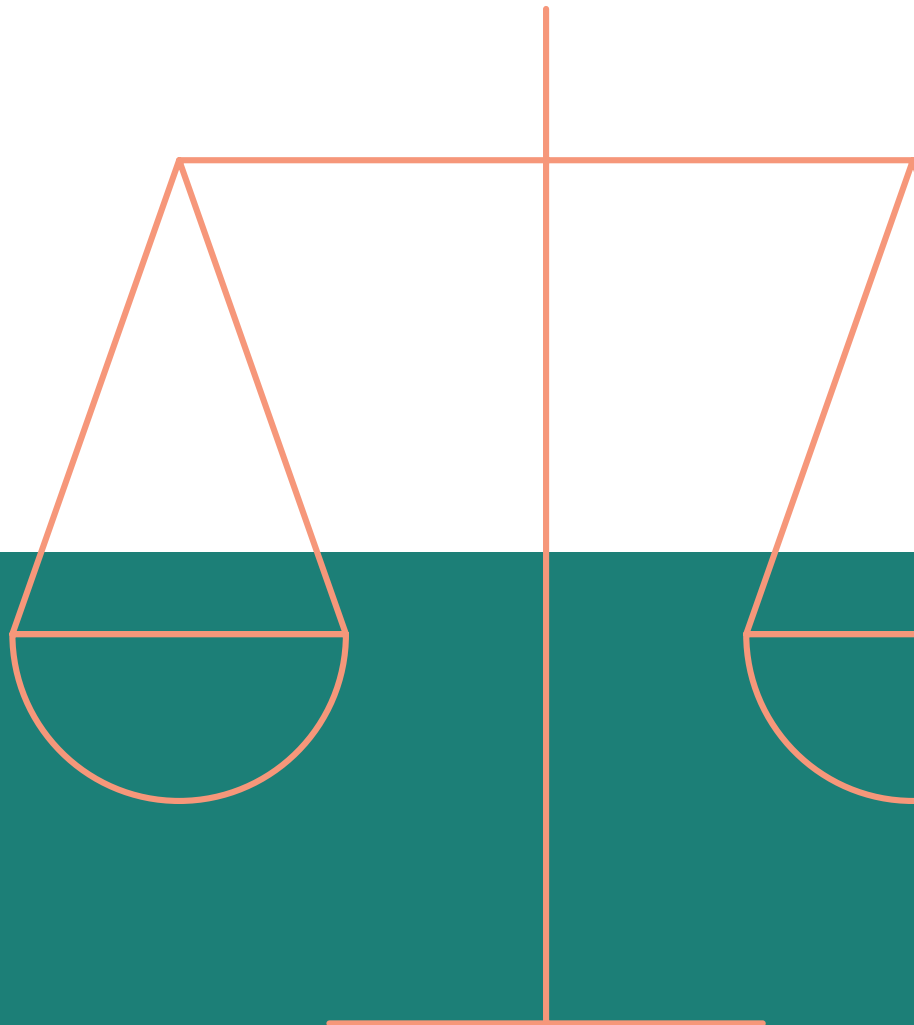




*Empowered lives.
Resilient nations.*

Zambia

Removing legal and policy barriers
for young key populations in the
Zambia HIV response



Policy brief

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 Zambia.¹

It aims to support a range of stakeholders to understand:

- why it's important to ensure young key populations can access vital health information and services,
- what their problems are, and
- how to bring about change.

