



Discussion Paper | August 2021

Strategies for domesticating and implementing laws and policies on HIV, gender-based violence, and sexual and reproductive health and rights for adolescent girls and young women in the SADC region

Discussion Paper | August 2021

Strategies for domesticating and implementing laws and policies on HIV, gender-based violence, and sexual and reproductive health and rights for adolescent girls and young women in the SADC region

CONTENTS

- ACKNOWLEDGEMENTS** 4
- ABBREVIATIONS** 5
- EXECUTIVE SUMMARY** 6
- INTRODUCTION** 8
- LEGAL AND POLICY FRAMEWORKS** 10
- SADC RESPONSES TO SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, HIV AND GENDER-BASED VIOLENCE** 13
 - SADC Protocol on Health 13
 - Maseru Declaration on the Fight against HIV and AIDS 13
 - SADC Protocol on Gender and Development 14
 - SADC Regional Strategy for HIV and AIDS Prevention, Treatment and Care and Sexual and Reproductive Health and Rights among Key Populations 15
 - Strategy for Sexual and Reproductive Health and Rights in the SADC Region 2019–2030 15
 - SADC Model Law on HIV 16
 - SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage 16
- KEY STAKEHOLDERS AND MECHANISMS FOR ACCOUNTABILITY** 17
- GAPS ANALYSIS IN POLICY AND STRUCTURE FOR EFFECTIVE TRACKING AND IMPLEMENTATION** 19
 - Adolescent girls and young women in all their diversity 20
 - Lack of legal rights to access sexual and reproductive health and rights services 21
 - Age, cultural and social norms 21
 - Gender-based violence 22
 - COVID-19 and national lockdowns 22
 - Access to education 23
- RECOMMENDATIONS: PRACTICAL GUIDANCE FOR REFORM AND IMPLEMENTATION** 24
 - Strategy for Sexual and Reproductive Health and Rights in the SADC Region 24
 - SADC regional structures 24
 - Member States 24
 - Civil society and young leaders 25
 - Legal profession 25
 - Academic and research institutions 26
- CONCLUSION** 27
- REFERENCES** 28

ACKNOWLEDGEMENTS

The Southern African Development Community (SADC) Lawyers' Association, in collaboration with the SADC Secretariat and the SADC Parliamentary Forum, and with support from the Joint United Nations Programme on HIV/AIDS, the United Nations High Commissioner for Refugees, the United Nations Population Fund and UN Women, wishes to express its sincere gratitude to all partners who provided guidance and invaluable input and participated in the development of this discussion paper. These partners are AfricAid, the African Youth and Adolescents Network, the AIDS and Rights Alliance for Southern Africa, the Southern Africa HIV and AIDS Dissemination Service, and the Women's Legal Centre.

ABBREVIATIONS

CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
COVID-19	Coronavirus disease 2019
CRPD	Convention on the Rights of Persons with Disabilities
HPV	Human papillomavirus
ICPD	International Conference on Population and Development
LGBTI	Lesbian, gay, bisexual, transgender and intersex
SADC	Southern African Development Community
SADCLA	Southern African Development Community Lawyers' Association
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCRC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

EXECUTIVE SUMMARY

This discussion paper shares strategies for domesticating and implementing laws and policies on HIV, gender-based violence, and sexual and reproductive health and rights of adolescent girls and young women in the Southern African Development Community (SADC).

The paper is the result of a highly consultative process, involving discussions and deliberations with various stakeholders, including AfricAid, the African Youth and Adolescent Network on Population and Development, the AIDS and Rights Alliance for Southern Africa, the Joint United Nations Programme on HIV/AIDS, the SADC Parliamentary Forum, the SADC Secretariat, SAFAIDS, the United Nations High Commissioner for Refugees, the United Nations Population Fund, UN Women, and the Women's Legal Centre.

Additionally, the SADC Lawyers' Association (SADCLA) engaged in a desk review of relevant literature to consolidate the views and proposals of stakeholders.

The United Nations defines adolescents as people aged 10–19 years, and youth or young people as those aged 15–24 years.

According to the United Nations Children's Fund, an estimated 460 000 people aged 10–24 were newly infected with HIV in 2019 worldwide, of whom an estimated 170 000 were adolescents. Adolescent girls and young women represent approximately 60% of new HIV infections among adolescents and young people.

Adolescent girls and young women are disproportionately affected by HIV in Africa. In sub-Saharan Africa about 4500 adolescent girls and young women are infected with HIV every week. In 2020 young women accounted for 27% of new HIV infections in sub-Saharan Africa, despite making up only 10% of the population.

Although there is continued progress in the SADC region in enhancing sexual and reproductive health

and rights and combating HIV and gender-based violence, there is still no robust legal and policy framework that promotes and protects the sexual and reproductive health and rights of adolescent girls and young women, including those living with HIV.

The gaps in the legal and policy framework and impediments on sexual and reproductive health and rights vary from country to country within the region, but of note are the following:

- Laws exist that tacitly encourage or perpetuate stigma, discrimination and criminalization of the sexuality of key populations, such as sex workers and lesbian, gay, bisexual, transgender and intersex people.
- There are disjointed legal standards on sexual and reproductive health and rights services, such as access to safe abortions.
- Key stakeholders demonstrate a lack of capacity in the implementation of laws and policy on sexual and reproductive health and rights.
- Schools lack access to comprehensive sexuality education.
- There is a lack of clear legal provisions on age of consent to access sexual and reproductive health and rights services.
- Law-enforcement mechanisms relating to gender-based violence are weak.

Although there is no specific legal framework providing for sexual and reproductive health and rights on its own, this discussion paper identifies several international and regional legal frameworks that reference sexual and reproductive health and rights and can close the gaps.

Some of the legal and policy instruments include the Convention on the Elimination of Discrimination against Women; the Convention on the Rights of the Child; the International Covenant on Economic, Social and Cultural Rights; the African Charter on Human and Peoples' Rights; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

At the SADC level, the following legal and policy instruments make provision for the enhancement and protection of sexual and reproductive health and rights: the Maseru Declaration on the Fight Against HIV and AIDS; the SADC Protocol on Gender and Development; the SADC Protocol on Health; the SADC Regional Strategy for HIV Prevention, Treatment and Care and Sexual and Reproductive Health and Rights among Key Populations 2018; and the Strategy for Sexual and Reproductive Health and Rights in the SADC Region 2019–2030.

As a strategy to achieve the domestication and implementation of the standards contained in these international and regional legal and policy frameworks, this discussion paper has identified key stakeholders, each with a unique and accountable responsibility: SADC Member States, the SADC Secretariat, United Nations agencies, development partners, civil society organizations, national parliaments, and the media.

As signatories to international and regional legal frameworks, Member States have the important obligation of ensuring these legal frameworks are actualized at the domestic level within the state's duty to promote, protect and respect human rights. International and regional legal frameworks include mechanisms to ensure rights are realized. States are, therefore, required to report on their progress in domesticating and implementing international and regional legal frameworks.

Member States must coordinate the process of implementing their national strategic plans for HIV; ensure regional minimum packages are available; ensure the legal and political environment is conducive to enable access to sexual and reproductive health and rights and HIV services for key populations, including adolescent girls and young women; and provide a specific budget for key population programming.

The SADC Secretariat's responsibilities include ensuring and encouraging region-wide adoption of the regional strategy; mobilizing resources for capacity development; providing technical support to Member States; leading the development of the minimum package of services; and promoting policies that facilitate access to sexual and reproductive health and rights and HIV services for key populations.

The role of development partners and United Nations agencies is largely to support the regional strategy and facilitate south–south and north–south exchanges.

Civil society organizations can hold states to account by submitting shadow reports to the different committees responsible for ensuring implementation of the frameworks. People whose rights have been violated and civil society can also use different fora such as the African Commission and the African Court on Human and Peoples' Rights to lodge grievances against states.

National parliaments can hold governments to account through their constitutional mandates of oversight, budget approval, representation and law-making. Through the oversight function, parliaments are able to directly question governments on the steps taken towards the domestication and implementation of international and regional human rights instruments, which they sign and are legally bound to. The budgetary function ensures parliaments hold governments to account for resources appropriated to sexual and reproductive health and rights services and how they are used.

