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Strengthening Sexual and Reproductive Health and Rights of Young Key Populations in Law and Policy

A HANDBOOK FOR DECISION MAKERS

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Foreword

Southern African Development Community (SADC) Member States have made significant progress in improving the sexual and reproductive health of all, including reducing HIV transmission and AIDS-related deaths. But the SADC Strategy for Sexual and Reproductive Health and Rights 2019–2030 urges SADC to do more, to “unlock its human development potential, meet the Sustainable Development Goals and the targets of the African Union’s Maputo Plan of Action 2016–2030”.

Young people are in danger of being left behind. Young people and adolescents in the region face heightened sexual and reproductive health and rights challenges. In the context of HIV, it is especially young key populations such as sex workers, gay men and other men who have sex with men, transgender people, people who inject drugs, prisoners and other incarcerated people who face challenges and barriers to access to health care.

Discrimination against young key populations is widespread. It happens in their families and communities, in health facilities, in schools and in the police stations and courts where they go to seek justice. Young key populations often do not receive relevant and comprehensive sexuality education to reduce their risk. They live in countries with discriminatory age of consent laws and policies that limit their ability to give independent consent to access health care. Other laws criminalize HIV transmission, non-disclosure and exposure, same-sex sex, sex work and drug use, reducing their ability to live openly without fear.

Central to the United Nations General Assembly Special Session (UNGASS) 2021 Political Declaration on HIV and AIDS is the recognition that we need to end inequalities to end AIDS. The Declaration commits all Member States, including SADC countries, to “urgent and transformative action to end the social, economic, racial and gender inequalities, restrictive and discriminatory laws, policies and practices, stigma and multiple and intersecting forms of discrimination, including based on HIV status, and human rights violations that perpetuate the global AIDS epidemic”, in order to contribute towards the achievement of the 2030 Agenda for Sustainable Development’s target of ending AIDS. UNDP’s Strategic Plan and HIV and Health Strategy emphasize the importance of reducing inequalities and social exclusion that drive HIV and poor health, as well as the promotion of effective and inclusive governance for health..

This Handbook provides practical guidance to decision makers to support efforts to end inequalities. It identifies some of the key barriers to sexual and reproductive health and rights for young key populations. It suggests ways in which law- and policymakers across government, in the health, justice, gender and youth sectors, can create much-needed protective laws, policies, strategies and programmes for young key populations.

Most importantly, it emphasizes how to involve young key populations themselves in all efforts to advance sexual and reproductive health and rights for all, leaving no one behind.

Jeff O’Malley

Manager – UNDP Hub on LGBTI+ and Key Populations

Acronyms and abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AIDS	Acquired Immunodeficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CSE	Comprehensive sexuality education
CSO	Civil society organization
ESA	Eastern and Southern Africa
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
RIA	Regulatory Impact Assessment
SADC	Southern African Development Community
SALC	Southern Africa Litigation Centre
SALRC	South African Law Reform Commission
SOGI	Sexual orientation and gender identity
SOPs	Standard operating procedures
SRH	Sexual and reproductive health
SRHR	Sexual and reproductive health and rights
STI	Sexually transmitted infection
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNGASS	United Nations General Assembly Special Session
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
WHO	World Health Organization



1.

Introduction to the Handbook

1.1 Introduction

The 2030 Agenda for Sustainable Development commits countries across the world to end poverty, hunger, AIDS and gender inequality, to promote peaceful and inclusive societies that advance the development of all people, prioritizing those left furthest behind.¹ Adolescents and young people from key populations are at significant risk of HIV exposure, sexually transmitted infections (STIs) and other sexual and reproductive health (SRH) problems—higher than that of their older key population peers²—and need to be prioritized in national efforts to end AIDS. UNDP’s HIV and Health Strategy 2022-2025: Connecting the Dots,³ guided by the 2030 Agenda for Sustainable Development and UNDP’s Strategic Plan 2022-2025,⁴ aims to reduce the inequalities and exclusion that make young key populations, and other populations left behind, at risk of HIV and poor health.

The United Nations General Assembly Special Session (UNGASS) 2021 ‘Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030’⁵ notes the disproportionate impact of HIV on young people, who represent 16 percent of the global population but account for almost a third of new HIV infections. The Declaration also recognizes that key populations such as people living with HIV, men who have sex with men, people who inject drugs, female sex workers, transgender people and people in prisons are more likely to be exposed to HIV or to transmit it.⁶

In Southern Africa, young people aged 10–24 make up over 30 percent of the population, yet a large proportion—particularly young key populations—continue to face heightened SRH risks and vulnerabilities, including to HIV and STIs, and experience barriers to adequate access to their sexual and reproductive health and rights (SRHR). Demographic trends indicate population growth among young people; this threatens the risk of further increases in HIV infection and associated SRH risks in the future.⁷

Who are young key populations?

UNAIDS considers five main key population groups to be particularly vulnerable to HIV and to frequently lack adequate access to services. This may be due to social and structural drivers and inequalities, including stigma, discrimination, and punitive and discriminatory laws. The main key populations are:

- gay men and other men who have sex with men;
- sex workers;
- transgender people;
- people who inject drugs; and
- prisoners and other incarcerated people.

1 United Nations (2015) *The 2030 Agenda for Sustainable Development*. Available at <https://sdgs.un.org/2030agenda>.

2 United Nations Development Programme (2018) *Achieving health equity for young key populations crucial to ending HIV in Southern Africa*. Available at <https://www.undp.org/africa/news/achieving-health-equity-young-key-populations-crucial-ending-hiv-southern-africa>.

3 World Health Organization (2016) *Consolidated Guidelines on HIV prevention, diagnosis, treatment and care for key populations*. Geneva: WHO, p. 7. Available at <https://apps.who.int/iris/bitstream/handle/10665/246200/9789241511124-eng.pdf>.

4 UNDP (2022) *HIV and Health Strategy 2022-2025: Connecting the Dots: Towards a More Equitable, Healthier and Sustainable Future*. New York: UNDP. Available at <https://www.undp.org/publications/connecting-dots-towards-more-equitable-healthier-and-sustainable-future-undp-hiv-and-health-strategy-2022-2025>.

5 UNDP (2022) *Strategic Plan 2022-2025*. New York: UNDP. Available at <https://strategicplan.undp.org>.

6 United Nations General Assembly (2021) *Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030*. New York: United Nations. Available at https://www.unaids.org/en/resources/documents/2021/2021_political-declaration-on-hiv-and-aids.

7 United Nations General Assembly (2021) *Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030*. New York: United Nations, paras 25 and 32.

7 Govender, K. and Poku, N.K. (2020) *Preventing HIV among young people in Southern and East Africa*. London: Routledge. Available at <https://www.taylorfrancis.com/books/oa-edit/10.4324/9780429462818/preventing-hiv-among-young-people-southern-eastern-africa-kaymarlin-govender-nana-poku>.

Globally, UNAIDS reported that key populations and their sexual partners (all age groups) accounted for 55 percent of new HIV infections in 2022.⁸ Young people from key populations are especially vulnerable in contexts marked by stigma, discrimination and harassment, punitive laws and social taboos.⁹ Studies consistently demonstrate that young key populations are even more vulnerable than older cohorts to STIs, including HIV, and other SRH concerns.¹⁰ For instance, a 2022 global study reported that HIV prevalence among men who have sex with men and female sex workers under the age of 25 exceeded 20 percent in reporting countries.¹¹ Around 70 percent of new HIV infections among males aged 15–24 years are estimated to have occurred among men who have sex with men, trans men and male sex workers globally, and 25 percent of new HIV infections among adolescent and young females were among female sex workers and trans women.¹²

Around 54 percent of all people living with HIV in the world live in Eastern and Southern Africa (ESA).¹³ Although there is limited specific data on HIV infection and SRH service coverage among young key populations in ESA, available research reflects the vulnerability of both young people, as well as key populations to HIV, STIs and other sexual and reproductive health concerns, with intersectional vulnerabilities based on their young age and their identification with a key population group.

For instance, according to 2022 estimates, key populations and their partners account for a significant 23 percent all new infections in the region. There are signs of decreasing proportions of new HIV infections amongst sex workers and their clients, but not amongst men who have sex with men and other key subpopulations since 2010.¹⁴ Additionally, data on young people shows that 220,000 young people aged 15–24 years in ESA were newly infected with HIV in 2021; 37 percent of the total new infections amongst adults aged 15 and over. Young women in the region accounted for 77 percent of these new infections; they are three times more likely to become infected with HIV than young men aged 15 to 24 years.¹⁵ Research indicates that transactional sex—alongside biological susceptibility and poor access to health care—may be among the key behavioural practices contributing to the vulnerability of young women in sub-Saharan Africa.¹⁶ A study in Mozambique showed that young key populations reported lower perception of HIV risk and HIV testing uptake compared to adult key populations.¹⁷

The heightened vulnerability to HIV among young key populations is driven by various factors, including widespread discrimination, stigma and violence, and laws criminalizing the conduct and identity of young key populations. This, combined with the particular vulnerabilities of youth, such as power imbalances in relationships, alienation from family and friends, inadequate access to high-quality SRH information and services, and insufficient comprehensive sexuality education (CSE), exacerbates risks.¹⁸

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- 8 Korenromp, E.L., Sabin, K., Stover, J., Brown, T., Johnson, L.F., Martin-Hughes, R., Ten Brink, D., Teng, Y., Stevens, O., Silhol, R., Arias-Garcia, S., Kimani, J., Glaubius, R., Vickerman, P. and Mahy, M. (2024) “New HIV Infections Among Key Populations and Their Partners in 2010 and 2022, by World Region: A Multisources Estimation.” *J of Acquired Immune Deficiency Syndromes* 95(1S): e34-e45. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10769164/>
 - 9 Joint United Nations Programme on HIV/AIDS (2023) *The path that ends AIDS: 2023 UNAIDS Global AIDS update*, p. 82. Available at https://www.unaids.org/sites/default/files/media_asset/2023-unaids-global-aids-update_en.pdf.
 - 10 Baggaley, R., Armstrong, A., Dodd, Z., Ngoksin, E. and Krug, A. (2015) “Young key populations and HIV: a special emphasis and consideration in the new WHO Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations.” *J Int AIDS Soc.* 2015 Feb 26;18(2 Suppl 1):19438. doi: 10.7448/IAS.18.2.19438. PMID: 25724509; PMCID: PMC4344541, p. 85. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4344541/>.
 - 11 Johnston, L.G., Nguyen, V.K., Balakrishnan S, Lwamba C, Khalifa A, Sabin K (2022) “Deriving and interpreting population size estimates for adolescent and young key populations at higher risk of HIV transmission: Men who have sex with men and females who sell sex.” *PLoS ONE* 17(9): e0269780. Available at <https://doi.org/10.1371/journal.pone.0269780>.
 - 12 Johnston, L.G., Nguyen, V.K., Balakrishnan, S., Lwamba, C., Khalifa, A. and Sabin, K. (2022) “Deriving and interpreting population size estimates for adolescent and young key populations at higher risk of HIV transmission: Men who have sex with men and females who sell sex.”
 - 13 UNAIDS (2022) *In Danger: UNAIDS Global AIDS Update 2022*. Geneva: UNAIDS, p. 258. Available at <https://www.unaids.org/en/resources/documents/2022/in-danger-global-aids-update>.
 - 14 Korenromp, E.L., Sabin, K., Stover, J., Brown, T., Johnson, L.F., Martin-Hughes, R., Ten Brink, D., Teng, Y., Stevens, O., Silhol, R., Arias-Garcia, S., Kimani, J., Glaubius, R., Vickerman, P. and Mahy, M. (2024) “New HIV Infections Among Key Populations and Their Partners in 2010 and 2022, by World Region: A Multisources Estimation.” *J of Acquired Immune Deficiency Syndromes* 95(1S): e34-e45.
 - 15 UNAIDS (2022) Regional Overview: Eastern and Southern Africa 2022. Available at <https://rstes.unaids.org/esa-data>.
 - 16 UNAIDS (2018) *Transactional sex and HIV risk: from analysis to action*. Geneva: UNAIDS and STRIVE, p. 6. Available at https://www.unaids.org/sites/default/files/media_asset/transactional-sex-and-hiv-risk_en.pdf.
 - 17 Boothe, M.A.S., Semá Baltazar, C., Sathane, I., Raymond, H.F., Fazito, E., Temmerman, M. et al. (2021) “Young key populations left behind: The necessity for a targeted response in Mozambique.” *PLoS ONE* 16(12): e0261943. Available at <https://doi.org/10.1371/journal.pone.0261943>.
 - 18 UNDP (2022) *The Southern Africa Young Key Populations Inclusion Initiative*. Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-09/undp-SAYKPII-project-brief.pdf>.

Young people are particularly vulnerable at the early stages of their development and during the transition from childhood to adulthood, due to physical, physiological, sociological and social changes, as well as economic, cultural, social and legal/normative barriers.¹⁹ In particular, then, young key populations face intersecting vulnerabilities and additional legal and policy barriers to access to HIV and SRH services.

It is critical to reach women and girls and men and boys both in and out of school with CSE, and sexual and reproductive health services.²⁰ Survey data from sub-Saharan Africa (2015–2020) indicated that only 37.6 percent of youth (aged 15 to 24 years) had comprehensive knowledge about HIV.²¹ The WHO has also noted how young key populations receive inadequate sexuality information and education, leaving them vulnerable to coercion, abuse and exploitation and to unintended pregnancy and STIs, including HIV.²²

Gender-based and sexual violence remains a critical concern in ESA, contributing to poor SRH.²³ For many adolescents, first sexual intercourse results from coercion or violence, with the likelihood of first sex being coerced being higher when it occurs at young ages (e.g. 28–62 percent of girls who had first intercourse below 12 years of age in three sub-Saharan African countries).²⁴ Women, especially young women from key populations, including females who use drugs, female sex workers and transgender women, experience particularly high rates of physical, sexual and psychological abuse. Reported rates of violence against sex workers and transgender women are high.²⁵

This Handbook looks at key social and structural barriers, including stigma, discrimination, gender inequality and violence; punitive laws that criminalize same-sex sex, sex work and drug use; and discriminatory age of consent laws and harsh law enforcement practices that place young people, particularly young key populations, at higher risk and block their access to appropriate SRH information, prevention, treatment and care. It recommends practical steps that law- and policymakers can take to review punitive and discriminatory laws and policies, remove stigma and discrimination, increase redress for rights violations and promote unfettered access to quality SRH care.

1.2 Purpose of the Handbook

The primary purpose and target of the Handbook is to:

- provide broad, practical guidance to decision makers in four key sectors (health, justice, gender and youth) on norms and standards for promoting the inclusion of the SRHR of young key populations in laws, policies, strategies, plans and decision-making processes, to advance the health, well-being and development of all people, leaving no one behind, in furthering the 2030 Agenda for Sustainable Development; and
- set out key principles and promising practices for inclusion of young key populations, using international and regional human rights commitments and framework documents as a benchmark, for law- and policymakers within the executive, senior civil servants and other important decision makers, for adaptation to country-level contexts, frameworks and priorities.

19 FHI (2010) *Young People Most At Risk of HIV*. New Triangle Park, NC: FHI. Available at https://data.unaids.org/pub/basedocument/2010/2010_yanmar_en.pdf.

20 United Nations Population Fund (2024) Comprehensive Sexuality Education. Available at <https://esaro.unfpa.org/en/topics/comprehensive-sexuality-education>; UNAIDS (2023) *The path that ends AIDS: 2023 UNAIDS Global AIDS update*, p. 54.

21 UNAIDS (2022) *In Danger: UNAIDS Global AIDS Update 2022*, p. 116

22 WHO (2016) *Consolidated Guidelines on HIV prevention, diagnosis, treatment and care for key populations*. Geneva: WHO, p. 96.

23 UNDP (2023) *Accelerating evidence-informed advocacy and policy-making efforts to eliminate violence against women and girls and harmful practices in Africa*. New York: UNDP. Available at <https://www.undp.org/africa/publications/accelerating-evidence-informed-advocacy-and-policy-making-efforts-eliminate-violence-against-women-and-girls-and-harmful>.

24 Starrs, A., Ezeh, A.C., Barker, G., Basu, A., Bertrand, J.T., Blum, R., et al. (2018) “Accelerate progress—sexual and reproductive health and rights for all: Report of the Guttman–Lancet Commission” *The Lancet* 391(10140), p. 2642-2692. Available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)30293-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)30293-9/fulltext).

25 WHO (2016) *Consolidated Guidelines*, p. 10.

The Handbook may also be useful for other secondary stakeholders and purposes, such as to:

- support and inform country- and regional-level advocacy and action by civil society organizations (CSOs), key population organizations and networks and other activists;
- guide Members of Parliament and other bodies and individuals with the capacity to support and advise on lawmaking, such as law reform commissions, national human rights institutions and technical experts; and
- provide a benchmark for evaluating and/or holding countries to account for inclusive laws, policies and processes.