It is particularly directed at:

- Government law and policymakers and law enforcers, including
 - key executive institutions such as the Office of the President and Vice-President, Attorney General and Director of Public Prosecutions;
 - key Ministries such as the Health, Justice, Gender, Youth, Sport and Child Development, Home Affairs, Labour & Social Welfare;
 - legislative bodies such as the Parliamentary Portfolio Committees on Health, Community Development and Social Welfare; Legal Affairs, Governance, Human Rights and Gender; Sport, Youth and Child Affairs
 - Parliamentary Legal Department and traditional authorities through the House of Chiefs; and
 - statutory bodies such as the Zambia Human Rights Commission, the Gender Equity and Equality Commission, the Police Public Complaints Commission, the Public Protector, the Law Development Commission, the Law Association of Zambia (LAZ), Attorney General's office, and the National Public prosecution Authority.
- Civil society organisations (CSOs) working on HIV, TB, health and human rights, Sexual Reproductive Health as well as networks and organisations of key populations

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.²

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 years³ 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.

Background

According to UNAIDS, in 2018, the HIV prevalence among 15–49 years adults in Zambia was 11.3%, which translates into more than 1.2 million people living with HIV. Zambia has a total population of 16.6 million with 45.4% of the population under the age of 15, and an annual population growth rate of 3.0%⁴.

- a. In line with the global goal of ending HIV and AIDS by 2030 and achieving the 90-90-90 targets, Zambia has adopted a wide array of policies to increase access to all HIV services for all populations. This has led to

a 37% decrease in AIDS-related deaths since 2010, from 26 000 deaths to 17 000 deaths. The number of new HIV infections has also decreased, from 56 000 to 48 000 in the same period.⁵

- b. According to the World Health Organization (WHO), more than 30 percent of all new HIV infections globally are estimated to occur among young people age 15 to 25 years.⁶ In 2017 Young people made up 33% of Zambia's population, one of the highest proportions in the world⁷, making, reaching young people with HIV and sexual and reproductive health care services critical to achieving the 90-90-90 target of ending AIDS by 2030. Zambia's National AIDS Strategic Framework (NASF) 2017-2021 identifies young people and key populations, including sex workers, men who have sex with men, transgender persons and people who inject drugs as priority target populations for the HIV response.⁸
- c. Despite recent positive advances, the NASF notes that young people in Zambia face "numerous challenges in accessing adolescent-responsive HIV services" and in serious danger of being 'left behind' in the national HIV response. Zambia's Legal Environment Assessment (LEA) states that inadequate and discriminatory laws and policies and their implementation and enforcement allow stigma and discrimination to continue to impact negatively on people living with and affected by HIV including key populations. Rights violations take place in the workplace, health care, education and within families and communities, increasing people's vulnerability and creating barriers to access to health services, and access to justice for rights violations for affected people, particularly young key populations.⁹

Stigma and Discrimination

The *Zambian People Living with HIV Stigma Index* of 2012 shows that stigma and discrimination remain a challenge across society. People living with HIV report exclusion from places of worship, homes, workplaces, households and health care facilities. In health care settings,

"For us as men who have sex with men, they embarrass you and even threaten to report you to the police if you made too much trouble complaining"

19-year-old male sex worker, Livingstone.

"Have you ever seen a thief go to the police and say that I am a thief? ... We are scared of those people."

30-year-old person who uses drugs, Kitwe.

they report being denied access to health care services, testing for HIV without voluntary, informed consent, forced medical procedures, detention, isolation and quarantine and even coerced termination of pregnancy.

- Young key populations especially lesbian, gay, bisexual, transgender and intersex (LGBTI) report high levels of stigma and discrimination such as exclusion, harassment, threats, stalking, bullying in schools and physical violence.
- Discrimination from health care workers include unfair, inadequate or complete denial of services, breaches of confidentiality, hostility and humiliation and threats of social persecution and legal prosecution.¹⁰
- Young men who have sex with men and young people who use drugs report to have emotional and psychological trauma caused by health provider's disclosure to their families and communities (breaches of confidentiality). They also avoid public health facilities, for fear of being stigmatised, discriminated against and reported to the police and subsequent arrest¹¹.
- There is inadequate comprehensive sexuality education (CSE) and health care information relating to same-sex sexuality and services, including social support services, to meet the need of young LGBTI populations and young people who use drugs.

