

**AFRICAN  
THINK TANK**  
ON HIV, HEALTH AND SOCIAL JUSTICE



# STRATEGY ON PREVENTING AND RESPONDING TO HUMAN RIGHTS VIOLATIONS AND CRISES



## EXECUTIVE SUMMARY

There is global recognition that law and human rights are central to an effective HIV response. Countries need encouragement and support to strengthen legal frameworks that will protect people living with HIV and key populations at higher risk of HIV exposure, and promote universal access to HIV prevention, treatment, care and support. UNAIDS must help to lead these efforts. This strategy details how UNAIDS in the Eastern and Southern Africa (ESA) region will:

- Rapidly assess current levels of integration of a rights-based public health approach
- Integrate human rights crisis prevention and response into UNAIDS country office programming
- Improve data collection and analysis to enhance such prevention and response
- Strengthen the work of the RST and our cosponsors in the region
- Prioritize a response to debates on legal barriers to HIV among key populations and those left behind.

## BACKGROUND AND RATIONALE

The UN *Political Declaration on HIV and AIDS*<sup>1</sup> adopted in June 2011 committed UN member states to reviewing laws and practices that prevent an effective HIV response. The 2012–2016 strategy of the Global Fund to Fight AIDS, Tuberculosis and Malaria Strategy lists promotion and protection of human rights as one of its five strategic objectives.<sup>2</sup> Promotion and protection of human rights has been core to the global UNAIDS mandate since 2001, when it was founded. The human rights component of the work of UNAIDS at country, region and global levels has always been regarded as essential to end HIV.

A high-level commitment to end all forms of discrimination related to HIV is translated into action, accountability and results in the UNAIDS Getting to Zero Strategy and the Unified Budget, Results and Accountability Framework (UBRAF). In the Eastern and Southern African region, commitment to the protection and promotion of human rights is crucial; much has been achieved at country and regional level. At country level, UNAIDS country directors incorporate actions on discrimination, gender equality and promotion of human rights, in annual work plans and, more importantly, in their ongoing interactions with country partners and other UN agencies. Recently, this has included political advocacy. Country and regional level UNAIDS focal points facilitated strong regional participation of ESA in the Global Commission on HIV and the Law.<sup>3</sup> The regional priorities of ESA thus feature strongly in the findings and recommendations of the report. At regional and country level UNAIDS staff promote adoption and full use of UNAIDS tools and guidance on human rights, gender and the elimination of stigma and discrimination.

Despite efforts across the ESA region, there has been a mixed record of achievement in using this approach. Executive director of UNAIDS, Michel Sidibe, captured the current state of human rights protections for sexual minorities in his statement at the International Day against Homophobia and Transphobia in 2014:

*'We must respect everyone's freedom to love who they want to and to express who they are. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people have shown immense courage and are sparking a social transformation. Criminalization of LGBTI people puts entire communities at risk. It keeps those in need of prevention and treatment services out of reach of life-saving interventions. It is outrageous that in 2014, when we have everything we need to defeat AIDS, we are still fighting prejudice, stigma, active discrimination and homophobic laws in 78 countries around the world.'*

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1 UNGASS, 2011. *Political Declaration on HIV and AIDS*.

2 *The Global Fund Strategy 2012–2016: Investing for Impact* (SO 4 – Promote And Protect Human Rights)

3 [Please provide reference](#)

## STRATEGY ON PREVENTING AND RESPONDING TO HUMAN RIGHTS VIOLATIONS AND CRISES

Legal and regulatory frameworks in the region have failed to adequately protect the human rights of people living with HIV and other key populations. In some countries, activities to address HIV-related laws and human rights have had limited impact. For example, in countries where laws to prohibit HIV-related discrimination have been enacted, people living with HIV and their families still experience discrimination due to limited access to justice and ineffective law enforcement.

The prevalence of punitive laws as they relate to eMTCT, ART and the recent anti-homosexuality debates in the region expose key populations, particularly lesbian, gay, bisexual and transgender LGBTI people in the countries concerned, to targeted harassment, violence and abuse and denial of appropriate health care and other services. The recently adopted anti-homosexuality laws in Nigeria and Uganda may encourage other countries in the region to introduce or reinforce penalties that target LGBTI people based on their real or perceived sexual orientation or gender identity, or its expression. This will fuel HIV-related stigma and discrimination, deter people from accessing HIV prevention, treatment, care and support and exacerbate the impact of HIV and AIDS and reverse any gains attained so far.

