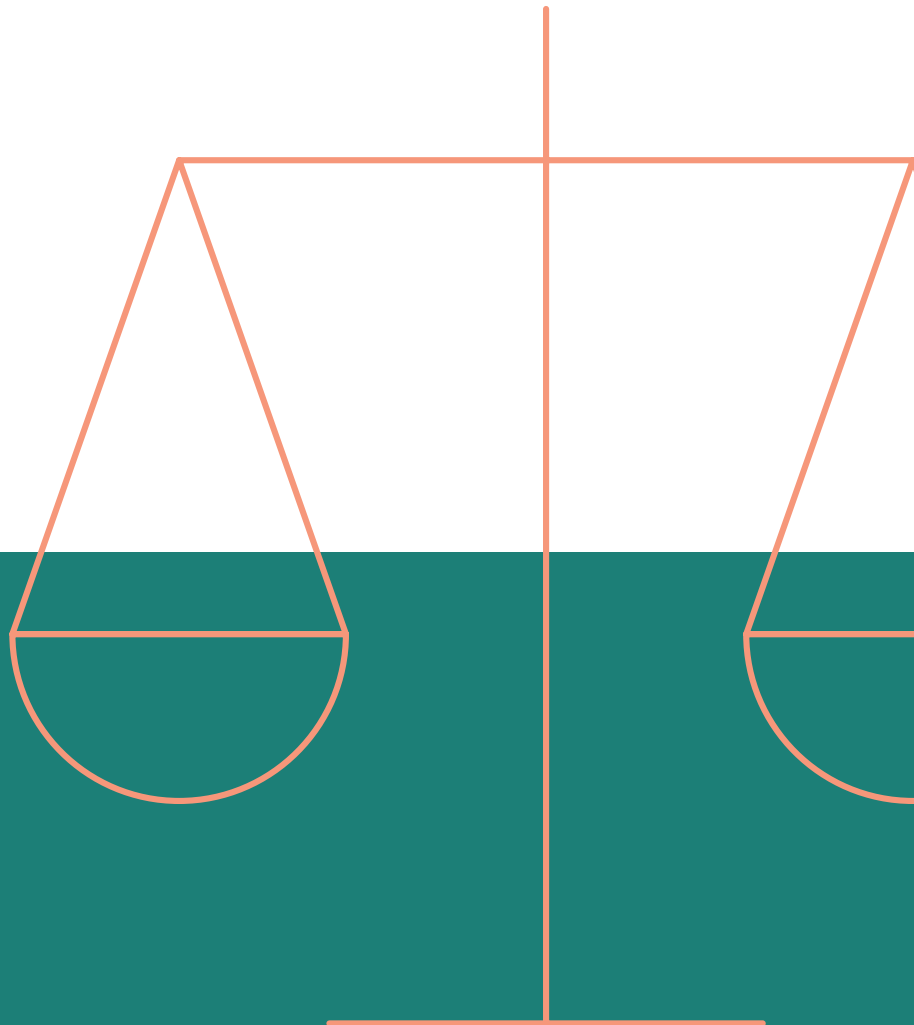




Angola

Removing legal and policy barriers for young key populations in Angola's HIV response



Introduction

This Policy Brief provides recommendations on how to remove legal, human rights and gender-related barriers to safe, accessible and effective health care for young key populations, to ensure they are not left behind in the national response to HIV and TB in Angola.ⁱⁱⁱ

It can be used by, amongst others, (i) civil society organisations (CSOs) working on HIV, TB, health and human rights as well as networks and organisations of key populations; and (ii) government law and policymakers and law enforcers, including:

- Key executive institutions such as the Office of the President and Vice-President, Attorney General (including the Public Prosecutor's Office), The Council of Ministers and the Ombudsman.
- Key ministries such as the Ministries of Health, Justice and Human Rights, Interior, Youth and Sports, Education and Finance, Social Action, Family and Women Empowerment.
- Governmental bodies such as the National Assembly's Commissions responsible for Legal Affairs, Health, Education, Social Communication, Youth and Sports, Family, Childhood, Social Work, Human Rights, Claims and Suggestions of Citizens, The National Directorate for Public Health (including Department of Reproductive Health), The National Institute for the Fight against AIDS, The National Child's Institute, The National Institute for the Fight Against Drugs and Provincial Committees for Human Rights
- Advisory bodies such as the National Commission for Fighting AIDS and the Intersectoral Commission for the Elaboration of National Human Rights Reports.