1.3 What does the Handbook contain?

- This introductory Section 1 sets out the background to and the purpose, format and use of the Handbook.
- Section 2 provides an overview of how stigma, discrimination, violence and gender inequality in law, policy and practice impact on young key populations in the region, affecting their access to SRHR and their health, well-being and development in the countries of the Southern African Development Community (SADC).
- Section 3 sets out key principles for promoting rights-based, inclusive laws, policies, strategies and processes to protect, respect, promote and fulfil the SRHR of young key populations.
- Section 4 contains sector-specific guidance, with a focus on practical approaches for addressing select, priority issues that can be addressed in the health, justice, youth and gender sectors, including examples, case studies, checklists and resources.

Key take-away messages

- Young key populations are at significant risk of exposure to HIV and STIs and other SRH problems, with research citing risk higher than that of their older key population peers.
- ESA remains the region most heavily affected by HIV, accounting for 54 percent of all people living with HIV.
- Key populations and their partners account for a significant 23 percent all new infections in the region in 2022.
- Data on young people shows that 220,000 young people aged 15-24 years in ESA were newly infected with HIV in 2021; 37 percent of the total new infections amongst adults aged 15 and over.
- Young people lack adequate access to quality and age-appropriate CSE, leaving them vulnerable to coercion, abuse and exploitation and to unintended pregnancy and STIs, including HIV.
- This Handbook recommends practical steps that law- and policymakers can take to review punitive and discriminatory laws and policies, remove stigma and discrimination, increase redress for rights violations and promote unfettered access to quality SRH care.

2.

**Priority SRHR issues affecting
young key populations in
SADC countries**

This section sets out some of the priority barriers to access to SRHR in law, policy and practice that affect young key populations in SADC countries, including:

- stigma and discrimination in health care settings;
- lack of access to CSE;
- age of consent laws;
- criminalization of HIV transmission, non-disclosure and exposure;
- criminalization of same-sex sex, sex work and drug use;
- violence, including sexual and gender-based violence; and
- lack of data on young key populations.

What are sexual and reproductive health and rights?

The International Conference on Population and Development Programme of Action defines sexual and reproductive health as “a state of physical, emotional, mental and social well-being in relation to all aspects of sexuality and reproduction”, which “implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.”

Sexual and reproductive rights are based on a range of human rights already recognized in international human rights and other consensus documents,²⁶ such as the rights to the highest attainable standard of physical and mental health,²⁷ and the right to life, liberty and security of the person and privacy.²⁸ The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination Against Women recognize that the right to health includes sexual and reproductive health.

Achievement of SRH relies on the realization of sexual and reproductive rights, which are based on the human rights of all individuals to:

- have their bodily integrity, privacy and personal autonomy respected;
- freely define their own sexuality, including sexual orientation, gender identity and gender expression;
- decide whether and when to be sexually active;
- choose their sexual partners;
- have safe and pleasurable sexual experiences;
- decide whether, when and by what means to have a child or children, and how many children to have; And
- have access over their lifetimes to the information, resources, services and support necessary to achieve all the above, free from discrimination, coercion, exploitation.

26 E.g. the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.

27 Article 12, International Covenant on Economic, Social and Cultural Rights.

28 Articles 6, 9 and 17, International Covenant on Civil and Political Rights.

2.1 What are the barriers to SRHR for young key populations in SADC countries?

Key populations continue to experience stigma, discrimination, violence and denial of their rights in laws, policies and practices, creating various structural and cultural barriers to achieving their SRHR in SADC countries.

According to the WHO, adolescents from key populations may face even greater stigma, discrimination and violence than that faced by older people from key populations.²⁹ For example, age of consent laws make it difficult or impossible for young people to access appropriate health care services, which makes them more vulnerable to HIV and STIs.

While further research is still needed, stigma, discrimination, gender inequality and violence against key populations are being increasingly documented in SADC, including within the health care sector. Some of the key issues will be described in the following section.

2.2 Stigma and discrimination in health care settings

The 2020 UNAIDS report ‘Evidence for eliminating HIV-related stigma and discrimination’³⁰ documents experiences of stigma and discrimination, including within health care, against key populations, including young key populations. This takes place regardless of their HIV status, which highlights the intersecting vulnerabilities they face. For instance, a study in South Africa and Zambia found that the majority of health workers interviewed held negative attitudes towards key populations. Research in Botswana, Malawi and Namibia found that men who have sex with men were over six times as likely to be refused services than heterosexual people, and twice as likely to be afraid to seek health care.

There are also reports of forced or coerced medical procedures and unauthorized disclosure of a patient’s medical information in many health care settings, where the rights of young people to provide voluntary and informed consent to procedures and privacy are violated. For example, in a Zambian study, adolescents living with HIV reported being told by health care providers and family members not to have sex, get married or start a family, violating their rights and also potentially harming their mental well-being.³¹ Other reports describe forced or coerced HIV testing and termination of pregnancy.³²

Stigma, discrimination and rights violations lead to key populations avoiding health care settings altogether or withholding information that is critical to their health care (e.g. regarding drug use or their sexual health), which may result in inadequate care and treatment.³³

2.3 Lack of access to CSE

UNAIDS notes that young people have insufficient access to quality and age-appropriate CSE, which leads to misinformation about sex and sexuality. CSE allows young people to take autonomous and informed decisions to protect their SRHR. Research also shows that it reduces gender-based violence, increases the use of contraception, decreases the number of sexual partners and delays the initiation of sexual intercourse.³⁴

29 WHO (2016) *Consolidated Guidelines on HIV prevention, diagnosis, treatment and care for key populations*, p. 7.

30 UNAIDS (2020) *Evidence for eliminating HIV-related stigma and discrimination*. Geneva: UNAIDS, p. 34. Available at https://www.unaids.org/sites/default/files/media_asset/eliminating-discrimination-guidance_en.pdf.

31 *Ibid.*, p. 34.

32 Southern Africa Litigation Centre (2016) *Accountability and Redress for discrimination in healthcare in Botswana, Malawi and Zambia*. Johannesburg: SALC. Available at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Report-Accountability-and-Redress-for-Discrimination-in-Healthcare.pdf>.

33 UNAIDS (2020) *Evidence for eliminating HIV-related stigma and discrimination*, pp. 12–13.

34 UNAIDS (2021) *UNAIDS Data 2021*, p. 15.

In 2021, ESA countries recommitted to specific targets for scaling up CSE,³⁵ as part of a broader 2013 commitment³⁶ to scaling up access to quality, youth-friendly SRH information and services, including HIV prevention, for adolescents and young people. An evaluation of the 2013 commitment found progress, including in increasing knowledge around HIV and reducing HIV infection, but a need to accelerate efforts to reduce early and unintended pregnancy and gender-based violence, among other things.

However, studies show numerous challenges to the integration and implementation of CSE in schools. A 2015 study by the United Nations Educational, Scientific and Cultural Organization (UNESCO) found limited inclusion of content on sexual orientation and gender identity (SOGI) in CSE programmes in Asia Pacific,³⁷ as well as in select African countries. A systematic review of CSE in 2018 found that there was still insufficient information on the impact of CSE curricula on young lesbian, gay, bisexual, transgender and intersex (LGBTI) people and other marginalized populations.³⁸ More recently, a 2019 review of CSE in sub-Saharan Africa found that the focus on gender and human rights was weak, and that topics such as contraceptive methods, sexuality, including pleasure and desire, abortion and other emerging societal issues were not being addressed.³⁹ In Angola, the 2022 ‘Intermediate Report of the Universal Periodic Review on 34th Cycle of the UPR of the Republic of Angola’ noted the failure to address SOGI issues in CSE as an issue of concern.⁴⁰

Furthermore, a UNESCO study conducted in Botswana, Lesotho, Namibia, South Africa and Eswatini revealed homophobic and transphobic violence in educational settings between the students, and also found evidence of discriminatory attitudes among educators and other employees on SOGI issues. This was found to have an impact on effective reporting and support for students who experience gender-based violence, particularly diversity-related violence. Only one third of respondents said that their school was a safe space for students who are perceived as different in terms of gender.⁴¹ The stigma and discrimination against young LGBTI people within the education sector emphasize the urgent need to ensure issues of SOGI, gender equality and gender-based violence are included within CSE and other life skills curricula in schools.

2.4 Age of consent laws in health care settings

Laws and policies governing the age at which young people can provide voluntary, informed and independent consent to access SRH information and services further limit their access to services.⁴² Inappropriate or uncertain age of consent laws have been shown to cause confusion among health care providers, impacting the availability of non-discriminatory and non-judgemental, youth-friendly SRH information, prevention, treatment and care services. The WHO notes that these policy and legal barriers limit rights to informed and independent decision-making, and prevent access to a range of services, including HIV testing and counselling, harm reduction and other services specifically for young key populations.⁴³

A United Nations Population Fund (UNFPA) review of age of consent laws and policies impacting adolescent SRH in ESA found that most countries lack clear laws and policies on the age of consent to medical treatment (including access to contraceptives, HIV counselling and testing, and abortion—where legal). This leads to confusion, resulting in health care workers using their personal discretion to decide on ‘an appropriate age’, and creating barriers to non-discriminatory and non-judgemental access to services. UNFPA noted that very

35 United Nations Children’s Fund (2021) *Leaders from Eastern and Southern Africa recommit to the education, health and well-being of adolescents and young people*. Press Release, 7 December 2021. Available at <https://www.unicef.org/esa/press-releases/leaders-esa-recommit-well-being-adolescents-young-people>.

36 See <https://www.youngpeopletoday.org/esa-commitment>.

37 UNESCO (2015) *From Insult to Inclusion: Asia-Pacific report on school bullying, violence and discrimination on the basis of sexual orientation and gender identity*. Bangkok: UNESCO. Available at <https://bangkok.unesco.org/content/insult-inclusion-asia-pacific-report-school-bullying-violence-and-discrimination-basis>.

38 UNESCO (2018) *International Technical Guidance on Sexuality Education*. Paris: UNESCO. Available at https://www.unaids.org/sites/default/files/media_asset/ITGSE_en.pdf.

39 African Population and Health Research Center (2019) *Comprehensive Sexuality Education in sub-Saharan Africa*. Nairobi: APHRC, p. 34. Available at <https://healtheducationresources.unesco.org/library/documents/comprehensive-sexuality-education-sub-saharan-africa>.

40 Arquivo de Identidade, IRIS Angola Association, Movement I Am Trans, Movimento T, Queer People and ATSA (2022) *Intermediate Report of the Universal Periodic Review on 34th Cycle of the UPR of the Republic of Angola*. Available at <https://www.ohchr.org/sites/default/files/2022-06/Angola-Mid-term-review-2022.pdf>.

41 UNESCO (2016) *Out in the Open: Education Sector responses to violence based on sexual orientation and gender identity / expression*. France: UNESCO at p36-39. Available at <https://unesdoc.unesco.org/ark:/48223/pf0000244652>.

42 UNAIDS (2021) *UNAIDS Data 2021*, p. 15.

43 WHO (2016) *Consolidated Guidelines*, p. 7.

few countries had made legislative provision for setting the age of consent to HIV testing and counselling at 12 years;⁴⁴ in SADC, Malawi, Lesotho and South Africa have done so.

TABLE 1: Is parental consent required for adolescent access to SRH services?

NO	YES, FOR ADOLESCENTS YOUNGER THAN 14 YEARS	YES, FOR ADOLESCENTS YOUNGER THAN 16 YEARS	YES, FOR ADOLESCENTS YOUNGER THAN 18 YEARS
Comoros (Lesotho) ⁴⁵ Madagascar Mozambique Namibia South Africa Tanzania	Malawi Mauritius	Botswana Zambia Zimbabwe	Eswatini Seychelles

Source: AIDSInfo (<https://aidsinfo.unaids.org/>), October 2021

2.5 Criminalization of HIV transmission, exposure and non-disclosure

Research has found that overly broad laws criminalizing HIV transmission lead to various problems, including exacerbating stigma and discrimination against people living with HIV, lending themselves to misuse and targeting of specific populations or leading to prosecutions for acts with negligible risks of HIV transmission. Criminal laws have disproportionately impacted women living with HIV, who are often the first in a partnership to discover their HIV status during antenatal HIV testing. The inappropriate use of the criminal law in public health, where overly broad laws criminalize HIV transmission, exposure and non-disclosure, has also been shown to negatively impact access to HIV prevention, treatment and care services for affected people, including young key populations.

Because of these concerns, international and regional guidance has recommended against the use of overly broad criminal provisions, recognizing that they discourage access to health care services.⁴⁶

Yet a UNFPA review in 2020 found that the majority of countries in the region criminalize HIV transmission, whether intentionally or through negligence.⁴⁷ In SADC at least 11 countries criminalize non-intentional HIV exposure and/or transmission (either through laws that apply to HIV specifically or by applying other general laws/penalties or using HIV as a grounds for increasing sentences),⁴⁸ with Zimbabwe having recently repealed its overly broad criminal law provision.

44 United Nations Population Fund (2020) *Harmonization of the Legal Environment on Adolescent Sexual and Reproductive Health in East and Southern Africa*. Johannesburg: UNFPA, p. 9. Available at <https://esaro.unfpa.org/en/publications/harmonization-legal-environment-adolescent-sexual-and-reproductive-health-east-and-southern-africa>.

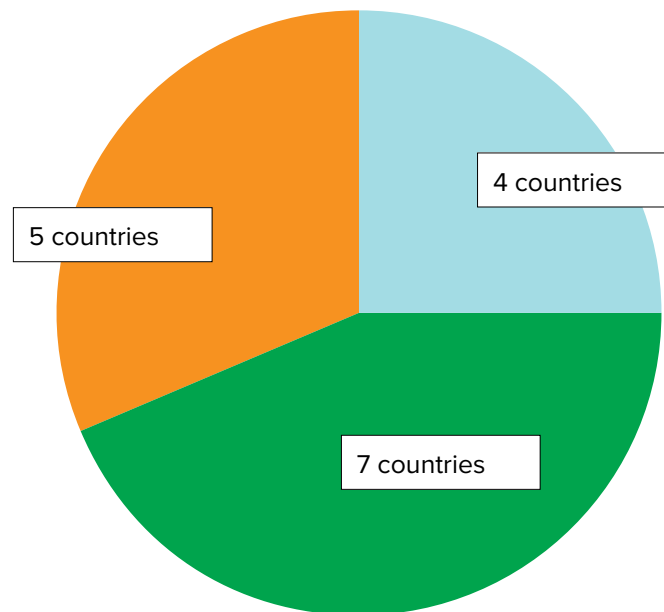
45 Data adjusted by the author in terms of Lesotho Children's Act. See https://esaro.unfpa.org/sites/default/files/pub-pdf/j7651-11_unfpa_harminization-summary-digital.pdf.

46 See, for instance, Global Commission on HIV and the Law (2012) *Risks, Rights & Health*. New York: UNDP. Available at <https://www.undp.org/publications/hiv-and-law-risks-rights-health>; and UNAIDS (2013) *Ending overly broad criminalization of HIV non-disclosure, exposure and transmission*. Geneva: UNAIDS. Available at https://www.unaids.org/en/resources/documents/2013/20130530_Guidance_Ending_Criminalisation.

47 UNFPA (2020) *Harmonization of the Legal Environment on Adolescent Sexual and Reproductive Health in East and Southern Africa*, p. 11.

48 See www.Hivpolicylab.org.

FIGURE 1: How many SADC countries have national laws criminalizing non-intentional HIV transmission or exposure? (16 countries)



- Yes
- No, imprisonment (up to 14 years)
- No; but criminalize 'deliberate' transmission

Source: HIV Policy Lab (www.Hivpolicylab.org) and AIDSInfo (www.aidsinfo.unaids.org), 2022.

2.6 Criminalization of same-sex, sex work and drug use

In relation to LGBTI people, the criminalization of same-sex relationships violates the rights of young people, and is shown to increase marginalization, exclusion and the risk of rights violations, exacerbating the vulnerability of sexual and gender minorities.