As representatives who are directly and popularly elected by the people, parliamentarians speak on behalf of the electorate and are able to probe issues that affect vulnerable groups, such as key populations, including adolescent girls and young women. Importantly, through their legislative function, national parliaments can initiate the domestication of international and regional laws through the enactment of appropriate laws that suit specific national situations.

Stanley Nyamanhindi, Chief Executive Officer, SADCLA

INTRODUCTION

This discussion paper promotes the recognition, protection and realization of the rights of adolescent girls and young women, particularly in relation to HIV, gender-based violence, and sexual and reproductive health and rights, in the Southern African Development Community (SADC) region.

Sexual and reproductive health and rights are related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination.

When we speak of adolescent girls' and young women's right to health, it includes their sexual and reproductive health, which encompasses aspects such as accessing health services in general, and accessing abortion and contraception.

The United Nations defines adolescents as people aged 10–19 years, and youth or young people as those aged 15–24 years.

According to the United Nations Children's Fund (UNICEF), an estimated 460 000 people aged 10–24 years were newly infected with HIV in 2019 worldwide, of whom an estimated 170 000 were adolescents. Adolescent girls and young women represent approximately 60% of new HIV infections among adolescents and young people.

Adolescent girls and young women are disproportionately affected by HIV in Africa. In sub-Saharan Africa about 4500 adolescent girls and young women are infected with HIV every week. In 2019 young women accounted for 24% of new HIV infections in sub-Saharan Africa, despite making up only 10% of the population.

Although there is continued progress in the SADC region in enhancing sexual and reproductive health and rights and combating HIV and gender-based violence, there is still no robust legal and policy framework that promotes and protects the sexual and reproductive health and rights of adolescent girls and young women, including those living with HIV.



The gaps in the legal and policy framework and impediments on sexual and reproductive health and rights vary from country to country within the SADC region, but of note are the following:

- Laws exist that foster stigma, discrimination and criminalization of the sexuality of key populations, such as sex workers and lesbian, gay, bisexual, transgender and intersex (LGBTI) people.
- There are disjointed legal standards on sexual and reproductive health and rights, such as access to safe abortions.
- Key stakeholders demonstrate a lack of capacity in the implementation of law and policy on sexual and reproductive health and rights.
- Schools lack access to comprehensive sexuality education.
- There is a lack of clear legal provisions on age of consent to access sexual and reproductive health and rights services.
- Law-enforcement mechanisms relating to gender-based violence are weak.

This paper aims to:

- Increase awareness of the gaps between national laws and regional and international norms for HIV, gender-based violence, and sexual and reproductive health and rights among policy-makers.
- Recommend strategies to increase national and institutional capacity to close the gaps between policy and implementation.
- Recommend and provide guidance for law reform and harmonization with regional and international standards.
- Increase coordinated and inclusive collaboration among state and non-state actor organizations that promote the rights of people living with HIV and sexual and reproductive health and rights.
- Identify key stakeholders in the implementation of sexual and reproductive health and rights to reduce the gap between legal and policy frameworks.
- Increase implementation through awareness-raising and practical, administrative and legislative procedures using targeted structures in the SADC region.¹

The target audience is policy-makers, including governments, national parliaments, traditional leaders, law and security enforcement wings such as police forces and prisons, SADC regional and national structures, and all those who influence policy, such as civil society, development partners, medical officials, judicial officers, academia, media youth advocates, and sexual and reproductive health and rights champions.

¹These include, but are not limited to, the Committee of Ministers of Justice and Attorneys General and SADC national committees to table agenda for law-reform model law-making processes under the SADC Parliamentary Forum.

LEGAL AND POLICY FRAMEWORKS

Although there is no specific legal framework providing for sexual and reproductive health and rights on its own, there is a plethora of international and regional law that references sexual and reproductive health and rights.

International and regional policy frameworks are more specific than national legal frameworks and provide much-needed guidance in the implementation of sexual and reproductive health and rights.

The Convention on the Elimination All Forms of Discrimination against Women (CEDAW) mandates states to eliminate discrimination against women in health care and ensure women have equal access to health-care services (1). It also guarantees women have access to appropriate services with respect to pregnancy, antenatal and postnatal care; are granted free services where necessary; and have adequate nutrition during pregnancy and lactation.

The United Nations Convention on the Rights of the Child (UNCRC), with 54 articles, is the most complete statement of children's rights ever produced, and the most widely ratified international human rights treaty.

Article 1 of UNCRC defines a child as any human being below the age of 18 years. Articles 2, 6, 13, 24 and 37 relate to access to sexual and reproductive health and rights and HIV services, especially in respect of parental consent to access services and conflation with age of consent. UNCRC explains how adults and governments must work together to make sure all children enjoy all their rights, including the right to health and health services (Article 24), the right to be safe from physical and mental violence (Article 19) and the right to education (Article 28) (2).

Articles 6, 7 and 17 of the International Covenant on Civil and Political Rights emphasize the protection by law of the right to life and dignity and against inhuman and degrading treatment. Article 12 enjoins states parties to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 1 of the Convention against Torture defines torture as the infliction of severe pain or suffering, whether physical or mental, by a public officer, with the intent of obtaining information from the victim. The Special Rapporteur notes that abuse and mistreatment of women seeking sexual and reproductive health and rights services similarly result in long-lasting physical and mental suffering experienced based on gender.

The Convention on the Elimination of All Forms of Racial Discrimination notes that restrictions to rights to health and access to sexual and reproductive health and rights services may disproportionately impact women from marginalized racial groups due to systemic inequality in access to services and provision thereof.

The adoption of the Convention on the Rights of Persons with Disabilities (CRPD) represented a major milestone towards the full and effective enjoyment of sexual and reproductive health and rights by adolescent girls and young women with disabilities.

Embracing the basic principles of human rights, CRPD moves away from medical and paternalistic approaches towards a human rights-based approach to the sexual and reproductive health and rights of people with disabilities.

- Challenges all forms of substituted decision-making in the exercise of sexual and reproductive health and rights (Articles 12 and 25).
- Prohibits harmful and discriminatory practices against people with disabilities in all matters related to marriage, family, parenthood and relationships, including the right to retain their fertility and to decide on the number and spacing of their children (Article 23).
- Calls for an end to all forms of exploitation, violence and abuse, including gender-based aspects (Article 16).
- Promotes access to good-quality and affordable sexual and reproductive health and rights services (Article 25) (3).

²In the SADC Framework on Comprehensive Care and Support for Orphans and Vulnerable Children and Youth, "children" refers to people aged 0–17 years, and "youth" refers to people aged 18–24 years.

The African Charter on Human and Peoples' Rights guarantees individuals the right to health and requires Member States to "take the necessary measures to protect the health of their people and to ensure they receive medical attention when they are sick" (4).

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) specifically guarantees women the right to sexual and reproductive health and rights and requires Members States to "provide adequate, affordable and accessible health services, including information, education and communication programmes to women" (5). It provides that women have the right to:

- Control their fertility.
- Decide whether to have children, the number of children to have, and the spacing thereof.
- Choose any method of contraception.
- Self-protection and protection against sexually transmitted infections.
- Be informed of their health status and that of their partner.
- Have family planning education.

The Maputo Protocol mandates states to provide affordable and accessible health services, including information, education and communication programmes; and to establish and strengthen existing prenatal, delivery and postnatal health and nutrition services for women during pregnancy and breastfeeding.

The Maputo Protocol also provides for medical abortion in limited circumstances, and sets the minimum age of marriage for women at 18 years.

The Beijing Declaration and Platform for Action, Beijing +5 Political Declaration and Outcome is considered the most progressive policy framework for advancing women's rights globally. It is a non-binding instrument that provides guidance to realize gender equality. One of its objectives is to review legislation with a view to removing discriminatory provisions and eliminating legislative gaps that leave women and girls without protection of their rights and without effective recourse against gender-based discrimination.

