AN OVERVIEW OF THE LEGAL ENVIRONMENT AFFECTING KEY POPULATIONS IN AFRICA

Policy Brief on Kenya, Lesotho, Malawi, Nigeria, Tanzania, Zambia, Zimbabwe and Uganda

SALC Policy Brief

No. 1 of 2025

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INTRODUCTION

There have been great strides in the past 20 years in the HIV response, with some countries having achieved the UNAIDS 95-95-95 targets. Changes in the legal and policy environment have improved the outlook for the Sexual and Reproductive Health Rights (SRHR) of key populations in sub-Saharan Africa. These changes have been ushered in through key national and regional laws, policies and progressive court judgments.

However, significant gaps remain for key populations, including Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ+) individuals, sex workers, vulnerable women and girls, People Living with HIV (PLHIV) and young people. Various legal and policy constraints hinder these key populations from seeking Sexual and Reproductive Health (SRH) and HIV prevention, treatment and care services. These include laws and policies that criminalise consensual same-sex sex, which target men who have sex with men (MSM), laws that limit legal gender recognition, and laws which criminalise acts associated with sex work. These laws and policies hinder key populations from accessing health services and make them particularly susceptible to HIV.

Gender-based violence and other harmful practices also affect key populations, with 1 out of 4 women believed to have been exposed to gender-based violence and 1 in 4 affected by sexual violence. Despite regional commitments like the African Union Campaign to End Child Marriage, SADC Model Law on Child Marriage and some government intervention through law and policy, the rate of child marriages in sub-Saharan Africa is high, with approximately 20% of women having been married before the age of 18.

This policy brief reflects on some of the key gains for key populations, including vulnerable women and girls, LGBTIQ+ individuals, young people, and sex workers in some sub-Saharan countries, particularly Zimbabwe, Zambia, Lesotho, Malawi, Tanzania, Kenya, Uganda and Nigeria. The brief also highlights some of the issues that persist and emerging issues that have the effect of risking the gains made and increasing other hardships for key populations.

IMPROVEMENTS IN THE LEGAL ENVIRONMENT OVER THE PAST TWO DECADES

NEW LAWS

The enactment of legislation throughout the region has gone a long way to fulfilling regional and international human rights commitments like those outlined in the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Some countries have also put in place laws that improve the SRHR of key populations, like HIV laws that address stigma and discrimination, laws outlawing child marriages and laws facilitating access to SRH services. Some of these legal developments were enabled and inspired by regional commitments like the SADC Model Law on Child Marriage and the African Union Campaign to End Child marriage, the AU Guidelines on Combatting Sexual Violence and the African Union and SADC HIV and SRHR Strategies.

Timeline of new laws

Gender equality, SRHR, gender-based violence, harmful practices

Year	Country & law	Significance
2014	**Zambia:** Gender Equity and Equality Act	Domesticates CEDAW and the Maputo Protocol, providing for gender equality and SRHR.
2015	**Malawi:** Gender Equality Act	Provides for gender parity, SRHR, including protection against harmful practices.
2015	**Kenya:** Protection Against Domestic Violence Act	Provides legal redress for GBV in private spaces, including marital rape.
2015	**Nigeria:** Violence Against Persons Prohibition Act	Provides legal redress for GBV including sexual assault, prohibits harmful practices, including Female Genital Mutilation (FGM).
2016	SADC Model Law on Child Marriage	Provides a blueprint for SADC states for laws to eradicate child marriages and deal with its consequences.
2016	**Kenya:** Sexual Offences Act amendment	Provides enhanced investigation and management of sexual offences; provides for gender neutral definition of sexual offences, has provisions for public education and information on sexual offences and sex education in schools.
2017	**Kenya:** Health Act	Codifies constitutional provisions on access to health and reproductive rights.
2017	**Malawi:** Constitution of Malawi amendment	Establishes age of child and sets minimum age of marriage at 18 years.
2017	**Malawi:** Marriage, Divorce and Family Relations Act	Establishes minimum age of marriage at 18 years, outlaws child marriage.
2021	SADC Model Law on GBV	Provides a framework for SADC states on laws addressing GBV.
2022	**Zimbabwe:** Marriage Act	Establishes minimum age of marriage at 18, outlaws child marriage.
2022	**Lesotho:** Counter Domestic Violence Act	Provides legal redress for GBV in private spaces, including marital rape.
2023	**Zambia:** Marriage Act	Establishes minimum age of marriage at 18 years, outlaws child marriage.

The **Zambia** Gender Equity and Equality Act is very progressive, providing for a comprehensive list of sexual and reproductive rights in line with CEDAW and Article 14 of the Maputo Protocol. It also provides for the duties of public and health officials to uphold these rights and an enforcement mechanism. However, the lack of public knowledge about these entitlements and poor implementation by the state hampers the realisation of these rights. The Act establishes a Gender Equity and Equality Commission to manage and oversee the implementation of the law, but to date, this has not been operationalised.

The **Malawi** Gender Equality Act aims, amongst other things, for the protection of sexual and reproductive rights including for adolescents, against sexual harassment and protection against harmful practices. However, implementation challenges, including poor funding for the State entities mandated to implement it, like the Malawi Human Rights Commission, affect its effectiveness. In addition, there is a lack of public knowledge of the existence of the law and how to use it.

The **Kenya** Health Act, by codifying the constitutional provision recognising the right to the highest attainable standard of health including reproductive rights, has enabled the effective recognition of

SRHR and their enforceability through the courts. Courts have been able to use the Act to uphold and interpret constitutional rights, including access to safe abortion and the rights of survivors of sexual abuse.