Research has documented human rights violations against LGBTI people in many SADC countries, including unlawful arrest and detention, bribery, extortion, physical and sexual harassment, violence, and abuse with impunity. Furthermore, LGBTI people have experience unscientific and degrading medical and scientific practices such as forced anal exams and so-called 'conversion therapies'. United Nations human rights bodies and agencies consider such practices a form of cruel, degrading and inhuman treatment, similar to torture, and have called for them to be prohibited.⁴⁹

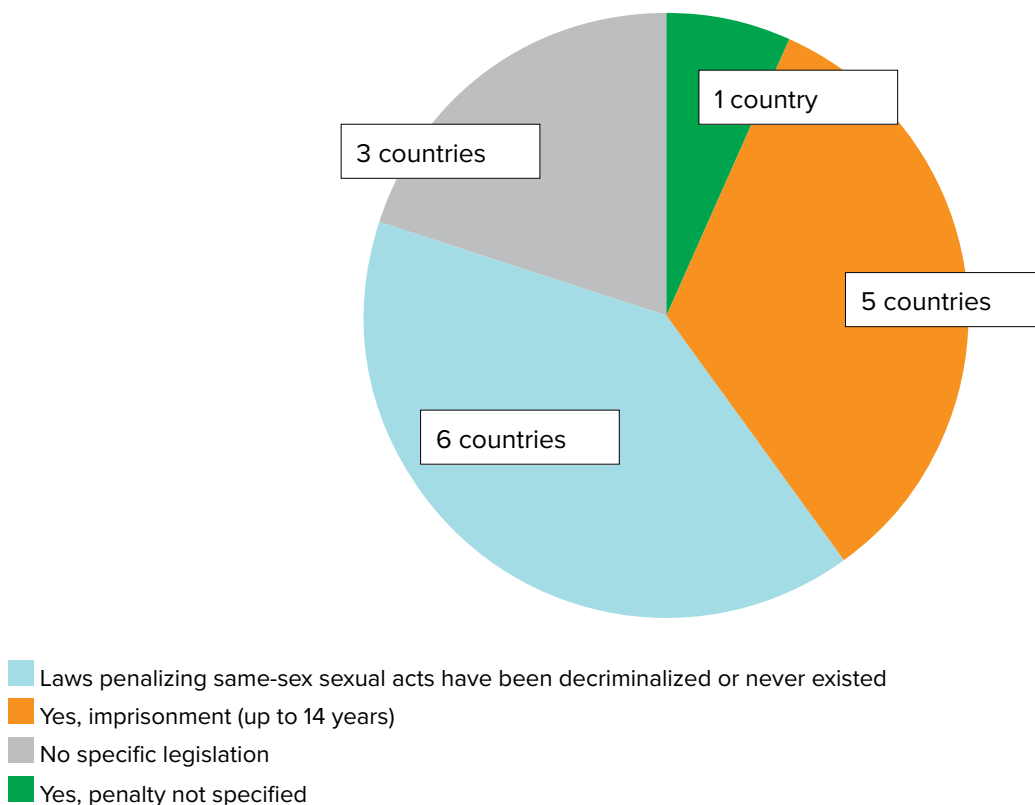
Around half of all SADC countries criminalize same-sex sexual acts, creating barriers to access to health information and services.⁵⁰ Some countries specifically criminalize same-sex sex between men (implicitly accepting same-sex sex between women). As gay men and other men who have sex with men are disproportionately impacted by the HIV epidemic, having a 26 times higher risk of acquiring HIV than other adult men, this is a major barrier to access to health care, impacting efforts to end HIV.⁵¹

49 UNAIDS (2020) *HIV and gay men and other men who have sex with men: Human Rights Fact Sheet Series 2021*. Geneva: UNAIDS. Available at <https://www.unaids.org/en/resources/documents/2021/07-hiv-human-rights-factsheet-stigma-discrimination>.

50 UNFPA (2020) *Harmonization of the Legal Environment on Adolescent Sexual and Reproductive Health in East and Southern Africa*, p. 12.

51 UNAIDS (2020) *HIV and gay men and other men who have sex with men: Human Rights Fact Sheet Series 2021*.

FIGURE 2: Laws penalizing same-sex sexual acts in SADC countries, 2021 (15 countries reporting)



Source: AIDSInfo (<https://aidsinfo.unaids.org/>), November 2023.

In 2022, HIV prevalence among transgender people was 14 times higher than among other adults aged 15 to 49 years.⁵² Four SADC countries specifically criminalize or prosecute transgender persons or criminalize cross-dressing.⁵³ Of particular concern, with the exception of South Africa and Namibia, countries in SADC do not have specific provisions in their laws allowing transgender people to change the gender marker or sex description on their official documents (although provisions allowing for new documentation when there has been a ‘material change’ may assist transgender people in some countries).⁵⁴

Laws that fail to recognize and realize the rights and identities of transgender people and intersex people—for instance, by allowing accurate documentation of sex and gender and/or changes to names and gender markers on identity documents—are discriminatory. They result in violations of the rights to equality and non-discrimination, dignity, privacy and the right to be free from cruel, inhuman and degrading treatment or punishment,⁵⁵ and impact a person’s ability to access a range of services, including SRH care, without discrimination.

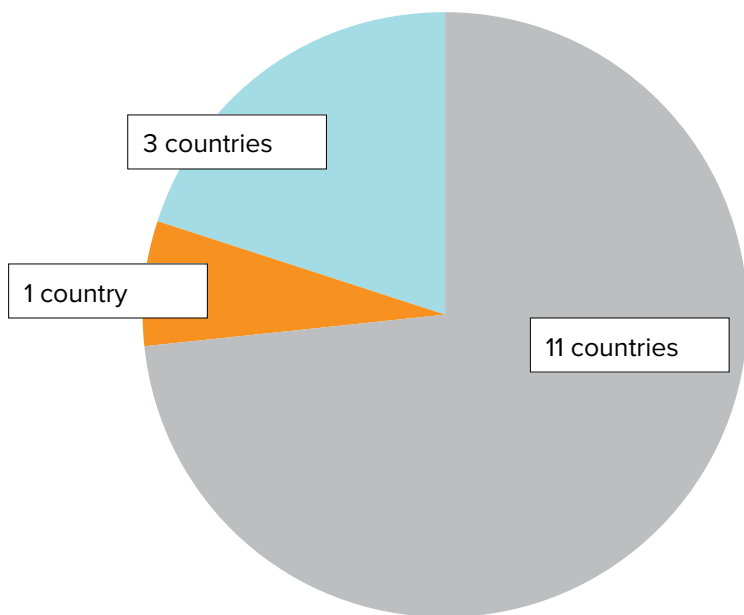
52 UNAIDS (2023) *HIV and transgender people: 2023 UNAIDS Global AIDS Update Factsheet*. Geneva: UNAIDS. Available at https://thepath.unaids.org/wp-content/themes/unaids2023/assets/files/thematic_fs_hiv_transgender_people.pdf.

53 See www.aidsinfo.unaids.org.

54 Southern Africa Litigation Centre (2016) *Law and Policies affecting Transgender Persons in Southern Africa*. Johannesburg: SALC. Available at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-Rights-Booklet.pdf>.

55 Ibid.

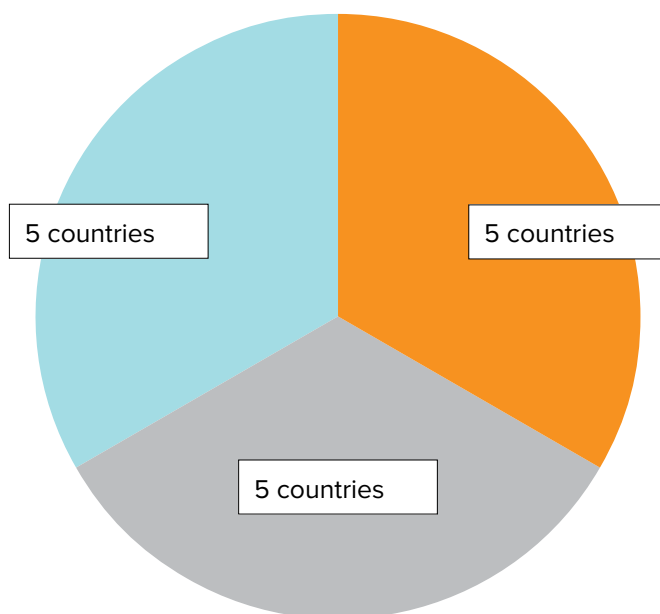
FIGURE 3: Gender Recognition Certificate or other required to change name to that of another gender on personal documents in 15 reporting SADC countries



Yes
No
No data available

Source: UNAIDS National Commitments and Policy Instrument 2021.

FIGURE 4: Constitutional prohibitions of discrimination interpreted to include gender identity in government policy in 15 SADC countries



Yes
No
No data available

Source: UNAIDS National Commitments and Policy Instrument 2021 and UNAIDS National Commitments and Policy Instrument 2022.

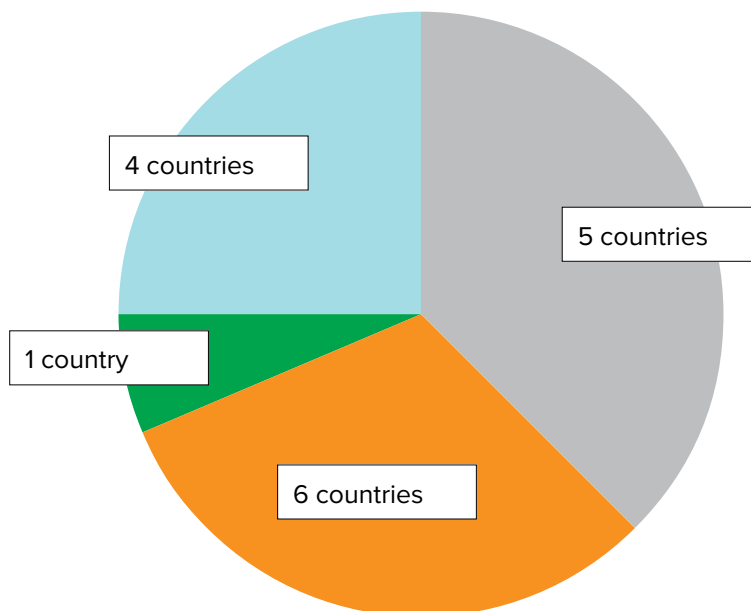
The Southern Africa Litigation Centre (SALC) reports that apart from South Africa and Namibia, most SADC countries do not have specific legal provisions allowing transgender or intersex people to change the gender marker or sex description in their official documents. However, there may be provisions in other laws that allow a person to apply for new identity documentation based on material changes in their particulars.

See Appendix A for a table of laws regarding gender markers of countries in Southern Africa.

Given the criminal law context, laws, regulations and administrative processes in many SADC countries also restrict the formation, registration and operation of organizations serving the needs of key populations such as LGBTI people and sex workers. In Africa, 50 percent of countries have laws that restrict the ability of LGBTI organizations to register or that seriously interfere or obstruct the work of CSOs.⁵⁶ There are also countless examples of government and law enforcement officials using these and other laws to harass, censor, raid, arrest and otherwise obstruct organizations.⁵⁷

Laws that criminalize and exclude young key populations and the organizations that work to serve their interests make it increasingly difficult for them to participate in decision-making processes (such as strategic planning for government sectors) and to access information and services, such as SRH information and services.

FIGURE 5: Level of legal restrictions on CSOs in SADC countries



Adopted to international policy recommendations: There is a social contracting policy for financing NGO/CSO-provided services, and NGOs/CSOs (including those that work with key populations) are able to register, seek funding and operate freely under national law

Partially adopted to international policy recommendations: Either there is a social contracting policy in place or NGOs/CSOs (including those that work with key populations) are able to register, seek funding and operate freely under national law, but not both

Not adopted to international policy recommendations: There is no social contracting policy for financing NGO/CSO-provided services, nor are NGOs/CSOs (including those that work with key populations) able to register, seek funding and operate freely under national law

No data

Source: HIV Policy Lab (www.Hivpolicylab.org), 2022.

56 International Lesbian, Gay, Bisexual, Trans and Intersex Association (2020) *State Sponsored Homophobia: Global Legislation Review Update*. Geneva: ILGA. Available at https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf.

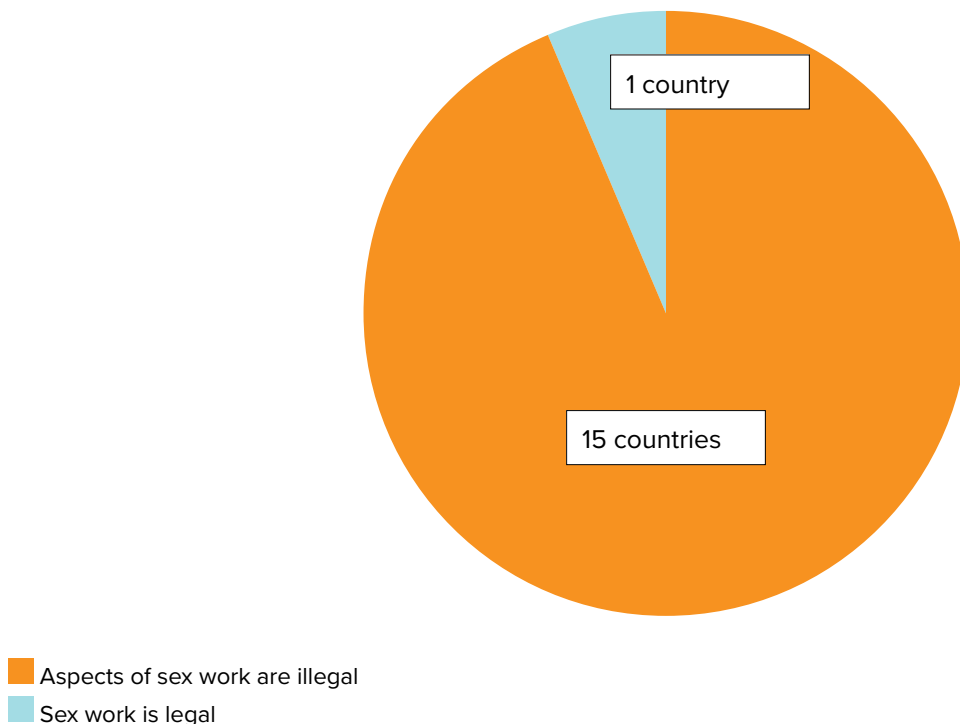
57 UNDP (2022) *Strengthening Civic Space and Civil Society Engagement in the HIV Response*. New York: UNDP. Available at <https://www.undp.org/publications/strengthening-civic-space-and-civil-society-engagement-hiv-response>.

Almost every country in SADC criminalizes some aspect of sex work. In 2021, sex workers, including young sex workers, had a 30 times greater risk of acquiring HIV than the general female population.⁵⁸ Criminalization of sex work has been proven to impede access to health care services, including effective HIV prevention, treatment, care and support services. A study in 10 countries in sub-Saharan Africa found that sex workers in a country that criminalizes sex work were over seven times more likely to be living with HIV than those in a country that partially legalized sex work.

Failure to recognize sex workers as legitimate workers increases their vulnerability to violence perpetrated by clients, police and other third parties. It also denies sex workers the basic health and social safety nets provided to other workers; this was particularly apparent during COVID-19 lockdowns, when sex workers reported increased harassment and discrimination, as well as exclusion from social support. Criminalization of sex work thus contributes to other rights violations, including denial of the right to life, to housing, security, privacy and access to health services.

International human rights bodies and experts and United Nations agencies have made clear that States must end direct and indirect criminalization of sex workers, including administrative penalties and other measures used against sex workers and clients, and licensing schemes that impose penalties on sex workers who fail to register.⁵⁹

FIGURE 6: In how many SADC countries are some aspects of sex work illegal?



Source: HIV Policy Lab (www.Hivpolicylab.org) and AIDSInfo (www.AIDSInfo.unaids.org), 2022.

58 UNAIDS (2022) *In Danger: UNAIDS Global AIDS Update 2022*, p. 17

59 Ibid.

2.7 Violence, including sexual and gender-based violence

Violence, including sexual and gender-based violence, is a critical issue affecting young key populations in sub-Saharan Africa. UNAIDS has found that gay men and other men who have sex with men are at heightened risk of violence compared with the rest of the population,⁶⁰ as are transgender and gender-diverse people. Among sex workers, 45–75 percent of adult female sex workers are assaulted or abused at least once in their lifetime.⁶¹ Women who inject drugs are up to five times more susceptible to intimate partner and gender-based violence than women who do not inject drugs.⁶²

In Africa, gender-based violence has a significant impact on adolescent girls and young women, young key populations, and sexual and gender minorities. For instance, a UNAIDS study found that over a third of young women aged 18–24 years reported being sexually abused during childhood in Kenya (32 percent), Uganda (35 percent) and Eswatini (38 percent).⁶³ In a study in eight sub-Saharan African countries, 33 percent of the transgender women surveyed said that they had been physically attacked at some point in their lives, 28 percent had been raped, and 27 percent said that they were too afraid to use health care services.⁶⁴ Yet laws and policies fail to adequately protect young key populations or provide adequate redress mechanisms for sexual and gender-based violence.

2.8 Lack of data on young key populations

Another overriding issue that impacts responses to young key populations relates to the broader lack of evidence and data on young key populations, at various levels, including:

- the lack of size estimation and HIV incidence and prevalence studies on key populations in general in a number of countries, and also specific information on key populations under the age of 24 years; and
- the lack of specific information on the human rights and gender-related barriers to HIV, including stigma, discrimination and violence experienced by young key populations.

There are efforts to increase this evidence. For instance, at country level there are opportunities to ensure that Stigma Index studies⁶⁵ collate and analyse data with a specific emphasis on disaggregating key populations' data by gender, age and identification with a specific key population. However, far more evidence is required to adequately respond to advance the SRHR of young key populations.

60 UNAIDS (2020) *HIV and gay men and other men who have sex with men: Human Rights Fact Sheet Series 2021*.

61 UNAIDS (2020) *HIV and sex work: Human Rights Fact Sheet Series 2021*.

62 UNAIDS (2021) *HIV and people who use drugs: Human Rights Fact Sheet Series 2021*. Geneva: UNAIDS. Available at <https://www.unaids.org/en/resources/documents/2021/07-hiv-human-rights-factsheet-stigma-discrimination>.