The Beijing Platform for Action calls on governments to review and amend laws and combat practices that may contribute to women's susceptibility to HIV; to implement legislation,

policies and practices to protect women, adolescents and young girls from discrimination related to HIV; and to ensure that women living with HIV do not experience stigmatization or discrimination. It calls for the implementation of specific appropriate programmes, such as education and information on sexual and reproductive health issues and sexually transmitted infections, including HIV; and for the dissemination of accessible information.

The Beijing Platform for Action reaffirms the right to the enjoyment of the highest attainable standards of physical and mental health; protection and promotion of the attainment of this right for women and girls; and incorporation of these rights in national legislation. This includes reviewing existing legislation, including health legislation and policies where necessary, to reflect a commitment to women's health.

The Beijing Platform for Action provides that governments must protect and promote human rights by ensuring all health services and workers conform to ethical, professional and gender-sensitive standards in the delivery of women's health services, including establishing or strengthening regulatory and enforcement mechanisms.

The Commission on the Status of Women Resolution 60/2, which focuses on women, girls and HIV, was generated by the Commission on the Status of Women in 2016. It aims to address the core of vulnerabilities in young women and girls in relation to HIV in accordance with the agenda of Sustainable Development Goals 5 and 10. It calls on the world to address and reduce gender inequalities (6).

Resolution 60/2 is closely linked with the 2016 High-level Political Declaration on HIV and AIDS (7), which carries clear gender-responsive global targets and commitments. SADC, as a sponsor of Resolution 60/2 and a signatory to the 2016 Political Declaration, used its 2019–2030 strategy as a programme of action to mobilize resources and demonstrate progress in harmony with commitments; and to set targets that will help in understanding the barriers and challenges facing young women and girls in the Southern African HIV context. These include the latest interventions on what works in tackling social and structural drivers of HIV, and the good practices that already exist.

The International Conference on Population and Development (ICPD) programme of action recognized the centrality of sexual and reproductive health and rights to health and development.³ ICPD notes that people have the right to have control over matters related to their sexual and reproductive health. It underscores that people should be able to decide freely and responsibly on such matters, free from violence and coercion. It also recognizes that the achievement of universal access to sexual and reproductive health and rights depends on strengthening health systems by expanding their reach and comprehensiveness in an holistic manner (8).

The Ministerial Commitment on Comprehensive Sexuality Education and Sexual and Reproductive Health Services for Adolescents and Young People in Eastern and Southern Africa (ESA Commitment) was endorsed and affirmed in 2012 by ministers of education and health from eastern and southern Africa. All SADC countries signed the ESA Commitment and therefore effectively committed

to scale up sexuality education within their respective school curricula.

The ESA Commitment was spearheaded by United Nations agencies in collaboration with the East African Community, SADC and civil society organizations from both regions. It contains time-bound targets, with an implementation period of 2012–2020. These targets require action by Member States to scale up delivery of comprehensive sexuality education and related health services to address sexual and reproductive health and rights challenges facing adolescents, especially girls.

Examples of such challenges include early and unintended pregnancies, HIV and sexual transmitted infections, gender-based violence, child marriage, discrimination, and low access to good-quality youth-friendly health services—all of which can undermine education opportunities and affect future opportunities for adolescent girls and young women.



³Commitment to the Beijing Platform for Action and the ICPD programme of action includes dedication to an honest, reflective reviewing process of national policies and laws and the progress made in terms of these instruments.

SADC RESPONSES TO SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, HIV AND GENDER-BASED VIOLENCE

SADC has developed comprehensive protocols and policies to address the issues of gender and HIV in the region.

SADC Protocol on Health

The SADC Protocol on Health promotes cooperation among Member States on common health concerns. One of its objectives is to develop common strategies to address the health needs of women, children and other vulnerable groups, and to progressively achieve equivalence, harmonization and standardization in the provision of health services in the region.

Member States must develop regional policies that recognize the intersectoral impact of HIV and sexually transmitted infections. Cooperation is needed in the areas of standardization of HIV and sexually transmitted infection surveillance systems, along with regional advocacy efforts to increase commitment and the sharing of information.

Member States must endeavour to provide high-risk and trans-border populations with preventive and basic treatment services for HIV and sexually transmitted infections.

The Protocol mandates Member States to formulate policies, including developing a surveillance system for monitoring maternal mortality; developing strategies to reduce maternal mortality; and empowering men, women and communities to have access to safe, effective, affordable and acceptable methods for regulating fertility. It also mandates health promotion and education to enhance individual well-being.

The Protocol calls on Member States to encourage adolescents to avoid engaging in early sexual activity, which may result in unintended teenage pregnancies.

Maseru Declaration on the Fight against HIV and AIDS

The Maseru Declaration acknowledges HIV as a top priority for SADC. It highlights priorities to address HIV in the region, promote sustainable and equitable economic growth and socioeconomic development, and mainstream gender in community- and nation-building, such as:

- Promoting and strengthening programmes for youth that create opportunities for education, employment and self-expression.
- Reinforcing programmes to reduce vulnerability to alcohol and drug abuse.
- Scaling up the role of education and information in partnership with all key stakeholders, including youth, women, parents, communities, health-care providers, traditional health practitioners, nutritionists and educators.
- Integrating HIV education at all levels of education.

To address gender inequalities, Education Plus—a joint initiative of UNAIDS, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), UNICEF and UN Women—was launched in November 2020 (9). This is a high-profile, high-level political advocacy drive to accelerate actions and investments to prevent HIV. It is centred on the empowerment of adolescent girls and young women and the achievement of gender equality in sub-Saharan Africa, with every adolescent girl in Africa completing secondary school.

The game-changing proposition of Education Plus is simple but ambitious—and long overdue:

- Challenge decision-makers and donors to significantly scale up investments, policies and actions on education and holistic multisectoral interventions for adolescent girls and young women to prevent HIV and gain social and economic benefits, including for those already living with HIV.
- Transform the promise of gender equality into reality in the context of the Beijing +25 process, the Africa Agenda 2063, the Maputo Protocol on African Women's Rights, the African Union Youth Charter, and other regional agreements on the rights of women and young people.

Strengthening health-care (especially public health) systems, family- and community-based care, and support for orphans and other vulnerable children will help to improve care, increase access to counselling and testing services, and improve treatment and support.

It is important to increase access to affordable essential medicines, including antiretroviral medicines and related technologies, through regional joint purchasing initiatives, using funds from national budgets.



This is even more relevant in the context of COVID-19 as Member States prepare for vaccine roll-out and access to regional and global vaccine initiatives (10). Accelerating development and mitigating the impact of HIV requires an enabling environment conducive to gender balance and rapid and broad-based socioeconomic development. Member States need to address major underlying factors that lead to the spread of HIV infection; harmonize policies, laws and strategies; and undertake joint programmes in high-priority intervention areas, such as prevention, treatment, care, support, nutrition and food security.

Member States need to reaffirm the commitment to implement the Abuja Declaration on allocating at least 15% of annual budgets to improve the health sector. International partners need to substantially increase financial and technical support at country and regional levels, such as through the Global Fund to Fight AIDS, Tuberculosis and Malaria.

It is important to develop and strengthen institutional mechanisms for HIV surveillance, share experiences, and exchange information on key areas of interventions such as prevention.

SADC Protocol on Gender and Development

The SADC Protocol on Gender and Development is the main framework on women's rights in the region. It sets the minimum age of marriage at 18 years and ensures girls have equal access to health care. It also introduces comprehensive legislative measures by calling on Member States to enact legislation prohibiting all forms of gender-based violence and to ensure justice for people who have experienced such violence.

The Protocol stipulates laws shall provide for comprehensive testing, treatment and care of survivors of sexual offences; provision of emergency contraception; and ready access to post-exposure prophylaxis and prevention of sexually transmitted infections. Measures must include mechanisms for the social and psychological rehabilitation of perpetrators of gender-based violence.

The Protocol mandates states parties to provide accessible and affordable legal services, including legal aid, to survivors of gender-based violence.

It obliges states parties to adopt legislation and policies that reduce maternal mortality; address the mental and sexual and reproductive health and rights needs of women and men; and ensure the provision of hygiene and sanitary facilities and nutritional needs of women, including those in prison.

