



# Strengthening Civic Space and Civil Society Engagement in the HIV Response

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## INTRODUCTION

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The United Nations (UN) Secretary General's 'The Highest Aspiration: A Call to Action for Human Rights'<sup>1</sup> and *Our Common Agenda* report highlight civic space and public participation as a priority for creating just, inclusive and peaceful societies. They urge Member States to do more to promote and protect civic space, and to develop renewed social contracts between governments and people anchored in human rights, to achieve the Sustainable Development Goals (SDGs) and deliver on the pledge to leave no one behind and reach those furthest behind first.<sup>2</sup>

Safe, open and inclusive civic space that respects fundamental freedoms of association, assembly and expression and promotes meaningful civil society engagement is critical for successful responses to end AIDS and promote health and well-being for all.

'Civil society' is made up of various individual and collective actors, including civil society organizations (CSOs), which organize, debate and act to influence public policy and the general direction of countries and communities.<sup>3</sup> It is separate from the state and business.

A CSO is any non-state, not-for-profit, voluntary group organized on a local, national or international level, and typically organized around specific issues. CSOs perform a variety of services and humanitarian functions, bring citizens' concerns to governments, provide analysis and expertise, serve as early warning mechanisms, help monitor and implement policies and commitments and encourage political participation at the community level.<sup>4</sup>

Civil society actors supporting the HIV response represent the needs and interests of some of the most marginalized and vulnerable members of society. This includes populations living in contexts

where their ability to participate in society is limited by stigma, discrimination and punitive laws and where they have limited access to justice. Shrinking civic space at the national, regional and international level blocks opportunities for civil society to advocate for health and human rights, monitor access to services, claim redress for rights violations or reach those left behind with health and legal support services.

In the 2021 Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030 (the 2021 Political Declaration), UN Member States committed to "creating and maintaining a safe, open and enabling environment in which civil society can fully contribute to the implementation of the present declaration and the fight against HIV/AIDS". A free, open and enabling civic space as well as empowered civil society are central to achieving the 10-10-10 targets of the 2021 Political Declaration which aim to ensure that by 2025, less than 10 percent of countries have punitive legal and policy environments, less than 10 percent of people living with and affected by HIV experience stigma and discrimination, and less than 10 percent of women, girls, people living with HIV and key populations experience gender inequality and violence—societal enablers that create an environment conducive for an effective HIV response. The Global AIDS Strategy 2021–2026: End Inequalities. End AIDS (the Global AIDS Strategy) also notes that it is crucial to empower, enable and fund civil society, communities of people living with HIV and key populations to ensure that no one is left behind.<sup>5</sup>

This United Nations Development Programme (UNDP) discussion paper describes the current state of civic space and provides recommendations for strengthening civic space and civil society engagement in the HIV response.

## What is civic space?

‘Civic space’ is the environment where civil society operates. Multiple factors—legal, policy, administrative, economic, social, customary and cultural—determine the extent to which members of society are able, either individually or collectively, to engage in actions to shape government policy and programmes and advance socially relevant goals. They create conditions that make a meaningful and vibrant civil society possible—or not—in a given context.<sup>6</sup> An open civic space, where the state respects its people’s fundamental rights to associate, assemble peacefully and freely express views and opinions, allows members of society to organize, participate and communicate and claim their rights.<sup>7</sup>

The concept of safe, open and enabling civic space is recognized as both a human rights imperative and a public good. Such civic space is grounded in several inextricably linked key human rights principles set out in international human rights instruments and is core to the concept of active and meaningful participation in public affairs as set out in Article 21 of the Universal Declaration of Human Rights (UDHR), Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and several other international legal instruments.

Civic space allows for the voices of all populations to be heard in law and policymaking processes, and leads to more informed, legitimate decision-making and more peaceful societies.<sup>8</sup> The UN Human Rights Committee has held that the concept of active and meaningful participation is broad and encompasses the right to engage in public life and exert influence in various ways. Participation can be direct or through representatives; in formal consultative political and decision-making processes, such as public hearings and referenda; and within civil society, “through public debate and dialogue with their representatives or through their capacity to organize themselves.”<sup>9</sup> Inclusive and accessible civic space is fundamental to exercising the rights of freedom of assembly, association and expression. Shrinking civic space can be a prelude to a more general deterioration in human rights.

Key global normative documents and strategies highlight the general importance of civic space:

- » The 2030 Agenda<sup>10</sup> commits Member States to creating the conditions to promote inclusive decision-making,<sup>11</sup> access to information and protection of freedoms of association, assembly and opinion,<sup>12</sup> and the participation of all without discrimination,<sup>13</sup> including marginalized and vulnerable populations,<sup>14</sup> towards achieving the SDGs.<sup>15</sup>
- » The UN Guidance Note on Protection and Promotion of Civic Space urges global solidarity towards achieving safe, open and enabling societies, recognizing the role of the UN in protecting civil society from shrinking civic space, promoting and expanding inclusive participation, and enhancing civil society engagement with the UN, as well as the role of governments and their people.<sup>16</sup>
- » UNDP’s Strategic Plan 2022–2025<sup>17</sup> sees open and inclusive civic spaces as central to achieving broader structural changes to build resilient societies able to respond to conflicts and crises, and ensuring that no one is left behind.
- » UNDP’s HIV and Health Strategy 2022-2025: Connecting the Dots – Towards a more equitable, healthier and sustainable future<sup>18</sup> notes that sustaining progress on Sustainable Development Goal (SDG) 3 requires strong collaboration and integrated responses across development sectors, including community and civil society engagement and participatory health governance and decision-making.