63 UNAIDS (2020) *Zero Discrimination Against Women and Girls*. Geneva: UNAIDS. Available at https://www.unaids.org/en/resources/documents/2020/2020_ZeroDiscrimination_brochure.

64 UNAIDS (2021) *HIV and transgender and gender-diverse people: Human Rights Fact Sheet Series 2021*.

65 See <http://www.stigmaindex.org/>.

3.

Recommendations for efforts to ensure inclusive, rights-based responses that promote SRHR of young key populations

This section provides key recommendations to guide the efforts of law- and policymakers in the health, youth, justice and gender sectors to protect, respect, promote and fulfil the SRHR of young key populations. These recommendations are extracted from and developed based on international and regional human rights obligations, as well as global strategies and best practices, to ensure effective law- and policymaking.

In terms of the UNGASS Political Declaration, Member States have committed to the 10-10-10 targets, aiming for fewer than 10 percent of countries with punitive and discriminatory laws, fewer than 10 percent of people living with HIV and key populations experiencing stigma and discrimination, and fewer than 10 percent of women, girls and key populations experiencing gender inequality, harmful gender norms and gender-based violence.

The key recommendations discussed in this section are:

- promote non-discrimination and equality;
- review and repeal discriminatory and/or punitive laws;
- implement the right to SRHR and services;
- prohibit and protect against violence;
- promote access to justice;
- ensure inclusion and participation in decision-making;
- engage in multisectoral approaches; and
- adopt evidence-informed approaches.

These recommendations should guide actions taken in each sector to respond to the barriers to access to services for young key populations, outlined in Section 2, above. Suggested examples of how to bring about change in practice are set out in Section 4, below.

TABLE 2: Relevant rights provisions under international and regional treaties

TREATIES	RIGHTS						
	Equality	Health	Life, security of the person	Dignity	Privacy	Freedom from torture and cruel, degrading and inhuman treatment	Freedom of expression and association
The Universal Declaration of Human Rights (1948) is a United Nations Declaration that set out, for the first time, the fundamental human rights of all peoples and nations and has since paved the way for over 70 human rights treaties.	Articles 1 and 7	Article 25	Article 3	Article 1	Article 12	Article 5	Articles 19 and 20
The International Covenant on Civil and Political Rights (ICCPR) is an international treaty setting out the civil and political rights of all persons. The Covenant was adopted by the United Nations General Assembly in 1966 and came into force in 1976. As of June 2022, 173 countries had ratified the Covenant.	Articles 2, 3 and 26		Articles 6 and 9		Article 17	Article 7	Articles 19 and 22
The International Covenant on Economic, Social and Cultural Rights (ICESCR) focuses on the social, economic and cultural rights of persons. The multilateral treaty was adopted by the United Nations General Assembly in 1966 and came into force in 1976. As of July 2022, the Covenant had 171 Parties.	Articles 2 and 3	Article 12					
The Convention on the Rights of the Child (CRC) is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. As of 20 November 2022, 196 countries were party to the CRC.	Article 2	Article 24	Article 6		Article 16	Article 37(a)	Articles 13 and 15
The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights. It was instituted on 3 September 1981 and has been ratified by 189 States.	Article 1	Articles 11(1)(f), 12 and 14(2) (b)					Article 7

TREATIES	RIGHTS						
	Equality	Health	Life, security of the person	Dignity	Privacy	Freedom from torture and cruel, degrading and inhuman treatment	Freedom of expression and association
The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment amplifies the right to protection from cruel and inhuman treatment, including in detention.						Articles 1 and 16	
The African Charter on Human and Peoples' Rights (ACHPR), also known as the African Charter or the Banjul Charter, is a regional treaty intended to promote and protect human rights in Africa. It came into effect on 21 October 1986. As of 2022, 54 of the 55 Member States of the African Union had ratified or acceded to the Charter.	Articles 2 and 3	Article 16	Article 4	Article 5		Article 5	Articles 9 and 10
The African Charter on the Rights and Welfare of the Child (African Children's Charter) sets out the rights of the African child, similarly to the CRC. It entered into force in 1999. As of 2022, 53 of the 55 Member States of the African Union had ratified or acceded to the Charter.	Article 3	Article 14	Article 5		Article 10	Article 16	Articles 7 and 8
The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is a protocol to the African Charter, which came into effect in 2005. It guarantees comprehensive rights to women and girls, including SRHR.	Article 2	Article 14	Article 4	Article 3		Article 4	

See Appendix C for details of ratification of treaties by SADC countries.

Recommendation 1: Promote non-discrimination and equality

Equality and freedom from discrimination are fundamental principles under international and regional law. Discrimination based on race, ethnic group, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status is clearly prohibited.⁶⁶

Further, although sexual orientation and gender identity are not specifically listed as prohibited grounds for discrimination in international and regional treaties, this list of grounds is said to be non-exhaustive. International and regional bodies have found that sexual orientation and gender identity are included in the prohibition against discrimination because of ‘sex’.⁶⁷ International and regional law particularly prohibit discrimination against people under 18 years of age on the basis of race, ethnic group, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.⁶⁸

Numerous United Nations bodies, the African Commission on Human and Peoples’ Rights and SADC have called on countries to end discrimination and ensure equality for children, young people and adults regardless of sex, sexual orientation or gender identity.⁶⁹

Discrimination is also prohibited in connection with the assertion of other rights such as the rights to health, work and education. For instance, denying access to health care services on the basis of a person’s sex, real or perceived sexual orientation, gender identity, disability or birth, among others, would implicate not only the prohibition of discrimination but also the right to health.

States are obliged to protect everyone from discrimination, including on grounds of sex, sexual orientation or gender identity, and to take appropriate action to provide redress for discrimination whether committed by public authorities or private people.⁷⁰ This includes:

- enacting appropriate legislative and other measures that prohibit and eliminate discrimination based on sex, sexual orientation or gender identity, among others, in the public and private spheres;
- taking all appropriate action to address discriminatory attitudes and behaviours related to sex, sexual orientation or gender identity, among others, including education and training programmes;
- taking positive steps to ensure the equal enjoyment of human rights for all regardless of sex, sexual orientation or gender identity, among other grounds; and
- taking “affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination”, including education and training programmes to eliminate prejudicial attitudes and behaviours.⁷¹

66 See the relevant articles of the ICCPR, the ICESCR and the ACHPR as per Table 2.

67 *Toonen v Australia*. Communication No. 488/1992, United Nations Doc. CCPR/C/50/D/488/1992 (Human Rights Committee) (1994). Available at <http://hrlibrary.umn.edu/undocs/html/vws488.htm>; *Salah et al. v Egypt*. United Nations Doc. E/CN.4/2003/8/Add.1 (United Nations Working Group on Arbitrary Detention) (2002), p. 68. Available at <http://www1.umn.edu/humanrts/wgad/7-2002.html>; African Commission on Human and Peoples’ Rights (2014) *Resolution 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*. Available at <http://www.achpr.org/sessions/55th/resolutions/275/?prn=1>; SADC (2018) *Regional Strategy for HIV prevention, treatment and care and sexual and reproductive health and rights among key populations*. Available at <https://healtheducationresources.unesco.org/library/documents/regional-strategy-hiv-prevention-treatment-and-care-and-sexual-and-reproductive>.

68 See the relevant articles of the CRC and the African Charter on the Rights and Welfare of the Child as per Table 2.

69 United Nations Human Rights Council (2011) *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity* (17 November 2011); African Commission on Human and Peoples’ Rights (2014) *Resolution 275*; SADC (2018) *Regional Strategy for HIV prevention, treatment and care and sexual and reproductive health and rights among key populations*.

70 United Nations Human Rights Committee (1989) *CCPR General Comment No. 18: Non-Discrimination* (10 November 1989), para. 9. Available at <http://www.refworld.org/docid/453883fa8.html>. Also see International Commission of Jurists (2007) *Yogyakarta Principles*, Principle 2. Available at <https://yogyakartaprinciples.org/principle-2/>.

71 United Nations Human Rights Committee (1989) *CCPR General Comment No. 18*, para. 10.

Recommendation 2: Review and repeal punitive/discriminatory laws

Punitive and discriminatory laws, policies and procedures are prohibited under international and regional law, as they implicate the rights to be free from discrimination, equality, liberty and security of the person, and health, among others.⁷² These laws, policies and procedures include laws which criminalize aspects of sex work, consensual, same-sex behaviour and HIV transmission, non-disclosure and exposure; laws and administrative action restricting the formation, registration and operation of CSOs; and laws, policies and procedures restricting rights of transgender and intersex persons to identity documentation.

States are obliged to take active measures to repeal punitive and discriminatory laws, such as:

- ending direct and indirect criminalization of sex workers, including administrative penalties and other measures used against sex workers and clients, and licensing schemes that impose penalties on sex workers who fail to register;
- removing laws that criminalize or are used to target people based on their gender identity, and laws that criminalize same-sex sexual behaviour; and
- removing laws that restrict the formation, registration or operation of organizations addressing the needs of transgender and other gender-diverse persons and gay men and other men who have sex with men.

Further, States must train law enforcement officers on their obligations towards transgender and other gender-diverse people, gay men and men who have sex with men, people living with HIV, and sex workers.⁷³

Finally, States must take care not to conflate sex work and trafficking in legislation, because it leads to the implementation of inappropriate responses that fail to assist either sex workers or victims of trafficking in realizing their rights, and, at worst, to violence and oppression.⁷⁴

Recommendation 3: Promote the right to accessible, available, appropriate and quality SRH information and services

The right to health is an inclusive right, and includes the following: access to health-related education and information; the right to be free from non-consensual medical treatment; the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; the right to prevention, treatment and control of diseases; access to essential medicines; maternal, child and reproductive health; equal and timely access to basic health services; and participation of the population in health-related decision-making at national and community levels.⁷⁵

The right to health is guaranteed to all people regardless of their race, ethnic group, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth, sexual orientation or gender identity.

72 See the various UNAIDS Human Rights Fact Sheets. Available at <https://www.unaids.org/en/resources/documents/2021/07-hiv-human-rights-factsheet-stigma-discrimination#:~:text=HIV%20and%20stigma%20and%20discrimination%20-%20Human%20rights%20fact%20sheet%20series%202021,02%20June%202021&text=The%202021%2D2026%20Global%20AIDS,inequalities%20and%20ultimately%20ending%20AIDS.>

73 Ibid.

74 UNAIDS (2012) *Guidance note on HIV and sex work*. Geneva: UNAIDS. Available at https://www.unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work; Global Commission on HIV and the Law (2012) *Risks, rights & health* and (2018) *Risks, Rights and Health Supplement*. New York: UNDP. Available at <https://hivlawcommission.org/supplement/>. See also UNAIDS (2020) *HIV and sex work: Human Rights Fact Sheet Series 2021*; UNAIDS (2021) *HIV and transgender and gender-diverse people: Human Rights Fact Sheet Series 2021*; and International Commission of Jurists (2007) *Yogyakarta Principles*, Principle 2.

75 Committee on Economic, Social and Cultural Rights (2000) *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (11 August 2000). Available at http://apps.who.int/disasters/repo/13849_files/o/UN_human_rights.htm.

Protective age of consent laws to promote access to health care

The lack of clarity in law and policy on the age of consent to access SRH services, including contraceptives and HIV testing, contravenes young people's rights to health, to be free from cruel, inhuman and degrading treatment, and to non-discrimination, among others.

Countries are required to establish in law or policy a specific age of consent to access SRH services. In determining the age of consent, countries must ensure that it is the same for males and females and that the minimum age reflects the evolving capacity, age and maturity of the child.⁷⁶ The age of consent can be different for different types of SRH services.

States are obliged to progressively achieve the full realization of the right to health, and at a minimum must show that they are making every possible effort, with the available resources, to better protect and promote the right to health. This includes:⁷⁷

- adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to health without discrimination on the basis of sex, sexual orientation or gender identity, including clarifying age of consent to health care services;
- ensuring that all people—regardless of age, sex, sexual orientation or gender identity—have access to accessible, acceptable and quality health care facilities, goods and services, including in relation to SRH, education, prevention, care and treatment programmes and services, such as CSE, and taking appropriate steps to target specific services for vulnerable populations, such as sex workers;
- ensuring that all people have access to their own medical records, without discrimination, and that all records and information are kept confidential;
- taking all appropriate actions to address discriminatory attitudes and behaviours related to sex, sexual orientation or gender identity among health care workers, including education and training programmes;
- ensuring that all persons are informed and empowered to make their own decisions regarding medical treatment and care, based on genuinely informed consent, without discrimination; and
- providing an effective remedy and offering people the ability to obtain redress when their right to health is violated.

⁷⁶ Committee on the Rights of the Child (2003) *General Comment 4* (1 July 2003), para. 9. Available at <https://www.refworld.org/docid/4538834f0.html>.

⁷⁷ Committee on Economic, Social and Cultural Rights (2000) *General Comment No. 14*; International Commission of Jurists (2007) *Yogyakarta Principles*, Principle 17.

Recommendation 4: Prohibition and protection from violence

Violence against young key populations, including gender-based violence, is clearly prohibited under international and regional law and guidelines, as it contravenes the right to be free from torture and cruel, inhuman and degrading treatment, which is closely linked to the right to dignity and the right to security of the person.⁷⁸ This right protects the individual from the intentional infliction of bodily or mental harm regardless of whether the victim is detained or not and whether the perpetrator is a public or private actor.⁷⁹ It also protects the dignity of a person, which prohibits personal suffering and indignity.⁸⁰ Finally, it prohibits medical or scientific experimentation without the free consent, which includes informed consent, of the person concerned.⁸¹

Physical violence against young key populations, including beatings and sexual violence as well as psychological harm, such as harassment and bullying by the government or third-party actors, violates the rights to dignity, security of the person, and to be free from torture and cruel, inhuman and degrading treatment.

Countries are required to do the following:

- prohibit in law torture and cruel, inhuman and degrading punishment and treatment;
- take the necessary measures to prevent and punish acts of torture and cruel, inhuman and degrading punishment and treatment, including those against categories of victims such as young key populations;⁸²
- prevent and redress unjustifiable use of force in law enforcement, and protect their populations against abuses by private security forces, and against the risks posed by excessive availability of firearms;⁸³
- provide particular safeguards for the special protection of particularly vulnerable people;⁸⁴
- protect people in their territory from torture and cruel, inhuman and degrading punishment and treatment committed by “people acting in their official capacity, outside their official capacity or in a private capacity”.⁸⁵ This includes protection from foreseeable threats to life or bodily integrity and providing appropriate instruction and training to all law enforcement and medical personnel who are “involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment”;⁸⁶ and
- provide an effective remedy for violations, including prompt and impartial investigation by competent authorities.⁸⁷

78 See SADC (2018) *Regional Strategy for HIV prevention, treatment and care and sexual and reproductive health and rights among key populations*; African Commission on Human and Peoples' Rights (2014) *Resolution 275*; and relevant articles of the ICCPR, the CAT, the CRC, the CEDAW, the ACHPR, the Maputo Protocol and the African Children's Charter, as per Table 2.

79 Ibid.

80 *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) / Sudan*. Communication No. 279/03-296/05 (African Commission on Human and Peoples' Rights) (2009), para. 158. Available at http://www.achpr.org/files/sessions/45th/comunications/279.03-296.05/achpr45_279.03_296.05_eng.pdf; *Jacqueline and Others v Rolling Stone Ltd. and Another*. Miscellaneous Case No. 163 of 2010 (High Court) (2010). Available at <http://iglhrc.org/sites/default/files/2010%20Kasha%20Jacqueline%20v%20Rolling%20Stone.pdf>; *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (CCT 11/98 [1998] ZACC 15).

81 Human Rights Committee (1992) *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (10 March 1992), para. 7. Available at <http://www.refworld.org/docid/453883fb0.html>.

82 Ibid., para. 8.

83 Ibid., para. 9

84 Ibid., para. 11.

85 Ibid., para. 2.

86 Ibid., para. 10.

87 Ibid., para. 14.

Reducing violence against all key populations

Violence against people from key populations should be prevented and addressed in partnership with key population-led organizations.

All violence against people from key population groups should be monitored and reported, and redress mechanisms should be established to provide justice.

Health and other support services should be provided to all persons from key populations who experience violence. In particular, persons experiencing sexual violence should have timely access to comprehensive post-rape care in accordance with WHO guidelines.

Law enforcement officials and health and social care providers need to be trained to recognize and uphold the human rights of key populations and to be held accountable if they violate these rights, including by perpetrating violence.