The progressive enactment of laws outlawing child marriages shows the importance of regional campaigns and commitments to affecting change across the region like the 2016 SADC Model Law on Child Marriage.

Adolescent health and SRHR

Year	Country & law	Significance
2016	**Tanzania:** Amendment of the Education Act	Education Act amended to criminalise marrying or impregnating a child in primary or secondary school.
2016	**Tanzania:** Amendment of the Penal Code	Penal Code amended to criminalise Female Genital mutilation of children.
2018	**Malawi:** Revised School Readmission policy	Policy revised to implement a human rights-based approach to allow pregnant girls re-entry into school.
2019	**Tanzania:** Amendment of the HIV and AIDS (Prevention and Control) Act	Reduces age of access to HIV testing to 15 years.
2020	**Zimbabwe:** Education Act amendment	Provides for re-entry of pregnant girls and adolescent mothers to school; state obligation to provide menstrual health sanitary ware; non-discrimination of children on grounds including pregnancy, gender, marital status; appointment of officials responsible for SRH in schools.
2021	**Tanzania:** Reversed a 2017 ban under Regulation 4 of Education Regulations GN295/2002	Allowed pregnant girls' readmission to school.
2023	**Malawi:** Section 138A of the Penal Code amendment	Provides a defence to the offence of unlawful sexual intercourse with a minor for consensual sex by minors.
2024	**Zimbabwe:** Criminal Law Codification and Reform Act amended	Raises the age of sexual consent to 18 years and provides for close-in age exceptions.

The developments in **Malawi, Zimbabwe,** and **Tanzania** on providing for re-entry of pregnant girls to school indicate considerable progress in recognising adolescent SRHR and the importance of ensuring continuation of access to education in circumstances of teen pregnancy. However, poor implementation by the state and lack of knowledge by the public hinder the effectiveness of these laws and policies.

The amendment of the **Tanzania** Education Act to prohibit the marriage and impregnating of school going children is welcome and contributes to prevention of child marriages. However, the law also criminalises children who 'marry' or impregnate school children, which is undesirable as exposing children and young people to the criminal justice system for consensual sexual relations impacts on access to SRH knowledge and services and is not in their best interests.

The amendment of the Penal Code to criminalise FGM against children is welcome and helps in the efforts to eradicate FGM in **Tanzania.** However, the law is weakened by the prohibition against FGM being limited only to children, as adult women are also affected, and may be coerced into undergoing FGM due to social and cultural power imbalances.

Rights of LGBTIQ+ persons

Year	Country & law	Significance
2022	**Kenya:** Children's Act	Legal recognition of intersex children and protection of their rights.
2022	**Kenya:** Amendment of Births and Deaths Registration Act	Legal recognition of intersex persons.
2024	**Lesotho:** Labour Act	Prohibits discrimination on grounds including sexual orientation.

Regional standards like the Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (Resolution 275) and the Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa (Resolution 552) by the African Commission on Human and Peoples' Rights (ACHPR) in 2014 and 2023 respectively, are important in directing regional commitments to improving the rights of LGBTIQ persons.

Lesotho, in addition to decriminalising consensual same sex acts in 2012 and subsequently recognising the right to non-discrimination on sexual orientation grounds in the workplace, has been progressive in improving LGBTIQ+ rights.

Kenya has progressively recognised the rights of intersex people first through protecting the rights of intersex children, and the recent approval by the government of a law for legal recognition through amending identity registration.

However, despite the regional resolutions, progress in enacting domestic laws that are protective of LGBTIQ+ persons is slow and poor, as can be seen by the scarcity of new laws, except for Lesotho and Kenya. Some inclusive practices followed the inclusion of LGBTIQ+ people in HIV management programmes and policies as key populations, but these advances risk being eroded by recent funding cuts to health services across the region. The continued existence of laws criminalising LGBTIQ+ people across the region also flies in the face of these regional standards.

Rights of PLHIV

Year	Country & law	Significance
2014	**Nigeria:** HIV & AIDS Anti-discrimination Act	Protects against stigma and discrimination of PLHIV, including labour protections.
2014	**Uganda:** HIV and AIDS Prevention and Control Act	Provides for the rights of PLHIV and sets 12 years as age of consent to HIV testing and treatment.
2019	**Malawi:** HIV and AIDS (Prevention and Management) Act	Prohibit HIV criminalisation and mandatory testing and disclosure.
2022	Zimbabwe: Amendment of Section 79 of Criminal Law (Codification and Reform) Act	Decriminalisation of HIV exposure.

The region has taken the management of HIV seriously through enacting laws and policies and recognised the rights of PLHIV to confidentiality and non-discrimination, as seen in most of the domestic HIV management laws.

Apart from the constitutionally protected right to non-discrimination, the HIV/AIDS Anti-Discrimination Act of Nigeria criminalises discrimination against people based on their HIV status. The Act also prohibits mandatory HIV testing by prospective employers or as a condition for access to services.

Despite the existence of this law in Nigeria, however, a report has found that, many PLHIV still suffer from stigmatisation, discrimination and abuse in general spaces including healthcare, workplace, education and religious settings. The report cites issues like a general lack of knowledge of the existence of the law and poor enforcement as contributors to poor implementation. Another reported challenge is the poor domestication of the law by states in the Nigerian Federation, which also affects national implementation.