States parties must take steps to implement gender-sensitive policies and enact legislation for HIV prevention, treatment and care in accordance with the Maseru Declaration.

SADC Regional Strategy for HIV and AIDS Prevention, Treatment and Care and Sexual and Reproductive Health and Rights among Key Populations

The SADC Regional Strategy for HIV and AIDS Prevention, Treatment and Care and Sexual and Reproductive Health and Rights among Key Populations was approved in 2017. The overall goal is to decrease the number of people and families living with or affected by HIV in the SADC region so that HIV is no longer a threat to public health and socioeconomic development.

The Regional Strategy does not specifically address adolescent girls and young women, but it focuses on HIV among key populations, namely sex workers, men who have sex with men, people who use drugs, transgender people and people in prison. Rates of HIV tend to be higher in these groups as a result of their marginalization or criminalization.

The Regional Strategy seeks to provide Member States with a framework to develop specific programming aimed at key populations. It offers key strategies such as:

- Strengthen access to justice for key populations by developing and implementing access to justice mechanisms for key populations. The key indicator for this is the number of Member States that provide legal aid services to key populations.
- Develop and implement a standard regional package of services for key populations.
- Scale up the generation of evidence relating to key populations.
- Carry out a legal environment assessment, including a review of punitive and protective laws, policies, law enforcement practices, and traditional and cultural practices, and identify the impact of such laws, policies and practices on key populations, sexual and reproductive health and rights, and HIV outcomes.
- Encourage regional and national dialogues in which Member States document and share best practices on removing legal and policy barriers for key populations.

Member States must ensure the legal and political environment is conducive to enable access to sexual and reproductive health and rights and HIV services for key populations. Since its adoption, there is no evidence that implementation of the Regional Strategy has been monitored or implemented.

Strategy for Sexual and Reproductive Health and Rights in the SADC Region 2019–2030

The Strategy for Sexual and Reproductive Health and Rights in the SADC Region 2019–2030 aims to provide a policy and programming framework for SADC Member States to accelerate the attainment of sexual and reproductive health and rights for all people living in the SADC region.

Some of the Strategy's key principles include:

- Member State ownership and leadership through domestication and alignment of national frameworks with the framework provided by the strategy.
- Active and meaningful participation of civil society, youth, communities, and people most affected by specific sexual and reproductive health and rights issues in the design, implementation, monitoring and evaluation of the strategy.
- Universal health coverage and equity in access to health services.
- Human rights-based approaches to the provision of sexual and reproductive health and rights services.
- Mutual accountability for results requiring Member States, civil society, youth networks, key populations and development partners to work together to drive the agenda forward.

Four core strategies have been identified to achieve the outcomes:

- Encourage innovative leadership that boldly accelerates the sexual and reproductive health and rights regional agenda, including removing political, cultural and economic barriers so all people can make decisions about their bodies.
- Align Member States' policy and legal frameworks with global and regional commitments and international human rights standards, including engagement on legal and policy sexual and reproductive health and rights gaps. Member States must also scale up national minimum packages of social, behavioural, structural and biomedical interventions.
- Establish universal health coverage and strengthened health systems in Member States to incorporate essential sexual and reproductive health and rights packages, including removing financial and other barriers to ensure equitable access to health-care services and removing barriers to education. Member States should consider enacting legislation to provide for national health insurance schemes so that underprivileged people can access good-quality health care and sexual and reproductive health and rights services.
- Carry out monitoring and evaluation for strengthened, evidence-based impact, such as prioritizing, fast-tracking and reporting on progress through the annual scorecard. This also includes establishing clearing houses and a regional platform to strengthen data collection.

As with other key instruments, the Strategy highlights that policy and social environments have particularly negative impacts on sexual and reproductive health and rights, gender inequality, teenage pregnancy, and limited comprehensive sexuality education.

The Strategy emphasizes that SADC Member States, civil society, nongovernmental organizations, adolescents, youth and key populations should be mutually accountable for achieving it. Given the disparities in access to financial and human resources and the mandate and powers of parties, challenges exist in ensuring all parties are mutually accountable.

It is encouraging that cooperation is expected between key stakeholders. Member States should ensure the Strategy protects all girls and youth, irrespective of nationality, refugee status or existence of documentation.

The Strategy sets out implementation and review with five-year time intervals, with the first due in 2023. The scorecard serves as an important tool to facilitate Member State accountability.

SADC Model Law on HIV

The Plenary Assembly of the SADC Parliamentary Forum adopted the SADC Model Law on HIV on 24 November 2008. The Model Law includes provisions on HIV education, information and communication; prevention of mother-to-child transmission of HIV; and HIV testing and counselling.

The Model Law obligates states to promote public awareness about the nature, causes, modes of transmission, consequences, prevention and management of HIV. It encourages collaboration with relevant public and private stakeholders for meaningful involvement and participation of people living with HIV.

The Model Law further obligates states to design and implement accessible HIV prevention programmes in the media that take into consideration cultural, age, sexual orientation and gender factors.

SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage

The SADC Parliamentary Forum adopted the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage on 3 June 2016.

The Model Law is a milestone in the protection of adolescent girls and young women in southern Africa. It serves as a guide to parliamentarians, ministries of justice, policy-makers, civil society organizations, youth advocates and other stakeholders in SADC Member States in developing and implementing national laws, policies and projects aimed at eradicating child marriage.

KEY STAKEHOLDERS AND MECHANISMS FOR ACCOUNTABILITY

International and regional legal frameworks include mechanisms to ensure rights are realized. States are required to report on their progress in domesticating and implementing international and regional legal frameworks.

Civil society can hold states to account by submitting shadow reports to the different committees responsible for ensuring implementation of the frameworks.

Victims of rights violations and civil society can use forums such as the African Commission and the African Court on Human and Peoples' Rights to lodge grievances against states.

Member States must coordinate the process of implementation in their national strategic plans for HIV; ensure regional minimum packages; and ensure the legal and political environment is conducive to enable access to sexual and reproductive health and rights and HIV services for key populations and provide a specific budget for key population programming.

The SADC Secretariat's responsibilities include ensuring and encouraging region-wide adoption of the regional strategy; mobilizing resources for capacity development; providing technical support to Member States; leading the development of the minimum package of services; and promoting policies that facilitate access to sexual and reproductive health and rights and HIV services for key populations.

The role of development partners and United Nations agencies is largely to support the regional strategy and facilitate north-south and south-south exchange.

SADC is often characterized as having a poor implementation record (11) and has limited records of how targets are monitored and measured.

Another issue is that even though the protocols and regional strategies call for justice initiatives, SADC has removed a crucial justice mechanism by

disbanding the SADC Tribunal, denying individuals and civil society redress against states parties. The Tribunal's mandate was reduced to deal only with inter-state disputes. As a result, it is unlikely that substantive human rights matters, especially sexual and reproductive health and rights, will be brought before the Tribunal.

The disbanding of the Tribunal means that individuals and civil society have no recourse for implementation of or adherence to protocols if states parties fail to do this at the national level. As a result, protocols and strategies are reduced to advocacy tools with limited scope for judicial enforcement at the national and regional level.