Background

In Angola the HIV prevalence among adults (15–49 years) is 2%, one of the lowest in Southern Africa. However, the number of new

Who are young key populations?

Key populations are groups who, due to specific higher-risk behaviours, are at increased risk of HIV, irrespective of the epidemic type or local context. They often have legal and social issues related to their behaviours that increase their vulnerability to HIV.

The five key populations are: men who have sex with men, people who inject drugs, people in prisons and other closed settings, sex workers and transgender people.ⁱ

Young people are defined by the United Nations as those aged 10 to 24 years.

In this Brief, **young key populations** are young people aged 10 to 24 yearsⁱⁱ who are members of key populations such as young people living with HIV, young gay men and other men who have sex with men, young transgender people, young people who inject drugs, young prisoners and young (18 years and older) sex workers.

Note: children (below 18) who sell sex are not considered sex workers, but sexually exploited children.

HIV infections per year is increasing, from 26 000 in 2010 to 28 000 in 2018,^{iv} and Angola is far from meeting the 90–90–90 targets. In 2018, UNAIDS estimated that only 42% of Angolans living with HIV knew their status while 27% living with HIV were on treatment.

The World Health Organization (WHO) estimates that over 30% of all new HIV infections globally are among young people 15 – 25 years.^v In Angola, where 65–70% of the population is below 24 years,^{vi} reaching young people with HIV and sexual and reproductive health care services is critical to ending AIDS by 2030. UNAIDS 2018 data shows that

young women in Angola aged 15–24 years are particularly vulnerable to new infections, which is three times higher than that of young men (6800 new infections among young women, compared to 1900 among young men). In addition, access to HIV treatment was higher among men than women, with 30% of adult men living with HIV on treatment, compared to 27% of adult women.

However, young people still lack access to appropriate health information and services. Only 32.25% of women and men aged 15–24 years correctly identified ways of preventing sexual transmission of HIV in Angola.^{vii} The Angola Legal Environment Assessment (LEA) on HIV and the Right to Sexual and Reproductive Health identified numerous barriers to health care for young people, including young key populations, such as discriminatory, restrictive and punitive laws and policies, inadequate health information and services and stigma and discrimination. It is critical to address these barriers, to ensure young people access the health care services critical to their development and well-being.

Stigma and discrimination

The LEA reported that around one-third of men and women aged 15-49 experienced stigma and discrimination on the basis of HIV status.^{viii} Angolan civil society organisations (CSOs), networks of key populations and international organisations also reported discrimination against young key populations, such as young men who have sex with men, young sex workers, young transgender people, young people who use drugs and young prisoners.

Networks and representatives of key populations reported ongoing stigma and discrimination, including in the health care sector, confirmed by CSOs and international organisations.^{ix} The lesbian, gay, bisexual, transgender (LGBT+) community reported blatant social exclusion and rights violations at various levels. Stigma and discrimination impacted on their willingness and ability to access health care services, such as HIV testing services, and to access and adhere to treatment.^x The LEA also found that LGBT+ populations had limited knowledge of their rights and how to access legal support services to enforce their rights.

Despite this, there are insufficient human rights programmes to reduce stigma and discrimination and increase legal literacy and access to justice for people living with HIV and key populations. For instance, the LEA found that

- There is limited specialised anti-discrimination training for HIV and TB practitioners
- There is no real mechanism to measure and track levels of stigma and discrimination and report on human rights indicators within the National Strategic Plan until recently – government and CSOs are now planning a PLHIV Stigma Index study. Its advisable that such a study is comprehensive and includes key populations i.e. LGBTI and people who use drugs.
- There is inadequate access to justice for rights violations, due to various challenges related to the availability of infrastructure, technical and human resources.^{xi} The

“I was ill and was taken to the hospital where, due to my serious condition, I was immediately admitted. When the health professional (doctor) entered the room to provide care and asked for my registration name (male name) and I replied, he refused to provide medical care, claiming that he did not put his hands on “men who dress as women.” I immediately replied that I did not choose to be what I am. The doctor simply ignored me, using offensive and discriminatory words that forced me to react proportionally, requiring the intervention of the hospital management to resolve the disturbance that resulted. A week later I was discharged even though I was in a very weak”