The trend of draconian and penal provisions in the region used as an HIV prevention tool hampers HIV prevention and treatment efforts. For example, Uganda's HIV and AIDS (Prevention and Control Act) criminalises HIV exposure and transmission. It has been a challenge to ensure the removal of offences criminalising HIV transmission where they have been enacted, with prosecutions continuing to take place.

Zimbabwe, for example, repealed its HIV-specific criminal law in 2022, but attempted to re-introduce it through an amendment of the law criminalising transmission of Sexually Transmitted Infections in 2024. It took concerted civic society advocacy to ensure that the law was not passed by Parliament. It is clear, considering the criminalised response to the Covid-19 pandemic, that public health arguments against criminalisation have not taken hold or been convincing enough.

Human rights protection

In 2019, **Uganda** enacted the Human Rights Enforcement Act (HREA), which provides for enforcement of constitutionally protected rights by the courts. There is a growing realisation of the importance of the courts in enforcement of rights, and laws like the HREA are necessary to strengthen and improve implementation of constitutional rights. The HREA has provisions that include the ability to enforce progressive realisation of socio-economic rights like health and SRH access through the courts and improves access by allowing public interest litigation and enabling lower courts to enforce constitutional rights.

COURT RULINGS

The legal protection of SRHR through direct constitutional provisions, as in the case of Zimbabwe and Kenya or indirectly through the Bill of Rights and enabling legislation has empowered the courts to ensure justice and uphold SRHR in the region. **Kenya**'s Constitution provides for the right to the highest attainable standard of health, including reproductive health (Article 43(1)), which has been codified through the Health Act. **Zimbabwe**'s Constitution also directly provides for SRHR, including the right to make reproductive decisions (section 52(b)); the right to paid maternity leave (section 65(7)); the right to access to basic health-care services, including reproductive healthcare (section 76(1)) and freedom from forced marriage (section 78(1),78(2)).

Other constitutionally protected rights in the region that protect SRHR include the right to equality and non-discrimination, the right to privacy, the right to life, dignity and freedom from violence, torture inhuman and degrading treatment, which are all protected in the Constitutions of Zambia, Malawi, Lesotho, Kenya, Zimbabwe, Uganda, Tanzania and Nigeria. Nigeria has domesticated the African

Charter on Human and Peoples' Rights through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, which provides for the right to the highest attainable standard of health. Below are some notable court judgments recognising and upholding SRHR in the region over the past 20 years.

Timeline of court rulings

Timeline	Country & case name	Decision
2014	**Zimbabwe:** *Mildred Mapingure v Minister of Home Affairs and Others*	Supreme Court awarded damages for state negligence in failing to provide emergency care for a rape survivor and highlighted deficiencies with abortion law.
2015	**Zimbabwe:** *Mudzuru v Minister of Justice, Legal and Parliamentary Affairs & Others*	Constitutional Court outlawed child marriage.
2015	**Malawi:** *S v Officer In Charge Mwanza Police Station & Others*	High Court ruled the mass arrest and mandatory HIV testing of sex workers illegal and unconstitutional.
2016	**Tanzania:** *Rebeca Gyumi v AG*	High Court outlawed child marriages (confirmed by Court of Appeal, 2019).
2016	**Malawi:** *Republic v Pempho Banda & Others*	High Court decided that the offence of living on the earnings of prostitution does not prevent sex workers themselves from living on their earnings.
2017	**Malawi:** *El v Republic*	High Court set out limitations and human rights-based approach to the application of criminal law to HIV transmission, acquitting an HIV+ woman who had been convicted of HIV exposure for breastfeeding a child.
2018	**Kenya**: *COI & GMN v Principal Magistrate Ukunda Law Courts & 4 Others*	Court of Appeal ruled that forced anal testing was unconstitutional and breached human dignity.
2018	***Lesotho:*** *Mokhele and Others v Commander, Lesotho Defence Force and Others.*	High Court overturned the discharge of women army recruits on the grounds of pregnancy, upholding SRHR of soldiers.
2018	**Nigeria:** *X v Brink and Others*	Industrial Court awarded damages for discrimination and mandatory HIV testing of PLHIV, affirming protection under the law.
2019	**Tanzania:** *AG v Rebeca Gyumi*	Supreme Court of Appeal confirmed the High Court judgment outlawing child marriage.
2019	**Kenya:** *FIDA-Kenya and others v Attorney General & Others*	Constitutional Court confirmed the legality of abortion in sexual violence cases and ordered the restoration of abortion care guidelines.
2019	**Zimbabwe:** *Nathanson v Mteliso*	High Court upheld the rights of a transgender woman to dignity and awarded damages for police abuse.
2019	**Nigeria:** *CN and 15 Others v Minister of Federal Capital Territory & 5 Others*	Federal High Court affirmed sex workers' rights to due process at the hands of law enforcement agencies.
2020	**Uganda:** *Constitutional Petition 16 of 2011*	Constitutional Court affirmed that providing basic maternal health care guarantees women's rights to life and health, holding the government accountable for the high rates of maternal mortality.
2020	**Africa:** *Advisory Opinion on Vagrancy Laws in Africa*	African Court on Human and Peoples' Rights affirmed that vagrancy laws breach the rights to dignity of poor and