## CIVIC SPACE AND THE HIV RESPONSE

The engagement of civil society and communities of people living with and affected by HIV has been “the backbone of the HIV response at every level, from global to national to community,”<sup>19</sup> and has fundamentally shaped the way in which governments, regional bodies and international institutions have responded to the HIV epidemic. For instance, civil society participation and community engagement have been central to mobilizing and empowering community voices and placing affected populations at the centre of HIV responses through the Greater Involvement of People living with HIV (GIPA) principle. The GIPA principle aims to realize the rights of people living with HIV to participate in decision-making processes that affect their lives.<sup>20</sup>

Safe, open civic spaces are particularly critical for mobilizing the communities most affected by HIV—people living with HIV, gay, bisexual and other men who have sex with men, sex workers, transgender people, people who inject drugs and people in prisons and other closed settings, women, girls and young people—since they can often be those most affected by shrinking civic space. They may be marginalized, criminalized, vulnerable to stigma, discrimination and violence and often invisible and rendered ‘voiceless’ in societies that fail to promote and protect their rights.<sup>21</sup>

Civil society has been instrumental in placing AIDS securely on the global agenda, advocating for treatment access and sustainable funding for HIV, identifying and challenging inequalities underlying the epidemic, advocating for the reform of discriminatory and punitive laws and policies, monitoring and reporting on country progress towards targets,<sup>22</sup> and informing and influencing strategic, rights-based and evidence-informed responses to HIV. This has helped to reduce HIV-related discrimination, mobilize unprecedented financial resources, increase access to HIV prevention and treatment, and strengthen enabling legal and regulatory frameworks that protect the rights to health and well-being for the most marginalized populations.<sup>23</sup> Prominent examples

of political and vocal community action in the 1980s and 1990s reflected a range of strategic approaches available to civil society actors—such as mass mobilization and protest action, strategic litigation and the use of the media—and the importance of safe, open and enabling civic spaces to support these actions.<sup>24</sup>

Civil society has played an increasing role in donor strategic planning and funding processes, from representation on national and global structures and inclusion within country-level dialogues to supporting the design, delivery, monitoring and evaluation of community-led interventions.<sup>25</sup> Civil society is represented on global health governance structures, including on boards, committees, panels and working groups of UN entities—such as the Joint United Nations Programme on HIV/AIDS (UNAIDS) Programme Coordinating Board,<sup>26</sup> the Technical Working Group of the Global Partnership for Action to Eliminate HIV-related Stigma and Discrimination,<sup>27</sup> the Global HIV Prevention Coalition<sup>28</sup> and the United Nations Office on Drugs and Crime’s Strategic Advisory Group on HIV and Drugs<sup>29</sup>—and donor organizations, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund).<sup>30</sup>

Civil society is also represented at the national and regional level, such as within the European Commission’s Global Health Policy Forum and the African Union Commission Africa Partnership and Coordination Forum on AIDS, TB and Malaria.<sup>31</sup> CSOs and networks of people living with HIV and key populations have provided HIV and health services directly to affected communities at the local level, as well as worked to monitor and advance rights, reduce stigma and discrimination, and increase access to legal support services. Community-led monitoring has also been used to improve services and hold providers and decision-makers to account. CSOs have effectively reached out to marginalized communities of people living with HIV and other key populations at a scale and in ways that governments were not able to do.<sup>32</sup>

## TRENDS IN SHRINKING CIVIC SPACE

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Globally, civic space is shrinking. In 2021, CIVICUS reported that 87 percent of the world's population live in countries rated as closed, repressed or obstructed.<sup>33</sup> Freedom House reported a continuous decline in political and civil rights across the world in the 14-year period between 2005 and 2019, with increasingly complex threats across even established democracies. The threats included laws repressing rights to freedom of expression, assembly and association; the application of broader laws (such as anti-terrorism and anti-propaganda laws) to stifle voices of dissent; and limitations and control through other means such as the restrictive interpretation and enforcement of laws and policies by the judiciary and law enforcement, administrative actions, and increasingly through the use of digital technologies.<sup>34</sup> The International Center for Not-for-Profit Law (ICNL) reports that since 2016 there have been 265 legal measures impacting civic space in 91 countries. The large majority of them, 72 percent, have restricted civic space and constrained human rights defenders, democracy movements and other civil society actors, including their ability to access international funding, to challenge rights violations in national courts and to access other accountability mechanisms.<sup>35</sup>

UNDP and ICNL note that alongside legal, judicial and administrative measures, reports of extrajudicial and more direct forms of violence, harassment, unlawful arrest and intimidation—even sexual assault and murder—have also emerged.<sup>36</sup> In 2019, 357 human rights defenders were reported killed and 30 disappeared in 47 countries, including people working on the rights of minorities and indigenous peoples. Acts of this type not only directly harm the individuals involved and their families, but also have an impact on the activities of other civil society actors and lead to self-imposed censorship and disengagement from public affairs.<sup>37</sup> CIVICUS notes that other trends over the last 10 years include a global pushback on human rights, a rise in populism, nationalism and ‘anti-rights’ groups, the polarization

of human rights debates at the national level, the splintering of alliances and collaboration between civil society actors, and the rejection of the role of international human rights institutions in resolving conflicts.<sup>38</sup>

