



To: High Commissioner, Office of the High Commissioner for Human Rights

RE: CALL FOR CONTRIBUTIONS: HUMAN RIGHTS IN THE CONTEXT OF HIV AND AIDS (HUMAN RIGHTS COUNCIL RESOLUTION 47/17)

The International Network of People Who Use Drugs (INPUD), Global Action for Trans Equality (GATE), the Global Network of Sex Work Projects (NSWP), and MPact: Global Action for Gay Men's Health and Rights welcome the opportunity to provide input to the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the Human Rights Council Resolution 47/17, "*Human rights in the context of HIV and AIDS*," adopted on 13 July 2021. Deeply entrenched social and structural barriers continue to impede progress within the HIV response. We, as global key population networks representing gay and bisexual men, people who use drugs, sex workers and transgender and gender-diverse people strongly endorse and urge action on the 10-10-10 social enabler targets, given the disproportionate burden of criminalisation, punitive laws and policies, stigma and discrimination and gender inequality on our communities. Political commitment and accelerated action towards meeting these targets, including sufficient funding allocations, are necessary if human rights *for all* are to be respected, protected, and fulfilled.

Globally, estimates show that 65% of all new HIV cases occur amongst key populations and our sexual partners.¹ A growing body of evidence points to one clear fact: criminalisation of key populations continues to hinder genuine and sustainable progress towards ending the HIV epidemic. Studies have shown that punitive and discriminatory laws are associated with high HIV incidence and prevalence, where stigma and laws criminalising drug use and possession, gender orientation, same-sex sexual activity and sex work synergistically increase HIV risks².

Criminalisation not only has a deleterious impact on health, but also on equity and human rights. This includes the right to non-discrimination and equality; health; housing; life; freedom from torture or other cruel, inhumane, or degrading treatment or punishment; liberty and security of the person; an adequate standard of living; private and family life; freedom of opinion, expression, peaceful assembly and association; freedom of thought, conscience and religion; and rights to and at work. The criminalisation of drug use and possession, gender identity and expression, sexual orientation and sex work entrenches discrimination and marginalises populations already facing exclusion and oppression, severely impeding access to health and social protection.

Conversely, peer-reviewed studies have shown that decriminalisation is fundamental to an effective HIV response, demonstrating significant results in reducing HIV incidence and improving overall health outcomes. Modelling estimates have indicated that the decriminalisation of sex work could avert 33–46% of HIV infections among sex workers and their clients over a decade.³ Decriminalising same sex sexual relations could cause an 8.1% increase in HIV viral suppression whilst decriminalisation of drug use is linked to 14% increased knowledge of HIV status and viral suppression.⁴ Furthermore,

¹ UNAIDS (2021) *Global HIV & AIDS Statistics – Fact Sheet*. Available at <https://www.unaids.org/en/resources/fact-sheet>

² Kavanagh MM, Agbla SC, Joy M, Aneja K, Pillinger M, et al. [Law, criminalization and HIV in the world: have countries that criminalise achieved more or less successful pandemic response?](#) BMJ Global Health. 2021; 6.e006315

³ Shannon K, Strathdee SA, Goldenberg SM, Duff P, Mwangi P, Rusakova M et al. [Global epidemiology of HIV among female sex workers: influence of structural determinants](#). The Lancet. 2015;385(9962):55-71

⁴ Kavanagh MM, Agbla SC, Joy M, et. Al. [Law, criminalization and HIV in the world: have countries that criminalise achieved more or less successful pandemic response?](#) BMJ Global Health. 2021; 6.e006315.

there are significant cost savings associated with the decriminalisation of drug use and possession, which could be redirected towards increasing coverage of HIV prevention and treatment services for people who inject drugs, thus lowering rates of HIV transmission.⁵

We endorse Human Rights Council Resolution 47/17, particularly for its recognition and acknowledgement of the imperative need to encourage member states to promote, protect and respect human rights and for acknowledging the role of societal enablers. However, the commitment of member states to progress these targets remain to be seen. Worldwide only 6 countries have decriminalised drug use and possession, only 1 country has decriminalised sex work; whilst 74 countries still criminalise same-sex sexual relations and 13 countries criminalise gender identity and expression. Moreover, some countries that purport to have decriminalised key populations have merely shifted towards the application of administrative laws and penalties that continue to mandate coercion and punitive practices (e.g., compulsory rehabilitation centres or conversion therapy) justified by pathologisation or deploy public nuisance and other petty offence laws to target and discriminate against key populations. In this context, it is crucial that law and policy reform efforts meaningfully involve key population-led organisations in determining milestones of legal, political, and social advancement. Countries that serve as models of progress are New Zealand (sex work), South Africa (gay and bisexual men and transgender people) and Uruguay (drug use and possession).