- Age of consent laws prevent young people below 16 years of age from accessing sexual and reproductive health services on their own, parental consent is required. In addition, provisions for consent to HIV testing and confidentiality are set out in health policy, rather than law.
- Health programmes fail to provide specific HIV protection methods for young key populations like lubricants, finger coats, dental-dams, clean syringes and access to pre-exposure prophylaxis for HIV. Social protection services do not recognise key populations specific vulnerabilities, it is limited and underfunded.
- Sex workers also experience discrimination in access to health care services¹² and research has found that young sex workers feel the impact of stigma and discrimination particularly severely.¹³ They are treated disrespectfully, refused services, coerced into testing for HIV and have their confidentiality breached, making them reluctant to use public health care services.
- Inmates, including young inmates, are kept in prison conditions that expose them to further risks of HIV and TB due to drug use and needle sharing, tattooing with homemade and unsterile equipment, sex between men, rape and sexual abuse. Inmates have limited access to appropriate health care services, information, despite the higher risk of exposure to HIV and TB.

"I had stopped taking ARVs because of the nurses talking about my status"

Young female sex worker, Livingstone.

Criminal laws, law enforcement practices and access to justice

In Zambia, the criminal law criminalises same-sex sex, sex work and drug use:

- *Sections 155 to 158 of the Penal Code criminalise same-sex sex as an "unnatural offence".*
- *Sections 146, 147 and 155 of the Penal Code criminalise men and women from living off the earnings of prostitution, aiding, abetting or compelling prostitution and 'unnatural offences' and are used to arrest sex workers.*
- *Section 8 of the Narcotic Drugs and Psychotropic Substances Act prohibits the possession of narcotic drugs and psychotropic substances and s11 also criminalises any person who does anything to support the commission of a drug offence – implicitly criminalizing health care workers providing harm reduction programmes to people who use drugs.*

Sections of the Penal Code that criminalise public indecency, being 'idle and disorderly', or being a 'rogue and vagabond' are used to harass, discriminate against and deny services to LGBTI populations, sex workers, people who use drugs and inmates. Young key populations report harsh discrimination, indignity, harassment, violence, arbitrary arrest, extortion and sexual abuse from law enforcement officials.¹⁴

Access to justice for these rights violations is limited. Young key populations don't know their rights, and neither are law enforcement officials sensitised to the rights of KPs. The fear of further violence and harassment also discourages them from reporting complaints. As a result, there is insufficient accountability for violations committed by law enforcement officers. Cases are not documented, followed up and perpetrators are not punished.

Access to legal support services to enforce rights are inaccessible to many in need even though constitutionally guaranteed. Vulnerable populations in Zambia, including young key populations – can't afford private legal fees and indicated that lawyers are unwilling to take on their cases for fear of breaking the law, professional and social stigma.

The justice system discourage young key populations from reporting violations – e.g. lack of adequate staffing within the judicial system, miscommunication, lack of transport for accused to the courthouses and backlog of cases for adjudicators and their support staff.

Recommendations

Law and policy review to strengthen the rights of Young Key Populations

- Enact an equality / anti-discrimination law that includes protection to equality and non-discrimination for all people, including young people living with HIV, TB and young key populations.
- Review Chapter 295 of the Laws of Zambia: Public Health Act to provide for the right to confidentiality; strict conditions for disclosure of health information; voluntary, informed consent to HIV testing and counselling and for a (lowered) age of consent for young people's access to HIV testing and other sexual and reproductive health services.
- Review the National HIV/ AIDS/STI/TB Policy to include protection to equality and non-discrimination for all affected populations, including young people living with HIV, TB and young key populations.
- Review the National Youth Policy to strengthen provision for adolescent health care information and services, including providing young people with access to condoms in schools and CSE that provides for the rights and needs of all young people, including young key populations.
- Amend the CSE curriculum, provided for in terms of s108 of the Education Act, to include information relating to the sexual and reproductive health and rights of young key populations
- The Zambia Law Development Commission to explore the possibilities of reviewing s155 – 158 of the Penal Code, to decriminalise same-sex sex between consenting adults.
- The Zambia Law Development Commission to explore the possibilities of review of s146 – 147 of the Penal Code to decriminalise aspects of sex work.
- Review sections 8 and 11 of the Narcotic Drugs and Psychotropic Substances Act and related provisions that create barriers to harm reduction and health care for people who use drugs.