Recommendation 5: Promote access to justice

Access to justice is a core element of the rule of law. It is a fundamental right and an essential prerequisite for the protection and promotion of all other human rights. Access to justice encompasses the right to a fair trial, including equal access to and equality before the courts, and seeking and obtaining just and timely redress for rights violations. Guaranteeing access to justice is indispensable to democratic governance and the rule of law, as well as to combat social and economic marginalization.⁸⁸ Access to justice is required to ensure that victims of human rights violations have an effective, adequate and appropriate remedy.⁸⁹

States are obliged to take all necessary steps to provide transparent, effective and equal access to justice for all, including sex workers, people who use drugs, transgender and gender-diverse people, gay men and other men who have sex with men, and people living with HIV.⁹⁰ This includes awareness-raising concerning legal rights and sensitization of judicial officers and other stakeholders.⁹¹ Further, States should, where appropriate, enact specific legislation and regulations to ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible, and should allocate the necessary human and financial resources to the legal aid system.⁹²

Recommendation 6: Ensure inclusion and participation in decision-making

The rights of young people to participate in decisionmaking in all matters that affect their lives, in accordance with their age and maturity, is a well-established legal principle.⁹³ In particular, participation of young affected and vulnerable populations in developing and implementing adolescent SRH programmes and services is essential.

88 Office of the High Commissioner for Human Rights (2017) *Thematic Report on the right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities*. Geneva: OHCHR. Available at <https://www.ohchr.org/en/disabilities/thematic-report-right-access-justice-under-article-13-convention-rights-persons-disabilities#:~:text=Article%2013%20of%20the%20Convention%20underscores%20the%20fact%20that%20access,the%20active%20involvement%20and%20participation.>

89 International Commission of Jurists (2007) *Yogyakarta Principles*, Principle 28.

90 Human Rights Committee (2004) *General Comment 31: The nature of the general legal obligation imposed on State Parties to the Covenant* (29 March 2004), para. 15. Available at <https://digitallibrary.un.org/record/533996?ln=en>; UNGASS (2012) *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, paras 14 and 38. Available at <https://digitallibrary.un.org/record/734369?ln=en>.

91 UNGASS (2012) *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, paras 14 and 38.

92 United Nations Secretariat (2012) *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems A/RES/67/187* (3 October 2012). Available at <https://digitallibrary.un.org/record/735513?ln=en>.

93 World Conference on Human Rights (1993) *The Vienna Declaration and Plan of Action* (1993). Available at <https://www.ohchr.org/sites/default/files/Vienna.pdf>.

Such participation has been shown to improve health outcomes.⁹⁴ Participation of young people must be meaningful, sustainable and inclusive.

Countries should take meaningful steps to ensure the meaningful participation of young key populations in developing and implementing relevant policy. This includes the following considerations:⁹⁵

- participation should be transparent and voluntary, and all participants should be treated with respect throughout their engagement;
- processes for participation should be inclusive and non-discriminatory, and should focus on the engagement of young people;
- countries should support training for both young people and adults, to ensure meaningful participation of young people in policy processes;
- processes should be accountable, and there should be a follow-up mechanism, involving feedback, monitoring and evaluation;
- participation processes should be safe and proactively address potential risks to young people; and
- countries should take meaningful steps to remove barriers to participation, such as criminalization of communities of young key populations and refusal to permit the operation of CSOs and community organizations.

Recommendation 7: Strengthen multisectoral approaches

Due to the intersecting identities and experiences of young key populations, addressing their SRH, including HIV, requires a multi-pronged, intersectoral and multi-actor approach.⁹⁶ For example, policy seeking to increase young key populations' uptake of particular services would require input from not only the health sector but also the education, justice and other sectors, as reducing barriers to accessing health services could require reducing stigma through awareness-raising and by addressing punitive and discriminatory laws. Engaging in a multi-stakeholder process also ensures that those hardest to reach have an opportunity to contribute.⁹⁷

HIV and SRHR interventions have understood that successful projects have one thing in common: all engage with stakeholders and community groups and manage these relationships proactively rather than reactively.⁹⁸

Recommendation 8: Evidence-informed approaches

Although there is convincing evidence on effective approaches to improve adolescent health,⁹⁹ detailed age- and sex-disaggregated data on young key populations are limited. Hence, policies and programmes should seek not only to use evidence-informed approaches but also to develop specific data on young key populations

94 International Conference on Primary Health Care (1978) *Declaration of Alma-Ata* (6–12 September 1978). Geneva: WHO. Available at <https://www.who.int/publications/i/item/WHO-EURO-1978-3938-43697-61471#:~:text=The%20Declaration%20of%20Alma%2DAta,of%20health%20throughout%20the%20world>; see also Article 12 of the CRC and Articles 7–9 of the African Charter on the Rights and Welfare of the Child.

95 United Nations Committee on the Rights of the Child (2009) *General Comment No.12: The right of the child to be heard* (2009) CRC/C/GC/12, para. 134. Available at <https://www.refworld.org/docid/4ae562c52.html>.

96 Delany-Moretlwe, S., Cowan, F.M., Busza, J., Bolton-Moore, C., Kelley, K. and Fairlie, L. (2015) "Providing comprehensive health services for young key populations: needs, barriers and gaps." *Journal of the International AIDS Society*, 18 (2 Suppl 1), 19833. Available at <https://doi.org/10.7448/IAS.18.2.19833>.

97 WHO (2021) *Nothing for us, without us. Opportunities for meaningful engagement of people living with NCDs*. Geneva: WHO. Available at <https://www.who.int/publications/i/item/nothing-for-us-without-us-opportunities-for-meaningful-engagement-of-people-living-with-ncds>.

98 AtIWest Communications (2022) *Why stakeholder engagement is important for big projects*. Available at <https://www.atlwest.ca/blog/why-stakeholder-engagement-is-important-for-big-projects>.

99 Catalano, R.F., Fagan, A.A., Gavin, L.E., Greenberg, M.T., Irwin, C.E. Jr., Ross, D.A. and Shek, D.T.L. (2012) "Worldwide application of prevention science in adolescent health." *Lancet* 2012;379:1653–1664.

to inform future interventions as part of the policy approach. It is also important to note that not all evidence-informed programmes are appropriate for all communities. Therefore, it is important to balance research about what works, with knowledge about what is feasible in specific communities.¹⁰⁰

100 National Adolescent and Young Adult Health Information Center (2014) *A Guide to Evidence-based programs for adolescent health: program, tools and more*. San Francisco: University of California, San Francisco. Available at <https://nahic.ucsf.edu/wp-content/uploads/2014/08/Evidence-Based-Guide.pdf>.

4.

Sector-specific guidance

This section looks at practical approaches for addressing human rights and gender-related barriers to SRHR for young key populations—looking specifically at some priority issues in SADC countries—and promoting the SRHR of young key populations in the health, justice, youth and gender sectors.

The first four sections (4.1–4.4) provide sector-specific guidance, including specific guidance on one or two priority issues of concern for the SRHR of young key populations in that sector and case study examples from SADC countries.

The last section (4.5) provides general guidance for all sectors that wish to strengthen SRHR in laws, policies, strategies, guidelines and programmes for young key populations, with a focus on the process to be followed, the sectors and representatives to be included, as well as a list of key laws, policies and guidelines to be reviewed and links to useful types of resources, including hyperlinks to examples, to support this work.

4.1 Guidance for the health sector

Key issues

Key issues affecting the SRHR of young key populations in the health sector have been discussed in Section 2. These and other national issues should form part of consultations and inform the review of relevant laws, policies, plans, strategies, guidelines and programmes, where relevant.

Some of the most critical issues in the region include:

- **stigma and discrimination** in access to health care services, including denial of SRH care, conditional access to care, verbal harassment and abuse, and receiving sub-standard care, among other things;
- **breaches of confidential information** in the health care setting;
- **forced or coerced health care** treatment, such as HIV testing without voluntary and informed consent, forced termination of pregnancy, surgery without voluntary and informed consent on intersex persons, particularly infants, and even forced sterilization of young women, such as young women living with HIV, in some instances;
- **age of consent** laws, policies and guidelines that deny young people independent access to health care services without the consent of a parent or guardian;
- inadequate access to affordable and **appropriate health care services** to meet the specific needs of young key populations;
- **CSE** that does not include information on SOGI, human rights, pleasure, desire and abortion, among other topics; and
- inadequate **access to redress** and remedies for violations of health rights.

Example: Health care-related discrimination and redress

Young key populations report being denied health care services; being treated in an undignified manner, including being harassed, mocked or verbally abused for their sexual orientation or gender identity, or for selling sex; breaches of confidential medical and personal information; and being provided with conditional access to care (e.g. being provided with access to antiretroviral therapy on condition of termination of pregnancy; being told to bring their sexual partner to health facilities to receive treatment). In addition, they report being unable and/or unwilling to access redress for these violations for several reasons, such as fear of breaches of confidentiality, fear of recrimination and further discrimination, limited awareness of avenues for redress, lack of confidence in the system and limited access to alternative health care services, among others.

There may be various ways to strengthen protection from health care-related stigma and discrimination and promote redress for young key populations. Some examples include:

- revising relevant health laws, policies, guidelines, charters and/or codes of ethics to:
 - specifically include mention of young key populations as a population in need of protection from discrimination;
 - specify the prohibition of discrimination on grounds of, for example, health or HIV status, gender, sexual orientation or gender identity, occupation etc.; and
 - provide remedies for unlawful actions that violate patients' rights.
- revising children's and youth laws, policies and guidelines to:
 - specifically include mention of young key populations as a population in need of protection from discrimination;
 - specify the prohibition of discrimination on grounds of, for example, health or HIV status, gender, sexual orientation or gender identity, occupation etc.; and
 - provide remedies for actions that contravene the prohibition of discrimination.
- revising gender laws, policies, strategies and plans to:
 - specifically include mention of young key populations as a population in need of protection from discrimination;
 - specify the prohibition of discrimination on grounds of, for example, health or HIV status, gender, sexual orientation or gender identity, occupation etc.; and
 - provide remedies for actions that contravene the prohibition of discrimination.
- revising health care training programmes to:
 - specifically include training on the SRHR of young key populations and the impact of stigma, discrimination and rights violations on access to health care services; and
 - specifically emphasize the rights of young key populations to equal access to non-discriminatory health care.
- strengthening human rights awareness and education programmes to:
 - specifically include communication and training on the SRHR of young key populations;
 - create awareness of rights to equal access to non-discriminatory health care services; and
 - create awareness and promote redress for rights violations.
- strengthening policies and guidelines for health care accountability and redress mechanisms to:
 - ensure they are transparent, accessible and independent;
 - ensure that complaints body officers are sensitized to the SRHR and human rights concerns of young key populations; and

- provide complainants with access to information, including medical records.
- Young key populations should be included in these efforts, for example by:
 - involving them as peer educators in education and awareness-raising;
 - including them in training and sensitization sessions for health workers;
 - involving them in decision-making spaces for law and policy review and reform; and
 - developing community-led monitoring of rights violations in the health care sector, by young key populations and organizations that support them.

Six principles for strengthening redress mechanisms in the health care sector

The SALC has documented human rights violations in health care settings in SADC countries. Based on its findings and consultations with stakeholders, it recommends the following key principles for strengthening safe and accessible health complaints mechanisms for key populations.

1. Clear, known rights, rules and processes

Young key populations do not always know their rights and how to enforce them. There should be clear information, accessible to all, including:

- health rights;
- how to submit a complaint;
- where to submit a complaint;
- what information is required;
- what process will be followed;
- what support is available; and
- possible outcomes of the process.

2. Multiple entry points for making complaints

Illiteracy and physical and financial inaccessibility are barriers to reporting complaints. Complainants should have diverse ways to make complaints, including using innovative technology (e.g. mobile phone/messaging services), in writing or in person.

3. Confidentiality and anonymity

Complaints mechanisms should protect complainants' personal information. Their identity should be kept safe, shared only with those directly involved in handling the matter. Anonymous complaints allow a person to lodge a complaint without providing personal information, or to unlink personal information from the complaint.

When a complainant must appear in person to provide evidence, procedural rules can provide for private, 'in camera' evidence to provide a safe, physical environment and to protect the complainant's identity.

4. Third-party complaints

An interested third party (e.g. a friend, family member, partner, community member or community support organization) should be able to submit a complaint on behalf of a health care user who may be unwilling or unable to submit a direct complaint.

5. Interim protection measures/mechanisms

Interim measures can be taken to protect populations from any harm arising during a complaints process, such as:

- protecting a complainant's personal, identifying information during an investigation if there is risk of harm;
- prohibiting contact between the complainant and the alleged offender (health care worker) if there is risk of denial of medical care;
- orders making it an offence to interfere with the investigations of the complaints body, to prevent withholding of information, or to prevent the denial of health care services; and
- orders providing interim relief and interim remedies (e.g. access to urgent health care services) pending the outcome of a final decision.

6. Broader engagement with key and vulnerable populations

Additional steps to engage with CSOs and networks can help to:

- create awareness of complaints mechanisms and how to use them;
- document common health rights violations;
- identify priority barriers to accessing justice;
- obtain follow-up, feedback and evaluation from people's experiences;
- build evidence of what works and what still needs to be done; and
- promote ongoing dialogue between populations and health care facilities, to strengthen understanding and build trust.

Source: SALC (2017) *Access to Justice for Healthcare Violations: A guidance note for complaint bodies*. Johannesburg: SALC. Available at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Policy-Brief-4.0.pdf>

Case study: One-day training reduces discriminatory attitudes in South Africa

The National Department of Health in South Africa is currently developing a national training strategy to scale up in-service training on HIV, tuberculosis, human rights and key populations and to integrate similar materials into its pre-service health care worker training curricula.

In 2013 and 2014, 405 health care workers (nurses, counsellors, social workers and managers) across 5 South African provinces participated in a one-day 'Integrated Key Populations Sensitivity Training Programme for Healthcare Workers in South Africa'. The programme aimed to sensitize health workers to improve access to appropriate and non-judgemental health services for men who have sex with men, sex workers and people who use drugs.

After the training, the attitudes of trained health care workers were compared with those who did not attend the training. Over 70 percent of participants strongly agreed that the training helped to increase their awareness of psychosocial vulnerabilities of key populations and address stigmatizing attitudes. Trained health care workers reported a shift in attitudes, increased empathy for key populations, less negative and discriminatory moral-based judgements, and increased self-perceived capacity to provide appropriate health services.

The findings suggest that sensitization training increases health care workers' knowledge and awareness of specific HIV-related health needs and psychosocial vulnerabilities of key populations, reduces moralizing and judgemental attitudes, and results in health care workers feeling better prepared to provide appropriate and sensitive services.

Source: Duby, Z., Fong-Jaen, F., Nkosi, B., Brown, B. and Scheibe, A. (2019) "‘We must treat them like all the other people’: Evaluating the Integrated Key Populations Sensitivity Training Programme for Healthcare Workers in South Africa." *S Afr J HIV Med.* 2019;20(1): a909. Available at <https://doi.org/10.4102/sajhivmed.v20i1.909>.

Example: Prohibiting forced/coerced testing, treatment or surgery of young key populations

There are numerous examples of forced or coerced testing, treatment or surgery that may impact young key populations. Some examples include mandatory HIV testing of sex workers, forced sterilization of young women living with HIV, coerced termination of pregnancy of young women who use drugs, and surgery on young intersex people without voluntary, informed consent.

There may be several ways to strengthen protection in law and policy for young key populations, to protect them from forced or coerced testing and treatment. Some examples include:

- revising relevant health laws, policies, guidelines, charters and/or codes of ethics to:
 - specifically prohibit forced/coerced health procedures;
 - specifically mention young key populations as a population needing protection from forced/coerced health procedures;
 - specifically provide for independent, voluntary and informed consent, including for adolescents of an agreed age; and
 - provide remedies for unlawful actions that violate patients' rights.

- revising children’s and youth laws, policies, strategies, plans and guidelines to:
 - specifically mention young key populations as a population needing protection from forced/coerced health procedures; and
 - specifically provide for independent, voluntary and informed consent for adolescents of an agreed age; and
 - provide remedies for actions that violate these laws.
- revising gender laws, policies, strategies, plans and guidelines to:
 - specifically mention young key populations as a population in need of protection from forced/coerced health procedures;
 - specifically provide for access to non-discriminatory, voluntary health care services; and
 - provide remedies for actions that violate these laws, policies, strategies, plans and guidelines.
- revising health care training programmes to:
 - specifically include training on the SRHR of young key populations, including evidence of the impact of stigma, discrimination and rights violations on access to health care;
 - specifically emphasize the rights of young key populations to access health care with independent, voluntary and informed consent, and laws and policies indicating the agreed age for independent consent; and
 - specifically prohibit forced or coerced testing, treatment or surgery.
- strengthening human rights awareness and education programmes to:
 - specifically include communication and training on the SRHR of young key populations;
 - create awareness of rights, including access to health care services based on voluntary and informed consent, and redress mechanisms; and
 - promote redress for rights violations.
- strengthening policies and guidelines for health care accountability and redress mechanisms to:
 - ensure they are transparent, accessible and independent;
 - ensure complaints body officers are sensitized to the SRHR and other human rights concerns of young key populations;
 - provide complainants with access to information, including medical records; and
 - create awareness and promote redress for rights violations, including for young key populations.

Case study: Regulatory Impact Assessment for strengthening SRHR of young intersex persons in Zambia

The Zambian Constitution and various national laws provide for equality, non-discrimination, and access to education, employment and health care without discrimination. However, these provisions fail to provide intersex persons with adequate protection from stigma, discrimination, violence, and unfair treatment within various sectors of society, including health care, employment and education.