Evidence shows that the people and organizations most at risk from shrinking civic space and repression are human rights defenders; those advocating for transparency, accountability and democratic governance; and those working on politically and socially sensitive issues, including representing the interests of marginalized and vulnerable populations, sexual and reproductive health and rights and the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people.<sup>39</sup> Pushbacks, not just from the state but from organized anti-rights groups, have reversed some of the key gains of the women’s rights and LGBTI rights movements in recent years.<sup>40</sup>

Digital technologies have presented an opportunity to promote and protect civic space, allowing online discussion, debate and organizing, but also posing a wide range of new risks and threats to fundamental rights to freedom of expression, peaceful assembly and association. These risks have been recognized at the highest levels. Various resolutions of the Human Rights Council, comments of the Human Rights Committee and reports by Special Rapporteurs draw attention to concerns about digital technology’s impact on human rights, such as its use to censor, threaten, surveil and harass civil society.<sup>41</sup> At the same time, there is widespread recognition that digital transformation is critical to support and enable sustainable development, including within ‘Our Common Agenda’<sup>42</sup> and UNDP’s Strategic Plan 2022–2025.<sup>43</sup> Most recently, Human Rights Council Resolution 48 recognizes both the benefits and dangers of digital technologies to the right to privacy, calling on Member States to respect and protect the right to privacy, including through reviewing laws, practices and procedures regarding

surveillance, data collection and profiling in relation to new and emerging digital technologies.<sup>44</sup>

Civil society actors are increasingly restricted from being able to freely organize and operate through the use of bureaucracy—such as complicated and expensive registration requirements, burdensome reporting, and limits on access to and the use of funding. The constitutionality of funding restrictions that limit the ability of organizations to advocate against government policy or to speak out on certain issues has been examined by courts, particularly because of the impact on freedom of expression and civic participation.<sup>45</sup>

More recently, overly broad emergency laws and regulations in response to the COVID-19 pandemic in many countries were often used to further restrain civic space.<sup>46</sup> The pandemic exacerbated the vulnerability of the least protected and most marginalized.<sup>47</sup> Evidence shows that existing vulnerability to intersecting forms of discrimination, vulnerability to the virus itself and to the negative impact of measures to control it disproportionately impacted marginalized populations<sup>48</sup> such as people living with HIV and those most affected, including women, key populations, young people, migrants and refugees, and the organizations that represent their interests.<sup>49</sup>

## Shrinking civic space: Implications for civil society engagement in the HIV response

Shrinking civic space threatens opportunities for civil society organizations and networks of people living with HIV and key populations to engage in HIV responses,<sup>50</sup> whether through restrictive laws, policies and administrative procedures, harsh law enforcement practices or the misuse of digital technologies. HIV CSOs and networks that represent, advocate for and provide services to key populations often go ‘underground’ in fear of repressive criminal laws and police harassment. Punitive legal contexts exacerbate barriers to public participation, legitimizing restrictions and repression of HIV-related civil society actors and closing avenues for redress for rights violations.

### **UNAIDS data indicate that:**

- » Punitive laws and inadequate access to justice continue to undermine HIV responses with 134 countries criminalizing HIV exposure, non-disclosure and/or transmission; 20 countries criminalizing and/or prosecuting transgender persons; 68 countries criminalizing same-sex sexual activity; 153 countries criminalizing some aspect of sex work; and 115 criminalizing the use or possession of limited amounts of drugs for personal use.<sup>51, 52</sup>
- » People who use drugs report not being able to participate in policy development related to their health in 77 countries.<sup>53</sup>
- » In 66 countries, there are no mechanisms to allow funding for community-led responses to HIV; 22 countries reported laws that restrict access to funding from international donors.<sup>54</sup>
- » Civil society actors in 30 countries report various barriers to civic space, including restrictions on providing services to key populations, restrictions on registration and cumbersome reporting restrictions.<sup>55</sup>

Laws and policies restricting rights to freedom of expression, information, association, assembly and public participation affect civic space for a wide range of civil society actors. Where populations are criminalized in national law, this creates a further barrier. Laws regulating the formation of lawful organizations and those relating to anti-terrorism, morality and public order, pornography, anti-propaganda and censorship laws can be used to stifle civil society expression and curtail its ability to operate. A recent case study by ICNL highlighted how laws criminalizing key populations are used to justify various restrictions on civil society organizations which respond to HIV and represent the interests of affected populations, blocking their ability to carry out day-to-day activities such as advertising their organizations, opening bank accounts, undertaking public activities and even posting signs over their front doors.<sup>56</sup>

Contracting and administrative requirements create further barriers, such as by entailing excessive costs,

time-consuming procedures and documentation, limiting eligibility for social contracting and restricting access to funding.<sup>57</sup> A national HIV network in Africa reported how national laws discouraged the registration of CSOs by setting out requirements for re-registration every three years, extensive documentary proof of prior, significant work, a three-year plan, financing from donors and documentation of registered fixed assets.<sup>58</sup> The use of anti-money laundering laws and administrative procedures to freeze bank accounts and limit the ability of organizations to receive, transfer and access funds from certain sources (e.g. international funding) are reportedly used to demand information, legitimize scrutiny of operations and even block HIV-related organizations from operating.