Beyond legal barriers, stigma and discrimination towards key populations remain endemic and unacceptably high. Criminal laws serve as a signal to society as to which communities are considered worthy of protection in society, codify stigmatising and discriminatory attitudes and vest these attitudes with the power of the law. Consequently, key populations experience extreme stigma, violence, and discrimination in health care, employment, and justice settings, from actors such as medical professionals and law-enforcement officials, and face homophobia, intoxicophobia, transphobia and whorephobia. The situation is unlikely to improve due to a lack of systematic and comprehensive data collection on our experiences of stigma and discrimination. Stigma related to HIV status and stigma associated with drug use and dependency, gender identity and expression, sex work and sexual orientation, are often concurrent. However, common misperceptions that measuring and combating stigma on HIV is equivalent to measuring and combating stigma towards key populations contributes towards major gaps in global and national responses. An assumption that a person is being discriminated against solely due to their HIV status, absent of stigma generated by key population status and identity can be misleading. This has serious implications for resource investment, political attention, and programming. As such, key populations are not always afforded the same legal protections, such as protection under anti-discrimination legislation, as provided for people living with HIV.⁶

In order to reach the 10% target on stigma and discrimination, recognition of the multiple and particular layers of stigma experienced by key populations is the critical first step in designing appropriate policies and programmes. This points to a key principle that needs to be embedded in global health and development work: each person has multiple identities and areas of basic needs, and therefore focusing solely on one area (HIV status) without paying attention to others (such as drug use, gender identity and expressions, sex work and sexual orientation),

⁵ Harm Reduction International (2016). The case for a harm reduction decade: progress, potential and paradigm shifts Available at https://www.hri.global/files/2016/03/10/Report_The_Case_for_a_Harm_Reduction_Decade.pdf

⁶ Davis, SLM. (2020). The Undocumented: Politics of Data in Global Health. Cambridge University Press.

and their intersectionality may yield only temporary, short-lived, and unsustainable results.⁷ A truly comprehensive and participatory approach to the respect, protection, and fulfilment of rights for all should be the foundation of a successful global HIV response.

Finally, the societal enabler target on gender equality should acknowledge women in all their diversity. Despite the disproportionate burden of gender inequality on women from key populations, too often, policies and practices aiming to address gender inequality invisibilise and exclude sex workers, transgender women and women who use drugs due to harmful gender norms. As a result of the synergistic and compounding effects of criminalisation, stigma and discrimination and gender inequality, women from key populations experience a discrete myriad of violations, including being disbarred from entry in safe spaces and shelters, forced abortions and sterilisations, denial of child custody and adoption rights and reduced access to health services and social protection benefits. Only 17 countries in the world have introduced legal gender recognition laws and policies. Efforts towards reaching this societal enabler target on gender equality, need to put the ‘last mile’ first and ensure gender equality for all.

Currently funding for key populations programmes remains abysmally low at approximately 2%, with key population-led networks receiving a miniscule portion.⁸ Despite being badly resourced, key population-led networks play a central role in efforts to achieve 10-10-10. We advocate for policy change, take action to reduce violence, stigma, and discrimination, monitor and respond to human rights violations, and promote community solidarity and resilience.⁹

In a context of growing political conservatism and a growing anti-rights lobby that targets key populations as ‘undesirable’ and as social outcasts, the need for coordinated and accelerated action on societal enablers within the HIV response is more evident than ever. The global HIV response has been detrimentally impacted by an unbalanced focus on biomedical and commodity-driven responses at the expense of addressing more difficult structural factors. Human Rights Council Resolution 47/17 is a milestone opportunity to address stigma, discrimination, criminalisation, and gender equality. However, genuine political will and commitment is needed to shift societal enabler targets from mere rhetoric to being made intrinsic to planning, financing, and implementing the HIV response.