		marginalised communities and are incompatible with the African Charter on Human and Peoples' Rights. The case recognised the specific impact on sex workers and gender-non-conforming persons and broadened the interpretation of 'other status' in the prohibited grounds of discrimination in African Charter.
2021	**Malawi:** *CM v The Hospital Director of Queen Elizabeth Central Hospital & The Minister of Health*	High Court provided clarity on access to safe abortion on health grounds.
2021	**Kenya:** *Dr Tatu Kamau v The Attorney General & Others*	Constitutional Court upheld the ban on Female Genital Mutilation and affirmed the rights of women and girls to freedom from violence through harmful cultural practices.
2022	**African Committee of Experts on the Rights and Welfare of the Child (ACERWC):** *Legal and Human Rights Centre & Centre for Reproductive Rights v United Republic of Tanzania*	The ACERWC decided that Tanzania's ban on pregnant learners' return to school violated the African Charter on the Rights and Welfare of the Child.
2022	**Kenya:** *PAK & another v Attorney General & 3 others*	The High Court affirmed that blanket criminalisation of abortion, including in cases of pregnancy resulting from sexual assault was inconsistent with the Constitution.
2023	**Nigeria:** *Women Empowerment and Legal Aid (WELA) v Attorney-General of the Federation*	The Court of Appeal struck down sections 126 and 127 of the Nigeria Police Act, which allowed the discharge of unmarried police officers who fall pregnant while in service.
2023	**Kenya:** *NGO Coordination Board v Eric Gitari & Others*	Supreme Court upheld the right of LGBTIQ+ people to form and register organisations.
	Kenya: *S W K & 5 Others v Medecins Sans Frontieres-France & 10 Others*	Constitutional Court awarded damages for coerced sterilisation of HIV+ women and affirmed their reproductive rights.
2024	**Zimbabwe:** *WLSA & Another v Minister of Health and Childcare & Another*	High Court declared provisions of the law limiting access to abortion for statutory rape and marital rape unconstitutional.
2025	**Tanzania:** *Onesmo Olengurumwa v Attorney General*	Court of Appeal declared unconstitutional the sections of the Basic Rights and Duties Enforcement Act that restricted public interest litigation for constitutional claims.

PERSISTENT ISSUES

Despite these gains, some significant issues have persisted. These include high rates of maternal deaths and severe injury, gender-based violence, and harmful cultural practices, as well as stigma and discrimination against key populations through the maintenance and use of criminal laws that penalise sexual conduct and status.

PUBLIC HEALTH ISSUES

Maternal mortality rates remain high. Some indirect causes for these high rates include socio-economic factors like poverty and poor access to healthcare services, particularly in rural areas that are also far from healthcare centres. Poor government investment in public health services and infrastructure is also considerable.

Unsafe abortion is one of the leading indirect causes of maternal mortality, and, as of 2019, was estimated to cause some 185 deaths per 100,000 abortions in sub-Saharan Africa. **Nigeria** and **Lesotho** are in the top 11 countries with the highest Maternal Mortality Rates (MMR) in Africa, with rates of 1047 deaths per 100 000 births and 566 per 100,000 births, respectively. Abortion complications cause a large number of hospital admissions for women in Lesotho, with approximately 24.3% women being treated for incomplete abortions.

A 2019 report by the **Malawi** Ombud highlighted serious systemic issues in public hospitals contributing to complications and resulting in emergency sterilisation of many women after obstetric interventions.

In **Uganda**, the 2020 Constitutional Court judgment in Constitutional Petition 16 of 2011 illustrated how poor public healthcare access and management is a major cause of maternal mortality.

Despite the considerable reduction in HIV prevalence in general over the years, the rates amongst key populations have remained high. In 2021, it was estimated that the key populations rates contributed to 51% of all new infections in sub-Saharan Africa. Young people, as a key population, continue to have the highest numbers of new HIV infections. In addition, the high rates of adolescent pregnancy in the region expose young women to risks of child marriages and maternal death and injuries.

ACCESS TO HEALTHCARE FOR WOMEN AND YOUNG PEOPLE

Young people face barriers to access SRH information and services and generally have poor enjoyment of SRHR due to the restrictive and unclear laws and policies. Many countries do not have specified ages for access to SRH services. In many cases, criminal laws, whilst seeking to protect young people from sexual exploitation, have *de facto* set the age of consent to SRH services. Policy and practice, however, also may allow access at lower ages, especially for HIV testing or treatment, or afford some discretion to health workers to assess the ability to consent. The inconsistencies between law, policy and practice create some confusion amongst service providers, to the detriment of young people's access to SRH care.

Age of consent and access to health services for adolescents

Country	Age of access to SRHR care	Age of sexual consent	Legal provisions
Zimbabwe	16, mature minor (contraceptives) 16, mature minor (HIV testing, treatment) 18 (consent to healthcare)	18	Section 70, Criminal Law (Codification and Reform) Act (as amended by Criminal Laws Amendment (Protection of Children and Young Persons) Act of 2024); Section 52, Medicines and Allied Substances Control (General) Regulations,1991; Guidelines for HIV Prevention, Testing and Treatment of HIV, Family Planning Guidelines; Public Health Act; Children's Act
Zambia	No official age	16	Section 138(1), Penal Code
Malawi	No official age	18	Section 4, Penal Code
Lesotho	12	16	Section 232(2), Children's Protection and Welfare Act; Section 8(1), Penal Code
Kenya	Parental consent	18	Section 8, Sexual Offences Act, National Reproductive Health Policy (2022-2032), Children's Act

Tanzania	15 (HIV testing)	18, unless married	HIV and AIDS Prevention and Control Act, Penal Code,
Uganda	12 (HIV testing and counselling, treatment requires parental consent) No age restriction (Family planning)	18	Section 12, HIV and AIDS Prevention and Control Act; National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights (SRHR),2006; Section 129, Penal Code
Nigeria	18, mature minors (consent to HIV testing)	18	National Guidelines for HIV Counseling and Testing; Section 31, Child Rights Act

The high rates of MMR caused by unsafe abortion in the region are attributed to poor access to safe abortion due to restrictive laws and policies, or poor access even where abortion is legal.