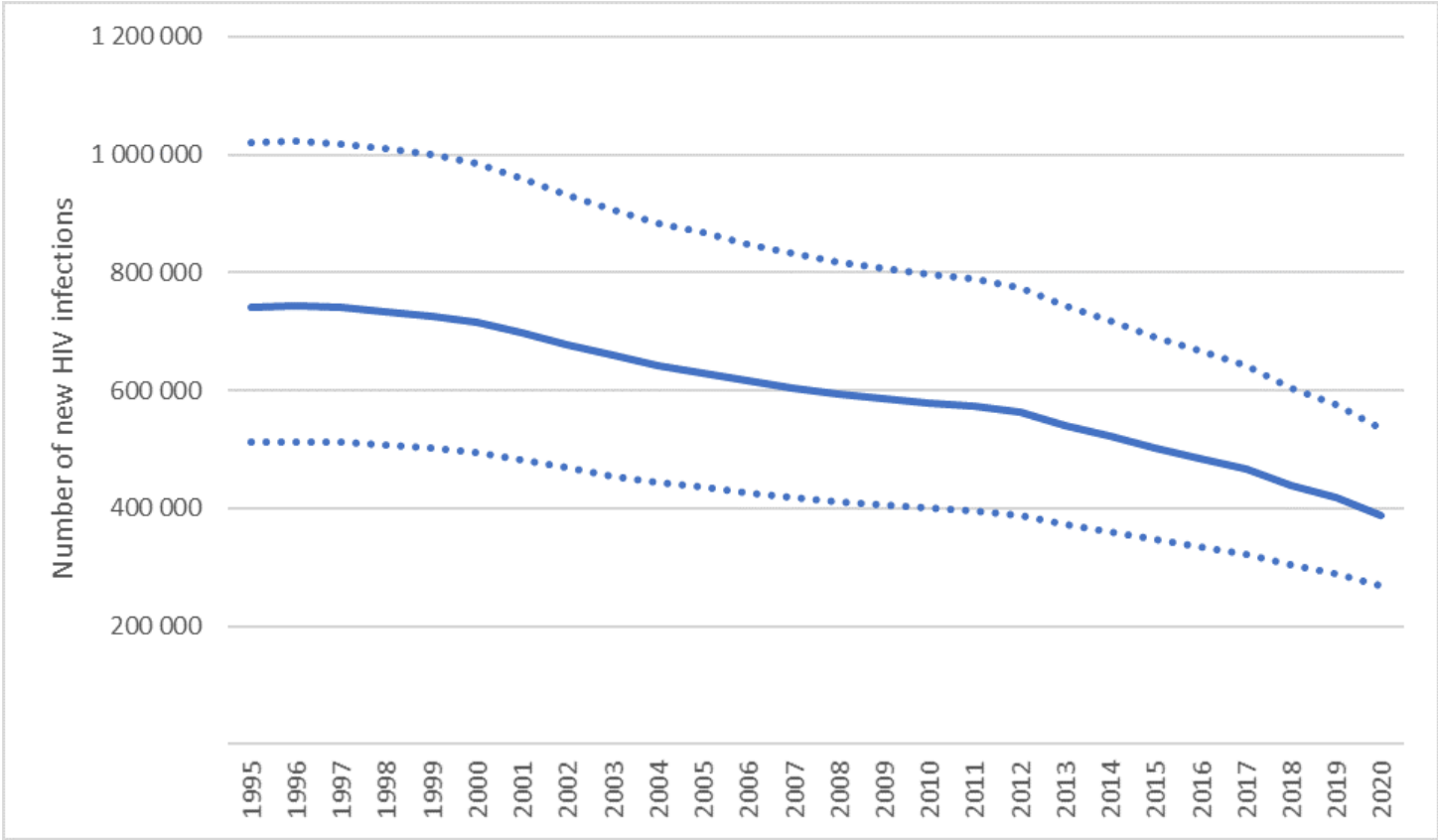
To enhance policy implementation at the domestic level, national parliaments that have the legal mandate to legislate appropriate state resources through budgets, oversee executive functions and carry out representative roles on behalf of citizens can play this critical role. This would entail enhancing the capacity of members of parliament in sexual and reproductive health and rights issues so they can effectively exercise their functions. Since sexual and reproductive health and rights is a cross-cutting issue, parliamentary committees that are tailor-made to oversee different government portfolios would play an important role in ensuring all aspects of sexual and reproductive health and rights, including water and sanitation and gender budgets, are addressed in law and policy reform processes.

At the regional level, members of parliament can more appropriately be engaged through the SADC Parliamentary Forum. This is a regional interparliamentary body comprising national parliaments of 15 SADC Member States. It provides a platform for parliamentarians to engage and discuss diverse issues of national and regional importance. Under its auspices, model laws on HIV and child marriage have been developed. It is currently implementing a robust sexual and reproductive health and rights project in 11 Member States through national parliaments.

A wooden gavel and a pair of brass scales of justice are positioned on a wooden desk. The scales are in the upper half of the image, and the gavel is in the lower half. The background is a blurred wooden surface.

At the regional level, members of parliament can more appropriately be engaged through the SADC Parliamentary Forum. This is a regional interparliamentary body comprising national parliaments of 15 SADC Member States. It provides a platform for parliamentarians to engage and discuss diverse issues of national and regional importance. Under its auspices, model laws on HIV and child marriage have been developed. It is currently implementing a robust sexual and reproductive health and rights project in 11 Member States through national parliaments.

KEY STAKEHOLDERS AND MECHANISMS FOR ACCOUNTABILITY



Number of new HIV infections among women aged 15 years and older, eastern and southern Africa, 1995-2019
Source: UNAIDS epidemiological estimates 2021

Adolescent girls and young women represent 60% of new HIV infections in young people worldwide. A positive trend is that fewer women and girls are becoming infected with HIV in the SADC region.

In sub-Saharan Africa, approximately 4200 adolescent girls and young women aged 15–24 years are infected with HIV every week. Young women accounted for 24% of new HIV infections in 2019, and yet they make up only 10% of the population in sub-Saharan Africa (12).

Despite continued progress, challenges remain in combating HIV among adolescent girls and young women, including among migrants and refugees. One of the biggest issues is lack of protective legal and policy environments. This includes punitive and discriminatory laws that foster stigma and

discrimination against key populations; lack of access to comprehensive sexuality education; and parental and spousal consent barriers that prevent young people from accessing health services.

There is a lack of consistency in legal standards and norms across the region,⁴ which impacts on the standardization and implementation of the various international frameworks.

The lack of ensuring legal protection for adolescent girls and women results in continued discrimination, stigma and criminalization and therefore a lack of equality for women and girls before the law. Even where legal safety nets exist, lack of coordination and capacity of key stakeholders in implementation results in gaps.

⁴Interview with Martin Nsibirwa, Head of Commissioners Programme at the South African Human Rights Commission, and Coordinator for Alliance for SADC National Human Rights Institutions and Ombudsman, 11 June 2020.

Adolescent girls and young women in all their diversity

Adolescent girls and young women are far from being equally affected by responses to HIV. This is even more pronounced with COVID-19. There are stark gendered disparities, and the most marginalized people are the hardest hit. Adolescents, women and girls are not a homogeneous group: they face multiple forms of discrimination and are at heightened risk of domestic violence, inadequate access of essential health care (both before and during the COVID-19 pandemic), COVID-19-related punishment, economic insecurity, and the imposition of unpaid and unrecognized care work.

When this is combined with the stigma and intersectional discrimination already facing marginalized women and girls (such as LGBTI people, sex workers, women and girls with disabilities, women living with HIV, women who use drugs, refugees, migrants, women and girls in conflict zones, women in detention and humanitarian settings, indigenous women, women from other racial and ethnic minorities, and adolescent girls and young women), we see that women and girls are undeniably being left behind (13,14).

Sex workers, LGBTI people, women living with HIV, and women who use drugs experience worse conditions, including being subjected to humiliating treatment if found violating public health orders (15). They lack access to social safety nets, financial support schemes (16), antiretroviral medicines, drug treatments, and harm-reduction supplies. They may be victims of discriminatory treatment and violence by landlords, families and local officials.

Sex work is not legal in any SADC Member State. Fourteen countries out of sixteen in SADC have criminalized and or have promulgated punitive legislation for sex work, and the rest have no explicit legislation governing it (17). The shame that surrounds the sale and exchange of sex reduces voluntary access to services, resulting in a very high prevalence of HIV among sex workers. Sex workers who are brave enough to seek treatment are sometimes sent back by health workers: the legal environment, discriminatory practices and shame make it impossible for sex workers to seek recourse. A concrete example for discriminatory practices is

that some countries would not provide STI treatment until the patient brings his/her partner along, which presents a challenge as often the partners cannot be traced. Male sex workers sometimes find them-selves in a context of sodomy laws operating to their disadvantage in addition to other sex worker laws.