In 2021, the Zambia Medical Association, the Intersex Society of Zambia and the United Nations Development Programme (UNDP) supported a Regulatory Impact Assessment (RIA) to assess the legal and regulatory framework for protecting the SRHR of intersex persons, identify gaps and challenges, and recommend critical actions for the review and reform of laws, regulations and policies.

The process included a review of international, regional and national human rights commitments, documents, guidance and protocols relevant to the rights of intersex persons, as well as an analysis of national laws that affect intersex persons in Zambia. It also included research into the nature and extent of stigma, discrimination and rights violations experienced by intersex persons both within Zambia and globally. Focus group discussions were held with key stakeholders, including from the Intersex Society of Zambia.

The RIA found instances of violations of the SRHR and other rights of intersex persons, including stigma and discrimination across various sectors of society, including in health care, institutional violence, as well as forced or coerced medical interventions on intersex persons, particularly intersex infants, adolescents and young people.

The RIA made several key recommendations to strengthen SRHR for intersex people, including:

- a review of anti-discrimination laws (e.g. the Gender Equity and Equality Act) to provide for equality and non-discrimination, including based on sex characteristics, and to recognize intersex persons as a vulnerable population; and
- a review of health law and guidelines to include specific protections of the SRHR of intersex persons, including young intersex persons, including protecting their rights to equality and non-discrimination, confidentiality, and protection from forced medical procedures in the health sector.

The RIA resulted in the development of a Medical Management Protocol for the health sector, to minimize harmful medical practices, including surgeries, that infringe the rights of intersex persons. The Protocol provides for equality and non-discrimination, privacy, dignity, and participation in decision-making, among other things. It recommends delaying unnecessary surgeries for young intersex persons until they can participate in decision-making.

4.2 Guidance for the justice sector

Key issues

Key issues affecting the SRHR of young key populations in the justice sector have been discussed in Section 2. These, and any other key issues, should form part of consultations, and should inform the review of relevant laws, policies, plans, strategies, guidelines and programmes, where relevant.

Some of the most critical key issues include:

- **overly broad laws that criminalize HIV transmission, exposure and non-disclosure**, which have been known to exacerbate stigma and discrimination against key and vulnerable populations and to discourage young key populations from accessing health care services, among other things;

- **laws that criminalize same-sex sex, aspects of sex work and possession of drugs for personal use**, which marginalize young key populations, drive them underground and away from health care services, and increase their vulnerability to stigma, discrimination and violence, including from law enforcement officers; and
- inadequate **access to redress** and remedies for rights violations, including fear of reporting complaints to law enforcement officers.

Example: Access to justice for young key populations

Young key populations report difficulties in accessing justice when their rights are violated. For instance, sex workers may struggle to report sexual abuse and rape by clients or law enforcement officers in countries where sex work is criminalized. Similarly, LGBTI people report being afraid of reporting discrimination in health care settings or violence from partners or clients, due to a mistrust of law enforcement officers and fear of prosecution for offences relating to same-sex sex when reporting.

There are many ways to strengthen access to justice for young key populations, using the courts and other remedies. This strengthens their broader protection and inclusion in society, including strengthening their access to SRHR and other services. They include:

- conducting legal environment assessments and human rights assessments to assess stigma, discrimination, punitive/discriminatory laws and policies, and access to justice in the country. The findings can be used to develop policy briefs and advocacy initiatives to direct law and policy review and reform, and measures to strengthen access to justice;
- revising criminal laws to:
 - repeal overly broad laws criminalizing HIV transmission, exposure and non-disclosure;
 - decriminalize same-sex sex;
 - decriminalize aspects of sex work;
 - review ‘public order’ laws used to harass and unlawfully arrest key populations; and
 - ensure protection from domestic/intimate partner violence for all persons, including sex workers and persons in same-sex sexual relationships.
- review prosecutorial and judicial guidelines to:
 - prohibit the use of ‘public order’ laws to harass or unlawfully arrest members of young key populations;
 - provide prosecutorial guidance on whether and when to prosecute cases of HIV transmission, exposure and non-disclosure;
 - provide judicial guidance on settling cases involving the overly broad criminalization of HIV transmission, exposure and non-disclosure;
 - provide prosecutorial guidance on whether and when to prosecute cases involving charges of same-sex sex or sex work; and
 - provide judicial guidance on adjudicating and sentencing in cases involving charges of same-sex sex or sex work.

- revising judicial pre- and in-service training protocols and programmes to:
 - specifically include training on the rights of key populations, including young key populations, including evidence of the impact of criminalization, stigma, discrimination and violence on access to justice;
- revising law enforcement pre- and in-service training protocols and programmes to:
 - specifically include training on the rights of key populations, including young key populations, including evidence of the impact of harsh law enforcement practices on access to justice for young key populations; and
 - specifically include training on the scope of criminal laws ('public order' laws and laws criminalizing same-sex sex, sex work and HIV transmission, exposure and non-disclosure) and lawful arrests within their scope.
- revising laws, policies and programmes regarding legal aid and legal support services to:
 - strengthen access to justice for young key populations; and
 - sensitize legal service providers on access to justice for young key populations.
- strengthening redress mechanisms, including by:
 - developing a range of accessible complaints mechanisms for young key populations to access justice (e.g. fast-track courts); and
 - sensitizing and strengthening national human rights institutions.
- strengthening human rights awareness and education programmes to:
 - create awareness of the rights of young key populations; and
 - create awareness of the right to access justice, including legal representation, legal aid and alternative complaints mechanisms.

Young key populations should be included in these efforts, for example by:

- involving them as peer educators in 'Know Your Rights' sessions;
- including them in training and sensitization sessions for lawmakers and law enforcement officers;
- involving them in decision-making spaces for law and policy review and reform; and
- developing community-led monitoring of rights violations, by young key populations and organizations that support them.

Case study: Justice sector working towards decriminalizing sex work in South Africa

Almost all countries in SADC criminalize aspects of sex work. After several years of civil society advocacy, and some efforts by government and statutory institutions such as the South African Law Reform Commission (SALRC) and the Commission for Gender Equality, the justice sector in South Africa has recently strengthened efforts to decriminalize sex work, culminating in the Criminal Law (Sexual Offences and Related Matters) Amendment Bill in December 2022.

While it has certainly not been a process without difficulties, it does illustrate how the justice sector can work with CSOs and key stakeholders to review laws on sex work, to better protect the rights of sex workers.

- In 2017, the SALRC investigated and produced a report on adult sex work, on behalf of the Department of Justice and Constitutional Development. The report did not support the decriminalization of sex work.
- In 2018, a summit arranged by the Multi-Party Women's Caucus reflected on the SALRC's report. At the conclusion of the summit, the SALRC promised to conduct further research and support public discussion on the matter.
- Later in 2018, 1,200 people, including President Cyril Ramaphosa and a number of CSOs, gathered at the Presidential Summit against Gender-Based Violence and Femicide. They discussed the relationship between gender-based violence and criminalization of sex work, among other things. The summit declaration committed to legislative measures to decriminalize sex work.
- A number of institutions such as the Commission for Gender Equality and the South African National Aids Council have since expressed their views in favour of the decriminalization of sex work.
- In 2019, the Department of Justice and Constitutional Development adopted the National Strategic Plan on Gender-Based Violence and Femicide 2020–2030. The Plan commits to fast-track legislative processes to decriminalize sex work between 2020 and 2024.
- In February 2022, the Deputy Minister of Justice and Constitutional Development, Mr. John Jeffery, started a series of consultative meetings with various stakeholders and interest groups to find the best way forward.
- In December 2022, the Department of Justice and Constitutional Development gazetted the Criminal Law (Sexual Offences and Related Matters) Amendment Bill for public comment. The Bill decriminalizes the sale and purchase of adult sex work.
- The Deputy Minister of Justice has indicated that if all goes according to plan, sex work will be decriminalized by 2024.

4.3 Guidance for the youth sector

Key issues

Key issues affecting the SRHR of young key populations in the youth sector should form part of consultations and inform the review of relevant laws, policies, plans, strategies, guidelines and programmes, where relevant.

Some of the most critical key issues have been discussed in Section 2 and include:

- **stigma, discrimination and inequality** in the education and health care sectors (e.g. bullying of LGBTI youth in schools), despite the vulnerability and needs of young people;

- **inadequate access to youth-friendly services, such as health care and education**, that meet the specific needs of young key populations;
- **age of consent** laws, policies and guidelines that deny young people independent access to health care services without the consent of a parent or guardian;
- **inadequate access to CSE** that also includes issues of concern (e.g. SOGI) for young key populations; and
- **laws, regulations and policies that fail to provide/allow for youth inclusion and participation** in decision-making that affects the rights of young key populations.

Case study: Promoting SRHR for young key populations in the youth sector in Mozambique

In Mozambique, the SRHR of young key populations are neither recognized nor included in the National Strategy for Implementation of Youth Policy. Recent efforts to strengthen the inclusion, representation, participation and influence of young key populations in decision-making aim to strengthen the protection of the SRHR of young key populations in youth policies.

In 2022, the Ministry of Youth reviewed the National Strategy, which provided an opportunity to ensure young key populations' SRHR were prioritized and integrated. Young key populations were empowered and meaningfully involved in this process through various steps such as strategies, processes and structures:

- Efforts were made to build the capacity and participation of young key populations by engaging CSOs, supporting pre-consultations and facilitating the participation of young key populations in decision-making platforms.
- Meetings were held between young key populations and the Youth Secretariat of State and Employment, which allowed young people to present and discuss their needs and priorities.
- UNDP supported a multisectoral meeting partnering with and bringing together young key population networks, organizations and other CSOs, with the Youth Secretariat and other core sectors. This supported the involvement of young key populations in dialogue and decision-making within the youth sector.
- In collaboration with UNDP, the Ministry of Youth identified strategies and priorities for joint actions to strengthen the inclusion of young key populations in the sector.

The expected outcome of the process is that the SRHR of young key populations will be promoted and explicitly recognized in the National Strategy for Implementation of Youth Policy.

Example: Access to CSE for young key populations

Access to CSE for young people, particularly young key populations, is an ongoing concern in SADC countries. It is critical that all young people receive CSE that provides information, skills and access to services to address their vulnerabilities. This includes providing CSE to support young key populations who may have specific sexual and reproductive health vulnerabilities and risks relating to sexual exploitation and abuse, involvement in transactional sex, same-sex sexual relationships and exposure to health risks due to drug use.

There are various steps the youth sector can take to support the review of relevant laws, policies and guidelines to strengthen access to CSE for young key populations in and out of schools, such as:

- collating information on stigma, discrimination and other rights violations in the education sector (e.g. through community-led monitoring and digital reporting platforms).

- revising relevant education and health laws, policies, guidelines, charters and/or codes of ethics to:
 - specifically include mention of young key populations as a population in need of protection;
 - specifically provide access to SRH information and services, including CSE for young people in and out of school; and
 - provide remedies for failing to provide access to relevant SRH information and services, including CSE.
- revising children’s laws to:
 - specifically include mention of young key populations as a population in need of protection; and
 - specifically provide for access to SRH services and information, including CSE for young people in and out of school.
- revising youth laws, policies, strategies and plans to:
 - specifically include mention of young key populations as a population in need of protection; and
 - specifically provide for access to SRH services and information, including CSE for young people in and out of school.
- revising education laws, policies, strategies and plans to:
 - specifically include mention of young key populations as a population in need of protection; and
 - specifically develop a CSE curriculum which includes issues of sexual orientation, gender identity, gender expression and sex characteristics.
- revising health care and education training curricula and programmes to:
 - specifically include training on the SRHR of young key populations, including the right of access to SRH services and information and CSE;
 - specifically include training on the provision of youth-friendly SRH services and information, including CSE for all young key populations; and
 - ensure that SRH information and CSE are aligned with and address the specific needs of young key populations, including addressing issues of SRH rights and the right to equality and non-discrimination, including gender equality, sexual orientation, gender identity, gender expression and sex characteristics.
- strengthening human rights awareness and education programmes to:
 - specifically include communication and training on the SRHR of young key populations;
 - create awareness of rights to access to information, including SRH services and information, including CSE; and
 - create awareness of rights and promote redress for rights violations.

- strengthening policies and guidelines for accountability and redress mechanisms to hold service providers to account by:
 - ensuring they are transparent, accessible and independent;
 - ensuring that complaints body officers are sensitized to the SRHR and human rights concerns of young key populations, including in terms of access to information and education; and
 - providing complainants with access to information.

Young key populations should be included in these efforts, for example by:

- involving them as peer educators in CSE, ‘Know Your Rights’ and other awareness-raising sessions;
- including them in training and sensitization sessions for health workers;
- involving them in decision-making spaces for law and policy review and reform; and
- developing community-led monitoring of rights violations, by young key populations and organizations that support them.

Tips for effective participation and inclusion of young key populations

- Ensure that young key populations are directly involved in the design, implementation and evaluation of programmes serving young people. Adopt a disaggregation approach in ensuring representation: nothing for us without us!
- Invest in young key populations’ leadership development, not only by securing their seat at the decision-making table but also by providing representatives with a package of support services to allow them to develop their skills, conduct timely consultations and provide feedback.
- Offer groups of young key populations the opportunity to be recognized at the local/municipality level before formal registration. Supporting partnerships with groups of young key populations could be a good first step to formalization.
- Ensure that community and young key populations’ inputs into health services are recognized and rewarded through investment in peer-to-peer community health workers.
- Design services-related information, communication and awareness/education tools that specifically target young key populations, through youth-led approaches that have proven successful in other locations and settings.
- Given the fear of prosecution, arrest, stigma or discrimination, develop an outreach approach that is peer-led and offers safeguards for treating young key populations with dignity and assurances of confidentiality in service delivery.

Case study: Promoting CSE among young people in Zambia through laws, policies and stakeholder engagement

In 2011, in line with global and regional treaties, the Government of Zambia enacted Education Act No. 23. Section 108(1)(i) of the Act empowers the Minister of Education to amend the curriculum to introduce CSE.

In 2014, the government worked with a range of partners, including UNFPA, the Human Rights Commission, the Population Council and Women and Law in Southern Africa, to assess the status of SRHR in Zambia and to develop the CSE curriculum. The training was rolled out to all schools, targeting children in grades 5–12.

In 2016, UNFPA and the Ministry of Youth, Sport and Child Development launched a 12-day train-the-trainer programme on the CSE curriculum for out-of-school youth in Zambia. The training aims to develop the capacity of sexuality education trainers to train other educators to provide CSE for out-of-school young people.

The implementation of the CSE curriculum has since been evaluated. Following the evaluation, various follow-up campaigns and programmes were launched. The Safeguard Young People programme aims to give young people access to more youth-friendly SRHR services at local health facilities and to set up a referral system between schools and health facilities. In 2021, through Safeguard Young People, the CONDOMIZE! and YoungSmartFree campaigns reached 229,000 young people with information on SRH in Zambia.

4.4 Guidance for the gender sector

Key issues

There are numerous opportunities to review gender-related laws and policies, to try to remove and reduce gender inequality, harmful gender norms and gender-based violence.

Key issues in sub-Saharan Africa have been discussed in Section 2, and include:

- **laws and policies that reinforce gender inequality**, reducing the autonomy of women and girls to have decision-making powers within their marriage, independently access SRH services, and own and inherit property, among other things;
- laws and policies that **fail to recognize and provide for all forms of gender identity and expression**, such as identity documents that fail to specifically provide for transgender or intersex persons;
- **laws, policies and practices that perpetuate harmful gender norms** such as child marriage; and
- laws, policies, guidelines and practices in the gender, health and justice sectors that **fail to protect or provide adequate support and redress for gender-based violence**, especially against women, girls, men, boys, and sexual and gender minorities.

Example: Reducing violence in law, policy and practice

Laws, policies and law enforcement practices fail to adequately reduce all forms of sexual and gender-based violence against all affected populations, including young key populations such as adolescent women and girls from key populations (e.g. young people who sell sex, young women who use drugs), as well as young LGBTI populations.

Important steps to take include:

- revising relevant anti-discrimination laws, policies, guidelines, charters and/or codes of ethics to:

- specifically include mention of adolescent girls and young women, adolescent boys and young men, and young LGBTI persons as populations in need of protection from sexual and gender-based violence;
- specifically prohibit gender inequality, harmful gender norms and sexual and gender-based violence; and
- provide remedies for all forms of violence.
- revising criminal laws and sexual offence laws to:
 - specifically include penalties for all forms of sexual and gender-based violence against all populations, including sexual and gender minorities; and
 - broaden definitions of sexual offences to ensure they are non-binary (e.g. broaden definition of rape to include rape of men, women, transgender and intersex persons), and repeal marital rape exemptions.
- revising gender-related laws, policies, strategies and plans to:
 - specifically include mention of adolescent girls and young women, adolescent boys and young men, and young LGBTI persons as populations in need of protection from inequality and sexual and gender-based violence;
 - specifically prohibit gender inequality, harmful gender norms and sexual and gender-based violence against all affected populations, including young key populations; and
 - specifically provide for the participation of adolescent girls and young women, adolescent boys and young men, and young LGBTI persons in policy- and decision-making.
- revising health care and law enforcement policies, standard operating procedures (SOPs), guidelines, training curricula and programmes to:
 - specifically include protocols and procedures for managing sexual and gender-based violence against young key populations; and
 - specifically include training on the SRHR of young key populations and their vulnerabilities to sexual and gender-based violence.
- strengthening human rights awareness and education programmes to:
 - specifically include communication and training on the right to identity documentation for young LGBTI persons;
 - create awareness of the right to access to information and data protection; and
 - create awareness of and promote redress for rights violations.
- strengthening policies and guidelines for accountability and redress mechanisms to hold perpetrators to account by:
 - ensuring they are transparent, accessible and independent;
 - ensuring that complaints body officers are sensitized to the SRHR and human rights concerns of young key populations, including in terms of access to information and education; and
 - providing complainants with access to information.

