

# Executive summary

Stigma and discrimination violate human rights and are barriers to HIV prevention and treatment. This report is concerned with the availability, effectiveness and sufficiency of systems providing accountability and redress for persons who experience discrimination in healthcare settings. The report focuses on the experiences of sex workers, lesbian, gay, bisexual and transgender (LGBT) persons, women living with HIV, and persons with disabilities in Botswana, Malawi and Zambia.



## Research findings

Legal protections and policy commitments in Botswana, Malawi and Zambia prohibit discrimination in broad terms and emphasise commitments to equitable access to quality healthcare, despite not providing for many explicit protections for key populations and vulnerable populations. It is not a crime to be a sex worker in Botswana, Malawi or Zambia, and LGBT persons are not criminalised in themselves – even if certain same-sex sexual acts are criminalised in these countries. Healthcare workers are ethically and legally bound not to discriminate unfairly against healthcare users and need to respect their inherent human dignity.

Anecdotal accounts from key populations and vulnerable populations indicate serious and varied experiences of discrimination in healthcare in Botswana, Malawi and Zambia, based on a number of grounds. These include health and HIV-status, gender, sexual orientation, disability, socio-economic status, occupation, and rural location. Conduct described as discriminatory by healthcare workers and institutions includes:

- Treatment denial.
- Abusive language.
- Failure to properly examine healthcare users before providing treatment.
- Sexual coercion and abuse.
- Physical abuse such as slapping and hitting.
- Failure to observe healthcare users' confidentiality, including health-status confidentiality and confidentiality relating to healthcare users' sexual orientation, gender identity, and occupation.
- Failure to conduct proper informed consent procedures.
- Failure to provide reasonable accommodation for persons with disabilities.
- Denial of access to sexually-transmitted infection (STI) and HIV testing, counselling and treatment, in the absence of (heterosexual) sexual partners.
- Blaming healthcare users for their health status.
- Segregation and the use of identifying practices for people living with HIV.
- Failure to accommodate the particular healthcare and access needs of sex workers, persons with disabilities, gay and transgender persons in particular.

There are various options to relate complaints of discrimination in healthcare outside of the formal court process. However, these processes provide for varying levels of availability, effectiveness, and sufficiency in holding healthcare workers and systems to account and in providing healthcare users with the right to redress. The complaints bodies analysed include facility-level or internal complaints processes, health professions and nursing councils, national human rights institutions and one specialised body dealing with persons with disabilities.

While having some potential for healthcare users to lodge complaints, these processes all require significant investment and improved procedural clarity and consistency to ensure that States are complying with their obligations to fulfil the right to redress for victims of discrimination. Greater

sensitivity to the needs of key populations and vulnerable populations must be guaranteed within these systems to ensure that the processes in themselves are not discriminatory by excluding certain persons from meaningful, safe and effective access.

## Key recommendations

From the preliminary research findings in this report, several recommendations are made. Key recommendations include:

**Legislative reform:** Including: the decriminalisation of consensual same-sex sexual acts; review of laws used to unlawfully target and harass sex workers; the development of legal protections and procedures for healthcare complaints; comprehensive disability legislation in Botswana; the entrenchment of healthcare users' rights to access their medical records; and the establishment of a national human rights institution in Botswana.

**Policy reform:** Including: developing commitments to ending discrimination in healthcare, with particular measures to protect sex workers, LGBT persons, women living with HIV and persons with disabilities; budgetary and personnel commitments to enable available, effective and sufficient complaints processes for healthcare users to lodge grievances; and improved health management policies to ensure persons with diverse disabilities are able to access healthcare services independently and with due respect for their dignity, safety, and right to informed consent and information.

**Development of ethical standards and guidelines:** Including: updating professional ethical codes to include concepts relating to discrimination and to address the particular forms of discrimination and healthcare needs experienced by key populations and vulnerable populations.

**Training of healthcare workers:** Including: training on revised concepts and examples of discrimination developed in consultation with key populations and vulnerable populations to ensure that diverse needs and experiences are sensitively accommodated.

**Improving the availability, effectiveness and sufficiency of complaints bodies:** Including: clarification and streamlining of facility-level complaints processes; improved safety and accessibility guarantees in all complaints mechanisms; and the incorporation of complaints analysis processes to ensure that systemic problems are identified and that healthcare workers are supported to be responsive to concerns about discrimination.

**Capacity-building and education for healthcare users and key stakeholders:** Including: the empowerment of healthcare users and key stakeholders on issues of health rights and the use of complaints processes; and training of complaints body staff on strategies to ensure the safety and protection of key populations and vulnerable populations.