The SADC Regional Strategy found these punitive laws make health-care workers reluctant to treat sex workers, as they fear condoning illegal behaviour. Further, sex workers are vulnerable to police abuse and are reluctant to report violent abuse to law enforcement or approach the courts for justice. The abuse of sex workers by police is facilitated by the presence of vagrancy laws found in what is collectively termed petty offence laws from the pre-colonial era in SADC countries. These laws criminalise ordinary activity under the guise of loitering and many informal workers without formal documentation to be on the streets are rounded up and arrested arbitrarily. It is worth noting that the African Court on Human and People's rights in December 2020, issued an Advisory opinion declaring colonial era vagrancy laws to be inconsistent with the African Charter. In that regard, all AU members states were requested to ensure that their law for public order and security become aligned with the African Charter. It is hoped that this will lead to reduction in the abuse of sex workers and other vulnerable groups in society.

In addition to insufficient legal safety nets in legal frameworks, selective application of the law and discriminatory practices by health workers and law enforcement agents presents a gap that exacerbates vulnerability of sex workers. Where public health systems require that sex workers present themselves with their sexual partners for STI treatment, this poses an inherent challenge as these partners cannot be always found or are unwilling. Overall, the legal environment, discriminatory practices and shame make it impossible for sex workers to seek the services they need.

The SADC region continues to grapple with homophobia and transphobia, which heavily impacts HIV prevention and treatment initiatives. Same-sex consensual relations remain illegal in eight Member States. This acutely reduces access to health services including for male sex workers.

In respect of transgender rights, only Botswana, Namibia and South Africa allow transgender people to change their gender marker or sex description on official documents. Other countries have provisions that allow a person to apply for a new identify document if there have been “material changes” to their personal particulars (18). This lack of legal protection and recognition results in marginalization and people not enforcing their rights in health-care and law-enforcement settings.

Lack of legal rights to access sexual and reproductive health and rights services

The right to have an abortion in the region is fragmented and differs between Member States. Access to safe abortion services is an inextricable element of the effective realization of reproductive health, not least on account of the maternal mortality and morbidity that is linked to unsafe illegal abortion. An estimated 200,000 unsafe abortions take place each year in Southern Africa. The Maputo Protocol only provides for the authorization of medical abortion in limited circumstances of sexual assault, rape or incest, or where the continued pregnancy endangers the mental or physical health of the mother or fetus.

It is critical to encourage SADC countries to live up to their commitments under the Maputo Protocol and align their legislation. This is mirrored in the SADC region, where abortion is available on demand only in Mozambique and South Africa. In Madagascar and Angola, abortion is totally outlawed. Botswana, the Seychelles and Zambia belong to the category of countries that have instated liberal reforms of abortion law. However, the experience from these countries demonstrates that decriminalization does not, by itself, secure equitable access to safe abortion due to excessive bureaucracy. South African reforms have shown that, where there is a commitment of resources to ensure an enabling public health sector infrastructure, unsafe abortion will fast become a malady of the past.

Despite being a preventable disease, cervical cancer remains a leading cause of cancer mortality for women in the region. Human papillomavirus (HPV) is the principal cause of cervical cancer and

can be prevented through vaccination, but few national HPV vaccination programmes have been initiated in the SADC region, largely because of the high cost of the vaccine (19). Women living with HIV are particularly vulnerable, they are four to five times more likely to develop invasive cervical cancer, are more vulnerable to persistent HPV infections, and can develop pre-cancerous lesions faster. HPV is also associated with having a greater risk of acquiring HIV. Young women in sub-Saharan Africa make up 58% of new HIV infections among young people globally and 67% of new infections in Africa.



Age, cultural and social norms

Most SADC countries fail to provide clear laws on the age of consent to health services, thereby impacting the ability of adolescent girls to access sexual and reproductive health and rights services, such as obtaining contraception or HIV testing and treatment.

This is directly linked to the lack of clear consensus on the age of consent for sexual activity. In the SADC region, the age of consent ranges from 14 years to 18 years (20). Critical to the issue of consent is the right of access to information, which is promoted by improving comprehensive sexuality education.

There is a lack of standardization on the age of marriage, despite continued campaigning to ban child marriage in the region. This gap impacts negatively on the sexual and reproductive health and rights of adolescent girls and young women. Child marriage continues in the region, which impacts disproportionately on vulnerable groups. UNFPA has developed a number of recommendations encouraging a recognized age of consent for sexual activity, medical treatment and marriage at 18 years (21). It also calls for the revision of laws regarding criminalization of HIV and harmful cultural practices.

⁴https://www.researchgate.net/publication/7929547_An_Appraisal_of_Abortion_Laws_in_Southern_Africa_from_a_Reproductive_Health_Rights_Perspective

Gender-based violence

Despite 12 SADC Member States having domestic violence legislation and 13 Member States having sexual assault legislation, the protection of women against violence remains weak in the SADC region due to among other factors poor law enforcement.

Anecdotal evidence suggests an increase in gender-based violence in the context of the COVID-19 pandemic, which may eventually exacerbate transmission if there is minimal protection for the most vulnerable people (22). COVID-19 lockdowns delayed the hearing of gender-based violence cases by courts and in many instances deterred survivors from approaching the police and courts for protection orders.

In September 1997, the SADC Protocol on Gender and Development (1997) were published aiming to provide for the empowerment of women, to eliminate discrimination and achieve gender equality by encouraging and harmonizing the development and implementation of gender responsive legislation, policies and programs and projects. One year later, the SADC Addendum on the Prevention and Eradication of Violence Against Women and Children calls for urgent elimination of all forms of violence.

We welcome the continued development of the SADC Region Gender-based Violence Model Law, under the leadership of the SADC Parliamentary Forum and partners, which intends to assist SADC Member States in the domestication and implementation of the principles, guidelines and obligations on curbing gender-based violence. Overall, it is important to note that when referring to Gender Based Violence SADC recognises that the discussion is not just about the act of violence, but also about education and prevention, as well as victim assistance (SADC declaration 1997, <https://www.sadc.int/issues/gender/gender-based-violence/>).

COVID-19 and national lockdowns

The COVID-19 pandemic and associated lockdowns have hit women the hardest, especially those in the informal sector (23). Lockdowns and general fear around COVID-19 have resulted in people not accessing health services or not being able to obtain treatment such as antiretroviral medicines, contraceptives or safe abortions.

There is concern that governments are directing already limited funding to COVID-19, meaning issues around sexual and reproductive health and rights may fall behind. For now, data on this are limited, and we rely on anecdotal evidence.

The South African Human Rights Commission has developed guidelines for addressing COVID-19 without ignoring other issues. It analysed the effects of COVID-19 on other rights such as health, education, HIV, tuberculosis and disability (24). A lesson that can be learnt from the HIV response is that restrictive, stigmatizing and punitive measures can lead to significant human rights abuses, especially among key populations (25).



Access to education

Equitable access to good-quality education is a human right. Education is strongly associated with good health, and it is an important predictor of well-being among women and children. Studies in the region have shown that staying in school longer has a protective benefit in reducing the risk of HIV infection (26). In Botswana, after compulsory and free secondary education was expanded, each additional year of secondary schooling led to an 8.1% reduction in the cumulative risk of HIV infection, and a 11.6% reduction in HIV risk among young women in particular (27). Positive effects of enrolment in secondary school on reduced sexual risk-taking behaviour and rates of HIV infection were found in Zimbabwe (25).



Higher levels of educational attainment among women are associated with increased control over sexual and reproductive health and rights.

Despite evidence for the multiple benefits of remaining in school, girls and young women in multiple settings around the world face significant barriers to education, driven by poverty, unequal social and cultural norms, harmful practices (such as child, early and forced marriage), poor infrastructure, gender-based violence and instability.

We need a radical gamechanger in the HIV response for adolescent girls and young women in all their diversity in the eastern and southern African region, and even more so now in the time of COVID-19.

An important contributor to sexual and reproductive health and rights in the SADC region is comprehensive sexuality education for adolescents and young people of all genders through the ESA Commitment made by ministers of education and health in 2013 (26).

Comprehensive sexuality education is cost-effective and improves sexual and reproductive health outcomes, including delayed initiation of sexual intercourse, decreased numbers of sexual partners, reduced sexual risk-taking, and increased use of condoms and contraception, all of which result in reduced rates of sexually transmitted infections, HIV and unintended pregnancies (27, 28).

