

THE MALAWI NATIONAL ADVOCACY CONVENING ON REDUCING VIOLENCE AND DISCRIMINATION AGAINST KEY POPULATIONS

14 – 15 JUNE 2017

Sunbird Capital Hotel, Lilongwe

TRANSFORMING
LAWS,
TRANSFORMING HIV

END
STIGMA

STOP THE
DISCRIMINATION

HUMAN
RIGHTS
FOR ALL

STOP THE
VIOLENCE

REMOVE
LEGAL
BARRIERS

HEALTH
FOR
ALL



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Acronyms

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| ARASA | AIDS and Rights Alliance for Southern Africa |
| CEDEP | Centre for the Development of People |
| CHREAA | Centre for Human Rights Education Advice and Assistance |
| CHRR | Centre for Human Rights and Rehabilitation |
| CSO | Civil Society Organisation |
| LGBTI | Lesbian, gay, bisexual, transgender and intersex |
| MHRC | Malawi Human Rights Commission |
| MoJ | Ministry of Justice |
| NAC | National AIDS Commission |
| SADC | Southern African Development Community |
| SRH | Sexual and reproductive health |
| TB | Tuberculosis |
| TWG | Technical Working Group |
| UNDP | United Nations Development Programme |

Executive Summary

The Malawi Human Rights Commission (MHRC) in collaboration with the AIDS and Rights Alliance for Southern Africa (ARASA), held a two-day National Advocacy Meeting on reducing violence and discrimination against key populations on 14-15 of June 2017 at Sunbird Capital Hotel, Lilongwe. The meeting was part of the Africa Regional Grant on HIV: Removing Legal Barriers, a Global Fund grant to remove legal barriers to responses to HIV within the Africa region, with UNDP as the Principal Recipient and ARASA as one of the Sub-Recipients. The meeting brought together stakeholders from key population groups, civil society organisations, government agencies, media and academia from across Malawi.

The aim of the Meeting was to discuss the causes of human rights violations against key and vulnerable populations and to explore available human rights remedies. The meeting also sought to strengthen national mechanisms to reduce violence and stigma against key populations, in order to improve access to HIV and TB prevention, treatment and care services and access to justice.

Specific Objectives of the National Convening

- To provide a platform for a range of stakeholders from different sectors, including key populations and people living with HIV, to engage in evidence informed discussions on causes of human rights violations related to HIV and TB and how to address them.
- To share information and experiences, including the lived realities of members of key populations, on the impact of existing laws, policies and practices on access to HIV/TB prevention, treatment and care services, as well as access to justice.
- To share good practices, lessons learned and experiences on promoting and protecting the rights of key populations and current advocacy efforts.
- To review the mandate of the national multi-sector working group on key populations within the context of HIV and TB related human rights violations and to recommend areas for strengthened advocacy and strengthening of these working groups.
- To establish or strengthen national multi-sectoral working group/s with the mandate of monitoring, preventing and addressing HIV and TB related human rights violations against key populations.

Expected Outcomes

The national advocacy convening sought to achieve the following ultimate outcomes:

- Increased stakeholder understanding and awareness of the key HIV, TB and human rights issues that affect key and vulnerable populations in Malawi.
- Strengthened advocacy efforts on preventing and addressing HIV and TB related human rights violations against key populations.

Key Recommendations

The following key recommendations emerged from the meeting:

1. Stakeholders should continue to advocate for the amendment of punitive and discriminatory provisions in the draft HIV and AIDS (Prevention and Management) Bill, 2017. The need to lobby for a Bill that fully supports the rights of key and vulnerable populations was also emphasised.
2. Stakeholders should continue lobbying for the repeal and reform of all punitive laws that impinge on the health rights of key and vulnerable populations (as well as fuel violence, stigma and discrimination) and for the implementation of protective policies.
3. There is need to harmonize laws relating to key and vulnerable populations with the Constitution.
4. In addition to law and policy, key population networks need to be strengthened and programmes need to be implemented to change mindsets around key populations, amongst communities, service providers and others.
5. There is a need to strengthen coordination mechanisms relating to the rights of key and vulnerable populations, including the establishment of a stand-alone Technical Working Group (TWG) on Key Populations in the National AIDS Commission (NAC).
6. There is a need to ensure the effective inclusion and meaningful engagement of key and vulnerable populations in all matters affecting them.
7. The Human Rights Commission should actively involve stakeholders in formulating the methodology for the Public Inquiry on Homosexuality.



