in South Africa<sup>10</sup>

The White Paper provides for Youth and Adolescent Health within the Maternal, Child and Women's Health chapter.

It provides six principles:

- ☉ MCWH services should be accessible to mothers, children, adolescents and women of all ages, the focus being on the rural and urban poor and farm workers;
- ☉ MCWH services should be comprehensive and integrated;

- ☉ clear objectives and targets should be set at the national, provincial, district and community levels in accordance with the goals of the RDP, the health sector and the United Nations Convention on the Rights of the Child;
- ☉ individuals, households and communities should have adequate knowledge and skills to promote positive behaviour related to maternal, child and reproductive health;
- ☉ MCWH services should be efficient, cost-effective and of a good quality; and
- ☉ women and men will be provided with services which will enable them to achieve optimal reproductive and sexual health.

### 2.6 The Health Act, 1977

#### **Section 14: Functions of the Department of Health**

- (1) *In addition to the functions entrusted to the Department of Health by any other law, the functions of the Department shall , subject to the provisions of this Act, be -*
  - (a) *with due regard to health services rendered by provincial administrations and local authorities, to co-ordinate health services rendered by the said Department and to provide such additional services as may be necessary to establish a comprehensive health service for the population of the Republic of South Africa;*
  - (b) *to take steps to establish a national health laboratory service;*
  - (c) *to take steps for the promotion of a safe and healthy environment;*
  - (d) *to promote family planning;*
  - (e) *with due regard to the provisions of the South African Medical Research Council*

Act, 1969 (Act No. 19 of 1969), to provide facilities for, and to undertake, research in connection with any matter falling within the scope of the said Departments functions in terms of this Act;

- (f) to provide services in connection with the procurement or evaluation of *evidence of a medical nature with a view to legal proceedings; and*
- (g) to perform such other functions as may be assigned to it by the Minister.

### **Section 16: Functions of provincial administrations**

*(1) In addition to the functions entrusted to a provincial administration by any other law, the functions of a provincial administration with regard to health services in its province, shall subject to the provisions of this Act, be -*

- (a) to provide hospital facilities and services;*
- (b) to provide ambulance services within its province and, with due regard to similar services provided by provincial administrations in adjacent provinces, to co-ordinate such services;*
- (c) to provide facilities for the treatment of patients suffering from acute mental illness;*
- (d) to provide facilities for the treatment of out-patients in hospitals or in other places where patients are treated for a period of less than twenty-four hours;*
- (e) to provide and maintain maternity homes and services;*
- (f) to provide personal health services, either on its own or in co-operation with any local authority;*
- (g) with a view to the establishment of a comprehensive health service within its province, to co-ordinate the services referred to in paragraphs (a) to (f), inclusive, with due regard to similar*

*services rendered by the Department of Health and Welfare, other provincial administrations and by local authorities; and*

- (h) to promote family planning in the province concerned;*
- (i) to perform any other function as may be assigned to it by the Minister.*

*The sections mainly provides for the functions of the National Department and those of provincial administrations addressing itself mainly to the creation of an environment conducive to good health and health care.*

## 2.7 The Child Care Act, 1983

### **Consent to medical treatment**

Consent to medical treatment and to the performance of operations is provided for by the Child Care Act, 1983 (Act No. 74 of 1983), section 39 in particular.

Section 39 (4)(b) provides as follows:

- (b) Any person over the age of 14 years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any medical treatment of himself or his child.*

In terms of section 39(4)(b), it means that a child over the age of 14 years is competent to consent to medical treatment of himself or herself and to the medical treatment of his or her child.

### **Consent to the performance of an operation**

Section 39(4)(a) provides as follows:

- (a) Any person over the age of 18 years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any operation upon himself.*

In terms of section 39(4)(a), it means that a person over 18 years is competent to consent to the performance of an operation on himself or herself.

The issue of teenage mothers is raised when dealing with consent to the performance of operations. Apparently, a teenage mother of 16 years can consent to the performance of an



operation on her child but not on herself (the mother) as she (the mother) is below 18. There are no provisions in the Act dealing with this situation. A solution to this situation can be found in the manner in which section 39 can be interpreted.