Zimbabwe's Termination of Pregnancy Act allows for abortion on grounds of risk to physical health, where there is risk to the life of the woman or foetal viability, as well as in the case of pregnancy arising from rape or incest. However, actual access to safe abortion is hampered by onerous and unclear administrative processes required, thus contributing to a high incidence of unsafe abortion.

In **Zambia**'s Termination of Pregnancy Act, abortion is allowed on socio-economic as well as medical grounds, but lack of public awareness of the law, and some onerous conditions hinder actual access.

In **Lesotho**, abortion is criminalised, with the exceptions as stated in section 45(2) of the Penal Code Act, 2012 to protect the health of the pregnant woman, in the case of severe foetal disability and in the case of rape or incest. Despite these exceptions, access to safe abortion is considered to be restricted in Lesotho, and there are high levels of unsafe abortions, a key factor in the high maternal mortality rate. There are no guidelines or regulations on actual access to safe abortion in terms of the law. Apart from maternal mortality, maternal morbidity is another challenging outcome of laws prohibiting abortion in Lesotho. In 2022, the Lesotho Bureau of Statistics found abortion complications as the main reason for hospital admissions among women. It was reported that 24.3% of hospitalised female patients were in treatment following "incomplete abortions."

Tanzania and **Malawi** do not have an abortion law that regulates access, but their Penal Codes contain exceptions to criminal sanctions to preserve the life of the woman. There are no abortion care guidelines to guide the circumstances and conditions for access to legal abortion. Thus, women and girls who are victims of sexual violence or incest are unable to access safe abortion and care services that meet international human rights standards. This leaves them with limited termination options and causes them to procure unsafe abortions.

In **Nigeria**, abortion is illegal in the Northern States in terms of Articles 232-236 of the Penal Code (Northern States) Federal Provisions Act and in Southern states in terms of sections 228-230, 297, 309 and 328 of the Criminal Code. The only exception is where it is performed to save the woman's life. Unsafe abortions, as a result, account for approximately 30% of the overall maternal mortality rate in Nigeria.

Access to abortion in **Kenya** is provided for in Article 26(4) of the Constitution, which states that abortion is not permitted unless, in the opinion of a trained health professional, there is a need for emergency treatment or the life or health of the mother is in danger, or if permitted by any other written law. However, in terms of sections 158 and 160 of the Penal Code, which predate the Constitution, abortion is illegal. The government withdrew abortion guidelines in 2014, which provided clarity for

provision of legal abortion care. The legal uncertainties and contradictions create fear among women to seek abortion care, and also for healthcare providers who are afraid to fall foul of the law, thus impacting access. The courts have attempted to provide some clarity, through court decisions including *FIDA-Kenya and others v Attorney General & Others* and *PAK & another v Attorney General & 3 others*, affirming the permissibility of abortion within the set circumstances in the Constitution, and confirming the inconsistency of maintaining a blanket prohibition on abortion including in cases of sexual offences, respectively. However, access to safe abortion remains challenging in Kenya.

The Maternal Mortality Rate in **Uganda** is estimated at 189 deaths per 100,000 live births, an improvement from the previously recorded 339 deaths. However, unsafe abortions continue to contribute to this rate, with the restrictive laws being a huge factor. Uganda's Constitution in Article 22(2) expressly prohibits the termination of the life of an unborn child unless provided for by law. Further, sections 141-143 and 212 of the Penal Code prohibit abortion and any attempts to procure one, with the exception of preserving the pregnant woman's life. The National Policy Guidelines and Service Standards for Sexual and Reproductive Health Rights, 2006 acknowledge the correlation between unsafe abortion and maternal mortality and provide some clarity on circumstances where abortion can be provided to preserve health. This includes a seeming expansion of grounds to include cases of rape or incest, cancer or HIV. The Guidelines, however, fall short of providing comprehensive guidance for the process for access to safe abortion to guide healthcare workers and health seekers. In 2017, a more comprehensive version of the Guidelines approved by the Ministry of Health and set to be launched was withdrawn at the final moment. The Women's Probono Initiative is awaiting judgment in a case filed in the East African Court of Justice challenging the Ugandan government's failure to reinstate these guidelines.

GENDER-BASED VIOLENCE AND HARMFUL PRACTICES

Gender-Based Violence (GBV) is a consistent issue in the region, despite legal and policy efforts to eradicate it. Harmful practices, a form of GBV, like child marriages and Female Genital Mutilation/Cutting (FGM/C), affect young women and girls disproportionately, making them vulnerable to HIV and SRHR violations. High levels of teenage pregnancies are attributed to child marriages leading to high maternal deaths and morbidity in young women and girls. FGM/C presents a major health challenge for women and girls, with increased risk of maternal deaths and sexual and reproductive health complications.

