



SUMMARY OF FINDINGS  
**AFRICAN THINK TANK  
ON HIV, HEALTH AND  
SOCIAL JUSTICE**



## Background

This document reports on the results of a rapid assessment carried out on behalf of the UNAIDS Regional Support Team (RST) for Eastern and Southern Africa (ESA). The assessment was commissioned to support the inaugural meeting of the **Think Tank on HIV, Health and Social Justice**, which took place in Johannesburg in March 2015.

In addition to being a source of strategic information to guide the deliberations of the **Think Tank**, the assessment informed priority-setting and action-planning for UNAIDS to accelerate progress on HIV-related human rights and social justice for people living with HIV, key populations and vulnerable groups at regional and national levels.

## Purpose and scope

The **overall purpose** of the rapid assessment was to document and assess current and emerging trends and issues pertaining to promotion and protection of human rights, and achieving social justice for people living with HIV, key populations and vulnerable groups across the ESA region.

This assessment defines **key populations** as lesbians and other women who have sex with women, gay men and other men who have sex with men, transgender people, people who sell sex (male and female), and people who inject drugs.

**Vulnerable groups** are adolescent girls and young women, children and youth, prisoners, migrants and mobile populations, and people with disabilities, as highlighted in the 2014 UNAIDS Gap Report.<sup>1</sup>

The rapid assessment was carried out in February and March 2015. Two modalities – desk review and key informant interviews – were used to collect data. In line with the UNAIDS Fast Track strategy for ESA, the national-level component of the assessment focused on Botswana, Ethiopia, Kenya, Lesotho, Madagascar, Mauritius, Malawi, Mozambique, South Africa, Swaziland, Uganda, Tanzania, Zambia and Zimbabwe.

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1 UNAIDS. 2014. The Gap Report. Geneva, CH: UNAIDS.

## HIV, human rights and social justice – regional realities

Although the assessment focussed on human rights and social justice for people living with HIV, targeted key populations and vulnerable groups, there are broader issues and trends that influence the way they play out.

- **Entrenched social and economic inequality** persists amid economic growth and transformation across the ESA region.
- **Slow progress on achieving gender equality.**
- **Cultural and religious conservatism.** The region struggles to balance the desire to promote and protect cultural tradition and identity and to define and follow a distinct moral compass while embracing diversity and change.
- **War and conflict.** The region is plagued by war and conflict, particularly in the east and along borders with countries in other regions.
- **Poor governance practices.** Some national governments struggle to govern according to basic principles of democracy, fairness and openness. Scapegoating, bigotry and persecution for political gain are still acceptable practices along with deeply entrenched corruption and graft.
- **Ambivalent or negative response to foreign aid or investment linked to human rights objectives.** There are negative reactions and consequences in some countries where foreign aid and investment is linked to progress on human rights issues, particularly for key populations.
- **Lack of progress in regional and national human rights bodies,** which often have critical administrative and technical weaknesses.
- **Lack of capacity among multi-sectoral actors regarding principles and practices of human rights and social justice.** This trend crosses all sectors from civil-society-based human rights defenders, government policy analysts and legislators to senior members of the judiciary, politicians, and religions and cultural leaders.
- **Slow progress in realizing promises of regional and national commitments on human rights and social justice.** Although many states have domesticated regional and international instruments, concrete, progress is still painfully slow in some groups.

## Achievements and challenges

Against a backdrop of broader geopolitical trends, the assessment identified achievements and challenges pertaining to HIV-related human rights and social justice issues for people living with HIV, key populations and vulnerable groups.

### Overall achievements

The literature we explored and key informants we interviewed acknowledge that there is momentum in the region regarding progress on key human rights and social justice issues which include:

- **Pride, resilience and courage.** Although daily life for people in key populations across the ESA region is harsh and punitive in almost all countries included in this assessment groups and individuals survive deregistration, police harassment, including physical and sexual assault, imprisonment, malicious prosecution, public exposure and victimization to emerge proud, resilient and courageous.
- **Visibility, voice and inclusion.** The voice and presence of people living with HIV, key populations and some vulnerable groups is increasing in the region. Representatives from key populations are being included in country coordination mechanisms and there is strong advocacy and support for networks for people living with HIV.
- **Movement-building and broadening the constituency.** At regional level, the effort that resulted in Resolution 275 at the African Commission on Human and Peoples' Rights in 2014 is an example of this trend.<sup>2</sup> At national level, current work on decriminalization of sodomy in Malawi and addressing stigma, discrimination and state-sponsored violence against sex workers in Kenya are other examples of change.
- **Improvements in the technical capacity** to identify, articulate and move forward on human rights and social justice issues and concerns.
- **Technical and financial investment.** There are many regional- and national-level fora that address general and specific human rights and social justice issues across the region.