To ensure that this HRC resolution advances the aspirational goals that it reflects, OHCHR should leverage its global legitimacy and convening power to lead collaborative processes on progressing societal enablers, call out harmful laws and policies for their incompatibility with international normative guidance and provide impetus for changing punitive and harmful laws, policies, and practices. Accordingly, we recommend the following:

1. The Human Rights Council should urgently request Member States to develop and submit a political roadmap towards meeting the 10-10-10 societal enablers, including the decriminalisation of drug use and possession, gender identity and expression, sex work, and sexual orientation, as well as enact legislation such as gender recognition and anti-discrimination that allow people to enjoy their lives more fully and without fear

⁷ Lyons C, Bendaud V, Bourey C, Erkkola T, Ravichendran I et al. (2022). Global assessment of existing HIV and key population stigma indicators: a data mapping exercise to inform country level stigma measurement. PLOS Medicine (unpublished)

⁸ AIDSfonds. (2020) Fast track or off track? How insufficient funding for key populations jeopardizes ending AIDS by 2030. Available at: <https://aidsfonds.org/assets/work/file/Factsheet%20general.pdf>

⁹ Ayala G, Sprague L, van der Merwe L, Morgan Thomas, R, Chang J, et al. *Peer and community-led responses to HIV: A scoping review*. PLOS ONE 16(12): e0260555. <https://doi.org/10.1371/journal.pone.0260555>

2. OHCHR should offer to facilitate state-to-state dialogues and engagements to identify steps towards breaking down barriers and challenges towards legal and policy reform. This includes adopting damage-mitigation measures and initiatives that can be taken in the short-term, such as providing community-led specialist legal services and support for key populations to promote access to justice mechanisms, including for police accountability
3. Key population communities must be in the driver's seat. The restrictions from governments on our ability to work on human rights, organise, and receive funds need to be repealed for key population-led networks and organisations to be full partners in the HIV response, and delivery of societal enabler programming. The proportion of funding to communities must be incrementally increased to reach the 60% target on community-led responses towards achieving societal enablers.¹⁰ Adequate investments should be allocated towards the capacity-building of key population-led organisations to engage in human rights mechanisms, shifting public perception, and undertaking community-led research, monitoring, and evaluation
4. The Human Rights Council should strongly urge Member States to meaningfully engage key population-led networks and representatives in designing the afore-mentioned roadmaps; in the governance of HIV planning and responses; and in other relevant processes. Relationships between key population-led organisations and National Human Rights Commissions, National Joint Programmes, UN Treaty Bodies and Special Procedures require strengthening through active UN leadership
5. The Human Rights Council should clearly and publicly communicate its position on the importance of funding and actioning comprehensive approaches towards the fulfilment of human rights across all global development areas, including in responses towards infectious diseases and pandemics, and to strongly encourage UN agencies and bodies to declare their unconditional support for the respect, protection and fulfilment of the rights of gay men and other men who have sex with men, people who use drugs, sex workers and transgender people
6. The UN system should continue to produce regular calls for submissions, including soliciting inputs from directly impacted communities in the development of resolutions, initiatives, and programmes; and in monitoring and evaluating results and the progress made towards commitments.

Forty years on, the global health and human rights community continues to fail key populations within the global HIV response. For the first time, the critical importance of the role of societal enablers has been recognised and acknowledged, accompanied by specific targets that have been formally endorsed by a majority of Member States, to accelerate action. Ongoing evidence-generation, particularly community-led research, on rights violations such as violence and discrimination, which disproportionately impact key populations, must be expanded to bolster rationales for change and call out inadequate action. Genuine and equitable progress, and indeed successful responses, require shifts in power norms and dynamics, and respect for agency and autonomy. It is high time for key populations to be recognised as rights bearers and as invaluable resources that possess unique knowledge, skills and perspectives of the epidemic that are fundamental for shaping better policies and programmes.

¹⁰ The total resourcing target for societal enablers is 3.1 billion, which if reached will avert 2.5 million new HIV infections and 1.7 million AIDS-related deaths by 2030