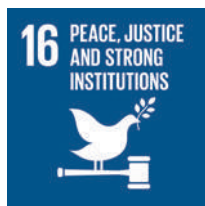


TECHNICAL BRIEF:



ACHIEVING SUSTAINABLE DEVELOPMENT GOAL 16 FOR ALL: LINKING HIV, KEY POPULATIONS, AND HUMAN RIGHTS

June 2019

EXECUTIVE SUMMARY

When UN Member States adopted the Sustainable Development Goals (SDGs), they committed to **Goal 16: creating peaceful, just and inclusive societies**. Achieving this Goal is key to the 2030 Agenda, including **SDG Target 3.3: ending AIDS by 2030**. The HIV epidemic closely tracks social and political inequalities. Where the world has made inroads in the fight against HIV, it has been in large part due to the strong engagement of affected communities in every aspect of planning, delivering, and evaluating HIV programs.

However, while HIV infections have slowed in the general population, prevalence remains high and incidence is rising in some regions among some women, girls and **key populations** at risk of HIV: gay men and other men who have sex with men, sex workers, transgender people, and people who use drugs.¹ This is in part because of stigma, discrimination, criminalization, and government reluctance to address the health needs of key populations. As a result, the Joint UN Programme on HIV and AIDS (UNAIDS) warns that the world is currently off track in its race to end AIDS by 2030.

To uphold human rights for all and fulfill Goal 16 and SDG Target 3.3, all Member States should:

1. **Take action to end widespread HIV-related stigma and discrimination, including in the health sector.**
2. **Decriminalize HIV non-disclosure, exposure, and transmission, same-sex sexual behavior, sex work, drug possession and drug use, and provide legal gender recognition for trans people.**
3. **Scale up programs that support access to justice for people living with and affected by HIV.**
4. **Uphold the right to freedom of association for key populations and people living with HIV.**
5. **Uphold the right to freedom of expression and right to information, ending censorship and enabling key populations and people living with HIV to share life-saving information on HIV prevention, treatment and care.**
6. **Uphold transparency and accountability, actively consulting key populations and people living with HIV in Voluntary National Reviews (VNRs) of SDG implementation, and in all processes related to the Sustainable Development Goals.**

ENDING AIDS BY 2030 AND ACHIEVING GOAL 16: THE WORLD IS OFF TRACK

UNAIDS (2018) has warned that the world is not on track to reaching the end of AIDS by 2030. While treatment access has improved and HIV incidence has declined globally, incidence is rising among key populations, adolescent girls and young women in some regions.

Viral hepatitis and tuberculosis also threaten progress: tuberculosis is the leading cause of HIV-related death.

These epidemics track the abysses created in societies by widespread discrimination, criminalization, and violence

targeting people living with HIV and key populations. Closing civic space and arbitrary censorship also limit the ability of affected communities to effectively reach those most at risk with life-saving health information, and to participate effectively in the HIV response.

Over 30 years of the global HIV response, civil society has broken ground in clarifying how fulfillment of the right to health depends on respect for civil and political rights for those most marginalized. The UN Human Rights Office and UNAIDS *International Guidelines on HIV and Human Rights* states that risk of HIV “feeds on violations of human rights, including discrimination against women and violations which create and sustain poverty. In turn, HIV begets human rights violations, such as further discrimination and violence” (OHCHR and UNAIDS 2006: 6). Addressing these issues is key to progressing on Goals 3.3 and 16.

“Too many people have been buried whose lives could have been saved if their rights had been protected.”

— Maurine Murenga, Board Member, Communities Delegation on the Board of the Global Fund

However, discussion of HIV has been inconsistent and sparse in the 2017 and 2018 VNR reports: overall, while 67% of VNR reports produced in 2017 and 2018 referenced HIV, only 19% referenced key populations, and only 10% referenced HIV-related stigma and discrimination (MSMGF et. al. 2018, MPACT and Free Space Process 2019). VNR reports that referenced HIV or key populations tended to discuss national progress in responding to HIV and reaching

GOAL 16: PEACE, JUSTICE AND STRONG INSTITUTIONS

In 2015, UN Member States committed to the 2030 Agenda and the *Sustainable Development Goals (SDGs)*. These 17 SDGs replaced the Millennium Development Goals with a more ambitious and inclusive agenda. The 2030 Agenda unites all developed and developing States in a shared plan to create global peace and prosperity.