Many countries condemn sex work. UNAIDS advocates for protective laws for sex workers. Studies show that most sex workers come from poor socioeconomic backgrounds. Punitive laws hamper the capacity of sex workers to negotiate sex and condom use, report violence to the police, access prevention, care and treatment services offered by health centres which makes them more vulnerable to HIV and unwanted pregnancy. Nevertheless, many strong initiatives at regional and country level in the ESA region protect and promote human rights and entrench a rights-based approach to public health in the response to HIV. These efforts are largely undertaken by civil society organisations but also include several bilateral and multilateral partners, that include UNAIDS and UNDP.

In many ESA countries, registered, active civil society organisations support lesbians and gays, sex workers and people who use drugs, and leverage support from regional partners such as Hivos, UNDP and UNAIDS. These organisations provide legal representation, and community level advocacy and support to ensure individuals can access and benefit from HIV-related services. Such work continues in Uganda, for example, despite the risk of police harassment and criminal sanctions.

We need to sustain these efforts and ensure they support the realization of the 90-90-90 UNAIDS targets – 90% of people living with HIV know their diagnosis, 90% of people living with HIV are on antiretroviral treatment and 90% of people on HIV treatment have an undetectable viral load. We need to leverage this foundation to strengthen more proactive responses at country and regional level and head-off any negative trends that will impede our collective efforts to achieve country, regional and global level strategic goals for the HIV response across the ESA region.

This regional strategy paper is a statement of consensus on the targets that will further and protect human rights and achieve high-impact results for individuals, families and communities affected by HIV.

## GUIDING PRINCIPLES

UNAIDS RST ESA recognizes and promotes non-discrimination and the right to health, in particular access to HIV-related services for people living with HIV and other key populations, including young people and adolescents. This paper incorporates the following overarching priorities:

- Work upstream to **prevent** the occurrence and recurrence of HIV-related human rights violations with key stakeholders at national level, including governments, parliamentary and judicial bodies; national human rights commissions, and civil society networks, etc.
- Protect people living with HIV and other key populations from human rights violations. Identify education and services and support them with human rights training through the UN Country Team (UNCT), and key ministries and parliamentary and judicial bodies that are able to mitigate legal backlash
- Monitor and evaluate the enforcement of existing laws by strengthening legal and judicial systems, as well as studies on access to justice for people living with HIV and other key populations.

## OBJECTIVES AND PROPOSED ACTIONS

The objectives and deliverables therein will be reviewed by the end of 2015. This paper proposes a multisectoral approach that includes judicial and parliamentary bodies, relevant government ministries (health, interior, gender and justice) and national human rights institutions. The goals of this paper are to:

- Ensure that the rights of people living with HIV, and other key populations are effectively protected
- Provide tools and resources that will strengthen the capacity of UNAIDS RST ESA and country offices to:
  - Prevent and respond to HIV-related human rights violations and crises
  - Engage in effective political advocacy and programmatic action against HIV-related human rights violations

To achieve these goals, it is proposed that the RST ESA and country offices prioritize the following five objectives:

### Assess the status of human rights crisis prevention and response:

- National-level rapid assessments to identify the gains and advantages, and disadvantages or imminent threats that may result from integrating rights-based public health into national strategic processes. A concept note would have to be developed along with implementation of the investment approach. RST will develop the rapid assessment tool
- Multisectoral country partners to deliberate on the findings of the assessments and develop short and medium-term plans for more effective integration of the rights-based public health approach.
  - Strategies to strengthen rights protection for PLHIV and other key populations, within ongoing national strategic processes
  - A concept note and implementation of the investment approach
  - Key UNAIDS programmes to support human rights
- Build the capacity of human rights and human rights-based public health approaches in country offices
- Develop action-oriented guidance for country offices and country directors on coordinated, multisectoral political advocacy that will entrench the rights-based public health approach at country and regional level
- Develop national and regional level multisectoral coordination processes aligned to entrenchment of the rights-based public health approach across national and regional responses to HIV.
- Reinvigorate collaboration and partnership with the Committee of the African Commission on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV of the African Commission on Human and Peoples' Rights.<sup>4</sup>

<sup>4</sup> <http://www.achpr.org/mechanisms/hiv-aids/>

### **Integrate human rights crisis prevention and response into the work and programmes of country offices**

- Enhance the capacity of national HIV-related platforms to prevent and respond to human rights crises. Country offices can consult with key partners to advocate for platforms to be established.
- Engage with national human rights institutions to provide legal aid services to people living with HIV and key populations to report discrimination, lack of protection from violence and other human rights violations. RST can consult with country offices and advocate for a regional network of human rights institutions to be established.
- Country offices need to review their roles in joint and country teams and provide stronger leadership on emerging HIV-related human rights and laws.
- Produce a guide on how to include rights of people living with HIV, and other key populations into new funding model concept notes.