In several jurisdictions, law enforcement practices negatively impact CSOs working on HIV and the communities they serve, silencing them and driving populations underground and out of reach. Examples of these practices include the use of police and security forces to disperse protests, arbitrary arrests and harassment, blockades and checkpoints to monitor movement, raids and even violence and enforced disappearances.<sup>59</sup> Transgender activists and organizations in politically, legally and socially constrained environments have reported instances of violence and rights violations from law enforcers, security forces and local authorities.<sup>60</sup> During COVID-19 lockdowns, reports of the opportunistic and disproportionate use of law enforcement, as well as judicial prosecutions, against key populations show the misuse of broad, restrictive regulations to enforce crackdowns on marginalized populations.<sup>61</sup> Moreover, narrow provisions and interpretations of national laws on *locus standi*—the legal principle regarding who has a right to appear before a court on a particular matter—restrict civil society actors from being able to challenge restrictive laws and practices on behalf of affected populations, as they are not considered to have the legal standing to challenge rights violations unless they are personally affected.<sup>62</sup>

Digital technologies have provided organizations and networks of people living with HIV and key

populations the opportunity to communicate and mobilize both within and across regions and countries. However, the digital divide—limited access to digital technologies and internet for certain groups—mirrors and reinforces existing inequalities and vulnerabilities. The proportion of women using the internet is 58 percent but there are still 234 million fewer women than men accessing the internet in low- and middle-income countries.<sup>63</sup> The gender digital divide has implications for the capacity of CSOs working on HIV to effectively reach women and girls. COVID-19 lockdowns and restrictions on movement have reinforced these inequalities, limiting access to more traditional avenues for HIV and health services, and have impacted CSOs' ability to reach affected populations.<sup>64</sup> A Southern African Development Community (SADC) report on the impact of COVID-19 on adolescents showed marked disparities in access to digital technologies, including along gender lines, and how this has limited access to health information and sexual and reproductive health services during COVID-19.<sup>65</sup>

These same technological innovations can be used to infringe rights to freedom of expression, assembly, association, privacy, equality and non-discrimination<sup>66</sup> and to censor civil society, especially organizations working with vulnerable or criminalized populations. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has reported on the arbitrary blocking of online content, surveillance using digital tools, network disruptions, cyberattacks and the criminalization of online activities,<sup>67</sup> and has noted disproportionate risks for women and LGBTI persons. There are reports of governments' surveillance and arrest of LGBTI activists through the use of social media platforms,<sup>68</sup> and online attacks on LGBTI people and moral criticism from political leaders and the broader public for expressing opinions on social media relating to LGBTI rights.<sup>69</sup> Similarly, journalists reporting on these and other politically sensitive issues can experience attacks on freedom of speech, disinformation, threats, arrest under vague criminal laws, violence and murder.<sup>70</sup>

# RECOMMENDATIONS ON PROTECTING AND PROMOTING CIVIC SPACE

As noted above, the 2030 Agenda, the 2021 Political Declaration, the Global AIDS Strategy and other international frameworks and commitments can be leveraged to create significant opportunities for the protection and promotion of civic space. The following are recommendations for countries to achieve safe, open and enabling civic space for the HIV response:

## Enabling legal, regulatory and policy frameworks

An enabling environment is recognized as a fundamental element of a safe, open and inclusive civic space. Efforts are needed to create enabling legal, regulatory and policy frameworks, where laws and the way they are interpreted and enforced guarantee and realize the rights of HIV-related civil society actors. Critical elements include safeguarding the right to freedom of expression, peaceful assembly and association, the right to privacy, and provisions that promote the formation, funding, contracting, operation and involvement of people living with HIV, key and vulnerable populations and the CSOs representing their interests in national HIV responses.

Legal and policy limitations on freedoms of expression, association and assembly, including those required during a state of emergency, should be reasonable and legitimate, in line with international human rights law. An enabling environment guarantees equality and non-discrimination to people living with HIV and other key populations, women and young people, rather than criminalizing or punishing them. Inclusive and safe civic space is promoted where laws and regulations are accompanied by monitoring and accountability mechanisms, such as national human rights institutions, and where civil society actors whose rights have been violated have access to lawmakers and law-making processes, and to independent tribunals, courts and other mechanisms staffed by sensitized judicial officers, alongside affordable and accessible legal support.

### Recommendation 1

States should create an enabling legal, policy and regulatory framework, consistent with international human rights norms, to support safe, open and inclusive civic space for the formation, operation, funding and engagement of CSOs and networks working for and with people living with HIV, other key populations, women and young people, for rights-based advocacy and service delivery, and community-led monitoring and health.

States should remove punitive and discriminatory laws affecting individuals and their organizations, in line with the 10-10-10 targets of the 2021 Political Declaration and the recommendations of the independent Global Commission on HIV and the Law.