CRIMINAL LAWS AFFECTING KEY POPULATIONS

Country	LGBTIQ+	Sex workers	PLHIV
Zimbabwe	Section 73, Criminal Codification and Reform Act (sodomy)	The activities associated with sex work are penalised under Sections 81 to 84, Criminal Codification and Reform Act (soliciting for prostitution, living on the earnings of prostitution (3rd parties), facilitating, procuring prostitution, keeping a brothel)	Section 70A, Criminal Laws Amendment (Protection of Children and Young Persons) Act, ('deliberate infection' of a child with an STI, including HIV)
Malawi	Sections 153, 154 and 156, Penal Code (carnal knowledge against the order	The activities associated with sex work are penalised under Sections 140, 145 – 147A and 180, Penal Code	Section 192, Penal Code (intentional or negligent transmission of dangerous infection or disease)

	of nature, unnatural offence, indecent practices)	(performing an indecent act in public; soliciting for immoral purposes; living on the earnings of prostitution; brothel-keeping; procuring a person for prostitution and transporting a person for prostitution)	
Lesotho	Same-sex acts have been decriminalised but Section 56, Penal Code (public indecency) can be used to criminalise LGBTIQ+ persons	Sections 55(2) and (3), Penal Code (engaging in sex work and soliciting others in a public place for the purposes of engaging in sex work)	Section 52, Penal Code (non-disclosure of a person's HIV status prior to sex amounts to an unlawful sexual act);Sections 30 and 32, Sexual Offences Act, (compulsory HIV testing for sentencing of a person charged with a sexual offence, and aggravated sentencing for offenders who are HIV positive, both knowingly or unknowingly, at the time of committing a sexual offence)
Kenya	Sections 162, 163 and 165, Penal Code ("gross indecency," consensual "carnal knowledge of any persons against the order of nature")	The activities associated with sex work are penalised under Sections 153 and 154, Penal Code (living on the earnings of prostitution); County by-laws (loitering, importuning for the purpose of prostitution, indecent exposure)	Section 26(1), Sexual Offences Act (transmission and "exposure" to HIV); Section 186, Penal Code (acts that could spread a dangerous disease)
Uganda	Sections 145, 146 and 148 ("unnatural offence"); The Anti-Homosexuality Act, (expanded the offences criminalising same sex acts "aggravated homosexuality" for "serial offenders"). Section 11 ("promoting homosexuality")	Section 139, Penal Code Act (prostitution seven years imprisonment)	HIV and AIDS Prevention and Control Act, Section 41 (attempted transmission of HIV); Section 43, ("intentional transmission of HIV"). Section 12 (compulsory HIV testing for people arrested for criminal proceedings and investigations)
Zambia	Sections 155 to 158, Penal Code criminalise same-sex sexual conduct	The activities associated with sex work are penalised under Sections 146 to 148, Penal Code (living in whole or in part on the profits from "prostitution" and owning or operating a brothel, soliciting for immoral purposes); Section 178 (public indecency)	Section 183, Penal Code (intentional or negligent spread of an infection or disease); Section 3, Anti-Gender-Based Violence Act (sexual abuse includes infecting another person with HIV or other STI)
Tanzania	Sections 138A, 154-155 and 157, Penal Code (carnal	The activities associated with sex work are penalised under	Section 47, HIV/AIDS (Prevention and Control Act)

	knowledge against the order of nature, gross indecency)	Sections 139, 145-148, 176, 176A and 177, Penal Code (procuring; keeping a brothel; living on earnings of prostitution; loitering; disorderly conduct or soliciting in a public place for the purposes of prostitution")	– ("intentional" HIV transmission). Section 179, Penal Code (unlawful or negligent "spread" of an infectious disease that is dangerous to life)
Nigeria	Sections 214, 215, 217 of the Criminal Code penalise carnal knowledge against the order of nature and attempts, gross indecency; Section 5 Same Sex Marriage (Prohibition) Act criminalises same-sex unions, and LGBTIQ+ expression, registration, advocacy)	Sex work is illegal in all Northern states under Islamic/Sharia Penal Code. In the Southern part of Nigeria, the activities associated with sex work are penalised under sections 223 to 225B, Criminal Code	Section 26(1), Sexual Offences Bill (It was passed by the Senate but is not yet an Act in force) (person who knows they have HIV to intentionally, or negligently do anything that is likely to transmit HIV); Sections 2 and 43, Sexual Offences Bills (rape under false pretenses or by fraudulent includes "intentionally failing to disclose HIV" (or other life-threatening STI))

Criminalisation of key populations increases stigma, discrimination and violence against them and violates their SRHR. In general, criminalisation of key populations is done through direct criminal laws that target them or indirect offences like vagrancy laws or other petty offences. There is widespread violence against LGBTQI+, including blackmail, sexual assault and arbitrary arrests, with often no successful prosecution. Sex workers experience extensive police abuse like harassment, arbitrary arrests and detentions using the laws, with few cases being prosecuted in court. This leads to poor access to healthcare services, denial of health services by some workers, and poor health-seeking behaviour by key populations.

Over-broad and unjust laws targeting PLHIV increase stigma and discrimination and negatively impact access to SRHR for PLHIV. They also impact HIV prevention and management programmes due to the chilling effect of criminalisation. Transgender and intersex persons face difficulties in acquiring legal documents (such as identity documents) that match their gender identity. The mismatch between gender presentation and identification pronouns has led to barriers to accessing government initiatives and programmes requiring legal documentation, including healthcare.

In **Tanzania**, the offence of "*carnal knowledge against the order of nature"* carries a minimum mandatory sentence of 30 years and a maximum of life imprisonment. The State often carries out periodic crackdowns against LGBTIQ, including through carrying out forced anal examinations as a pretext for prosecution. As a result of the dehumanisation that comes from being criminalised, it is further reported that these key populations continue to experience denial of health services, verbal harassment and abuse, and violations of confidentiality. In 2016, the government banned the free distribution of personal lubricants at drop-in centres established by national and international NGOs, limiting the impact of HIV prevention efforts. In Tanzania, there have also been periodic crackdowns by local authorities and police abusive practices on sex workers and those suspected to be sex workers.