### **Improve research and data collection, analysis and use**

- Partner with UNDP and legal organisations to assess the legal environments of selected countries and generate action plans to follow up on law reform and improve access to justice and law enforcement in the ESA region.
- Evaluate the *People Living with HIV Stigma Index* processes in the ESA to strengthen them, or develop alternative tools to improve national and regional capacity to address stigma and enhance political and legal advocacy for protection from discrimination. Tools include human rights literacy for people living with HIV, and other key populations.
- Include civil society organizations, people living with HIV, and other key populations in studies related to them. This includes collection of data, management of studies, reporting, dissemination and uptake.
- Ensure national platforms use these findings and data to assist country offices and policy makers to better understand the best available evidence and inform

their choices of the most suitable crisis prevention and response strategies, and human rights programmes.

### **Strengthen human rights programming of RST ESA and cosponsors**

- Work towards a more programmatic approach to human rights, HIV and key populations by building capacity of Regional Economic Communities (African Union Commission (AUC), East African Community (EAC), and Southern African Development Community (SADC) on HIV and human rights.
- Support the regional judges forum, in partnership with UNDP, following the regional workshop in Nairobi in 2013 to strengthen legal environments in ESA.
- Engage AUC, EAC and SADC parliamentarians with the inter-parliamentary union (IPU) advisory group on HIV and AIDS.
- Consult with and propose the establishment of a regional platform for development partners working on AIDS for better alignment and harmonization.
- Develop a system to support and monitor the inclusion of key programmes in national strategic plans, investment cases and concept notes.

### **A response to anti-homosexuality debates and laws**

- The recent emergence of anti-homosexuality debates and laws in sub-Saharan Africa threatens to undermine the HIV response and violate the fundamental human rights of LGBT people. In this context, UNAIDS RST and UCOs can effectively work towards preventing the emergence of anti-homosexuality laws through:
  - Working ‘upstream’, as early as possible, with relevant national government ministries, human rights commissions, CSOs, national AIDS authorities, the private sector, media, opinion leaders, religious and traditional networks, and development partners, through sensitization and capacity-building programmes.
  - Propose and support the establishment of multisectoral platforms for action on

HIV and human rights at national level to discuss and address (in a preventive manner) issues related to HIV-related human rights.

- Partner with LGBT organizations and agree on a way forward. Monitor and detect early anti-homosexuality initiatives, and public homophobic statements, etc.
- Conduct research, collect data on HIV prevention and prevalence in LGBT and other key populations and disseminate it among policy makers.
- Advocate among the highest authorities, including the relevant ministries, about the harmful implications of anti-homosexuality laws on the national HIV response, public health and the enjoyment of human rights, including the right to privacy and non-discrimination.
- Where relevant and necessary, develop and implement political advocacy interventions to actively promote the protection of human rights among and within LGBT constituencies and organisations. Create safe spaces for individuals and organizations to plan and monitor advocacy and awareness activities, particularly where doing so at country level may create risk of harassment or arrest. Reach out to public opinion leaders who have progressive views on homosexuality and LGBT issues.
- Support official recognition of LGBT associations and support their legitimacy in the HIV response.
- Identify potential media allies to create a space to dialogue objectively on homosexuality issues.

will also provide on-going, real-time quality assurance to country offices and country partners, and develop and issue relevant, regional specific guidance tools to support effective strategies for legal and political advocacy.

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## IMPLEMENTATION APPROACH

To address these urgent priorities and provide guidance, the RST ESA will convene a regional think tank on HIV, health and social justice made up of national and regional level legal advocates and human rights specialists. The think tank will offer national and region-specific technical support to UCOs and multi-sectoral country partners on the development and execution of advocacy strategies, in close collaboration with regional champions and the Organization of African First Ladies against HIV/AIDS (OAFLA), to address specific opportunities and challenges for strengthening protections for key populations within a rights-based public health approach. It