## Sustainable, non-restrictive funding

Sustainable, non-restrictive and flexible funding is critical for investing in community capacity and enabling HIV-related civil society networks and organizations to lead efforts and engage meaningfully in the HIV response and to respond to human rights crises. This requires:

- » Ensuring adequate funding, financial—including tax—incentives and contracting and financing models, which are sensitive to supporting civil society actors, to:
  - Raise funding from national and international sources.
  - Undertake a range of activities from advocacy to service delivery and from challenging to working in partnership with government.
- » Providing reasonable wages for community-led work.
- » Building capacity, organizational and leadership development and technical support.

Donors and development partners working alongside governments should invest in and strengthen community capacity and support sustainable financing of community-led responses. For instance, the Global Fund's provision of technical assistance has helped increase the meaningful engagement of civil society and communities in their funding cycles.<sup>71</sup> Another example is the Robert Carr Fund for Civil Society Networks which invests in global and regional networks led by and serving inadequately served populations.<sup>72</sup>

UNDP's work in supporting countries on enabling environments and social contracting has shown success in extending funding to CSOs to provide HIV-related services.<sup>73</sup> For example, in Panama, the Ministry of Health, with the support of UNDP and the Global Fund, established a mechanism to strengthen public financing of CSOs, initially for the provision of HIV and TB services. This mechanism allowed CSOs to rapidly start providing services in COVID-19 prevention to vulnerable populations in the first year of the pandemic. In Armenia, the Ministry of Health and the National AIDS Centre contracted an NGO to implement HIV prevention resulting in an 800 percent increase in clients being tested in less than three years.<sup>74</sup>

## Recommendation 2

States should support access to adequate, sustainable, transparent and non-restrictive funding and contracting (including social contracting). Financing models and mechanisms should be conducive to fund community-led responses to meet the 2025 targets of the 2021 Political Declaration on HIV and AIDS for funding on social enablers ensuring that:

- » 11 percent of global AIDS resources are invested in societal enabler programmes, including initiatives to reduce stigma, discrimination, gender inequality and violence; repeal punitive and discriminatory laws; and support community mobilization, community-led monitoring, outreach and communication.
- » 30 percent of testing and treatment services are delivered by community-led organizations.

- » 60 percent of social enabler programmes are delivered by community-led organizations.
- » 80 percent of prevention programmes for key populations are delivered by community-led organizations.

## Accountability and access to justice

Fundamental to safe, open and inclusive civic spaces are efforts to strengthen accountability for protecting and promoting enabling environments, meeting targets for community service delivery and ensuring access to justice where rights are violated. Providing redress for violations and human rights crises at the local, national, regional and international level is critical to fostering these safe, inclusive spaces for community participation.

State duties include ensuring legal frameworks that facilitate systematic engagement between CSOs and parliamentarians and increasing accountability for law and policy reform. Equally, an enabling environment requires:

- » Access to the courts, including for public interest litigants.
- » Effective, accessible, independent, sensitized and functional law enforcement and adjudication systems.
- » Access to legal support services and crisis response mechanisms, including through civil society organizations' local-level human rights defenders.
- » Pro bono legal support and state sponsored legal aid.
- » Strong independent monitoring mechanisms to track violations and propose reforms.

Within the court system, a sensitized, independent judiciary is an important safeguard of rights, supporting progressive interpretations of broadly restrictive laws through jurisprudence and influencing public perceptions of the rights of marginalized populations. Other monitoring and accountability mechanisms should also be established to check the use of excessive force

against civil society actors, particularly in the case of HIV where populations may be criminalized in law or practice and already vulnerable to police abuse, and to ensure the safety of journalists, media and human rights defenders.<sup>75</sup>

National human rights institutions can also advance the rights of people living with HIV and other key populations, improve access to sexual and reproductive health and rights, and strengthen national HIV responses by using their investigative and educational mandates.<sup>76</sup>

The UN further recognizes that HIV-related civil society actors should also have the freedom to engage with regional and international human rights bodies and mechanisms without reprisals,<sup>77</sup> to seek redress, provide evidence of community-led monitoring and documentation, participate in review processes and report on progress in advancing the rights and access to health and well-being for affected communities.

### **Recommendation 3**

States should strengthen monitoring of and accountability for creating safe, open and enabling civic spaces towards meeting the global AIDS targets. They should strengthen access to justice for human rights violations and undue restrictions on the formation, organization and operation of organizations and networks of people living with HIV and other key and vulnerable populations at the national, regional and international level, including through:

- » Supporting community-led monitoring of protection and promotion of human rights and access to quality health care services.
- » Increasing legal literacy among HIV-related civil society organizations and networks.
- » Strengthening access to legal support services, including human rights defenders for emergency responses, legal aid and pro bono legal support.
- » Providing access to a range of monitoring and accountability mechanisms, including independent police monitoring mechanisms

and fully resourced national human rights institutions.

- » Sensitizing judicial officers, law enforcement and parliamentarians on the importance of safe, open and enabling civic space, and protecting the rights of civil society.