In **Nigeria,** the enactment of the Same-Sex Marriage Prohibition Act (SSMPA), a federal law, which further criminalised LGBTIQ+ people in addition to the already existing Criminal Code provisions, increased the negative effects of the laws on access to healthcare, including HIV prevention and treatment. This was due to increased stigma and discrimination, leading to a reduction in health-seeking.

In **Malawi**, in the case of *Akster and Another v DPP and Another*, the High Court, sitting as a Constitutional Court, rejected a legal challenge to the provisions of the Penal Code that criminalise same-sex conduct. LGBTIQ+ persons are often denied services at public health institutions by some healthcare workers due to stigma and discrimination associated with criminalisation. There are already reports of the Court's decision increasing further exclusion of LGBTIQ+ people from access to healthcare, and exposure to violence and discrimination.

A **Uganda** Network of Sex Worker-Led Organisation (UNESO) report found an increase in evictions of sex workers by landlords between January 2023 and February 2024, associated with the enactment of the Anti-Homosexuality Act, which prohibits renting out accommodation to LGBTQ+ persons.The Anti-Homosexuality Act, passed in 2023, adds to the already existing criminalisation under the Penal Code, with additional provisions for forced conversion therapy and prohibiting LGBT 'advocacy', which includes sheltering or renting out to LGBTIQ+ people. A challenge to the law was dismissed by the Court in 2024, although the court struck out some parts of the law related to HIV criminalisation and imposition of the death penalty.

In **Zimbabwe**, Section 81 of the Criminal Code, which prohibits soliciting, is most often used to detain, harass, and prosecute sex workers. Given the ambiguity of the provision, successful prosecutions under section 81 are rare but the police periodically carries out sweeping exercises targeting women in public spaces.

The **Nigeria** Sex Workers Association (NSWA) recorded that although the law (in the Northern States) does not directly criminalise sex work, there is widespread harassment and violence by the police, who often use administrative offences against them. The case of *CN and 15 Others v Minister of Federal Capital Territory and 5 Others*, decided by the High Court in 2019, illustrates how various administrative offences are often used to harass and arrest sex workers.

In **Malawi**, the case of *EL v Republic* illustrates the use of criminal law to target PLHIV. In this case, even though the High Court questioned the constitutionality of the law, it fell short of a declaration, leaving the law intact.

The **Zimbabwe** Criminal Laws Amendment (Protection of Children and Young Persons) Act, in section 70A, introduces an offence of 'deliberate infection' of a child with an STI, including HIV and aggravated sentencing for people convicted of child sexual abuse who are found to be HIV positive. The provision criminalising 'deliberate infection' is overbroad, as it criminalises anyone who 'does anything' which could expose a child to HIV, potentially criminalising parent to child transmission of HIV. The provision is remarkably similar to the repealed law that was slated for being overbroad in its language. The provision for aggravated sentencing creates a reverse onus for anyone who has an STI (including HIV), even if they did not know about it, to prove that they did not intend to infect the child.

EMERGING ISSUES

IMPACT OF FUNDING CUTS ON SRHR AND HIV RESPONSE

US government aid in 2023

Country	HIV/STI funding (USD)	Family planning and reproductive health funding
Zimbabwe	140 000 000	5 500 000
Malawi	94 000 000	29 000 000
Lesotho	74 000 000	
Kenya	270 000 000	45 000 000
Uganda	190 000 000	44 000 000
Zambia	310 000 000	23 000 000
Tanzania	370 000 000	33 000 000
Nigeria	150 000 000	100 000 000

In January 2025, the US government announced a freeze and subsequently cut the majority of funding for global aid, including PEPFAR and UNAIDS funding. This has fed into an already dwindling pool of global funding for health, human rights and other pressing issues. Although the situation is evolving, and very fluid, the US funding cuts have had and are going to have a devastating effect on global health, including the HIV response. Although in most countries, after the initial freeze, reports showed that current stocks of HIV treatment drugs and anti-retroviral (ARV) were still available, it was not clear whether this would remain in the long-term. The funding cuts have drastically affected human resources needed for the distribution of treatment, prevention, counselling etc for the HIV response. They have also affected HIV prevention programmes targeting key populations and community-led responses. The loss of funding has led to the closure of key population services provided by NGOS and an assumption that key populations would automatically be integrated into public health services.

SHRINKING CIVIC SPACE

There has been a trend for countries in the region to enact new laws or enforce laws that have the effect of shrinking the space for civic engagements, public participation, and CSOs holding the government accountable. This varies from direct NGO laws with restrictive provisions, or provisions that are draconian in their implementation, or other laws, such as public order laws impacting the freedom of people to assemble and challenge government policies. These laws, policies and practices affect key populations as individuals but have a greater effect on their ability to support activism and self-advocate for their rights and welfare, as well as receive support from other organisations. The funding cuts are also affecting funding for CSOs and will impact advocacy and service provision provided by CSOs.

In April 2025, **Zimbabwe** enacted the Private Voluntary Organisations Amendment Act. The Act requires compulsory registration of all NGOs that receive public funds or donations, and other NGOs designated by the Minister after risk assessment. All existing NGOs and associations are required to apply for registration, with no guarantee of approval.