In particular, Goal 16 is a ground-breaking commitment that addresses the kinds of institutions and societies needed to make the other SDGs a reality. With this Goal, UN Member States commit to **promoting peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, inclusive and accountable institutions at all levels.**

This brief focuses on five of the 12 targets for Goal 16, and their close links to the HIV response:

- **16.1 - Significantly reduce all forms of violence and related death rates everywhere**
- **16.3 - Promote the rule of law at the national and international levels, and ensure equal access to justice for all**

- **16.7 - Ensure responsive, inclusive, participatory and representative decision-making at all levels**
- **16.10 - Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements, and**
- **16.B - Promote and enforce non-discriminatory laws and policies for sustainable development**

Each year, the UN convenes the High Level Political Forum (HLPF) for a thematic review of the SDGs and to discuss progress on State implementation through Voluntary National Reviews (VNRs). In July 2019, the HLPF theme is “Empowering people and ensuring inclusiveness and equality,” and Goal 16 will be reviewed. During the VNR process, States are encouraged to convene national stakeholders, including civil society, to review successes, challenges, and lessons learned. A *Goal 16 Advocacy Toolkit* explains how civil society can advocate for issues related to peace, justice, and strong institutions in the VNR and HLPF processes.

key populations, not the problems posed by criminalization and violence. Moreover, communities living with and affected by HIV are not systematically included in national consultations on SDG implementation. This contributes to and reinforces their invisibility.

This brief analyzes five targets under SDG 16 and explains how progress in these areas is essential to ending HIV, to protecting and respecting human rights, and to achieving the ambitious 2030 Agenda.

DISCRIMINATORY LAWS AND POLICIES AND ACCESS TO JUSTICE

UN Member States committed to **SDG Target 16.B: promote and enforce non-discriminatory laws and policies for sustainable development**. The right to non-discrimination is fundamental to human rights law, and it is included in every human rights treaty. In particular, article 12 of the *International Covenant on Economic, Social and Cultural Rights*, which most States have ratified, commits to upholding the right to the highest attainable standard of health without discrimination of any kind.

In practice, though, discrimination is widespread in the health sector due to stigmatizing views among health care workers. Across 19 countries, one in five people living with HIV report being denied health care (UNAIDS 2018). National stigma index reports produced by people living with HIV find that stigma and discrimination are also widespread in the employment, housing, education, and other sectors.² In addition, those most at risk of tuberculosis transmission – such as mobile populations, miners, prisoners, people who use drugs, and people living with HIV – also experience discrimination in access to life-saving health services (Stop TB and TB People 2019). States must take action to address HIV- and TB-related discrimination in the health sector.

Laws on the books in many countries further undermine access to health services. As of 2018, 68 countries criminalized HIV non-disclosure, exposure or transmission; HIV prosecutions using these and other legal provisions had been reported in 69 countries (UNDP 2018: 5). In some countries, TB patients have been imprisoned for not adhering to treatment (UNDP 2018). Numerous studies have demonstrated that the resulting fear of seeking health care is a barrier to services (Santos et al. 2016, Beyrer et al. 2016, Costa et al. 2016, Braun et al. 2017). Arrests and

“The enforcement of HIV-specific criminal laws — or even the threat of their enforcement — fuels the fires of stigma. It also makes it more difficult for those living with the virus to talk openly about it, and to be tested, treated and supported.”

– Justice Edwin Cameron

sensationalized media coverage of them often spread false information about HIV (Barré-Sinoussi et. al. 2018). Leading health experts and UNAIDS have called on States to repeal these laws, which have no basis in science (UNAIDS 2018a).

While SDG 5 commits States to ending all forms of discrimination against women and girls, widespread gender inequality continues to fuel the HIV epidemic, with high rates of infection among adolescent girls and young women. Women in all their diversity face discriminatory social norms, legal inequalities and barriers to accessing health services. Rising populism and homophobia in many countries can result in political leaders negating or minimizing the existence of key populations (HRC 2018). Criminalization is also widespread, and drives key populations underground, fueling their reluctance to seek government-funded health services and resulting in poor treatment adherence (Schwartz et. al. 2015).