The provisions of section 39 must be read as declaratory rather than prohibitory. They simply declare that a person of a certain age is competent to perform certain acts and not that it is prohibited for a person of a certain age to perform certain acts (see **Strauss, SA**, Doctor, Patient and the Law, 3<sup>rd</sup> Edition, 1980, page 174) To support the interpretation suggested, section 39 does not provide that a teenage mother of below 18 years is competent to consent for the performance of an operation on her child but this

appears to be the practice. It is a practice because it is not prohibited by section 39. With regard to the performance of an operation on the teenage mother who is not over 18 years herself, the teenage mother's parent or guardian must give consent.

### **Emergency Treatment**

In an emergency, the question sometimes arises as to what happens when this occurs on a child far from a facility (where the medical superintendent is not available). The question relates to a situation where medical treatment has to be administered, for instance, at the scene of an accident where the nearest health facility is a distance away. Even in this instance, the consent of the patient to treatment is required if the patient is competent to consent.

In an instance where the patient is not competent to consent, either because he or she is under 14 years or 18 years or unconscious and persons who by law can consent to treatment are not available, a situation of "unauthorised administration" will arise. This situation has developed into a legal doctrine which simply means that a person is entitled

- not obliged - to take steps to protect the interests of another person who is absent, where such interests are imperilled.

There are four essentials to the doctrine in relation to medical treatment:

- (a) there must be a real situation of emergency;
- (b) the patient must be unaware that he or she is medically treated, or must at least be incapable of properly appreciating the situation (e.g. persons below age);
- (c) the treatment must not be against the will of the patient; and
- (d) the treatment must be intended to be in the best interests of the patient.

## 2.8 Liquor Act, 1989

The Liquor Act, 1989 (Act No. 27 of 1989) makes it an offence to sell or supply liquor to any person who is under the age of 18. It also makes it an offence to employ persons below 18 for the purposes of selling or supplying liquor.

### Section 45. Juveniles

*The holder of a licence shall not -*

- (a) *sell or supply liquor on the licensed premises to any person who is under the age of 18 years.*

### Section 44. Employees

*The holder of a licence shall not -*

- (a) in or in connection with the sale or supply of liquor;  
employ any person-
- (b) who is under the age of 18 years;

## 2.9 Choice on Termination of Pregnancy Act, 1996

The Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996) has extended reproductive health services to women by providing for termination of pregnancy upon request.

The Act defines a woman as a *female of any age*

Section 5 of the Act provides that *termination of pregnancy may only take place with the informed consent of the pregnant woman*. It further provides that *no consent other than that of the pregnant woman shall be required for the termination of a pregnancy*.

Therefore any pregnant female of any age can consent to termination. Although the section requires a medical practitioner or midwife to advise a pregnant minor to consult with her parents, guardian, family members or friends before pregnancy can be terminated, the section

makes it clear that *termination of pregnancy shall not be denied because such minor chooses not to consult such persons*.

## 2.10 Sterilisation Act, 1998

Consent to sterilisation is provided for in the Sterilisation Act, 1998 (Act No. 44 of 1998).

Section 2 provides that no person is *prohibited from having sterilisation performed on him or her if he or she is capable of consenting and is 18 years or above*.

In cases where the person in respect of whom a request for sterilisation is made is below 18 years (section 3), sterilisation can only be performed if -

- (a) the physical health of the person is threatened (if sterilisation is not performed);
- (b) a parent, spouse, guardian or curator of the person consents to sterilisation;
- (c) a panel of experts convened in terms of the Act (section 3(2)) concurs that sterilisation may be performed;
- (d) there should not be any other safe and effective method of contraception except sterilisation.

## 2.11 Medical Schemes Act, 1998

The question often arises whether dependant patients have the right to seek medical treatment independently of the member of the medical scheme, whether the member has to be informed of the diagnosis (of a dependant patient). The Medical Schemes Act, 1998 (Act 113 of 1998) and the regulations made thereunder provide some direction on the matter.

Section 59(1) provides that *a supplier of service*

who has rendered a service to a member or to a dependant of such a member in terms of which an account has been rendered, shall, notwithstanding the provisions of any other law, furnish to the member concerned an account or statement reflecting such particulars as may be prescribed.