Zambia amended the Non-Governmental Organisations Act in 2020, to require compulsory registration of all NGOs, including international NGOs operating in the country, and impose stringent criminal penalties on operating without registration. Further legal reforms have been mooted for 2025.

In 2022, **Malawi** amended its NGO Act, which also requires compulsory registration and regulation of all NGOs in the country, with criminal penalties for non-compliance that can be imposed personally on NGO office-bearers.

In **Uganda,** under the NGO Act, 2016, the NGO Bureau has wielded immense power over NGOs, including arbitrary suspension and deregistration, which raises concerns for freedom of association and expression and reprisals against CSOs that are critical of the government. Recent amendments to the NGO Act will lead to direct government regulation of NGOs, which also raises concerns of increased government control and repression. The Uganda Anti-Homosexuality Act's prohibition on advocacy for LGBTIQ+ rights is also a direct threat to the ability of LGBTIQ individuals to associate and self-advocate and also threatens collaborations within civil society.

In **Tanzania**, some laws that potentially limit civic space, activism, and the sharing of information include: the NGO Act, 2002, with stringent registration and reporting requirements; the Electronic and Postal Communications (Online Content) Regulations (2020); and the Computer Misuse Act. Also, amendments to the Basic Rights and Duties Enforcement Act limiting access to the courts to enforce human rights have made it difficult for public interest litigation to enforce human rights. In June 2025, the Supreme Court of Appeal struck down these amendments, ruling them unconstitutional and amounting to a denial of access to justice.

Section 5 of the Same-Sex Marriage Prohibition Act (SSMPA) of **Nigeria** criminalises the registration, 'sustenance', marches, or meetings of LGBTIQ+ organisations and imposes a penalty of 10 years' imprisonment upon conviction. This law directly affects key populations' freedom of association, guaranteed under Article 40 of the Constitution and has affected the ability of CSOs and healthcare workers to provide services and advocate for LGBTIQ+ persons' rights. A shadow report to the African Commission on Human and Peoples' Rights in 2011 highlighted the effects of the enactment of the law on LGBTIQ+ individuals and groups in Nigeria. The report alleged that the law has led to a reduction in NGO operations due to fear. It is also reported that some LGBTIQ+ organisations had to register as general human rights organisations, affecting community-led and focused services. Some LGBTIQ+ serving organisations reportedly had to shut down their work or shift priorities for fear of violence, arbitrary arrests and public shaming or register as mainstream human rights groups that work with the general population. This made access to appropriate and inclusive service challenging for LGBTIQ+ people.

In **Zambia**, the Public Order law remains unreformed despite government undertakings, and it is increasingly used to suppress assembly, e.g. women were arrested at an anti-GBV march, accused of promoting LGBTIQ rights.

The civic space in Kenya has been impacted by government crackdowns on protests, leading to arrests, enforced disappearances and deaths. There have also been crackdowns on LGBTIQ+ expression and assembly.

RISE IN ANTI-RIGHTS MOVEMENTS AND REGRESSIVE LAWS AND COURT RULINGS

Emerging movements advocating against SRHR, gender equality and human rights will negatively affect rights and welfare of key populations. These movements, which are largely funded by US and European ultra-conservative groups are characterised by the spread of hate speech and misinformation and lobbying of political, professional, and religious leaders across Africa. These anti-rights and anti-gender movements have increasingly used the courts to counter SRHR. Their influence can be illustrated by the examples below.

The **Uganda** Anti-Homosexuality Act is a result of sustained mobilisation and the influencing of politicians by anti-gender movements, including US religious and far-right movements.

In **Zambia**, the government mooted removing the word 'sexual' from SRHR programming to counter LGBTIQ+ rights. There are also periodic anti-LGBTIQ flare-ups, including hate speech in the media from some politicians.

In **Tanzania**, some members of parliament pushed for more stringent penalties against LGBTIQ+ people in response to the new anti-LGBTIQ law in Uganda.

In **Malawi,** the anti-rights influence was seen when parliament declined to debate a private member's bill to reform the abortion law.

The **Malawi** courts allowed religious groups to intervene in litigation to argue against key population rights in the Wim Akster constitutional case, which declared the sodomy offence constitutional.

In **Kenya**, a parliamentarian in *George Kaluma v NGO Board and Others* unsuccessfully petitioned the Supreme Court to overturn its judgment affirming LGBTQ rights to associate. Parliamentarians also introduced a Family Protection Bill in 2023 in Parliament to curtail SRHR and LGBTIQ+ rights.

There is growing organisation of regional convenings in Africa funded by US Conservative fundamentalist groups that appear to influence legislative changes restricting SRHR. One such convening, held in Kenya in May 2025 resolved, amongst other actions, to advocate for revision of laws and policies in Africa to undermine gender equality and SRHR.

CONCLUSION

The increasingly prolific activities of anti-gender actors and the shrinking of civic space through regressive laws, reduced funding and increasing repression are worrisome developments that threaten to reverse the gains that have been made over the past two decades. It is therefore crucial to leverage and reinforce legislative and judicial growth by utilising and strengthening the norms and standards established through advocacy and activism. Continuous awareness-raising, information-sharing and capacity strengthening will empower activists and communities to know and effectively utilise and enforce their rights and to safeguard and ring-fence the gains made. There is also a need for shifts in the way advocacy is conducted, including increasing cross-sector collaboration that recognises the intersectionality of issues affecting different key populations, SRHR and other rights. Long-lasting, progressive but tactical advocacy strategies are needed in the face of increased threats.