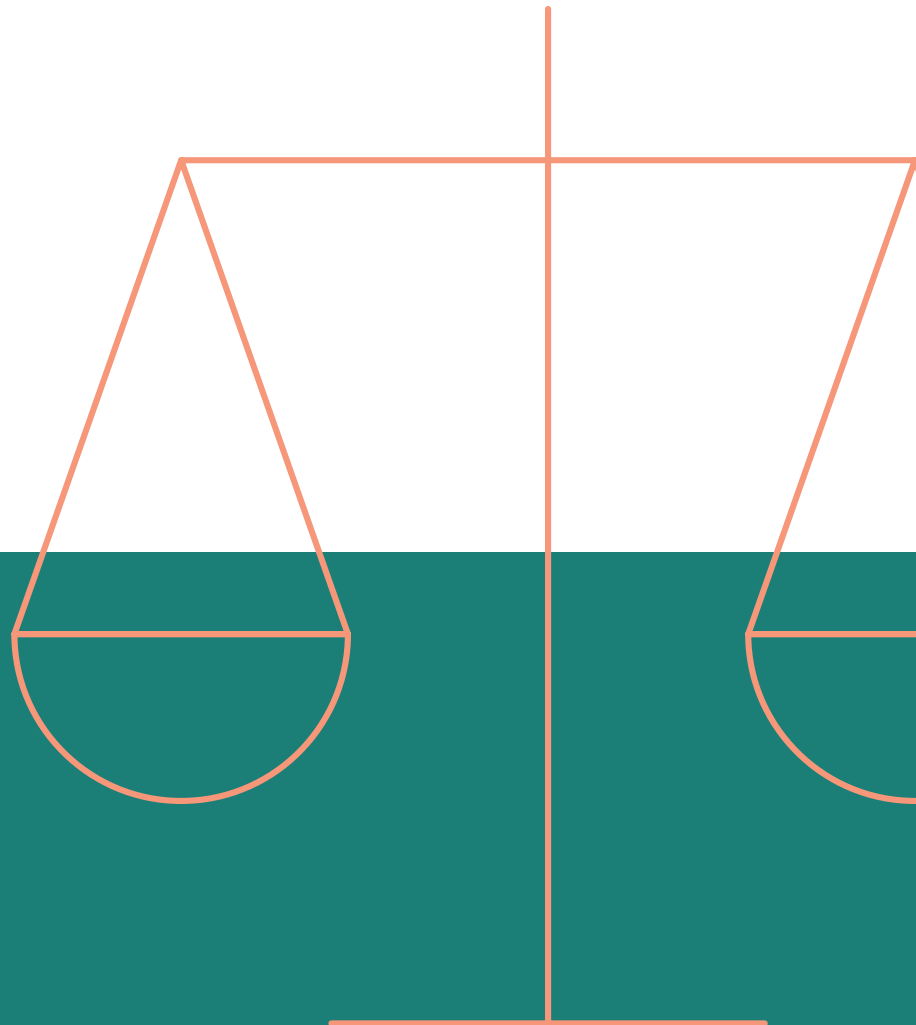




*Empowered lives.
Resilient nations.*

Zimbabwe

Removing legal and policy barriers
for young key populations in the
Zimbabwean 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 (YKPs), to ensure they are not left behind in the national response to HIV and TB in Zimbabwe.¹

It aims to support a range of stakeholders to understand

- why it is important to ensure YKPs access vital health information and services;
- what are their problems,
- how can policy makers and service providers bring about change?

It is particularly directed at:

- Government law and policy-makers and law enforcers – including
 - key executive institutions (Office of the President, Attorney-General's Office, National Prosecuting Authority),
 - key Ministries (e.g. Health & Child Care; Justice, Legal and Parliamentary Affairs; Women & Youth, Police) and
 - statutory bodies such as the Zimbabwe Human Rights Commission and Zimbabwe Gender Commission
- Civil society organisations (CSOs) working on HIV, TB, health and human rights as well as networks and organisations of key populations

Background

According to UN data, in 2018, Zimbabwe had a total population of 16,9 million.² Almost half of the population (47,8%) are estimated to be below the age of 18.³

- a. Zimbabwe has made important progress in the fight against AIDS, reducing the number of AIDS-related deaths since 2010 by 60% and decreasing the number of new HIV infections from 62 000 to 38 000 in the same period.⁴ Despite these successes, pressing challenges remain. Discriminatory and punitive laws, stigma, discrimination

Who are young key populations?