## **Community-led monitoring and research**

The history of civil society engagement in the HIV response highlights the value of enabling communities to bring evidence of their lived realities to policy and decision-making. Data collection is critical to support this work, allowing civil society to inform public dialogue with evidence, support appropriate strategies and responses based on such evidence, and advocate for change. Monitoring, data collection and documentation also provide an important ‘early warning’ mechanism, alerting national, regional and international actors to and potentially preventing human rights crises. Civil society actors may need specifically targeted capacity strengthening, technical assistance and funding to collect quality data. For instance, the People Living with HIV Stigma Index studies are implemented through support to networks of people living with HIV to lead and carry out this work. The studies have provided concrete evidence that shapes understanding of the nature and extent of HIV-related stigma and discrimination, influencing policy and programmes.<sup>78</sup>

Key declarations and strategies describe the importance of community-led monitoring and research in the global response to HIV:

- » The 2021 Political Declaration commits Member States to establishing and supporting community and participatory monitoring systems, so that community-generated data can be used to protect the rights of all populations, especially people living with HIV and other people still being left behind.<sup>79</sup>
- » The Global AIDS Strategy 2021–2026 calls on Member States to “support community-led monitoring and research and ensure that community-generated data is used to tailor

responses to the needs of people living with HIV and key populations, including young key populations.”<sup>80</sup>

- » Enhanced community-led monitoring is seen as a critical intervention in Global Fund–funded comprehensive programmatic responses for effective HIV responses related to human rights and gender.<sup>81</sup>
- » The 2022 Five-Year Strategy of the United States President’s Emergency Plan for AIDS Relief (PEPFAR) commits to supporting countries to strengthen an enabling environment for improved health and well-being by addressing critical policy, programmatic, social and structural barriers and inequities in service access, uptake and continuity.<sup>82</sup>

Creating the conditions to enable CSOs and networks of people living with HIV, other key populations, women and young people to carry out community-led monitoring, documentation and research is critical to effective HIV responses, as is facilitating them to use this data and evidence to report on rights violations, respond to human rights crises and inform HIV-related strategies, policies and plans at the national, regional and international level.

#### **Recommendation 4**

States should support the use of data and evidence from community-led monitoring and research by organizations and networks of people living with HIV, key and other vulnerable populations, including through funding and capacity strengthening, to:

- » Monitor rights violations and access to services.
- » Provide evidence of the impact of restrictive laws and rights violations.
- » Provide early warnings for impending human rights crises linked to emergency response initiatives.
- » Advocate for the inclusion of such data and evidence in research that shapes policies and programmes at the national, regional and international level.

## **Institutionalizing community engagement and meaningful participation**

The 2021 Political Declaration commits Member States to the Greater Involvement of People Living with HIV, and to empower and include networks and communities of people living with, at risk of and affected by HIV in decision-making, planning, implementing and monitoring.<sup>83</sup> An external evaluation of the independent Global Commission on HIV and the Law identified meaningful participation of civil society and the elevation of the experiences and voices of communities of people living with HIV and key populations as critical factors for countries to follow up on its recommendations.<sup>84</sup> Additionally, a growing body of evidence shows that creating an environment that allows for systematic engagement and alliances between CSOs and parliaments has been instrumental in supporting positive law and policy reform for key populations in jurisdictions as diverse as Angola, Gabon, Portugal, Serbia, Thailand and Uruguay.<sup>85</sup>

Beyond creating the legal, regulatory, policy, administrative and financial conditions for meaningful civil society participation, its institutionalization is needed within organizational structures, processes and programmes. Models by donors including the Global Fund and PEPFAR are instructive, requiring community participation, community-led initiatives, inclusion of human rights safeguards within funding agreements and community representation on boards and within strategic planning processes.<sup>86</sup> The UN Secretary-General in his Call to Action on Human Rights committed to ensuring that UN Resident Coordinators and Country Teams develop partnerships with civil society organizations to contribute to an enabling civic space.<sup>87</sup> The subsequent UN-wide strategy on promoting and protecting civic space provides a range of recommended actions for UN entities, including protecting civil society actors against intimidation and reprisals associated with their engagement with the UN, and preventing of and follow-up on allegations of intimidation and reprisals.<sup>88</sup>

Institutionalizing community engagement requires specific, visible leadership at all levels and a commitment to a culture of dialogue with the most affected communities, active listening and follow-up action. It also requires decision makers to acknowledge and take action to remove the structural barriers to participation and the intersecting vulnerabilities facing people living with and vulnerable to HIV, especially in contexts where their behaviour or identity is criminalized.

### **Recommendation 5**

States should adopt specific measures to foster and institutionalize a culture of law, policy and governance that promotes the systematic and meaningful engagement of CSOs, people living with HIV and other key and vulnerable populations. States should create and strengthen structures, systems and frameworks at the subnational, national and regional level that promote safe and meaningful community engagement including through civic education, awareness raising, and support for national champions.