Source: Interview with transgender person – Angola: Legal Environment Assessment of HIV, and the Right to Sexual and Reproductive Health (LEA)

LEA reported that patients do not use remedies for fundamental reasons: the lack of knowledge of rights and how to access justice, the fear of HIV-related discrimination, exacerbated for key population, including young key populations, and the total lack of credibility of complaints mechanisms within the health system.^{xii}

Limited protection in law and policy for young key populations

The LEA found that young key populations are not well protected in law and policy:

- Law 8/04 on HIV and AIDS, for instance, specifically protects people living with HIV from discrimination. However, it doesn't protect key populations – including young key populations. This leaves them vulnerable to discrimination, violence, police abuse and violations of their rights to health information and services, including sexual and reproductive health information, and their rights to freedom of association.^{xiii}
- Importantly, the new Penal Code criminalises discrimination, including on the basis of sexual orientation. It was recently approved, but at the time of this Brief, was still not in force. Once in force, efforts should be made to create awareness of these rights and strengthen access to justice for rights violations.
- Key national health laws, policies and plans, including sexual and reproductive health plans, recognise but fail to adequately address stigma and discrimination, including in access to health care services.^{xiv}
- The Child Law Act 25/12 and the HIV Law Act 8/04 provide some guidance for managing children with and affected by HIV. But these laws fail to address a number of barriers impacting on young people, including young key populations, such as stigmatising attitudes towards young people's sexual and reproductive health rights, including around issues of sexual orientation and gender identity.

A sex worker reports:

"In general, society looks at us with derision and indifference including some clients and the law does not protect us."

Source: Angola: Legal Environment Assessment of HIV, and the Right to Sexual and Reproductive Health Rights (LEA), Page 33

- The law permits child marriage under certain circumstances. Although the Family Code sets the age of consent to marriage at 18 years,¹ it allows for a girl of 15 and boy of 16 to marry, with the consent of a person with legal authority (e.g. a parent), under certain circumstances.^{2,xv}
- Age of consent laws limit young people from independently accessing health care. For instance, Law 8/04 on HIV and AIDS requires the consent of a parent or guardian for a minor to accessing HIV-related health services,^{xvi} which discourages young people from accessing sexual and reproductive health care services.

Limited access to appropriate health care and social services

The LEA also identified various issues creating barriers to available, accessible, acceptable and quality health care for young key populations:

- Comprehensive sexuality education (CSE), including discussion of sexual orientation and gender identity issues, is not well resourced and implemented in schools for young people.^{xvii} The Constitution recognises the rights to information and to education, and the HIV Law 8/04 and health plans and strategies provide for HIV-related information and education. However, there are still limited resources to implement these actions.^{xviii}

1 Article 24.

2 Article 24.2 and 24.3

- Health care services are inadequately funded, resulting in insufficient access to necessary drugs and services or programmes to address the underlying social determinants of health. Various problems cited in the LEA included a lack of access to various medications; lack of specialised human resources in urban and peri-urban areas; poor access to clean drinking water, basic sanitation and electricity and a poor health management system, such as information, logistics and communication.^{xix}
- Health programmes for prisoners need strengthening. Law 8/08 (Penitentiary Law) and prisons policies and plans do not provide comprehensive HIV programmes for prisoners that include e.g. preventive measures such as condoms and measures to reduce stigma, discrimination and violence (including sexual violence),^{xx} and these services are not fully implemented.
- There is no specific social protection for young people affected by HIV. For instance, neither the HIV Law 8/04 nor the NSP specifically provide social assistance for key populations, including young key populations.^{xxi}

Discriminatory, punitive and criminal laws limit the rights of key populations and create barriers to access to services

The LEA also found various punitive, discriminatory and criminal laws that ignore the health rights of or create barriers to health care for people living with HIV, TB and key populations, including young key populations. These include:

The New Criminal Code criminalises transmission, exposure and non-disclosure of HIV status. The law obliges people living HIV to disclose their HIV status – to sexual partners

and to health care professionals – in order to protect them,^{xxii} contrary to UNAIDS guidance against enacting specific laws to criminalise HIV transmission.^{xxiii}

Same-sex marriage and same-sex unions are not allowed, restricting the rights of LGBT+ persons to a family and to benefits granted to heterosexual couples in law, e.g. the right to inheritance.^{xxiv}

The rights of transgender persons to change their name are limited by the Civil Registry Code³ ^{xxv} and they report being marginalised in Angola, with inadequate participation in decision-making forums and consultation on issues that affect them, including health care policies and programmes.