WHO defines **key populations** as 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.⁵

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

In this Brief, **young key populations** are young men who have sex with men, people who inject drugs, prisoners and transgender aged 10 to 24 in Zimbabwe. Young sex workers are aged 18 to 24 years. Children below 18 who sell sex are not considered sex workers but are considered sexually exploited children.

and human rights violations continue to be major barriers to reach global and national targets on HIV prevention and SRHR.

- b. According to the World Health Organization (WHO), more than 30% of all new HIV infections globally are estimated to occur amongst people aged 15 to 25 years.⁶ In Zimbabwe, UNAIDS estimates HIV prevalence among young women to be 5,7% and 3,2% among young men, however, this figure may be significantly higher. The Zimbabwe's 2015 Demographic and Health Survey shows that young people do not test for HIV. Forty-six percent (46%) of young women aged 15-19 years who had tested for HIV received their results, as compared with 92% of women aged 30-39 years.⁷

- c. In Zimbabwe, YKPs are at greater risk of HIV and or experience increased impact of HIV, AIDS and poor health. Their vulnerability is linked to discriminatory laws, policies and practices that impact on their human rights, including their access to health care services and access to justice.
- d. The LEA report sought to understand how laws, policies and practices impacted on YKPs in Zimbabwe and how to strengthen the legal and policy environments, to reduce HIV risk and improve the sexual and reproductive health and rights (SRHR) of young key populations. Key issues included the following:-

Stigma and Discrimination

The 2014 People Living with HIV Stigma Index in Zimbabwe found that 65% of people living with HIV and TB experienced discrimination.⁸ The LEA found that stigma, discrimination and a range of human rights violations affect and impact on the lives of people living with HIV, people with TB, vulnerable and key populations. These violations infringed on their rights to adequate access to sexual and reproductive health care services, impacting negatively on their health and the broader public health response to HIV and TB.

The LEA found that:

- Service providers, including health care service providers and law enforcers i.e. police, have discriminatory attitudes and prejudices towards young people and key populations. They are not well sensitised to sexual and reproductive health and rights of young people living with HIV and/or TB and rights of YKPs and young people in general.
- Health care workers stigmatise young people's sexuality and young people living with HIV in particular young women living with HIV and young people at risk of HIV. Topics around birth control, condom use and frank discussions on sexuality with young people are considered taboo, even sinful and immoral. Young women have difficulties accessing condoms due to stigmatising perceptions of having multiple sex partners or being labelled as a sex worker.

LGBTI: LGBTI stands for lesbian, gay, bisexual, transgender and intersex. The UNAIDS' Terminology Guidelines 2015 define LGBTI people as follows:

Lesbian: A lesbian is a woman attracted to other women. She may or may not be having sex with women, and a woman having sex with women may or may not be a lesbian.

Gay: The term gay men and other men who have sex with men encompasses both men who self-identify as gay, as well as men who do not, yet who have sex with other men.

Bisexual: A bisexual person is defined as a person who is attracted to and/or has sex with both men and women, and who identifies with this as a cultural identity.

Transgender: Transgender is an umbrella term to describe people whose gender identity and expression does not conform to the norms and expectations traditionally associated with their sex at birth. Transgender people include individuals who have received gender reassignment surgery, individuals who have received gender-related medical interventions other than surgery (e.g. hormone therapy) and individuals who identify as having no gender, multiple genders or alternative genders. Transgender individuals may self-identify as transgender, female, male, transwoman or transman, transsexual, hijra, katoey, waria or one of many other transgender identities, and they may express their genders in a variety of masculine, feminine and/or androgynous ways. Due to this diversity, it is important to learn and use positive local terms for transgender people, and to avoid derogatory terms.

Intersex: An intersex person is an individual with both male and female biological attributes (primary and secondary sexual characteristics).