## **Maximizing the potential of digital technologies**

Digital technologies present opportunities for creating safe, open and inclusive civic space. This requires maximizing their positive potential, including through the expansion of unobstructed access to free, safe digital platforms which facilitate the participation of diverse populations, including those who are most marginalized and criminalized in the context of HIV. Digital technologies can provide important avenues for networks and CSOs of and for people living with HIV to engage and participate in public life, advance rights and provide information and access to services. The Special Rapporteur on the rights to freedom of peaceful assembly and of association notes State obligations in the digital age to guarantee freedom of assembly and association, “to bridge the digital divides, including the gender digital divide, and to enhance the use of information and communications technology,

in order to promote the full enjoyment of human rights for all”.<sup>89</sup>

Safe civic space requires protection against the misuse of digital technologies, ensuring that they facilitate rather than repress the voices of people living with HIV and other key populations, women and young people. Safeguards are necessary to ensure that digital technologies are not used for restricting the rights to freedom of expression, association and assembly; or to harass, silence or undertake surveillance of populations affected by HIV; and that they are used to provide access to remedies for those whose rights are violated.<sup>90</sup> In the 2021 Political Declaration on HIV and AIDS, Member States committed to enhancing “the potential of digital health technologies and innovations to advance HIV responses, the right to the enjoyment of the highest attainable standard of physical and mental health as well as service access securely and consistent with human rights obligations.”<sup>91</sup>

### **Recommendation 6**

States should ensure that digital technologies create safe and inclusive opportunities for community engagement in HIV responses, including initiatives to advance human rights, support community-led monitoring, and promote access to HIV and health information and services.

States should prohibit the use of digital technologies for surveillance and harassment of people living with HIV and other key populations, particularly populations criminalized in law, and provide remedies for unlawful restrictions of their rights.

## **Free media and channels of communication**

Beyond digital technologies, free media and channels of communication are a core component of civic space, allowing dialogue on and debate of diverging and dissident views. They provide a platform for HIV-affected communities and the organizations and networks that serve them

to disseminate information and education and encourage access to services, as well as to expose discrimination, inequity and rights violations. In contexts where laws, policies and practices restrict the media, criminalize free speech, allow for censorship and deny access to information, efforts to advance the rights of marginalized populations and debate politically sensitive issues, such as sexual and reproductive health, HIV, LGBTI rights and gender equality, are curtailed. Strategies to promote the freedom of media, maintain open communication channels and protect the safety and security of journalists are important elements of enabling safe, inclusive and open civic spaces.

### **Recommendation 7**

States should remove unjustifiable restrictions and take measures to protect the freedom of media and communication channels to promote the rights of people living with HIV and other key populations to access and disseminate information, contribute to public discourse and advance equality and human rights in the context of HIV.

Alliances among CSOs working on HIV and those working on other human rights and social justice issues remain critical for advancing advocacy on key issues such as enabling environments and reducing stigma and discrimination against people living with HIV and other key populations. UNDP-supported initiatives such as the Removing Legal Barriers Regional Initiative<sup>93</sup> and the Inclusive Governance Initiative in Africa<sup>94</sup> have fostered multi-stakeholder coalitions across Africa to engage with policymakers, while simultaneously facilitating the involvement of women's health and feminist groups in discussions on the punitive and discriminatory laws negatively impacting key populations.

Government and other stakeholders should support and facilitate alliances and collaboration between networks of people living with HIV and other key populations, CSOs working on HIV and other civil society and community actors. Effective civic engagement and meaningful participation requires government and civil society to collaborate across sectors in HIV service delivery and in the protection, promotion and fulfilment of human rights and fundamental freedoms critical to strengthening civic space.

## **Cross-movement and cross-sectoral collaboration**

In the 2021 Political Declaration, Member States committed to working with a range of stakeholders at the national, regional and international level to end inequalities, end AIDS and promote health and development. This includes CSOs, community-led organizations and networks and human rights defenders across various sectors, in collaboration with statutory institutions, UN agencies and donors. This aligns with the interconnected nature of the SDGs, which recognize the interdependence of efforts to reduce inequalities. For instance, the efforts of UNDP, the Joint United Nations Programme on HIV/AIDS and other international stakeholders to frame HIV as a development rather than a narrowly biomedical issue has been instrumental in shifting policy, planning, management and budgeting for HIV across countries and strengthening effective multisectoral responses to HIV.<sup>92</sup>

### **Recommendation 8**

States should promote collaboration among networks of people living with HIV and other key populations, CSOs working on HIV and other stakeholders from civil society, development agencies and the private sector working on broader issues of rights, health and development.

## **Promote the use of regional and international human rights systems**

The international and regional human rights systems have mechanisms for periodically reviewing the fulfilment of the human rights obligations and commitments of Member States. The reviews are based on national reports prepared by the State under review and a summary of information submitted by other stakeholders including

civil society actors and national human rights institutions.<sup>95</sup> The periodic reviews have provided HIV CSOs the opportunity to present alternative or ‘shadow’ reports to the national reports submitted by governments, which describe the status of HIV-related human rights obligations and their fulfilment.

The regional human rights systems help localize human rights norms to reflect specific concerns of the region. They may prove to be more effective in some respects than the international [United Nations] systems especially because of the similarities in States’ political, social and cultural systems, and the closer proximity of such systems to regional and national CSOs.<sup>96</sup> For instance, the engagement of HIV civil society organisations and their partners with the African Commission on Human and Peoples’ Rights led to the creation of a Committee of Experts on the Rights of People Living with HIV in 2010.<sup>97</sup> The Committee has issued several resolutions and recommendations to African Union Member States clarifying their human rights obligations in the context of HIV. Within the Inter-American Commission on Human Rights, the Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons, which became fully operational on 1 February 2014, has made several recommendations to its Member States on issues of sexual orientation, gender identity, gender expression and body diversity in the Americas.<sup>98</sup>

### **Recommendation 9**

States should promote the use of regional and international human rights systems and their special procedures by networks of people living with HIV and other key populations, CSOs working on HIV, other stakeholders from civil society, development actors and their national human rights institutions.