There is limited legal protection for sex workers. Although the new Penal Code repeals provisions criminalising aspects of sex work,^{xxvi} the legal status of sex work is unclear.⁴ The HIV Law 8/04 on HIV and AIDS does not include protection for key populations, including sex workers. As a result, sex workers, including young sex workers between 18 to 24 years, do not receive special protection under current laws.^{xxvii}

Drug use is criminalised by Law 3/99 in Angola, and the health rights of people who use drugs are not protected or prioritised in health and HIV laws, policies and plans, such as the HIV Law 8/04, the NSP, the National Strategy for Key Populations or the CILAD Strategic Plan.^{xxviii}

3 Article 130.

4 In terms of the Civil Code, it is unclear whether a person, fully exercising his or her right to sexual self-determination and contractual freedom, could “sell” sex. Contractual freedom is limited by law, public order and morality, in accordance with the combined provisions of Articles 405 (2), 280 and 281 of the Civil Code. Given this, it appears that selling sex could render a contract void (not a valid contract).

Recommendations

The LEA made various recommendations, the following of which are critical for strengthening the health rights of young key populations in Angola:

Law and Policy Review and Reform

- Revise Law 8/04 on HIV and AIDS to:
 - i. Promote substantive equality and protect from all forms of discrimination, family abandonment, violence, detention, and police abuse and to promote access to health services, social assistance – including for young key populations – and to freedom of association, amongst other things.
 - ii. Recognise the vulnerability of children in a holistic manner, considering the child's right to health and other rights and the specific needs of children of all ages
 - iii. Allow for access to HIV testing and related health care without parental consent for children at least of 14 years and older in accordance with the SADC Model Law on HIV and regional guidance. Ensure that children who are capable of providing independent consent also have an independent right to confidentiality regarding HIV status, including in special psychosocial support services.
 - iv. Repeal the provisions regarding non-disclosure, exposure and transmission or revise such provisions to only criminalise intentional transmission of HIV “when an individual transmits the HIV virus maliciously and intentionally, with the express purpose of causing harm”
 - v. Establish provisions to ensure the availability of specific health services that prioritise the prevention, treatment, care and support needs of key populations, including young key populations.
 - vi. Establish provisions to ensure the availability of specific social protection benefits that prioritise the needs of young people affected by HIV, TB and key populations, including young key populations.
 - vii. Provide special protection for sex workers to provide for non-discrimination and to establish occupational health and safety conditions to protect sex workers and clients, including support for safe sex during sex work access to safe working conditions for sex workers.
 - viii. Establish provisions to provide for legal literacy programmes to increase awareness of rights, and strengthen access to legal support services and sensitised, confidential redress mechanisms.
 - ix. Establish provisions to appropriately protect (young) key populations and vulnerable populations
- Make specific provision for the sexual and reproductive health and rights of people affected by HIV in the revision of the Basic Law of the National Health System and access to confidential, effective redress mechanisms for rights violations.
- Develop a National Youth Policy that integrates the sexual and reproductive health and rights of young people
- Review Law No 7/04 (Basic Law on Social Protection) and Decree 43/03 in order to extend social security coverage to people affected by HIV, including young key populations.
- Repeal the provisions of Art 130 of the Civil Registry Code and allow transgender persons to have their gender affirmed and recognised in identification documents and official forms.
- Review Law 8/08 (Penitentiary Law) to include specific provisions to protect prisoners, including young prisoners, and to provide access to health care services for HIV.
- Review Art 23 of Law 3/99 (Law on Trafficking and Consumption of Narcotic Drugs, Psychotropic Substances and Precursors) with a view to evaluating the decriminalisation of consumption, possession and cultivation of drugs for personal use.