Source: [UNAIDS Terminology Guidelines 2015](#)

- Men who have sex with Men (MSM), transgender and sex workers, experience stigma and double discrimination. YKPs further experience a range of human rights violations including outright denial of access to health care; insults; degrading treatment and breaches in confidentiality. This makes YKPs fearful of harsh treatment and disclosures of private and potentially harmful information resulting to unwillingness to access public health facilities and avoiding testing and treatment.
- Young people living with HIV, TB and YKPs experience various forms of stigma, discrimination and inequality in their homes, families, communities and schools such as family alienation and gender-based violence (GBV). This increases their fear to disclose and places them at further risk, depriving them of additional support, and access to information.
- Children and young people living with HIV experience stigma and discrimination in their homes and communities making it difficult for them to disclose their HIV status and receive support. Young lesbian, gay, bisexual, transgender and intersex (LGBTI) populations live with the heavy psycho-social burden of hiding their sexual orientation and gender identity, fearing disclosure, exclusion and being ostracised by families. Limited choices, dependent on and fearful of losing family support is a major barrier to accessing support and services.
- Young women and girls continue to experience inequality, discrimination, harmful gender norms (like child marriage) and GBV, making them vulnerable to HIV and AIDS. Young women found disclosure and negotiating safe sex with a partner, even in cases of discordant couples, a challenge leading to broader family discussions and ultimately violence and or marginalisation.
- Comprehensive sexuality education (CSE) in schools is inadequate, especially for young LGBTI persons in school. CSE does not deal with issues of sexual orientation, gender identity or the specific health risks for young LGBTI populations.

- Perpetual bullying of adolescents and young people perceived to have a different sexual orientation and gender identity within the school system and community increases discrimination of YKPs and suicide risks.

Gaps in Law and Policies

The LEA found that HIV-related stigma and discrimination linked to challenges in laws, policies, practices, and religious and cultural beliefs exacerbated the negative impact of HIV on young key populations in Zimbabwe.

The following challenges in law and policy are particularly significant for young key populations:

- Age of consent laws: The regulation of the age of consent to sex and the age of consent to access to health information and services impacts negatively on the sexual and reproductive health of young people, including YKPs . In Zimbabwe, the age of consent to sex is set at 16 years and health policies provide for children of 16 years and possibly below to access HIV testing and treatment on their own, but the law on age of consent to medical treatment is unclear. This results in a number of challenges.
 - Firstly, research shows that very few young people are willing to ask for their parents' permission to access services. Children and young people do not want to use HIV testing services with a parent or guardian.
 - Secondly, the differences in laws and policies makes health care providers themselves unclear of the rights and responsibilities of young people. With the age of consent to sex set at 16 years, the rights of young people below 16 years to access sexual and reproductive health care is particularly unclear to health care workers and young people alike. This, combined with the poor attitudes of health care workers to young people's access to sexual and reproductive health care, contributes to poor management of reproductive health services for young people, even though HIV and TB prevalence is highest amongst young people.⁹

- The Criminal Law (Codification and Reform) Act criminalises sex between men. This impacts on their right to privacy and exacerbates stigma, discrimination, violence and access to non-discriminatory, appropriate and accessible health care services for men who have sex with men (MSM), including young men and other LGBTI populations in Zimbabwe.
- The Criminal Law also criminalises various aspects of sex work, including solicitation, living off sex work or facilitating sex work and procuring. Sex work in Zimbabwe is highly stigmatised. All sex workers, irrespective of gender, report discriminatory treatment in the health-care sector including stigmatisation, denial of services and breaches of confidentiality, making them reluctant to disclose their health needs thus impacting on their ability to seek and access treatment. Violence and abuse from clients, and law enforcers, including attempts or failure to negotiate safe sex with clients remains a major challenge for sex workers.
- The LEA recommends a review of these laws and alignment with the Constitution in order to adequately protect key populations. Other laws and policies such as the Public Health Act and Prevention of Discrimination Act also require strengthening since they don't deal specifically with HIV, AIDS, TB health status, or the various inequalities and human rights violations experienced by people living with HIV, vulnerable populations and key populations, including YKPs. The process to align various relevant pieces of legislation with the Constitution has slowed due to resource constraints, despite commitment and political will by government.
- Young key populations are not able to access legal support services and they don't know about organisations that provide legal aid, such as the Legal AID Directorate or other CSOs. Those aware of the free legal AID support services report that they are inadequately resourced, not accessible, and decentralised as were the courts.,,
- Young key populations are often reluctant to report any violence to law enforcers, due to the fact that they are criminalised in law and fear arrest, and because law enforcers themselves violate their rights e.g sex workers are reluctant to report abuses or pursue remedies for fear of arrest and law enforcement officials are often the perpetrators of violence and abuse. Vulnerable and key populations, including YKPs also fear additional stigma and discrimination in the court system.