Tips for addressing gender-based violence against young key populations

According to the United Nations Special Rapporteur on Violence against Women, **gender-based violence should be addressed through a non-binary approach** that recognizes that it is a phenomenon that includes matters of sexuality, and violations against persons on the basis of their real or imputed sexual orientation, gender identity and sex characteristics.

As such, the scope of the definition of gender-based violence needs to be expanded to include violence based on sexuality, sexual orientation, gender identity and sex characteristics, thereby including all cisgender, queer, intersex and transgender women and female-presenting people.

Tips for policymakers to successfully address violence against young key populations include the following:

- Policies and programmes addressing violence must be comprehensive and address all aspects of violence (from interpersonal to structural and societal), in all contexts of its manifestation (peace times or conflict), in all locations (rural/urban, in the family or in the community, public or private), regardless of the perpetrator (state or non-state actors) or the victim (member of the mainstream or marginalized groups) and in all its forms (verbal, physical, psychological).
- Policymakers need to be knowledgeable and aware of the needs and rights of young key populations and devise policies and programmes that are responsive to the compounded vulnerabilities that young key populations face due to their age, inexperience, identity and choices.
- Any policy or programme that seeks to address the needs of young key populations needs to be informed, monitored and evaluated with meaningful inputs from young key populations.
- Education and dedicated skills-building programmes need to be developed and rolled out for policymakers and programmers to be knowledgeable on and responsive to the needs and rights of young key populations. Countries should consider an enhanced accountability mechanism, given the age and compounded vulnerabilities of young key populations.
- The scope of the definition of gender-based violence needs to be expanded to include a non-binary approach that considers violence based on sexuality, sexual orientation, gender identity and sex characteristics.

Example: Recognizing gender identity and expression in law

The failure of laws, policies and regulations to allow people to obtain or amend official documents to reflect their name (or name change) and gender marker (e.g. to reflect gender identity for transgender persons, or intersex status, or to reflect non-binary status) creates various obstacles and barriers for the full participation of transgender and intersex people in society. For instance, they may be unable to access or amend official documentation (e.g. identity documents, birth certificates, academic records etc.) to reflect their gender identity or intersex status, which may create numerous barriers to participation in society, including for routine tasks such as receiving parcels for delivery, and creating obstacles to higher learning and employment, and access to health care and other services.

There are various steps the gender sector can take to support the review of relevant laws, policies and guidelines to strengthen gender equality in official documentation, such as:

- collating information on gender inequality, harmful gender norms and gender-based violence that impact young people, including on young sex workers, people who use drugs, and young sexual and gender minorities (e.g. through a 'gender observatory', call centres/hotlines or community-led monitoring initiatives);

- revising relevant anti-discrimination laws, policies, guidelines, charters and/or codes of ethics to:
 - specifically include mention of adolescent girls and young women, adolescent boys and young men, and young LGBTI persons as a population in need of protection;
 - specifically provide for equality and non-discrimination based on sex, gender, sexual orientation, gender identity and expression, and sex characteristics; and
 - provide remedies for discrimination based on sexual orientation, gender identity and expression, and sexual characteristics.
- revising status laws to:
 - provide for changes to birth registration and identity laws to allow for changes of sex or gender in official registers and official documentation to reflect gender identity (including non-binary and intersex); and
 - allow for a wide range of people, including young persons, to apply for a change of particulars, including on the basis of social, psychological and medical gender affirmation and not only surgery.
- revising gender-related laws, policies, strategies and plans to:
 - specifically include mention of adolescent girls and young women, adolescent boys and young men, and young LGBTI persons as populations in need of protection;
 - specifically provide for the participation of adolescent girls and young women, adolescent boys and young men, and young LGBTI in policy- and decision-making; and
 - specifically provide for the identity rights of young LGBTI persons, including changes in name and gender markers on official documentation.
- revising health care and education policies, training curricula and programmes to:
 - specifically include training on the rights of young LGBTI persons to access non-discriminatory education and health care, notwithstanding discrepancies in gender markers on documentation;
- strengthening human rights awareness and education programmes to:
 - specifically include communication and training on the right to identity documentation for young LGBTI persons;
 - create awareness of the right to access to information and data protection; and
 - create awareness of and promote redress for rights violations.
- Young key populations should be included in these efforts, for example by:
 - involving them as peer educators in awareness-raising and education sessions;
 - including them in training and sensitization sessions for health workers and educators;
 - involving them in decision-making spaces for law and policy review and reform; and
 - developing community-led monitoring of gender inequality, harmful gender norms and gender-based violence, by young key populations and organizations that support them.

Case study: The establishment of a gender observatory in Angola

In 2022, the Ministry of Social Affairs, Family and Promotion of Women in Angola began developing a gender observatory, with implementation planned for 2023. The process began back in 2016, with the idea of establishing an official database, using key, standardized qualitative and quantitative indicators, to collate, monitor and document progress towards gender equality and inform development policies and programming in the country.

The main objectives of the gender observatory are to:

- monitor the country's progress towards achieving international, regional and national goals and targets in the promotion of gender equality, with a particular focus on commitments within CEDAW, the African Charter, International Labour Organization Conventions, the African Agenda 2063 and the Sustainable Development Goals;
- show the impact of state actions and measure the changes in women's autonomy across different spheres;
- make information available to different stakeholders, including the broader public, as well as the government and CSOs, on gender equality in Angola;
- provide information and tools to support evidence-informed publications and the evaluation of public policies and programmes, to promote strengthened gender equality; and
- promote increased visibility of gender inequalities, to support the integration of gender equality in the public development agenda.

With the support of UNDP's #WeBelongAfrica project, the Ministry of Social Affairs, Family and Promotion of Women consulted and collaborated with gender equality and LGBTI CSOs in discussions around potential key indicators, seeking recommendations for specific indicators to monitor and document gender inequality and gender-based violence affecting LGBTI people.

The collaboration between LGBTI CSOs and the gender sector has expanded opportunities for the inclusion of LGBTI indicators to broaden the understanding of gender beyond binary concepts. For now, the gender observatory includes a specific section for the collation of research, data and reports on sexual and gender diversity, supporting ongoing efforts to promote a protective legal and policy environment and to strengthen the inclusion of LGBTI people in Angola.

4.5 General guidance for all sectors

The following key steps are suggested as guidance for those wishing to review their laws, policies, strategies, guidelines and programmes to strengthen the SRHR of young key populations in their sector. They are not prescriptive; the suggested guidelines can be adapted to suit your country's context and evolving opportunities.



Step 1: Allocate responsibility to a representative task team

It is recommended that a representative task team be set up to guide, provide technical support to and oversee the law and policy review and reform process and follow up on recommendations.

Ideally, there may already be an **appropriate, existing multisectoral structure, committee or forum** that is well suited to take on the task. In this case, it may be useful to constitute and allocate responsibility to a subgroup or task team. This helps to ensure that the intervention is situated within existing commitments, includes key role-players within the sector(s) and is sustainable and well resourced. The task team can discuss and further clarify its roles and responsibilities for reviewing key laws, policies, strategies, guidelines or programmatic responses within the sector.

Representation on the task team will differ from country to country and will depend on the main sectors and issues involved. However, given the multisectoral nature of the issues, it is important to remember the usefulness of working across all sectors—health, justice, youth and gender, as well as government, civil society and United Nations agencies, for instance—on SRHR issues affecting young key populations. Some potential key representatives are suggested below.

Table 3: Key representatives for a task team

Key stakeholders	Potential roles and responsibilities
Government representatives from your sector and related sectors (e.g. health, justice, gender, youth and, if relevant, education, social welfare, correctional services, police etc.)	<ul style="list-style-type: none"> Act as secretariat for the task team Build political leadership for efforts to protect and promote SRHR of young key populations Provide expertise on sectoral laws, strategies, plans, policies and programmes relevant to the SRHR of young key populations Support government action to review relevant laws, policies, strategies, guidelines or programmes
Networks of people living with HIV	<ul style="list-style-type: none"> Mobilize the community and build support for the process Represent the interests of and provide direct knowledge and lived experiences of people living with HIV, including of stigma, discrimination, rights violations and other human rights and gender-related barriers to health care facing young key populations Support advocacy and follow-up action to review and reform laws, policies, strategies, guidelines and programmes to strengthen the SRHR of young key populations
Networks/representatives of key and vulnerable populations , particularly young key populations (e.g. young people, sex workers, gay men and men who have sex with men, transgender people, prisoners)	<ul style="list-style-type: none"> Mobilize the community and build support for the process Represent the interests of and provide direct knowledge and lived experiences of young people and young key populations, including of stigma, discrimination, rights violations and other human rights and gender-related barriers to health care facing young key populations Support advocacy and follow-up action to review and reform laws, policies, strategies, guidelines and programmes to strengthen the SRHR of young key populations
CSOs working in the health, justice, youth and gender sectors on issues relevant to the SRHR of young key populations (e.g. health, HIV, SRHR, gender equality, LGBTI rights, youth, justice and human rights issues)	<ul style="list-style-type: none"> Mobilize the community and build CSO support for the process Provide technical expertise and organizational experience of human rights and gender-related barriers affecting the SRHR of young key populations Support advocacy and action on law and human rights for affected populations

Key stakeholders	Potential roles and responsibilities
Any relevant statutory bodies (e.g. Human Rights Commission, Gender Commission, Youth Commission, Law Commission, Ombudsperson)	<ul style="list-style-type: none"> • Build political leadership and support for the process • Work within their government mandate to support the monitoring and investigation of human rights violations and support the law reform process • Provide knowledge and expertise on law and human rights review and reform and strengthening access to justice
Relevant United Nations agencies, donors and international organizations (e.g. UNDP, UNAIDS, UNFPA, UNESCO, PEPFAR, Global Fund to Fight AIDS, TB and Malaria, Frontline AIDS)	<ul style="list-style-type: none"> • Broker political relationships and build support for the process • Provide knowledge, experience and technical expertise of law, human rights and gender-related issues affecting the SRHR of young key populations • Support for resource mobilization
Other potential representatives	
Legal and human rights activists	<ul style="list-style-type: none"> • Provide technical experience and organizational experience of law and advocacy for law and policy review and reform and strengthened access to justice
Academia and research institutions	<ul style="list-style-type: none"> • Provide research knowledge and technical expertise on health and human rights issues affecting young key populations
Faith-based organizations and leaders	<ul style="list-style-type: none"> • Build faith-based support for the process and follow-up action
Professional bodies (e.g. medical associations, nurses' council, social workers' associations, educators' associations)	<ul style="list-style-type: none"> • Build support for the process and follow-up action • Provide knowledge and organizational experience of interactions between young key populations and professionals (health workers, educators, social workers) in the sector

Step 2: Undertake a consultation with key stakeholders

An important next step is to undertake a consultation with key stakeholders to discuss and identify the priority legal, policy and human rights issues impacting the SRHR of young key populations in your sector.

Key stakeholders are similar to those represented on the task team, including among others:

- government representatives from across all sectors;
- networks of people living with HIV, and other affected populations;
- CSOs working with people living with HIV and affected populations, and working on health, justice, youth and gender-related issues;
- relevant United Nations agencies and donors; and
- relevant statutory bodies.

A consultative process can help to:

- present available information, and identify and discuss barriers to access and other critical SRHR issues affecting young key populations, including any recent studies and research findings, among key stakeholders in the sector;

- discuss available information on opportunities presented by protections in laws, policies, strategies, guidelines and programmes, as well as important law and policy reform processes or strategy update processes under way;
- discuss available information on challenges and gaps in laws, policies, strategies, guidelines and programmes that may exacerbate the issues;
- identify key priorities for further research, review or reform;
- identify key stakeholders, partnerships and multi-stakeholder forums available to support actions to strengthen the SRHR of young key populations, including other donor-supported work under way at national level;
- discuss resources available for strengthening the SRHR of young key populations;
- discuss capacity, capacity constraints and technical support needs of key stakeholders; and
- agree on a way forward, including the roles and responsibilities of various stakeholders and the task team.

Step 3: Gather information

Priority actions to strengthen the SRHR of young key populations should be informed by the best available evidence. All countries recognize the challenges of limited evidence and data to inform law and policy review and reform. Evidence-gathering activities can include:

- undertaking further desk research on critical SRHR issues affecting young key populations in the sector;
- collating data on rights violations from call centres/hotlines, legal support organizations, community-led monitoring initiatives, human rights/gender observatories, national human rights institutions and civil society;
- setting up interviews with key stakeholders to gather further information, inputs and recommendations;
- reviewing relevant laws, policies, plans, strategies, guidelines or programmes; and
- undertaking a full situation analysis of existing opportunities, programmes, capacity and resources for strengthening the SRHR of young key populations.

Step 4: Review and implement protective laws, policies, strategies, guidelines and other interventions

Based on the outcomes of the consultative process and evidence-gathering, the task team and other key stakeholders can begin to undertake priority activities, which may include:

- prioritizing advocacy activities for recommended changes to laws, policies, plans, strategies, guidelines or programmes for consultation;
- developing implementation plans for the full implementation of changes to laws, policies, strategies, guidelines and programmes;
- determining key partnerships, allocating responsibilities across sectors and allocating oversight to multisectoral forums;
- developing capacity assessments and plans for technical support needs;

- conducting resource mobilization;
- raising awareness, conducting education and training, and developing relevant information, education and communication materials;
- developing monitoring and evaluation plans and indicators to monitor and evaluate implementation of changes; and
- documenting best practices and lessons learned.

Step 5: Link to regional-level initiatives

Country-level efforts should link to regional-level initiatives to strengthen responses at the national level, as well as to support and build on regional-level efforts and enhance cross-regional support. For instance, activities should include:

- drawing on regional platforms, as well as regional frameworks, guidance and technical support, to bolster political commitment for national-level activities and advocacy;
- sharing achievements, challenges and lessons learned with regional partners; and
- contributing to regional advocacy initiatives that align with national priorities, showcasing results, supporting change and encouraging accountability from other regional partners.

Annex A: Key documents

Key documents to inform the issues

Relevant national-level research studies and reports for review may include the following:

- a [UNDP-supported national Legal Environment Assessment](#) detailing challenges and gaps and recommending reform of laws, policies and practices that limit access to health care for people living with HIV, including key and vulnerable populations in the context of HIV;
- a [Global Fund-supported Baseline and/or Mid-Term Assessment](#) of efforts to remove human rights- and gender-related barriers to HIV;
- a [GNP+-supported People Living with HIV Stigma Index Country Report](#) detailing the nature, extent and impact of stigma and discrimination experienced by people living with HIV and key populations in specific sectors;
- other health, legal and human rights research findings on stigma, discrimination and punitive laws affecting young people, including young key populations in specific sectors, such as [UNFPA \(2017\) Harmonizing the Legal Environment for Adolescent Sexual and Reproductive Health and Rights](#);
- legal and human rights research findings on gender inequality, harmful gender norms and gender-based violence against young people, including young key populations, such as [AUC, UN Women, OHCHR and UNFPA \(2019\) Gender-based violence in Africa during the COVID-19 Pandemic](#);
- other human rights-related research findings on stigma and discrimination against LGBTI and sex workers globally and in the region, such as [Centre for Human Rights \(2022\) Study on the Human Rights Situation of Intersex Persons in Africa](#); [Human Rights Watch \(2022\) Progress and Setbacks on LGBTI Rights in Africa](#); [ILGA \(2020\) State-Sponsored Homophobia](#); [African Sex Worker Alliance \(2019\) Every sex worker has a story to tell about violence](#);
- CSO annual and research reports, including reports of community-led monitoring of gender inequality, harmful gender norms and gender-based violence experienced by young people, key populations and young key populations, and human rights violations documentation in all relevant sectors—for example, in health facilities and at community level. See, for instance, [Rights And Reactions: Results and Lessons Learned from REAct, A Community-Led Human Rights Documentation and Response System](#) and [PEPFAR Watch: Community-Led Monitoring](#);
- reports by statutory bodies (such as a national human rights institution or a youth or gender commission); and
- country-level reports on human rights and health commitments to regional bodies (e.g. African Commission on Human and Peoples' Rights) and international bodies such as United Nations committees and organizations. See, for instance, the data collated through the [National Commitments and Policies Instruments](#) submitted by governments to UNAIDS; [country reports to the Committee on the Elimination of Discrimination Against Women](#) or to the [Committee on the Rights of the Child](#); and reports to the [Committee on Economic, Social and Cultural Rights](#), among others.