1. Introduction

1.1 Background and Context

The Malawi Human Rights Commission (MHRC) in collaboration with the AIDS and Rights Alliance for Southern African (ARASA) hosted a two-day national advocacy meeting on reducing violence and discrimination against key populations in Malawi. The meeting, which took place at the Sunbird Capital Hotel, Lilongwe, Malawi targeted different stakeholders, including representatives of key and vulnerable population groups, civil society organisations, government officials, the media, the academia and the private sector.

These stakeholders were brought together in order to engage in evidence informed discussions on the nature and extent of human rights violations against key and vulnerable populations in the context of HIV and TB. The meeting also provided a platform for stakeholders to share information and experiences on the impact of the existing legal environment on access to HIV prevention, treatment, care and support services. The ultimate goal of the meeting was to strengthen advocacy efforts on preventing and addressing HIV and TB related human rights violations against key populations.

The meeting was organised against the background that stigma, discrimination, violence and punitive legal frameworks continue to increase the susceptibility of key and vulnerable populations to HIV infection. Punitive and discriminatory laws, policies and practices marginalise and isolate key populations, preventing access to HIV prevention, treatment and care services. Key populations continue to suffer from stigma and discrimination, including in the health care sector. Deeply entrenched individual and societal attitudes present a barrier to eliminating stigma and discrimination. This disabling environment also frustrates efforts to collect updated and accurate data on prevalence and health outcomes amongst key populations. While efforts have been made to increase protections for the health rights of key populations, these efforts are fragmented and disparate. There is a lack of coordination and communication across the various actors, a disconnection that is undoubtedly fuelled by the generally prohibitive context within which these issues arise.

1.2 Methodology

The meeting was a two day consultative and facilitated workshop consisting of 76 key stakeholders from across Malawi, including representation from key population groups, civil society organisations, government ministries, academia, development partners and the media. The meeting created time and space for presentations, facilitated panel and plenary discussions and group work on key HIV, TB and human rights issues that affect key populations and agreement on the “way forward”, including the strengthening of a national working group on preventing and addressing violence and stigma against key populations.

1.3 Overview of the meeting – Objectives and Expectations

ARASA Regional Advocacy Officer Nthabiseng Mokoena addressed the audience and gave an overview of the meeting, also spelling out the expectations of the planners. Nthabiseng stressed that the role of ARASA was to provide technical support for the meeting, whereas the ownership of the process, the debates and the planned actions lies with the national institutions, stakeholders and affected communities. Nthabiseng urged the participants to reflect on a number of questions affecting key and vulnerable populations, including:

1. Why are there cases of stigma, violence and discrimination against key populations?
2. What does criminalisation mean for key populations?
3. What are stakeholders doing about stigma, violence and discrimination? What should they do about it?
4. How adequate and effective are the current stakeholder initiatives?

Participants were also urged to change perspective and avoid looking at key populations as disease vectors. Rather, it was important to look at key populations as human beings who were especially vulnerable to infection, and needed protection from violence and abuse.

1.4 Participants' Expectations

Participants were asked to express what they expected from the national advocacy convening. The participants responded that they expected the national advocacy convening to:

- Clearly provide conceptual clarity to the terms “key populations” and “vulnerable populations”
- Fill the existing knowledge gaps and address the challenges facing key populations in Malawi
- Clarify information such as whether sex work is legal or illegal in Malawi
- Update participants e.g. on the Public Inquiry that the MHRC has been tasked to conduct by the Malawi Government
- Discuss issues such as how best to accord equal rights to persons with disabilities
- Discuss how stakeholders can coordinate their efforts to fight stigma, discrimination and violence against key populations and other vulnerable populations;
- Build a united voice in the fight against violence, stigma and discrimination against key and vulnerable populations.
- Provide a clear road map towards the implementation of resolutions and recommendations made in the Convening and earlier meetings.

The shared view of the convening – presenters and participants – was that the meeting should not be another talk show where nothing happens at the end, but should lead to action.