- As of 2019, 70 States criminalize consensual same-sex sexual behavior, and six impose the death penalty (Mendos 2019), though the *International Covenant on Civil and Political Rights* asserts that the death penalty should only be imposed for the most serious crimes.
- Trans people are criminalized and prosecuted in 57 countries (Transgender Europe 2019). Few countries legally recognize a change of gender markers or names, making it difficult for trans people to seek health services that are consistent with their gender identities (ILGA 2017).
- Drug use and possession of drugs for personal use are criminalized in most countries as part of a global “war on drugs,” which “has led to the imprisonment of millions, but failed to reduce either the size of the drug trade or the number of people who use psychoactive substances,”

according to UNAIDS (2019: 5).

- Sex work is criminalized in 208 countries and dependencies (NSWP 2019). While numerous VNR reports celebrate country efforts to combat trafficking, they fail to note that the conflation of adult consensual sex work with trafficking has led to harmful legislation which can prevent sex workers from accessing material resources, organizing for better work conditions, and asserting their labor rights. This legislation can expose sex workers to increased risk of violence and arrest (NSWP 2019a).

Because of these criminal laws, the populations who most need to be reached to fulfil global health goals must often hide to survive. This results in significant gaps in data, lack of visibility of their real needs, and a resulting lack of national resources allocated to health services (Davis et. al. 2017).

For all these reasons, in 2016 the World Health Organization (WHO) recommended that States decriminalize sex work, same-sex sexuality, and drug use; and fund a package of interventions, including access to justice, to specifically reach key populations. Calls to decriminalize key populations have been reiterated by numerous UN human rights mechanisms.³ In June 2019, the UN Executive Board, representing 31 UN agencies, called for decriminalization of possession and use of drugs.⁴

SDG Target 16.3 commits UN Member States to promoting rule of law and ensuring equal access to justice for all. While States progress towards decriminalization and towards ending stigma and discrimination, they should also scale up programs that provide legal literacy, legal assistance, and access to justice for people living with HIV and key populations. These are among the [seven programs recommended by UNAIDS](#) (2012) to reduce stigma and discrimination and increase access to justice in national HIV responses. Funding these programs is consistent with State obligations under article 14 of the International Covenant on Civil and Political Rights, which upholds the right to legal assistance.

VIOLENCE AND RELATED DEATHS

SDG Target 16.1 commits UN Member States to significantly reducing all forms of violence and related deaths. Public discussion of this to date has not sufficiently taken account of the many forms of violence linking key populations and HIV.

“A legal environment that respects, protects and fulfils human rights, and promotes overall health and well-being, is an efficient and effective means of reducing the risks and toll of disease.”

- Global Commission on HIV and the Law, Risks, Rights and Health supplement, July 2018

Criminalization, stigma, and discrimination create a climate of impunity for violence – in some countries, even leading to extrajudicial executions (MSMGF 2015, NSWP 2017, HRW 2018). These multiple and diverse forms of violence include:

- **The failed global “war on drugs”:** UNAIDS (2019) reports the “war on drugs” has increased the risk of physical violence for people who use drugs. In the worst example, the Philippines has witnessed thousands of extrajudicial executions linked to a national crackdown on drugs. In 2018, 38 members of the UN Human Rights Council called on the Philippines to end extrajudicial killings and allow an independent investigation (HRC 2013).
- **Homophobic and transphobic violence:** The UN Independent Expert on Violence and Discrimination Based on Sexual Orientation and Gender Identity has found that there are millions of victims of violence and discrimination based on sexual orientation and gender identity each year (HRC 2018). Reported rates of violence against sexual and gender minorities range from 6% to 25% (Blondeel et. al. 2018). Trans women are often the target of violence due to their non-conforming gender identity and gender expression (HRW 2019).
- **Sexual and gender-based violence, including intimate partner violence:** these forms of violence are known to increase the risk of HIV and sexually transmitted infections. Women living with HIV report high rates of intimate partner violence, especially on disclosure of HIV status (WHO et. al. 2013, Shamu et. al. 2014). Sex workers of all genders and women who use drugs face violence from State and non-State actors, including violence in the workplace, street-based violence, family and intimate partner violence, police abuse, abuse by the military and other armed actors, and

abuse in detention (Sluggett 2012).