Annex B: Relevant laws, policies and guidelines

TABLE 1: Key laws, policies and guidelines to review

TYPE OF LAW/POLICY/ GUIDELINE	EXAMPLE	WHAT PROVISIONS TO LOOK FOR
Anti-discrimination laws	<ul style="list-style-type: none"> • Equality laws • Gender equality laws • Employment laws 	<ul style="list-style-type: none"> • Provisions protecting equality rights and prohibiting discrimination based on sex, gender, sexual orientation, gender identity and expression, and sex characteristics
Health laws and regulations	<ul style="list-style-type: none"> • Public health laws • Communicable disease regulations • Health professions laws • SRH laws, policies and guidelines • HIV laws, policies and guidelines • Termination of pregnancy/sterilization laws 	<ul style="list-style-type: none"> • Specific protections for young people, key populations and/or young key populations • Equality and non-discrimination in access to health care for all • Prohibition of forced/mandatory health testing or treatment • Health care on the basis of voluntary and informed consent • Age of consent/adolescent access to health care on the basis of independent, voluntary informed consent • Confidentiality of medical information
Health strategies, plans and guidelines	<ul style="list-style-type: none"> • HIV strategic plans • SRH strategies and plans • Adolescent and youth health strategies and plans • Health prevention, treatment and care guidelines • Patients' rights charters 	<ul style="list-style-type: none"> • Minimum standard of health care services to meet the needs of young key populations • Training of health care providers on patients' rights, specifically the rights of young key populations • Legal literacy for patients, including young key populations, on their health rights and redress mechanisms • Accountability for rights violations
Health professional guidelines, protocols, SOPs and training curricula	<ul style="list-style-type: none"> • Health care worker codes of ethics • SOPs—for example, for obtaining voluntary, informed consent, and for treating marginalized populations, including young people and young key populations • Training protocols and curricula for in- and pre-service training of health workers 	

TYPE OF LAW/POLICY/ GUIDELINE	EXAMPLE	WHAT PROVISIONS TO LOOK FOR
Criminal laws	<ul style="list-style-type: none"> • Penal codes • Sexual offence laws • Domestic/intimate partner violence laws • Criminal procedure laws • Sentencing laws • Local/municipal by-laws 	<ul style="list-style-type: none"> • Provisions that criminalize same-sex sex • Broad provisions that criminalize ‘sexual conduct against the order or nature’, ‘unnatural sexual offences’ or anal sex • Provisions that criminalize aspects of sex work, including, for example, buying sex, selling sex, soliciting, living off the earnings of sex work, running a brothel etc. • Provisions criminalizing or creating offences relating to ‘disturbing public order’, ‘nuisance’, ‘vagrancy’ etc.
Law enforcement	<ul style="list-style-type: none"> • SOPs for monitoring and investigating rights violations • SOPs for responding to sexual and gender-based violence • Pre- and in-service human rights training programmes and curricula 	<ul style="list-style-type: none"> • Provisions criminalizing HIV transmission, exposure and non-disclosure • Provisions that criminalize domestic/intimate partner violence for a wide range of partnerships (including same-sex partnerships) • Provisions that criminalize sexual abuse and rape of all persons, including women and girls, men and boys, as well as sexual and gender minorities • Provisions that criminalize marital rape/rape within a partnership
Access to justice	<ul style="list-style-type: none"> • Justice sector strategies and plans • National human rights institutions laws, strategies and plans • Legal aid laws and services 	<ul style="list-style-type: none"> • Guidance for monitoring and investigating gender-based violence • Guidance for monitoring and investigating rights violations against marginalized populations, such as young key populations • Prosecutorial guidelines for adjudicating on HIV transmission, exposure and non-disclosure • Prosecutorial and judicial guidelines for prosecuting and settling cases of gender-based violence, to support access to justice for young people, including young key populations • Training of law enforcement officers on the rights of key populations, including on gender-based violence against sexual and gender minorities and sex workers, and on the rights of young key populations • Training of the judiciary on the rights of key populations, including on gender-based violence against sexual and gender minorities and sex workers, and on the rights of young key populations • Provision for legal support, including legal aid, for marginalized populations, including young key populations • Provision for investigation of rights violations against marginalized populations, including young key populations • Provision for legal literacy for marginalized populations, including young key populations, on their rights and redress mechanisms
Gender	<ul style="list-style-type: none"> • Gender equality laws, policies, strategies and plans • Gender-based violence laws, strategies and plans 	<ul style="list-style-type: none"> • Provisions protecting equality rights and prohibiting discrimination on the basis of sex, gender, sexual orientation, gender identity and expression, and sex characteristics

TYPE OF LAW/POLICY/ GUIDELINE	EXAMPLE	WHAT PROVISIONS TO LOOK FOR
Education laws and policies	<ul style="list-style-type: none"> • Schools and education laws • Educators' professional/council laws • Laws and policies relating to skills development • Laws and policies regarding curricula and provision of CSE • Other related education policies (e.g. relating to rights, access to education, sexuality education, HIV, health, learner pregnancy, sexual abuse) 	<ul style="list-style-type: none"> • Specific protections for young people, key populations and/or young key populations in education • Equality and non-discrimination in access to information and education for all young people • Provision for protection from stigma, discrimination and violence, including based on SOGI, for young people and young key populations • Provision for minimum standards of CSE for young people in and out of school • Provision for protection for/management of pregnant learners • Training of educators on the rights of young people, including young key populations, and provision of appropriate information • Provision for young people's participation in decision-making
Education strategies, plans and guidelines	<ul style="list-style-type: none"> • Strategic plans for promoting adolescent SRHR/CSE in education • Education SRHR, CSE and sexual abuse guidelines • Education guidelines regarding teacher education and development 	<ul style="list-style-type: none"> • Provision for accountability for rights violations and non-compliance with ethical guidelines, policies and protocols within education and health care
Education professional guidelines, protocols, SOPs and training curricula	<ul style="list-style-type: none"> • SOPs for managing issues such as discrimination, sexual abuse, bullying and learner pregnancy • Training protocols and curricula for in- and pre-service training 	
Children and youth	<ul style="list-style-type: none"> • Children's laws • Children's and youth HIV, health, SRHR and education policies, strategies and plans 	<ul style="list-style-type: none"> • Provisions setting out the age of majority • Specific recognition of the vulnerability of young key populations, such as young LGBTI people and young sex workers • Provisions setting out children and young people's SRH rights (as above) • Provisions setting out children's and young people's right to education, including to CSE (as above) • Provisions for legal literacy on rights and redress mechanisms for young people in and out of school • Provisions setting out children's and young people's right to access to justice
Laws affecting status of persons	<ul style="list-style-type: none"> • Marriage, divorce, child support and maintenance laws • Birth and death registration and identity laws, and national register laws, policies and regulations • Data protection laws, policies and regulations regarding official documentation 	<ul style="list-style-type: none"> • Provisions providing for the equality rights of women and people in same-sex partnerships in unions, marriage and divorce, including equality in division of property • Provisions providing for recognition, registration and amendment of names and gender markers on birth certificates and other official documentation, to reflect various forms of gender identity and expression, and sex characteristics

Annex C: Laws affecting the SRHR of young key populations in SADC countries

TABLE 2: Laws criminalizing HIV transmission in Southern and East Africa

COUNTRY	DOES NATIONAL LAW CRIMINALIZE NON-INTENTIONAL HIV TRANSMISSION OR EXPOSURE?	DO LAW ENFORCERS PROSECUTE NON-INTENTIONAL HIV TRANSMISSION OR EXPOSURE (IN RECENT YEARS)?
Angola	Yes	No
Botswana	Yes	No
Comoros	No	No
Democratic Republic of the Congo	No; but criminalizes 'deliberate' transmission	No
Eswatini	No	No
Lesotho	Yes	Yes
Madagascar	Yes	No
Malawi	No; but criminalizes under general law	Yes
Mauritius	No	No
Mozambique	Yes	No
Namibia	Yes	No
Seychelles	No	No
South Africa	No; but criminalizes under general law	Yes
United Republic of Tanzania	Yes	No
Zambia	No; but criminalizes under general law	Yes
Zimbabwe	No (recently repealed)	Yes

Source: HIV Policy Lab (www.Hivpolicylab.org) and AIDSInfo (www.aidsinfo.unaids.org), 2022.

TABLE 3: Same-sex laws in Southern and East Africa 2021

COUNTRY	IS SAME-SEX SEX ILLEGAL?	NOTES
Angola	No	
Botswana	No	Court declared laws unconstitutional
Comoros	Yes	Imprisonment for up to 14 years
Democratic Republic of the Congo	No specific legislation	
Eswatini	Yes	Imprisonment for up to 14 years
Lesotho	No specific legislation	
Madagascar	No	
Malawi	Yes	Imprisonment for up to 14 years
Mauritius	No (recently struck down)	Court recently declared unconstitutional
Mozambique	No specific legislation	
Namibia	Yes	Penalty not specified
Seychelles	No specific legislation	
South Africa	No	
United Republic of Tanzania	Yes	Imprisonment for up to 14 years to life
Zambia	Yes	Imprisonment for up to 14 years to life
Zimbabwe	Yes	Imprisonment for up to 14 years

Source: HIV Policy Lab (www.Hivpolicylab.org) and AIDSInfo (www.AIDSInfo.unaids.org), 2022.

TABLE 4: Laws restricting LGBTI+ organizations in Southern and East Africa

COUNTRY	LEGAL PROVISION
Democratic Republic of the Congo	Article 3 of Decree, Law No. 4 (2001) requires CSOs seeking registration to undergo a two-tiered process, with legal personality granted by the Minister of Justice after a favourable opinion is received from the ministry responsible for the sector in which the organization is engaged. According to a joint submission by six non-governmental organizations (NGOs) to the 2017 Universal Periodic Review, most organizations that have referred to LGBTI+ people in their constitution have been denied registration.
Eswatini	Eswatini operates on a hybrid system of common law and customary law. Consensual same-sex sexual activity—at least among men—has been widely understood to be illegal since 1907. This fact, in addition to widespread conservatism regarding issues of sexual orientation, gender identity and expression, and sexual characteristics, constitutes a significant barrier to the registration of LGBTI+ NGOs. In September 2019, Eswatini Sexual and Gender Minorities (ESGM), a local LGBTI group, was officially denied registration after four months of unclarity. Eswatini’s Registrar of Companies denied the organization’s application, citing Article 27 of the Constitution and stating that “marriages must be between men and women, whereas this association wants to promote same-sex relations”. The Registrar is also said to have argued that the group’s objectives went against Eswatini’s “communal or group interest” and could potentially “mislead the public, cause annoyance to people, or be suggestive of blasphemy or indecency”.
United Republic of Tanzania	Various provisions within Chapter 337 of the Societies Act (2002) allow the Tanzanian Registrar to reject, deregister or outlaw any organization with “any purpose prejudicial to, or incompatible with, the maintenance of peace, order and good government”. Additionally, Section 14(1) of the Non-Governmental Organizations Act (2002) states that the NGO Coordination Board may refuse the registration of NGOs whose activities are “not for public interest or are contrary to any written law”. In 2019, the expression “order and good government” included in the Societies Act was replaced by “order, morality and good governance”, as per Article 34(b) of the Written Laws (Miscellaneous Amendments) (No. 3) Act (2019). This explicit reference to “morality” increases the already sizeable legal barriers to the registration of organizations working on sexual and gender diversity issues, given the criminalization of same-sex sex.
Zambia	Section 8 of the Societies Act (1958) empowers the Registrar of Societies to refuse to register any society that is prejudicial to or incompatible with peace, welfare or good order in Zambia. In 1998, the Registrar of Societies refused to entertain activists who tried to register their group, the Lesbians, Gays and Transgender Association (LEGATRA), and said that he could not register the group “any more than I could a Satanic organisation”. While there are several LGBTI+ human rights organizations, they operate underground and strategically negotiate the dangerous legal landscape. In 2016, several United Nations Special Procedures expressed concern regarding undue delays, the subsequent refusal to register and arrests of civil society defenders in the registration of the Engender Rights Centre for Justice on grounds of “soliciting for immoral purposes”. In October 2019, a Member of Parliament raised a motion seeking to ban political parties and organizations that support LGBTI+ rights in Zambia. The motion eventually expired.

Source: International Lesbian, Gay, Bisexual, Trans and Intersex Association (2020) *State Sponsored Homophobia Global Legislation Overview Update*. Geneva: ILGA. Available at https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf.

TABLE 5: Laws regarding gender markers in Southern Africa

	CHANGE GENDER DESCRIPTION OR STATUS	MATERIAL CHANGES IN PARTICULARS	CHANGE PHOTOGRAPH	CHANGE FORENAME OR SURNAME
Angola		Article 87 Código do Registo Civil 2015		Article 87 Código do Registo Civil 2015
Botswana		Section 16 National Registration Act	Section 17 National Registration Act	Sections 12 & 13 Births & Deaths Registration Act
Eswatini		Section 8(3) Births, Marriages & Deaths Registration Act		Sections 8(1) & 8(2) Births, Marriages & Deaths Registration Act
Lesotho		“Necessary” Section 8(1) National Identity Cards Act		Section 7(2) Registration of Births and Deaths Act
Malawi		Section 20(1) National Registration Act	Section 21(1) National Registration Act	
Mozambique		Section 85(1) (m) Código do Registo Civil		
Namibia	Section 7B Births, Marriages & Deaths Registration Act		Section 12(1)(a) Identification Act	Section 8 Births, Marriages & Deaths Registration Act
South Africa	Section 2(1) Alteration of Sex Description & Sex Status Act			
Zambia		Section 9(2) National Registration Act		
Zimbabwe				Section 18(2) & 18(3) Births & Deaths Registration Act

Source: SALC (2016) *Laws and Policies Affecting Transgender Persons in Southern Africa*. Johannesburg: SALC.

TABLE 6: Sex work laws in East and Southern Africa 2022

COUNTRY	ARE ASPECTS OF SEX WORK ILLEGAL?	NOTES
Angola	Yes	Profiting from organizing and/or managing sexual services is criminalized.
Botswana	Yes	Ancillary activities associated with selling sexual services are criminalized. Ancillary activities associated with buying sexual services are criminalized. Profiting from organizing and/or managing sexual services is criminalized.
Comoros	Yes	Profiting from organizing and/or managing sexual services is criminalized. Sex work is not subject to punitive regulations and is not criminalized.
Democratic Republic of the Congo	Yes	Profiting from organizing and/or managing sexual services is criminalized. Sex work is not subject to punitive regulations and is not criminalized.
Eswatini	Yes	Ancillary activities associated with selling sexual services are criminalized. Profiting from organizing and/or managing sexual services is criminalized, and there are other punitive and/or administrative regulations of sex work.
Lesotho	Yes	Selling and buying sexual services are criminalized. Ancillary activities associated with selling sexual services are criminalized. Profiting from organizing and/or managing sexual services is criminalized. Sex work is not subject to punitive regulations and is not criminalized.
Madagascar	Yes	Ancillary activities associated with selling sexual services are criminalized. Profiting from organizing and/or managing sexual services is criminalized. Sex work is not subject to punitive regulations and is not criminalized.
Malawi	Yes	Ancillary activities associated with selling sexual services are criminalized. Profiting from organizing and/or managing sexual services is criminalized.
Mauritius	Yes	
Mozambique	No	The issue is determined/differs at subnational level.
Namibia	Yes	
Seychelles	Yes	
South Africa	Yes	
United Republic of Tanzania	Yes	
Zambia	Yes	Partial criminalization of sex work. Ancillary activities associated with selling sexual services are criminalized. Profiting from organizing and/or managing sexual services is criminalized.
Zimbabwe	Yes	

Source: HIV Policy Lab (www.Hivpolicylab.org) and AIDSInfo (www.AIDSInfo.unaids.org), 2022.

TABLE 7: Ratification of treaties in SADC countries

COUNTRY	ICCPR	ICESCR	CEDAW	CRC	AFRICAN CHARTER	MAPUTO PROTOCOL	CHILDREN'S CHARTER
Angola	1992	1992	1986	1990	1990	2007	1992
Botswana	2000	–	1996	1995	1986	–	2001
Democratic Republic of the Congo	1976	1976	1986	1990	1987	2008	Signed: 2010
Eswatini	2004	2004	2004	1995	1995	2012	–
Lesotho	1992	1992	1995	1992	1992	2004	1999
Madagascar	1971	1971	1989	1991	1992	Signed: 2004	2005
Malawi	1993	1993	1987	1991	1989	2005	1999
Mauritius	1973	1973	1984	1990	1992	2017	1992
Mozambique	1993		1997	1994	1989	2005	1998
Namibia	1994	1994	1992	1990	1992	2004	2004
Seychelles	1992	1992	1992	1990	1992	2006	1992
South Africa	1998	2015	1995	1995	1996	2004	2000
United Republic of Tanzania	1976	1976	1985	1991	1984	2007	2003
Zambia	1984	1984	1985	1991	1984	2006	2008
Zimbabwe	1991	1991	1991	1990	1986	2008	1995



UNDP HIV and Health Group, Africa