The Education+ Initiative launched by UNAIDS in conjunction with UNESCO, UNFPA, UNICEF and UN Women focuses on adolescent girls and young women and the completion of good-quality secondary education, which protects against HIV (50% decrease) and yields multiple other social and economic outcomes for advancing health, gender equality and development (29).

The Education+ Initiative aims to ensure girls' completion of good-quality secondary education through investments for rollout of free universal access to education by 2025, and by ending gender-discriminatory laws and practices. It will also allow for universal access to comprehensive sexuality education, school-to-work transitions, economic security and empowerment.

RECOMMENDATIONS: PRACTICAL GUIDANCE FOR REFORM AND IMPLEMENTATION

Strategy for Sexual and Reproductive Health and Rights in the SADC Region

This is a key document in realizing sexual and reproductive health and rights in the region. There has been limited awareness-raising among stakeholders, however. It would be useful to dedicate resources to popularizing the Strategy. Emphasis should be placed on the minimum package of services and minimum standards to adopt, adapt and implement the strategy. These are relevant to operationalizing the policies and protocols and their domestication at state level.

Member States should ensure the Strategy recognizes the rights of girls and youth, irrespective of nationality, refugee status or existence of documentation.

SADC regional structures

Implementation of international and regional legal frameworks and policy remains fragmented in the SADC region, and the law is not standardized or harmonized. There is a need for stakeholders to develop a model law specifically outlining sexual and reproductive health and rights. This will assist in codifying and aligning participation by Member States in drafting and implementing legislation to protect sexual and reproductive health and rights in the region.

A model law will also assist the SADC Secretariat, national human rights institutions and civil society to monitor implementation and enforcement of sexual and reproductive health and rights in the region.

The current protocols and policies are not specific enough to provide harmonization between the age of consent for sexual activity and access to sexual and reproductive health and rights services, or decriminalization of LGBTI people, abortion and HIV transmission. Further, they fail to underscore inclusion as a main tenet of public health interventions.

Despite the pressing need for funding and resources towards combating COVID-19, these efforts cannot come at the expense of sexual and reproductive health and rights. The regional response needs to be all-encompassing and to not exclude sexual and reproductive health and rights.

It is important to improve coordination between the different structures within the SADC region to deal with the issues of gender, sexual and reproductive health and rights, and HIV in a coordinated and comprehensive manner.

Member States

Member States need to reform legislation and policy that grants adolescent girls and young women, irrespective of nationality or background, the right to control decisions about their health and sexual and reproductive lives. In particular, Member States need to protect the rights of adolescent girls and young women to access prevention, treatment and care services for issues that affect them, such as HIV, sexually transmitted infections, unintended pregnancies and contraceptives.

Law development commissions should be mandated to undertake an audit of legislation and policy to eliminate provisions that hinder the enjoyment of sexual and reproductive health and rights, or that impede access to gender-based violence and HIV prevention programmes, treatment and care services. These commissions can submit requests and suggestions for law amendment to the ministries of justice in SADC Member States.

Ministries of justice can advise and guide other ministries and state departments to produce and implement policies and laws that protect adolescent girls and young women from HIV and gender-based violence and promote their sexual and reproductive health and rights.

Ministries of justice can ensure the policies and laws they initiate, draft or produce promote the welfare of adolescent girls and young women in relation to HIV, gender-based violence, and sexual and reproductive health and rights.

Ministries of justice can also review local laws to ensure exposure and amendment of elements that inhibit the exercise of sexual and reproductive health and rights by adolescent girls and young women, or that promote gender-based violence or the spread of HIV to or among adolescent girls and young women.

Human rights commissions in SADC countries can investigate cases of HIV and gender-based violence and the violation of sexual and reproductive health and rights of adolescent girls and young women in their countries. They can conduct community awareness campaigns on sexual and reproductive health and rights, HIV and gender-based violence. They can develop national guidelines on sexual and reproductive health and rights, HIV and gender-based violence to inform state policies and legislation.

Human rights commissions can also engage in surveys on the status of sexual and reproductive health and rights, HIV and gender-based violence among adolescent girls and young women in their countries. This will help in the formulation or amendment of laws for the protection of adolescent girls and young women.

Laws that criminalize LGBTI people and sex work should be reformed or abolished.

Comprehensive sexuality education should be improved and made accessible to adolescent girls and young women. The right of access to information regarding sexual and reproductive health and rights should be improved for adolescent girls and young women.

Gender-based violence laws should be reformed and enforced, and laws and policies should provide support to survivors.

The judiciary should adopt gender-sensitive approaches to court procedures and impose harsh sentences for gender-based violence.

Programmes need to be developed and adequate funding provided to strengthen institutions such as inclusive health-care facilities, law enforcement and courts, with a focus on programmes regarding gender sensitivity to reduce stigma and discrimination against adolescent girls and young women despite their sexual orientation, gender

identity or choice of trade.

It is important to ensure COVID-19 responses do not leave sexual and reproductive health and rights behind and that sexual and reproductive health and rights are included in the essential package of services.

Inclusive platforms for information exchange and best practice development with non-state actors such as the media and academia may be helpful.

Civil society and young leaders

Civil society and young leaders can advocate for the adoption of an inclusive model law to standardize and harmonize legislation and policy in the region for sexual and reproductive health and rights. They should continue to build alliances to adopt an SADC-wide approach to protecting and promoting sexual and reproductive health and rights.

It is important to continue to raise awareness, community mobilization and legal literacy regarding sexual and reproductive health and rights so that adolescent girls and young women are aware of their rights.



Legal profession

It is important to capacitate lawyers in the areas of sexual and reproductive health and rights, gender-based violence and HIV law and practice. A comprehensive pro bono network of lawyers with an electronic and physical presence may include representation, education and awareness-raising among stakeholders.

Lawyers can assist with recording of human rights violations and using the information in conjunction with United Nations and regional human rights monitoring and reporting mechanisms to foster compliance.

Academic and research institutions

An essay competition could be developed for university students in the SADC region, including a debatable question on sexual and reproductive health and rights, gender-based violence, HIV and key populations. The competition could aim to encourage students to develop innovative policy solutions that could contribute to public debate on sexual and reproductive health and rights, gender-based violence and HIV.

A moot court competition could be organized in which law students from the SADC region argue a hypothetical case before a "court", with the aim of promoting in-depth analysis of sexual and reproductive health and rights, gender-based violence and HIV. This would enable participants to engage in open, honest and inclusive dialogue on these matters.

A conference could be organized, with publication and dissemination of conference proceedings, on

sexual and reproductive health and rights, gender-based violence and HIV among adolescent girls and young women in the SADC region. Conferences bring together scholars from various backgrounds and countries, who can share evidence on, and propose solutions for, sexual and reproductive health and rights, HIV and gender-based violence in their countries. Best practices can then be selected and shared across the region.

SADCLA student chapters could be launched in at least two universities in each SADC country. These can help promote adolescent girls' and young women's sexual and reproductive health and rights, and rights around HIV and gender-based violence. Student chapters can create awareness and encourage debate about sexual and reproductive health and rights, HIV and gender-based violence. Those who receive information on sexual and reproductive health and rights, HIV and gender-based violence can then share the information in their communities.



CONCLUSION

This discussion paper shows that the southern Africa region continues to grapple with the effects of HIV. The brunt of the disease is felt by the region's adolescent girls and young women, who arguably account for the highest number in population and human capital. Gender-based violence and limited protection of sexual and reproductive health and rights further compound the problems faced by this vulnerable group.

Interventions to address these matters abound at international and regional levels. Some of the significant legal instruments include the African Commission on Human and Peoples' Rights, CEDAW, CRPD, the International Covenant on Economic Social and Cultural Rights, the Maputo Protocol, the SADC Protocol on Gender and Development, and UNCRC.

The legal and policy frameworks developed under the auspices of the SADC Secretariat are commendable. Despite the strides that have been made, however, the region continues to face significant challenges that hinder progress in implementing HIV, gender-based violence, and sexual and reproductive health and rights responses that impact adolescent girls and young women.