1.5 Setting the tone

1.5.1. Opening remarks

Malawi Human Rights Commissioner Bertha Sefu delivered welcome remarks on behalf of the Commission. She thanked ARASA for its partnership and support, critical for ensuring the success of the Meeting. The Commissioner observed that the meeting came at an opportune time for Malawi since it was in the process of enacting HIV-specific legislation. She also stressed that 90-90-90 goals cannot be reached if some people are left behind. The Convening, according to the Commissioner was, especially, relevant to the Commission because it has been charged by the government with the responsibility of holding public consultations on sexual minority rights. The Commissioner acknowledged that, despite the existence of progressive policies on HIV and AIDS, key and vulnerable populations continue to suffer human rights violations in Malawi, partly due to a punitive legal environment. The Commissioner lamented the continued subjection of key and vulnerable populations to stigma, discrimination, abuse and violence by those that are supposed to protect them. She also noted that stigma and discrimination push key and vulnerable populations to the fringes of society and cut them off from life-saving services. This renders them especially vulnerable to disease and undermine national efforts to curb the spread of HIV and TB. The Commissioner, however, expressed satisfaction with the fact that the agenda covered a wide range of very critical issues relating to the plight of key populations and other vulnerable groups. Accordingly, she stressed the need for stakeholders to engage rigorously with the issues of human rights and HIV among key and vulnerable populations. Finally, she urged the participants to find solutions to the prevalent problems of stigma, discrimination, violence and abuse against key populations and other vulnerable populations. She also mentioned that institutions and people should not stand in the way of progress. It was her hope that after the meeting, stakeholders would leave strengthened and renewed in their determination to protect and promote the rights of vulnerable populations.

1.5.1. Opening remarks

Justice Dr. Redson Kapindu, from the High Court of Malawi, gave a key note address. Justice Kapindu began his address by noting that the issue of violence against key and vulnerable persons in Malawi remains a matter of fundamental human rights concern. He buttressed his point by drawing the attention of participants to a number of human rights violations affecting key and vulnerable populations, as highlighted in the concept note for the meeting.

Justice Kapindu noted that the government of Malawi has made it explicit in its policies and international commitments that it is committed to ensuring that there should be no violence against key populations. He also noted that the government has made further commitments to ensure that key populations are not discriminated against in terms of healthcare services. He wondered, however, whether these were mere paper commitments. He then proceeded to urge participants to critically examine whether government commitments are reflected in practice and if not, what could be done to ensure that violence against key populations is eliminated in society and that there is no discrimination in healthcare services. In short, he stressed the importance of ensuring that the paper commitments that the Malawi Government has made, both domestically and internationally, are translated into action that furthers the response to HIV and AIDS. Justice Kapindu also stressed the importance of bearing in mind the provisions of the UNAIDS International Guidelines on HIV and Human Rights in discussing issues pertaining to violence, discrimination and HIV prevention and management among key and vulnerable populations.

The Judge further noted that, while it was critical to focus on the key populations and vulnerable groups that were flagged to be highlighted at this meeting, it was useful to bear in mind other vulnerable populations which were not being given enough priority in this Convening. These included women with mental disabilities who are frequently subjected to sexual abuse and are stigmatized by penal legislation which, even after the 2011 revision, still refers to ‘imbecile and/or idiots’.

Justice Kapindu confirmed also that Court has been playing its part, by declaring some Malawian legal provisions unconstitutional. The Judge also noted that Parliament was in the process of enacting the HIV and AIDS (Prevention and Management) Bill. In this regard, he noted that the Convening was an appropriate forum to examine the Bill critically and to explore how it addresses key issues of concern in respect of the key and vulnerable populations.

Justice Kapindu also reiterated the need to handle HIV and AIDS issues from handled from a rights based perspective. This, according to him, was because the approach empowers those affected and infected to vindicate their rights. The Judge reminded the participants that human rights were counter-majoritarian in nature and are designed to protect the least advantaged in society. Finally, Justice Kapindu emphasised the need to view human rights issues affecting key populations from the perspective of justice.



Justice Kapindu

2. Key Topics covered in Presentations

Presentations drew upon the knowledge and experience of a multiplicity of stakeholders. The presenters proposed ways of working together to create and ensure safe spaces for members of key populations to access HIV and TB services. Broadly, the presentations covered the following issues:

2.1 Contextual issues

2.1.1 Status of HIV and TB among Key and Vulnerable Populations

Mr Dominic Likongwe, the Key Populations Coordinator at NAC, made a presentation on the status of the epidemics among key populations, associated drivers of the epidemic, national policies and strategies and the coordination of HIV programmes for key populations.

