# Benchmarks and beyond: Assessing and addressing structural barriers to rights-based HIV programming for LGBTI key populations in six African countries





- In 2019, roughly 50% of new infections in Sub-Saharan Africa were among key populations and their sexual partners.
- Testing and treatment coverage of key populations remains disproportionately low and unlikely to meet the 95% service coverage target and the 10-10-10 structural barriers target of the Global AIDS Strategy.
- There is strong evidence that stigma, discrimination, criminalization and social exclusion make key populations more vulnerable to HIV infection and less likely to access and use relevant services.
- The United Nations Development Programme's Inclusive Governance Initiative conducted baseline research in six African countries. The studies benchmark LGBTI inclusion as a basis for advocacy and programming to, amongst other things, challenge structural barriers to rightbased HIV prevention, care and support in Africa.

#### STRUCTURAL BARRIERS TO INCLUSIVE HIV RESPONSES

- Laws and policies that criminalize, exclude or fail to protect LGBTI people and the human rights defenders/organizations who represent their rights and needs.
- Institutional strategies, plans and practices that stigmatize, silence or persecute sexual and gender diversity.
- Ongoing discrimination and violence against LGBTI persons in social, political, economic, religious and cultural spheres.
- Inadequate data on the vulnerabilities and impacts of HIV on LGBTI key populations and on best practices to address these.
- Limited targeted investment and programming for LGBTI-focused interventions at national, multi-country and regional levels.

#### STRUCTURAL REFORM: KEY ADVANCES AND OBSTACLES

# CÔTE D'IVOIRE

conduct.

Health laws and plans protect vulnerable groups and include the rights of key populations.

Anti-discrimination provisions in HIV-specific laws do not include LGBTI people.

It is mandatory to disclose one's HIV status to a sexual partner. No laws explicitly criminalize same-sex sexual

Employment law protects against discrimination, including based on sex and HIV status.

#### DEMOCRATIC REPUBLIC OF THE CONGO

National strategic plan on HIV and AIDS addresses discrimination against groups vulnerable to HIV infection, including men who have sex with men and transgender people.

HIV legislation protects the rights of men who have sex with men, as a vulnerable group.

Discrimination based on gender is prohibited in health service provision.

No laws explicitly criminalize same-sex sexual conduct.

Some legal provisions are interpreted in ways that lead to LGBTI persons being persecuted.

## KENYA

National policies and strategies on HIV and AIDS incorporate prevention and care services for key populations, including men who have sex with men and transgender persons.

Same-sex sexual conduct is criminalized.

Rights of intersex persons are guaranteed in law and data on the intersex population are included in the national census.

No legal protections against discrimination in education, employment, healthcare or housing.

Programming of the national human rights institution is inclusive of sexual and gender diversity.

### **ANGOLA**

HIV transmission, exposure and non-disclosure are criminalized.

HIV-specific law does not consider key populations, including LGBTI people.

No laws explicitly criminalize same-sex sexual conduct or non-binary gender identities.

Discrimination based on sexual orientation was recently made a crime.

National human rights action plan is inclusive of sexual and gender diversity.

### ZIMBABWE **\*\*\***

Same-sex sexual conduct is criminalized.

HIV transmission, exposure and non-disclosure were recently decriminalized.

Health policies, strategies and plans recognize key populations, including LGBTI persons.

Domestic violence and employment laws do not extend protections to sexual and gender minorities.

Anti-discrimination law fails to include protections for LGBTI people and key populations.

## NAMIBIA \*\*\*

National strategic framework for HIV includes programming for men who have sex with men and transgender people.

Same-sex sexual conduct is criminalized.

Law Reform and Development Commission recommends the repeal of the sodomy laws.

same-sex relationships. No legal protections against discrimination in employment, healthcare or housing.

Law on domestic violence does not recognize

## **ACROSS ALL SIX COUNTRIES**

sexual and gender minorities:

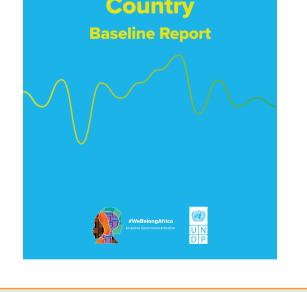
- Even in criminalized or stigmatized environments, there is progress in creating space for **services** for key populations based on a public health rationale.
- LGBTI key populations are mostly included in health sector legislation, policies and plans,
- however this is lacking in other sectors.

Principles of human rights, non-discrimination, human dignity and equality before the law, are

- all enshrined in national constitutions.
- There is a fragmented and uneven approach to LGBTI inclusion across national laws, policies and strategies, and LGBTI people largely remain in a state of legal insecurity.
- There is trend towards legal recognition of LGBTI community groups.
- There are no legal rights for **adoption**, marriage and legal gender recognition for LGBTI people.
- Gender equality and family laws are heteronormative and rely on binary definitions.
- No laws explicitly prohibit medical interventions on intersex children. Comprehensive sexuality education is not part of education policy.
- Discrimination, violence and exclusion are fuelled by anti-LGBTI religious and cultural narratives.

#### **CLICK HERE TO DOWNLOAD THE SIX COUNTRY REPORTS**

These baseline reports provide a high-level analysis of the legal and policy context concerning LGBTI rights and inclusion, along with detailed information on relevant laws, policies, strategies, structures, stakeholders and initiatives for each country.



## RECOMMENDATIONS FOR POLICY, PROGRAMMING AND PRACTICE

**Expand country and regional programming** for right-based HIV prevention, care and support for marginalized groups in Africa:

- Strengthen key population involvement in all aspects of HIV policy making and programming, and work with Justice Ministries and police to reduce the impact of criminalization, while pursuing longer term approaches to decriminalization and stigma reduction.
- Adopt a rights-based and multi-sectoral approach to health programming that tackles barriers to rights and services beyond the health sector.
- Address human rights violations and their impacts on delivering and accessing sexual and reproductive health and HIV-related services for key populations.
- Integrate an LGBTI focus into sector-specific policies and programmes including in education, employment, justice and social services.
- Increase data on HIV prevalence, structural risks, and key population size estimates, to enhance the evidence-base for HIV responses.
- Promote understanding of the diversity within key populations and of the intersecting forms of discrimination LGBTI people face.

### Establish regulatory environments that affirm human rights and protections:

- Expand law and policy reform to ensure the decriminalization and full recognition of sexual and gender diversity.
- Repeal all punitive laws, including those that criminalize consensual same-sex sexual conduct and HIV transmission, exposure and non-disclosure.
- Pass protective laws on inclusive gender equality, legal gender recognition and non-
- discrimination. • Harmonize national laws with regional and international human rights norms and standards.

Support state decision-makers to be responsive and accountable to all their citizens, including

- Enhance the capacity of duty bearers (parliamentarians, the judiciary, senior government officials etc.) to champion equitable sexual and reproductive health, HIV outcomes, and human rights for all.
- Promote inclusive governance approaches, particularly in the health, education, justice, social security and gender sectors.
- Strengthen the participation and influence of diverse LGBTI civil society and leaders, and their allies, in relevant policy and decision-making.

Inclusive governance focuses on state actors as the most important duty bearers with an obligation to respond to rights holders. Whether enacting or enforcing laws, resourcing or overseeing delivery of public sector services, or influencing social norms, inclusive governance requires state actors to affirm human rights for all - including for LGBTI individuals, communities and organisations. Inclusive governance requires state actors - heads of government and the executive, parliamentarians, judges, civil servants and so on - to proactively engage with, and be responsive and accountable to, the public at large, with particular attention to the most marginalized and left behind.