- Ensure that prioritized, differentiated activities for male, female, transgender and young sex workers are also specifically provided for in the National Strategic Plan for HIV, the National Strategy for Key Populations, national health programmes including activities to address stigma, discrimination and human rights violations and to provide prevention, treatment, care and support.

Programmes to address stigma, discrimination, awareness of rights & access to justice

- Strengthen awareness and education campaigns to reduce stigma and discrimination, increase awareness of rights to non-discrimination set out in existing laws and policies, and available legal support services and enforcement mechanisms.
- Sensitise health care workers on the rights of people living with HIV, people with TB and key populations, including young key populations, to reduce discrimination in the health care sector.
- Strengthen Codes of Good Practice for health care services and apply disciplinary sanctions to health professionals and other relevant actors who violate patients' rights.
- Sensitise police officers, prison staff and legal practitioners on the rights of people living with HIV, TB and key populations, including young key populations, to reduce discrimination in the justice sector.
- Strengthen enforcement mechanisms in other sectors, including law enforcement and education, to ensure redress for rights violations for key populations, including young key populations.
- Develop judicial and prosecutorial guidance on dealing with cases of intentional transmission of HIV, including standards to take into account medical and scientific advances as evidence in criminal proceedings relating to non-disclosure, exposure and transmission of HIV.
- Develop further research on HIV, human rights and access to justice in Angola, including by the Ombudsman and the Ministry of Justice and Human Rights.

Increased access to health care and social services

- Provide access to comprehensive sexual education that includes issues of HIV, sexual and reproductive health and rights, human rights, gender equality and non-discrimination, including on the basis of sexual orientation and gender identity in schools.
- Strengthen social assistance for young people, including young key populations
- Take measures to strengthen access to diagnostics, prevention, treatment and care services for all people affected by HIV and TB, including young key populations; this may include through a review of intellectual property rights and access to medicines in Angola.

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- i World Health Organisation (WHO) *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations*
 - ii The United Nations (UN) considers youth as those between 15 to 24 years of age. Children are young people below the age of 18 years, according to the Convention on the Rights of the Child and the World Health Organization defines adolescents as young people aged 10 to 19 years.
 - iii It is based on the findings of Angola's Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health (LEA), conducted by the Angolan Executive, led by the Instituto Nacional de Luta Contra a SIDA (INLS) [National Institute for the Fight against AIDS], in collaboration with the Ministry of Justice and Human Rights, and supported by United Nations Development Programme (UNDP) Angola. It also follows up on the Angola Engagement Scan (United Nations Development Programme Regional Service Centre, Africa), which identifies opportunities for engaging in advocacy around the LEA's recommendations. Available at <https://www.africa.undp.org/content/rba/en/home/presscenter/pressreleases/2020/new-guidance-tools-aim-to-improve-engagement-of-young-key-popula.html>.
 - iv [UNAIDS webpage, Angola, country profile \(Accessed October 27th 2020\)](#)
 - v [World Health Organization \(2019\) HIV and Youth \(Accessed October 27th 2020\)](#)
 - vi https://www.indexmundi.com/angola/demographics_profile.html (Accessed October 27th, 2020)
 - vii [UNAIDS webpage, Angola, country profile \(Accessed October 27th, 2020\)](#)
 - viii Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 50
 - ix Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 54
 - x Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 49-50
 - xi Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 127
 - xii Art. 205 New Criminal Code Angola (2020). *See also* Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 132
 - xiii Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 52-55
 - xiv Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 52-55
 - xv Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health Rights, pp. 13-14, p. 80
 - xvi Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 68
 - xvii Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 126
 - xviii Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 126
 - xix Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 27
 - xx Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 103-104
 - xxi Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 115-166
 - xxii Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 72
 - xxiii [UNAIDS webpage Guidance \(accessed October 27th, 2020\)](#)
 - xxiv Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 97
 - xxv Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 97
 - xxvi The Penal Code -1886- contains provisions that can be interpreted as punishing sexual work. Sex work can be considered a dangerous state, e.g. prostitutes who cause public scandal or repeatedly disobey police orders, pursuant to paragraphs 3, 5 and 6 of Art. 71, sanctioned with the security measures provided for in Art. 70. These provisions are revoked by the new Criminal Code adopted in January 2019
 - xxvii Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 100
 - xxviii Angola: Legal Environment Assessment for HIV and the Right to Sexual and Reproductive Health, page 105-106

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