He highlighted a number of barriers to uptake and use of sexual and reproductive health (SRH) services that need to be addressed, including, discrimination, social disapproval, violence, criminalisation, social and self-stigma, exclusion, the limited capacity of health systems, inadequate services for men who have sex with men and sex workers, an unfavourable legal environment, high sexual violence that goes unreported and lack of comprehensive integrated biological and behavioural data. He also outlined the challenges associated with the work of NAC on key populations such as inadequate data and non-reporting by some key populations' service organisations, inadequate key populations' networks and capacity gaps on the part of implementers of key populations' intervention. He also pointed out the inadequate participation of and consultation with key populations in programme management and delivery as a major obstacle to the promotion of the rights of key populations. In conclusion, Mr Likongwe emphasised the need to expedite the creation of a standalone Technical Working Group on Key Populations.



Dominic Likongwe

2.1.2 A Human Rights Based Approach to Violence, Stigma and Discrimination among Key and Vulnerable Populations

Ms Chisala-Tempelhoff, from the MHRC outlined the mandate of the Human Rights Commission, in terms of national legislation, to raise awareness of, protect and promote human rights and gender equality.

She noted the stigma, discrimination and human rights violations affecting people in the context of HIV and the impact this has not only on basic rights, but on public health.

She went on to define a human rights-based approach to development, which focuses on realising the rights of all persons, including the most marginalised populations. A human rights-based approach to HIV, TB and key populations uses international human rights standards to respond to HIV and TB, guarantees the meaningful participation of key/vulnerable populations in interventions affecting them, focuses on marginalized populations and empowers them to claim their rights, strengthens the accountability of all actors and emphasizes processes as well as outcomes. A rights-based response ensures that the process is based on human rights principles and aims to increase the capacity of rights-holders (such as key populations) to claim their rights and of duty-bearers (such as public health care workers) to fulfil their obligations to respect, protect, promote and fulfil rights.



Chisala Tempelhoff

2.1.3 Health seeking practices among key and vulnerable populations

Dr. Vincent Jumbe from the Malawi College of Medicine presented information on health seeking practices among key and vulnerable populations. The World Health Organisation defines key populations as those who are at higher risk of HIV exposure and who also live within social or legal contexts which increase their vulnerability. In Malawi, key and priority populations include men who have sex with men, transgender persons, sex workers, young people, couples, prisoners and highly mobile populations. Dr Jumbe presented evidence from empirical research conducted in Malawi on health seeking practices amongst lesbian, gay, bisexual and transgender persons, showing that sexual minorities experience stigma, discrimination and violence, fear disclosures, experience poor treatment at or avoid health care services and are not well informed of their rights. Similarly, sex workers experience discrimination when accessing health care facilities and fail to attend for early treatment or adhere to their treatment. He emphasized the need for a multi-pronged approach to address structural factors to improve access to health services by key populations, which included creating an enabling environment as well as providing comprehensive health care. This should include encouraging zero tolerance towards discrimination, training health workers, strengthening legal literacy and access to legal support as well as ensuring available, accessible and appropriate interventions.



Dr. Vincent Jumbe

2.1.4 HIV and TB in the Prison Settings

Dr Henry Ndindi from the United Nations Office on Drugs and Crime (UNODC) made a presentation on HIV and tuberculosis (TB) in Prison Settings. He gave an overview of the global, regional and local HIV and TB situation in the prison setting, showing the increased incidence and prevalence of HIV and TB within the prison environment, where prisoners are 1.5 to 50 times more likely to be HIV-positive than the general population. He outlined the factors that fuel HIV, TB and poor health in prisons, including unsafe sex, injecting drug use, sexual violence, overcrowding, poor nutrition, poor ventilation and poor access to health and social services. He identified some of the challenges Malawi faces in addressing HIV and TB in prison, including the weak criminal justice system, limited resources, limited data and weak coordination at national and regional levels. Dr Ndindi provided information on the work done by UNODC in sub-Saharan Africa to support countries to mitigate the HIV and TB situation in prisons, including through encouraging the creation of an enabling legal and policy environment, promoting human rights-based interventions as well as providing health care services. He stressed the rights of prisoners to health care, in terms of local, regional and international standards and noted the various guidance documents available to guide a rights-based response to HIV and TB in prisons. He spoke of the need to implement a comprehensive package of 15 key interventions in a 3-step process (at entry, stay and exit from prison) in Malawi, based on the Southern African Development Community (SADC) Minimum Standards, and the resource, coordination and implementation challenges Malawi faces in doing so. Finally, he noted that currently, given the failure to prevent HIV through providing condoms within prisons, due to legal barriers to same-sex sex, access to antiretroviral therapy in prisons is critical.