- **Torture and other abuses inflicted in the name of “treatment”:** This includes cruel, inhumane and degrading treatment, amounting to torture in some cases, as well as forced labor in compulsory drug detention and rehabilitation centers (UNAIDS 2012a). Hundreds of thousands of people are still detained in such facilities (Kamaralzuman and McBrayer 2016). Similarly, the Pan-American Health Organization (2012) has warned against services purporting to “cure” homosexuality, also known as conversion therapy. People affected by TB have experienced shackling in hospitals (Stop TB Partnership and TB People 2019). Other forms of compulsory treatment include forced sterilization of women and transgender people, forced anal exams, and intersex genital mutilation (HRW 2016 and 2017).

The *International Covenant on Civil and Political Rights* upholds the inherent right to life, a right to freedom from torture, and a right to liberty and security for all persons. But the widespread nature of the violence described above, even in societies that are peaceful, just, and inclusive for the general population, makes fulfilment of Goal 16 remote for many living with and at risk of HIV.

INCLUSIVE AND PARTICIPATORY DECISION-MAKING

For all the reasons discussed above, thirty years of experience combating HIV have “hammered home the importance of the right to participation of those most affected by HIV” (OHCHR and UNAIDS 2006). **SDG Target 16.7 commits UN Member States to ensuring responsive, inclusive, participatory and representative decision-making at all levels.** Human rights norms also promote transparency and accountability, and the UN Special Rapporteur on Extreme Poverty and Human Rights has called for States to respect the right of persons living in poverty to participate in government decision-making (UN News 2013).

The HIV sector is unique in having implemented this principle in practice, with robust community representation in all levels of planning, financing, implementing and evaluating programs. UNAIDS (2007) first articulated this as the Greater Involvement of People living with HIV and AIDS (or “GIPA”) principle, and the principle has since expanded in practice to incorporate key populations, women and youth. Empowerment

of communities living with and affected by HIV and TB has been key to success in the global response. National, transnational, and global networks of key populations and people living with HIV use the law and human rights norms to sensitize lawmakers and police, monitor health programs for accountability, promote law reform, and advocate effectively for their rights.

The historically unprecedented scale of global mobilization in response to HIV has catalyzed creation of governance and finance institutions which both explicitly commit to human rights and are governed with community representation. For example, the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) is the largest multilateral donor for health, disbursing \$3 to 4 billion a year to 140 countries. Its governance board of twenty members include three representatives of civil society delegations, one of which represents communities living with and affected by HIV, TB and malaria. At the country level, the Global Fund relies on Country Coordinating Mechanisms (CCMs), which are national multi-stakeholder committees that prepare funding requests to the Global Fund and oversee implementation. CCMs are required to include all sectors in the response to HIV, TB and malaria, including representatives of people living with the diseases and key populations.

Similarly, the leading global HIV governance agencies all include community representation on their boards of directors. UNAIDS is governed by a Programme Coordinating Board, which includes NGOs, including people living with HIV. The Robert Carr Fund for Civil Society Networks; Unitaids; and Gavi, the Vaccine Alliance also include community representatives on their governance bodies. This representation is grounded in a strong commitment to human rights principles and standards.

However, the shift in global focus towards a broader goal

“HIV-affected communities have mobilized millions of individuals; influenced policies and laws; improved access to services; and challenged stigma and discrimination. This has, in turn, led to better health outcomes.”

— *The Global Network of People Living with HIV (GNP+)*

of achieving Universal Health Coverage, while important to fulfilling the right to health, may jeopardize past gains in inclusive governance. Twelve international health organizations are leading the process of developing a [Global Action Plan](#) for healthy lives and well-being, which aims to streamline and improve institutional coordination. In this process, States should also uphold their commitment to a rights-based approach (UHC2030 2018). If the global health architecture consolidates, communities living with and affected by HIV must continue to have a meaningful voice in the decisions that affect their lives, including roles in global health governance.