States should strengthen the mandate of the human rights mechanisms by implementing their recommendations including on the rights of people living with HIV and other key populations.

## CONCLUSION

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Progress so far in the HIV response highlights examples of the leadership and engagement of civil society and communities, and the vital role they have played as advocates, watchdogs and service providers. Advocacy by civil society has influenced global governance, including through United Nations General Assembly Political Declarations on HIV and AIDS. The meaningful engagement and participation of civil society remain critical. A safe, open and enabling civic space is a prerequisite for the meaningful engagement of CSOs and communities to end AIDS as a public health threat by 2030. It promotes conditions that enable civil society to be recognized in law and policy; to be empowered, resourced and protected from discrimination; and to lead effective HIV responses, including efforts to end stigma, discrimination, violence and inequalities, progress law reform, and advance the rights of people living with HIV and other key and vulnerable populations.

The commitments of the 2021 Political Declaration on HIV and AIDS, and the targets of the Global AIDS Strategy 2021–2026, especially the 10-10-10 targets on societal enablers and the 30-80-60 targets on community-led responses cannot be achieved without concerted action by all stakeholders. Governments, civil society organizations, development partners, UN entities and the private sector must scale up efforts to strengthen civic space and meaningful civil society engagement in the HIV response. The recommendations presented in this paper contribute to promoting safe, open and enabling civic space that can advance the achievement of many SDG targets, including ending the AIDS epidemic as a public health threat by 2030 and leaving no one behind.

# ANNEX I: KEY HUMAN RIGHTS PRINCIPLES UNDERPINNING SAFE, OPEN AND ENABLING CIVIC SPACES

- » The **right to freedom of association**<sup>99</sup> which includes the right of groups of individuals to form organizations and associations, choose their members, decide on their internal governance, receive and use resources and engage in collective action to express, promote, pursue or defend a lawful purpose such as the promotion and protection of human rights.<sup>100</sup>
- » The **right to freedom of expression**<sup>101</sup>—including the freedom of all individuals or institutions to express themselves freely through all channels, including through digital technologies<sup>102</sup>—and closely linked to this, the freedom to seek and receive information in the individual or public interest and to impart information and ideas.
- » The **right of peaceful assembly**<sup>103</sup> which protects the non-violent gathering of persons for expressive purposes such as public debate, criticism and collective protest, and which protects peaceful assemblies whether they take place in private, public, in person or online,<sup>104</sup> including the right to exchange views and opinions through information and communication technologies.
- » The **right to life, liberty and security of the person**<sup>105</sup> which protects those participating in public affairs from harm, including violence and detention, as a response from law enforcers.
- » The **right to freedom of thought, conscience and religion**<sup>106</sup> which is closely related to the right to freedom of expression around matters relating to beliefs, including religious beliefs.
- » The **right to privacy** (anonymity and protection of personal data)<sup>107</sup> which protects all people from arbitrary or unlawful interference

with their personal affairs or from unlawful attacks on their reputation, which are critical safeguards for human rights defenders and media professionals, among others.

- » The **right to equality and non-discrimination**<sup>108</sup> to ensure that all persons have equal rights, without discrimination, to exercise participation in public affairs.
- » Various protections in human rights law to protect the marginalized populations “most left behind”, which includes people living with HIV and other key and vulnerable populations in the context of HIV.<sup>109</sup>

These rights have been further complemented by various UN resolutions and declarations. Importantly, the UN General Assembly Declaration on Human Rights Defenders (Resolution 53/144 of 1999) emphasizes the role of individuals and civil society organizations in creating public awareness of fundamental human rights and promoting just, tolerant and inclusive societies,<sup>110</sup> and amplifies State responsibilities for creating the conditions for an enabling civic space.<sup>111</sup>

The Declaration on Human Rights Defenders specifically calls attention to UN Member State responsibilities to protect the right to freedom of opinion and expression, access to information and participation in public affairs;<sup>112</sup> the right of individuals and groups to advocate against violations of human rights and fundamental freedoms,<sup>113</sup> and the responsibility to protect freedom of assembly in various ways, enabling NGOs, associations or groups to organize, receive and use resources and communicate with each other,<sup>114</sup> as well as reinforcing the right to a remedy where these rights and fundamental freedoms are denied.<sup>115</sup>

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- 109 In addition, the International Covenant on Economic, Social and Cultural Rights also contains provisions relevant to civic space, including the right to non-discrimination (Article 2), the right to join unions (Article 8) and the right to work and education in general and the right to take part in social life (Article 15). UN General Assembly (1966). [International Covenant on Economic, Social and Cultural Rights](#) Vol. 993, p. 3. United Nations, Treaty Series.
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- 111 Ibid., Article 2.
- 112 Ibid., Articles 5, 6 and 8.
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- 114 Ibid., Articles 2 and 13.
- 115 Ibid., Articles 2 and 9.



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