Dr. Henry Ndindi

3. Understanding Violence and Discrimination Against Key Populations:

Implications for HIV and TB prevention and management

Civil Society Organizations (CSOs) presented information on understanding violence and discrimination and access to justice for key populations in the context of HIV and TB. The CSOs, namely the Centre for Human Rights and Rehabilitation (CHRR), CHREAA, CEDEP and Malawi Sex Workers Alliance highlighted violence and discrimination, including within prisons, and poor access to health care services for vulnerable and key populations.

Speakers stressed the need for dealing with legal barriers and addressing human rights violations through means other than law reform, noting for instance the need to document human rights violations, ensure adequate responses to violations and deal with issues such as religious beliefs that impact on violations.

3.1 Policy and Legal Environment for Key and Vulnerable Populations

3.1.1 International Standards and State Obligations

Chrispine Sibande, a sexual and reproductive health rights lawyer, outlined Malawi's national human rights commitments and principles, showing how these are also based on international standards and obligations. International human rights standards are set out in treaties and conventions, the guidance and comments of treaty monitoring bodies, Universal Periodic Reviews and State Reports and case decisions and judgements from committees and international commissions and courts, amongst other things. He outlined some of the international treaties and conventions dealing with human rights broadly, and sexual and reproductive health and rights in particular. Mr Sibanda examined key human rights principles, such as the right to dignity, privacy, non-discrimination and health, and their application (including in case law) to protecting the rights of sexual minorities from discrimination and violence and how criminalisation of same-sex sex infringed rights. He emphasised that all people regardless of sexual orientation or gender identity, must be treated with respect and human dignity and that discrimination against people on the basis of gender identity or sexual orientation is a violation of the right to equality. Mr Sibanda lamented the fact that Malawi continues to discriminate against key populations in different sectors of society, despite making treaty commitments to end discrimination. He highlighted the various recommendations made by various human rights treaty bodies urging it to end discrimination against key/vulnerable populations and noted the failure of Malawi to heed these recommendations. He concluded that it was difficult to prevent discrimination, violence and stigma if Malawi remained uncommitted to international human rights principles and standards.



Chrispine Sibande

3.1.2 National Legal Framework and Access to Justice

Hilda Soko, an HIV and human rights specialist, gave an overview of the national laws applicable to vulnerable and key populations, including international law human rights standards, the Constitution, Acts of Parliament, common law, case law and customary law. She drew attention to the rights to equality, non-discrimination, liberty, dignity, privacy and the right to life (which includes the right to health) in the national Constitution, which apply equally to all people, as well as the specific rights of children and women. She also drew attention to punitive provisions within the Public Health Act allowing for quarantine, as well as Penal Code provisions criminalising aspects of sex work and same-sex sex. She also identified various laws protecting women and children, including those protecting them from sexual assault and violence and those laws protecting the equality rights of women, children and people with disabilities. Judicial decisions were discussed, including the decision in the Mangani case entrenching the right to equality within health care settings as well as the decision in the R v Steven Monjeza Soko and Tionge Chimbalanga Kachepa case that discriminated against men who have sex with men. The presenter stressed the need to repeal discriminatory laws and enact laws that protect key and vulnerable populations.



Hilda Soko

3.1.3 Recent judicial decisions and key/vulnerable populations

Justice Zion Ntoba focused on the role of the judiciary in protecting the constitutional rights of all persons, including vulnerable and key populations. She highlighted various recent court decisions that have promoted and protected rights of key populations and other vulnerable populations, including:

- *Marinho v SGS Blantyre* – upholding an employee’s right to non-discrimination
- *R v Mayeso Gwanda; Stella Mwanza and others v R* – reviewing the rogue and vagabond laws and the ways in which they are enforced (e.g. against sex workers, homeless persons) as overbroad and leading to discrimination in application
- *Gable Masangano v Attorney General* – upholding the principles that prisoners retain human rights, although they are deprived of right to liberty within prisons, and that poor prison conditions (e.g. overcrowding, poor ventilation) infringe their rights.
- *Kaseka and others vs R* – reviewing the discriminatory arrest of sex workers under the “idle and disorderly” provisions, where clients were not arrested
- *Phempho Banda and others v R* – reviewing the discriminatory and irregular arrest of sex workers under provisions of the Penal Code
- *EL v R* – overturning a conviction of HIV exposure through accidental breast feeding in light of medical, scientific evidence and the particular circumstances of the case.