<sup>2</sup> African Commission on Human and Peoples' Rights, 55th ordinary session, 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity

## Challenges

Positive trends are proportional to regional challenges and limitations, which include the following:

- **Fragmentation, polarization and marginalization.** It is difficult for different stakeholders working in human rights to see common cause in shared struggle. The most frequently mentioned example was the marginalization of sexual orientation and gender identity work because it is seen as only applicable to small groups of individuals.
- **Challenges to consensus on vulnerabilities and priorities for action.** There is ongoing debate on conceptual and practical levels about the main vulnerabilities regarding HIV that must be addressed using strategies and approaches grounded in human rights and social justice concepts.
- **Emerging tensions within the public health approach.** Although HIV has provided an unprecedented opportunity for human rights and social justice issues to be brought to the forefront of national and regional public health responses, there are inherent limitations. For example, human rights for key populations are based on their risks and vulnerabilities to HIV infection. They are not seen in the wider context of fundamental rights and entitlement to equality and freedom.
- **Human rights and social justice are conceived too narrowly** as largely legal issues involving access to courts and quasi-judicial bodies for restitution or redress. This approach makes it difficult to tackle some of the issues that impede progress of the regional response to HIV.
- **Limited technical capacity.** Although there have been tangible improvements in the capacity to identify human rights and social justice issues in the context of HIV, there are still gaps among all stakeholders and across all sectors.
- **Shrinking technical and financial investment.** Shifting priorities in investment in the HIV response is limiting opportunities for human rights and social justice work. Open Society Foundations (OSF) recently documented this trend.<sup>3</sup>

<sup>3</sup> Open Society Foundations, 2014. HIV and Human Rights: A Mapping of Donor Priorities and Trends in Southern Africa. Briefing paper.

- **Tensions over whether HIV should be included in the post-2015 development agenda.** Although UNAIDS and others want to keep the regional response to HIV at the centre of the post-2015 development agenda, and integrate HIV into newly defined strategic development goals, their efforts have not yet been successful.

### **Assessment of regional strategies and approaches**

A component of the rapid assessment is a high-level investigation of the sufficiency of regional strategies and efforts to achieve sustained progress on HIV-related human rights and social justice priorities. The following regional strategies and approaches were regarded as having **highly positive relevance and effectiveness**:

- **Strategic litigation**, even though the quantity of litigation underway is matches neither the need nor the opportunity at regional and country level.
- **Strategic and technical guidance at regional and country levels** provided through the UNAIDS Human Rights Division and the UNAIDS Reference Group on HIV and Human Rights, and through the Global Commission on HIV and the Law.
- **Training and sensitization of the judiciary, politicians, religious leaders and others** is beginning to show results in some countries for some groups.
- **Technical support** from the South African Litigation Centre (SALC), Open Society Initiative of South Africa (OSISA/OSIEA), Aids and Rights Alliance for Southern Africa (ARASA), UNAIDS and UNDP is deemed invaluable and essential, but there is still a significant gap between need and opportunity, and the support available.
- **The UNAIDS convener role** (where it is being carried out) was very highly regarded, particularly when it was paired with effective **political advocacy** on the part of the UNAIDS Country Director.
- **Coalition-building**, when successful, was viewed as essential for making substantive progress, both at regional and country levels.

- **When advocacy was coordinated, collaborative and sustained with specific targets and shared outcomes was very relevant and efficient.** Single issue, confrontational advocacy styles were regarded as not effective.

Relevance and effectiveness was debatable with the following strategies and approaches:

- **Engagement with regional and global human rights bodies** that are not well positioned or where mechanisms for them to effect change in the day-to-day realities for key populations and vulnerable groups are not in place.
- **Working with parliamentarians, particularly given issues of poor governance practice across the region.**
- **Current approach to addressing stigma and discrimination for people living with HIV.** While the stigma index studies are a useful way to document the depth and extent of stigma and discrimination, the recommendations the process generates are not always pragmatic and achievable.
- **Confining the focus of HIV-related human rights work too narrowly to the specific issues for the three prioritized populations** within UNAIDS, and limiting the benefit and the need to see human rights issues more broadly and as more interconnected.

The collective **impact** of all efforts across the region on HIV-related human rights and social justice challenges is not yet substantive enough and should be a topic of urgent discussion and action.

The need to maintain current levels of technical and financial investment, and leverage additional contributions, is critical. Much of the current effort and momentum **will not be sustainable** long enough to achieve lasting impact across the region without this assurance of support.

### Country level issues, trends and opportunities

An important component of the assessment was to examine human rights and social justice issues, trends and opportunities for people living with HIV, key populations and vulnerable groups in specific countries across the region. The *trends and achievements* that emerged from the country-level analysis are highlighted below.

- The law and policy environment for addressing protection against discrimination for people living with HIV and articulating rights and entitlement has expanded and become stronger.
- In many instances, however, law and policy instruments include problematic provisions, such as the criminalization of HIV transmission in different contexts or circumstances.
- The law and policy context has become stronger regarding protection and promotion of HIV-related rights and entitlements, but not for seeking recognition, or redress to such rights and entitlements.
- Although there are laws and policies to promote general rights and entitlements for people living with HIV, there are few, if any, that provide specifically for key populations.
- Only Uganda repealed criminal statutes that target key populations. However, some countries have recognized key populations within new strategies and programmes, and efforts are being made to provide services and include key population representatives in country-level processes to plan and monitor HIV responses.