The particulars have been prescribed by the Minister in the regulations made in terms of the Medical Schemes Act (**Government Notice No. R.1262 of 20 October 1999**). Regulation 5 of provides as follows:

#### **Accounts by suppliers of services**

5. *The account or statement contemplated in section 59(1) of the Act must contain the following:*
- (a) *the surname and initials of the member;*
  - (b) *the surname, first name and other initials of the patient;*
  - (c) *...*
  - (d) *...*
  - (e) *the name of the practitioner who provided the service;*
  - (f) *the relevant diagnostic and such other item code numbers that relate to such relevant health service;*
  - (g) *...*
  - (h) *the nature and cost of each relevant health service rendered, including the supply of medicine to the dependant of that member and the name, quantity and dosage of the medicine;*
  - (i) *a copy of the original prescription or a certified copy of such prescription;*
  - (j) *where mention is made in such account of the use of theatre, all procedures carried out together with the relevant item code number .*

It is clear from the regulation quoted above that it is difficult for a dependant patient to seek medical treatment independently of the member without the member knowing of such treatment. A member may not know of the treatment at the time when it is administered but when the account is furnished the member will know of it.

## 2.12 Domestic Violence Act, 1998

The Domestic Violence Act, 1998 (Act No. 116 of 1998) is aimed at protecting the victims of domestic violence and is therefore of importance to adolescents and youth.

A complainant in terms of the Act also includes a child and this means that children are also protected by the Act. The Act defines a "domestic relationship" also as a relationship between the parents of a child or persons who have or had a parental responsibility for that child. "Domestic violence" is defined as including *physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, .....* These are acts from which adolescents and youth in general, especially women, suffer mostly.

Section 4 of the Act provides that notwithstanding the provisions of any other law, any minor, or any person on behalf of a minor, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.

Section 7 provides that in issuing a protection order, the court may, if it is satisfied that it is in the best interests of the child, refuse the person against whom an order is made, contact with the child or order such contact with such child on such conditions as it may consider appropriate. Section 11 restricts the attendance of persons in proceedings on domestic violence and this serves to protect complainants who can be easily intimidated.

## 2.13 National Youth Policy

This policy was developed by the National Youth Commission to provide a framework for youth development across the country. It is obviously necessary that the present policy guidelines are consistent with the National Youth Policy. This is one of the reasons that some provincial officials and the National Youth Commission were involved from the outset in the development of these policy guidelines.

The National Youth Policy identifies eight "priority target groups":

- ☉ young women;
- ☉ unemployed young men and women;
- ☉ out-of-school young women and men;
- ☉ rural young men and women;
- ☉ young men and women at risk through socio-economic factors or participation in risk behaviours;
- ☉ young men and women with a disability;
- ☉ teenage mothers;
- ☉ young people living and working on the street; and
- ☉ young men and women with HIV/AIDS.

In the development of the Policy Guidelines for Adolescent and Youth Health, every effort was made to ensure that the health needs of these groups are recognised.

Health comprises one of nine "strategy areas" in the National Youth Policy. Within the health strategy area, there are three specific health strategies.

1. The first is a "National Youth Health Action Plan", being developed by the Department of Health. This refers to the current policy guidelines. A number of issues that should be addressed in the plan are listed.

Although the bulk of these issues are indeed addressed in these policy guidelines, there are some omissions. The most significant omission is "the identification of well-defined, gender-disaggregated and quantifiable data and research on a wide range of youth health matters". This was not considered an appropriate component of policy guidelines. In any case, many of these data are available from other sources.<sup>48</sup>

2. The second strategy is the development of a South African Youth AIDS Programme by the Department of Health. Although the present guidelines cannot be construed as fulfilling this strategy, most of the issues listed are in fact addressed in these policy guidelines. Any future attempts to develop a National Youth HIV and AIDS Strategy should build on these policy guidelines as well as the National AIDS Plan.

3. The third strategy refers to teenage pregnancy and school attendance. While the health aspects of teenage pregnancy are addressed in the policy guidelines, the educational aspects should be addressed primarily by the education sector.

Finally, the National Youth Policy proposed the establishment of a Youth Law Team to review a range of laws that have a bearing on youth health. These laws refer to issues such as the minimum ages of first sexual intercourse, marriage and purchase of alcohol and tobacco. In the light of the proposed establishment of this team, these legal issues will receive minimal attention in these guidelines.