Recommendations

[Review laws and policies to protect equality and non-discrimination for young key populations](#)

- Include provisions to protect the rights of all people, including young people living with HIV, TB and young key populations, to equality and non-discrimination in the Public Health Act and in Part II of the Prevention of Discrimination Act.
- Review section 73 of the Criminal Law (Codification and Reform) Act to decriminalise adult consensual sex between men.
- Repeal the provisions of the Criminal Law Code that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit adult sex work,¹⁰ and ensure safe working conditions for sex workers.

[Improve access to and delivery of health care services for young key populations](#)

- Include provisions in the Public Health Act and health policy to specify the rights of young people living with HIV, TB and young key populations, to appropriate health information and services, including HIV, TB and sexual and reproductive health services.

Lack of Access to Justice

The LEA (2019) found that YKPs were not adequately aware of their rights and or able to access justice for rights violations:

- Young key populations don't know their human rights, constitutional rights and legal rights and, as a result, are not empowered to claim their rights, this includes knowledge of how and where to access documents setting out these rights.

- Include provision for a lowered age of consent to HIV testing and counselling, contraception and other sexual and reproductive health care services without parental consent in the Public Health Act or other laws.
- Include provision for the right to respect for the views and opinions of young people in access to health care services, for the rights to confidentiality and conditions relating to disclosure of health information, including HIV status, for young people.
- Train health care providers in medical ethics and human rights, including non-discrimination, towards young people and particularly young key populations, to ensure youth-friendly services.
- Establish 'safe corners' at health institutions to enhance confidentiality in accessing health care and to mitigate stigma and discrimination against young key populations.
- Review HIV, TB and sexual and reproductive health plans and policies to ensure programmes to provide for appropriate, comprehensive services and service delivery for the treatment, care and support of all young key populations.
- Provide access to comprehensive sexuality education that takes into account the issues of sexual orientation and gender identity, including for young LGBTI populations.

Improve access to justice for young key populations

- Strengthen stigma and discrimination reduction programmes to reduce stigma and discrimination against young people living with HIV, TB and young key populations.
- Conduct legal literacy to increase awareness of rights to non-discrimination, equality, health and related rights amongst young key populations.
- Train law enforcement officials, especially the Victim Friendly Unit, on the rights of young key populations, emphasising the principles of equality and non-discrimination and the right to equality before the law, and equal protection of the law.
- Take steps to prevent and redress unlawful arrest and violence against young key populations, including holding police accountable for violence and rights violations.

For further info

For further information on the findings and full recommendations of the LEA:

[NAC and UNDP \(2019\) Zimbabwe: Legal Environment Assessment for HIV, TB, Sexual and Reproductive Health Rights](#)

1 It is based on the findings of Zimbabwe's *Legal Environment Assessment for HIV, TB, Sexual and Reproductive Health Rights* (LEA), undertaken by the Zimbabwe National AIDS Council (NAC) with the support of the United Nations Development Programme (UNDP). It also follows up on Zimbabwe's *Civil Society Engagement Scan*, which identifies opportunities for engaging in advocacy around the LEA's recommendations.

2 [UNData: Country profile: Zimbabwe](#)

3 ZIMSTAT (2012) *Population Census National Report*

4 [UNAIDS, Country profile: Zimbabwe: 2018 estimates](#)

5 World Health Organisation (WHO) *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations*

6 [World Health Organization HIV and youth](#)

7 [Zimbabwe National Statistics Agency \(2015\), Zimbabwe Demographic and Health Survey 2015: Key Indicators](#)

8 Zimbabwe National Network of People Living with HIV (2014) *Zimbabwe Stigma Index Research Report*.

9 Zimbabwe Population Based HIV Impact Assessment, 2016.

10 Section 61 of the Criminal Law Code defines a 'prostitute' as a male or female person who for money or reward allows other persons to have anal or extra-marital sexual intercourse or engage in other sexual conduct with him or her or solicits other persons to have anal or extra-marital sexual intercourse or engage in other sexual conduct with him or her. The Criminal Law Code prohibits public solicitation, living off the earnings of prostitution and procuring ('pimping').

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