The challenges lie chiefly in the SADC Member States' lack of or slow progress in the uptake of international and regional legal and policy frameworks at the national level. Several reasons have been identified for the lethargy in legislative uptake. These include lack of political will, ineffective or inadequate pressure citizens, lack of accountability mechanisms to underwrite global commitments, parallel conservative forces, cultural dynamics and shrinking civic space.

To circumvent these challenges, this paper identifies strategies embedded in a multisector approach that includes SADC Member States, policy-makers and implementers, the SADC Secretariat, United Nations agencies, development partners, civil society organizations, national parliaments and the media.

Possible solutions include:

- Encourage human rights commissions to investigate cases of gender-based violence, HIV, and sexual and reproductive health and rights violation.
- Debate, document and disseminate best practices through academic conferences, moot courts and SADCLA student chapters to protect adolescent girls and young women.
- Encourage law reform by law development commissions, ministries of justice and national parliaments.
- Capacitate lawyers and promote pro bono services in the areas of gender-based violence, HIV, and sexual and reproductive health and rights.
- Build alliances with civil society and young leaders.
- Support civil society to organize and advocate for the effective implementation of existing policies and laws whilst also lobbying for the adoption of an inclusive model law.
- Civil society can also organize and work with gender justice initiatives to take to court strategic litigation or case laws that aim to set a precedent and shift the legal positions in countries where this is needed.
- Enhance access to justice on SRHR cases with emphasis on affordable, inclusive access to legal representation and functional courts. Provide legal aid clinics and courts in remote hard to reach areas.

This discussion paper can be used as a barometer to measure the development and implementation of law and policy frameworks on HIV, gender-based violence, and sexual and reproductive health and rights of adolescent girls and young women in SADC Member States.

REFERENCES

1. CEDAW general recommendation no. 24: Article 12 of the Convention (Women and Health). A/54/38/Rev.1, Chapter I. New York: United Nations Committee on the Elimination of Discrimination Against Women; 1999.
2. How we protect children's rights with the UN Convention on the Rights of the Child. London: United Nations Children's Fund (UNICEF UK) (<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>).
3. Report of the Special Rapporteur on the Rights of Persons with Disabilities. A/72/133. New York: United Nations General Assembly; 2017 (https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Disability/A_72_133_EN.docx&action=default&DefaultItemOpen=1).
4. African Charter on Human and Peoples' Rights ("Banjul Charter"): Article 16. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). African Union; 1981.
5. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ("Maputo Protocol"). Article 14. African Union; 2003.
6. Women 2000: gender equality, development and peace for the twenty-first century—gender mainstreaming, situations and programmatic matters. E/CN.6/2020/L.5. 9. United Republic of Tanzania: United Nations Economic and Social Council; 2020 (<https://www.undocs.org/en/E/CN.6/2020/L.5>).
7. United Nations Political Declaration on Ending AIDS sets world on the Fast-Track to end the epidemic by 2030. Geneva: Joint United Nations Programme on HIV/AIDS; 2016 (https://www.unaids.org/sites/default/files/20160608_PS_HLM_Political_Declaration_final.pdf).
8. Five pillars of population and development. New York: United Nations Population Fund (<https://www.unfpa.org/icpd/5-pillars-population-and-development>).
9. Education+. Geneva: Joint United Nations Programme on HIV/AIDS (<https://www.unaids.org/en/topics/education-plus>).
10. SADC regional response to COVID-19 pandemic. Gaborone: Southern African Development Community; 2020 (https://www.sadc.int/files/8816/0119/7567/BULLETIN_13-SADC_Response_to_COVID19_ENGLISH.pdf).
11. Mapuva J, Muyengwa-Mapuva L. The SADC regional bloc: what challenges and prospects for regional integration? *Law Democr Dev*. 2014;18:22–36.
12. Global AIDS update: seizing the moment —tackling entrenched inequalities to end epidemics. Geneva: Joint United Nations Programme on HIV/AIDS; 2020 (<https://aids2020.unaids.org/report>).
13. Universal values principle two: leave no one behind. New York: United Nations Sustainable Development Group; 2020 (<https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>).
14. Saving lives: leaving no one behind. Geneva: United Nations Programme on HIV/AIDS; 2018 (https://www.unaids.org/sites/default/files/media_asset/about_unaids_en.pdf).
15. Statement by human rights experts on the International Day against Homophobia, Transphobia and Biphobia: COVID-19—the suffering and resilience of LGBT persons must be visible and inform the actions of states. Geneva: Office of the United Nations High Commissioner for Human Rights; 2020 (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25884&LangID=E>).
16. Let transgender people be in the picture. Geneva: United Nations Programme on HIV/AIDS; 2020 (https://www.unaids.org/en/resources/presscentre/featurestories/2020/may/20200514_transgender-people).
17. Gender links: sex work policy brief. Johannesburg: Gender Links; 2013 (https://genderlinks.org.za/wp-content/uploads/imported/articles/attachments/16377_sex_work_policy_brief.pdf).

- 18.** Laws and policies affecting transgender persons on southern Africa. Johannesburg: Southern African Litigation Center; 2016 (<https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-Rights-Booklet.pdf>).
- 19.** Delany-Moretlwe S, Kelley K, James S, et al. Human papillomavirus vaccine introduction in South Africa: implementation lessons from an evaluation of the national school-based vaccination campaign. *Glob Health Sci Pract.* 2018;6(3):425–438.
- 20.** Southern African Development Community, Girls not Brides, United Nations Population Fund. A guide to using the SADC model law on eradicating child marriage and protecting children already in marriage. Windhoek: Southern African Development Community Parliamentary Forum; 2018 (<https://www.girlsnotbrides.org/wp-content/uploads/2018/12/SADC-Model-Law-Toolkit.pdf>).
- 21.** Harmonizing the legal environment for adolescent sexual and reproductive health and rights. New York: United Nations Population Fund; 2017 (<https://esaro.unfpa.org/en/publications/harmonizing-legal-environment-adolescent-sexual-and-reproductive-health-and-rights-0>).
- 22.** The impact of COVID-19 on social justice, human rights and prevention of gender-based violence. Geneva: Joint United Nations Programme on HIV/AIDS; 2020 (<http://rstesa.unaids.org/special-initiatives/item/289-the-impact-of-covid-19-on-social-justice-human-rights-and-gender-based-violence-in-the-sadc-region-lessons-from-the-hiv-response>).
- 23.** Behman J. The effect of increased primary schooling on adult women's HIV status in Malawi and Uganda: universal primary education as a natural experiment. *Soc Sci Med.* 2015;127:108–115.
- 24.** De Neve J, Fink G, Subramanian SV, Moyo S, Bor J. Length of secondary schooling and risk of HIV infection in Botswana: evidence from a natural experiment. *Lancet.* 2015;3(8):E470–E477.
- 25.** Agüero M, Bharadwaj P. Do the more educated know more about health? Evidence from schooling and HIV knowledge in Zimbabwe. *Econ Dev Cult Change.* 2014;62(3):489–517.
- 26.** What is the ESA commitment? Harare: Young People Today Initiative; 2019 (<https://www.youngpeopletoday.org/esa-commitment/>).
- 27.** Ensure universal access to sexual and reproductive health and reproductive rights: measuring SDG target 5.6—based on population-based survey data from 2007–2018. New York: United Nations Population Fund; 2020 (<https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA-SDG561562Combined-v4.15.pdf>).
- 28.** Cost and cost-effectiveness analysis of school-based sexuality education programmes in six countries: full report. Paris: United Nations Educational, Scientific and Cultural Organization; 2011 (<https://healtheducationresources.unesco.org/index.php/library/documents/cost-and-cost-effectiveness-analysis-school-based-sexuality-education-six>).
- 29.** Five UN leaders to champion girl's education and empowerment. Geneva: Joint United Nations Programme on HIV/AIDS; 2020 (<https://www.unaids.org/en/resources/multimedia-centre/videos/2020/education-plus-initiative>).



UNAIDS



UN WOMEN

304 Brooks Street, Menlo Park,
Pretoria, 0102,
Gauteng, South Africa
Telephone: +27 (0) 12 366 8800
Fax: +27 (0) 12 362 0969
Email address: info@sadcla.org
Website: www.sadcla.org