- Support the review of the Prisons Act to include strengthened protection for the rights of young inmates and to strengthen protection from sexual violence

Improve access to and delivery of services for young key populations

- Train and sensitize health care workers on SRHR, human rights, medical ethics and gender equality to protect the rights of young key populations and to reduce stigma and discrimination.
- Expand access to appropriate health care services, including psychosocial support and necessary health services for young key populations, including those in correctional facilities.
- Integrate youth and key population friendly health services in mainstream health care centres.
- Implement protective provisions in the Prisons Act to decrease overcrowding in prisons and to protect juveniles in prisons.
- Increase resources for social protection programmes, including livelihood and empowerment support schemes for young key populations.
- Strengthen complaints mechanisms so that young key populations are able to report discrimination in health care settings.

Improve access to justice for young key populations

- Undertake awareness-raising and education for young key populations, to strengthen understanding of their right to equality and non-discrimination, health and access to justice for violations.
- Undertake campaigns to reduce stigma and discrimination against young key populations in schools, health settings and community
- Conduct training and sensitization of police to provide child and youth-friendly services, to prevent violence, harassment and abuse and to respect the rights of young key populations.

- Strengthen access to legal support services, including pro bono lawyers, legal aid and paralegal support services for young key populations.
- Strengthen the Zambia Human Rights Commission's role in research, investigation and monitoring of the rights of young key populations.

For further information

[National HIV/AIDS/STI/TB Council of Zambia and UNDP \(2019\) *Legal Environment Assessment for HIV, TB and Sexual and Reproductive Health & Rights*](#)

Transbantu Association Zambia and UNDP (2019) *Zambia Civil Society Engagement Scan in Health Policy and Law*

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- 1 It is based on the findings of Zambia's *Legal Environment Assessment for HIV, TB, Sexual and Reproductive Health Rights* (LEA), undertaken by the National HIV/AIDS/STI/TB Council of Zambia (NAC) with the support of the United Nations Development Programme (UNDP). It also follows up on Zambia's *Civil Society Engagement Scan*, which identifies opportunities for engaging in advocacy around the LEA's recommendations.
 - 2 World Health Organisation (WHO) *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations*
 - 3 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.
 - 4 https://demographicdividend.org/country_highlights/zambia/
 - 5 [UNAIDS \(2019\) Zambia Country Profile](#)
 - 6 [World Health Organization \(2019\) HIV and Youth](#)
 - 7 [UNFPA: Adolescents and Youth Dashboard: Zambia](#)
 - 8 [Zambia National AIDS Strategic Framework 2017-2021 \(NASF\)](#)
 - 9 [National HIV/AIDS/STI/TB Council of Zambia and UNDP \(2019\) Legal Environment Assessment \(LEA\) for HIV, TB and Sexual and Reproductive Health & Rights](#)
 - 10 SALC (2017) *Access to Justice for Healthcare Violations: Background Document*, Panos Institute (2013) *HIV Prevention for Sexual Minority Groups in Zambia*, Population Council (2016) *Formative assessment of HIV risk and size estimation using census and enumeration methods among key populations most at risk of HIV in Zambia*, HEARD (2018) *Zambia: Baseline report on young key populations and sexual and reproductive health and rights*.
 - 11 Population Council (2016).
 - 12 Population Council (2016), USAID-Open Doors (2016) *Experts' Review of FHI360 Report on Initial Meeting with Key Populations*.
 - 13 HEARD 2018.
 - 14 NAC and UNDP (2019), USAID-Open Door (2016).

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