Several *challenges and gaps* were highlighted in the countries that were analysed. These included the following:

- With some exceptions (Malawi, for example), there has been little progress in addressing resistance to human rights concepts and issues for key populations among religious leaders and institutions.
- Similarly, the drive to sensitize and form effective partnerships with politicians was identified as an ongoing challenge.
- The technical capacities of individuals and organizations working on human rights and social justice issues, specific to HIV and people living with HIV, key populations and

vulnerable groups, as well as more generally, was too weak or inadequate to make effective progress.

- The responsibility of public institutions to protect and promote human rights is still an area of concern.
- There was an ongoing lack of effective mechanisms for joint planning and strategizing among stakeholders involved in human rights and social justice work at country level. This included challenges for groups to see common cause in their work and to identify and work together on shared priorities.

In terms of *strategic opportunities for accelerating progress*, the following were among those highlighted at individual country level:

- Enhanced technical and financial support for strategic litigation. Country-level stakeholders expressed a desire to undertake more strategic litigation and engagement with the courts.
- Ongoing technical and financial support to maintain or expand activities to build the capacity of people living with HIV, key populations and vulnerable groups to understand human rights and social justice concepts, particularly within the country context, and identify and claim rights and entitlements.
- Technical and financial support to broaden or restate how some human rights and social justice challenges are formulated and taken forward.
- Ongoing technical and financial support to continue work with the judiciary, law and policy makers and politicians on human rights and social justice concepts as well as the realities and needs of people living with HIV, key populations and vulnerable groups within national HIV responses.
- Provision of tools, strategies and best-practice accounts for building and sustaining coalitions of stakeholders active on human rights and social justice issues.

### Strategic opportunities for further progress

The findings present the following opportunities regarding HIV, human rights and social justice for people living with HIV, key populations and vulnerable groups across the ESA region.

**Strategic implementation support responsive to country needs.** This involves leveraging additional financial and technical investment for country-defined priorities, some of which are shared or common across the region.

**Strengthening collaboration and linkages at regional and country levels.** At country level, while there is best practice in some countries (Malawi, Kenya and Uganda, for example) other countries do not yet have effective national platforms for coordinated action on human rights and social justice priorities. At regional level, there is an opportunity to:

- Document and share best practice.
- Provide tools and templates for coalition-building and for establishing and maintaining national platforms.
- Provide technical and operational support where it is needed.

**Strengthening monitoring and accountability.** A shared regional results framework, or index for monitoring progress on human rights and social justice challenges will measure progress on substantive, interconnected issues of human rights and social justice and could also include early warning indicators to strengthen coordinated, proactive responses to negative trends and possible retrograde actions (such as criminalization).

**Facilitating regional dialogue on reframing.** An entity to facilitate and convene key actors across the region will bring about collaboration and consensus on new ways to frame and proclaim human rights and social justice issues that are more inclusive and engaging without obscuring or sidelining the lived experience of denial of rights and entitlements for people living with HIV, key populations and vulnerable groups.

**Strengthening regional advocacy.** Some regional participants felt UNAIDS has yet to bring its full institutional weight to advocacy efforts for law and policy change at national and regional levels. Although in some countries, UNAIDS has shown exceptional leadership in convening and facilitating action and speaking out on the evidence for protection and promotion of human rights and the effectiveness of HIV responses, it is not a

consistent across the region. UNAIDS could increase its voice and leadership in advocacy, particularly *political advocacy*, at regional and national level.

**Sustain and increase financial and technical support for community empowerment.**

Human rights and social justice that impacts and changes daily realities for people living with HIV, key populations and vulnerable groups cannot advance without strong and effective organization emerging from and led by these same groups. Without this, efforts lack credibility and potency.

Ongoing work is needed across stakeholders, including technical partners and donors, to leverage longer term technical and financial investments for these entities and to strengthen coordination and collaboration.

### **Next steps**

The purpose of the assessment was to effect deliberation on priorities for collective action and guide movement on these priorities. The following steps were envisioned:

- Presentation of the findings of the assessment at the inaugural meeting of the **Think Tank**, for discussion and deliberation.
- Time-bound action strategies at regional and country level for accelerated progress on human rights and social justice issues in ESA.
- A regional advocacy strategy for UNAIDS to strengthen coordination, collaboration and overall effectiveness of these efforts in ESA.
- A results framework or index, inclusive of early-warning indicators for UNAIDS to monitor collective progress on jointly defined priorities.

The final approved version of the assessment findings would be shared through UNAIDS with all participants as well as relevant regional and national level stakeholders. There is need for ongoing work across stakeholders, including technical partners and donors, to leverage longer term technical and financial investments for these entities and to strengthen coordination and collaboration across these efforts.