FUNDAMENTAL FREEDOMS AND ACCESS TO INFORMATION

While target **SDG Target 16.10 commits UN Member States to ensuring public access to information and protecting fundamental freedoms**, closing space for civil society limits these rights.

Key populations and people living with HIV face increasing restrictions on their ability to register and operate NGOs (ICNL 2018). Some states use “LGBT propaganda” laws to limit this right to freedom of association (Global Philanthropy Project 2016). In a survey of 194 countries, only 56%, or 109 countries, permit LGBTI organizations to legally register (OutRight Action International 2018). Other states refuse to register organizations advocating for people who use drugs and/or sex workers, because these groups are criminalized. This impedes community engagement in designing, planning, prioritizing, budgeting, implementing, and evaluating HIV services.

Censorship of content related to HIV and key populations is on the rise in many countries. The rights to freedom of association, freedom of assembly, freedom of expression and the right to information are all upheld in the *International Covenant on Civil and Political Rights*. States have an obligation to promote and protect access to health information (Article 19 2019). However, “LGBT propaganda” laws and other arbitrary State interference in communication, including online, prevent communities from disseminating tailored and accurate prevention and treatment messaging. Health information is critical to the ability of women, girls, and key populations to make informed choices.

There have been worrying signs at the UN as well. In 2016, more than 50 countries blocked groups of key populations and people living with HIV from the meeting to approve the UN Political Declaration on HIV and AIDS (Holpuch 2016). While Human Rights Council Resolution 38 called for greater participation by civil society in national planning, many community leaders lack information on the processes (AIDSfonds 2019). Some States actively seek to prevent HIV organizations from speaking about topics such as abortion and decriminalization of sex work, and lobby to eliminate the word “gender” from UN documents (Global Justice Center 2018, Oppenheim 2018).

To ensure that “no one is left behind” in efforts to reach Goal 16 and SDG Target 3.3, all stakeholders should work with communities living with and affected by HIV. Truly creating peaceful, just, and inclusive societies should begin with the groups who are most marginalized.

NOTES

- 1 Country-reported data on key populations is available from UNAIDS [Key Populations Atlas](#).
- 2 See country reports at [The People Living with HIV Stigma Index](#).
- 3 See, for example, Human Rights Committee *Toonen v Australia*, Concluding Observations for Kuwait 2011, Burundi 2014, CEDAW Concluding Observations for Guyana 2012, Sri Lanka 2011, CRC Concluding Observations Iran 2011, Eritrea 2014, CESCR General Comment 22 (2016) E/C.12/GC/22; A/HRC/36/L.6, preamble; Keen, Emily N. 2018. *Decriminalization and the UN Human Rights Bodies*. Harvard Law School HR Program report. HRP 18-002, March; p. 46. Special Rapporteur on Right to Health Report to UNGA 2016 – On 2030 Agenda for SDGs and Health and Human Rights of those Furthest Behind para 46 A/71/304; Special Rapporteur on Right to Health Report to UNGA 2010 para 42 A/65/255; Special Rapporteur on the Right to Health, Human Rights Council, 14th session, agenda item 3 A/HRC/14/20.
- 4 United Nations System, Chief Executives Board for Coordination. 2018. CEB/2018/2. Second regular session of 2018. Manhasset, New York, 7 and 8 November.

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ABOUT MPACT (www.mpactglobal.org)

MPact Global Action for Gay Men's Health and Rights (formerly known as MSMGF or The Global Forum on MSM & HIV) was founded in 2006 by a group of activists concerned about the disproportionate HIV disease burden shouldered by men who have sex with men. MPact works at the intersection of sexual health and human rights, and is linked to more than 120 community-based organizations in 62 countries who are fighting for the sexual health and human rights of gay and bisexual men around the world.

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FREE SPACE PROCESS

ABOUT FREE SPACE PROCESS (<http://icssupport.org/what-we-do/free-space-process/>)

The Free Space Process (FSP) partnership brings together 11 international civil society, key population networks, and network organizations in an effort to proactively coordinate and collaborate on joint advocacy. FSP provides a "free space" for partners to discuss and work on common strategic policy and aims to maximize dynamic, experienced, and well-connected advocacy for greater effect and combined policy impact.

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