Justice Ntoba highlighted a number of challenges associated with using the courts to protect vulnerable and key populations. These include bias and discriminatory laws and policies; limited access to justice; the failure to comply with judicial decisions and the lack of awareness of the role of the judiciary on the part of the victims of injustice. The Judge highlighted several options going forward including continued litigation, increased advocacy and lobbying – e.g. for the review of the Public Health Act; continued advocacy around the HIV and AIDS (Prevention and Management) Bill, as well as effective and multifaceted programming in the area of violence and discrimination reduction.

3.1.4 The HIV and AIDS (Prevention and Management Bill), 2017: Implications for Key Populations

Chikosa Banda, a law lecturer, gave an overview of the draft HIV legislation and highlighted a number of problematic criminal law elements within the Bill which have implications for key and vulnerable populations and which indicate a stronger focus on criminal law than on human rights within the Bill. He outlined various protective provisions within the Bill, including non-discrimination, the prohibition on harmful practices, the rights of persons living with HIV and the rights of young people to access testing without parental consent. However, he also showed how provisions, such as the non-discrimination provision, failed to adequately protect vulnerable and key populations, as recommended by the SADC Model Law on HIV and AIDS, and that the Bill as a whole failed to include their specific needs. He further outlined a number of provisions that are problematic from a human rights perspective including: the positive duty imposed upon persons living with HIV to undergo counselling and to take medicines, disclosure and partner notification clauses, clauses requiring mandatory testing for certain classes of employees, pregnant women and their sexual partners, clauses prohibiting HIV education in schools from being “sexually explicit” and criminalisation of transmission clauses. It was further noted that the Bill was silent on issues relating to key populations, including prisoners. The Bill has been referred to a parliamentary committee and it was noted that there was still room for further advocacy around the contentious issues surrounding the Bill.



Chikosa Banda

3.2 Strengthening multi-stakeholder advocacy strategies to reduce violence and discrimination against key populations

A panel discussion brought together stakeholders working with or advocating on behalf of key populations to discuss their encounters, lived realities, challenges, gaps and their suggestions going forward.

Pamela Mkwamba of UN Women Malawi, and Grace Kumwenda of Pakachere spoke of the need for interventions against violence to be undertaken in partnership with key population organisations. Violence should be monitored, reported and redressed and requires a multi-stakeholder framework that works at various levels – the community level working with key populations, the places they frequent and the broader community, with health care workers, law enforcers, magistrates as well as at the broader legal and policy level. It should include prevention (e.g. through raising awareness, legal literacy), reporting (e.g. through hotlines), responses (e.g. legal support, health care services) and documentation (e.g. reporting nature and frequency of violations). Responses should include partnerships with key populations and with key organisations for their support, expertise and services. Key messages from the panel included that i) key populations are not just statistics but people, ii) key populations should be meaningfully involved in all advocacy iii) advocacy should be driven by data and evidence and iv) partnership and collaboration are critical.



Civil society spoke of the role of civil society organisations at international and regional level (e.g. through reports to human rights treaty bodies and advocacy for implementation of their recommendations); national level (e.g. through participation in various fora and work with government ministries) and at community level (e.g. through community mobilisation, documenting human rights violations and advocacy). They identified key challenges as the legal environment, access to justice for rights violations, poor coordination between CSOs advocacy efforts and limited resources, which impacted on the ability of CSOs to monitor and follow up on initiatives.

Pamela Mkwamba

Dennis Chipao spoke of the role of the police in reducing violence, and noted the vulnerability of key populations and other minority groups to violence and discrimination. The role of the police is to, amongst other things, protect the rights of all persons and in dealing with suspects, victims of crime and minority populations, this requires balancing the rights of accused persons with the victims of crime. He recognized that suspects have health rights which obliges the police to ensure they have access to medical treatment, daily custody visits to check on their well-being, sanitation and nutrition. Victims of crime are protected through interventions that include victim support units, child protection officers, special child prosecutors, access to psycho-social support and confidential services in order to make complaints. In the case of minority populations vulnerable to abuse, training with prosecutors and investigators has been undertaken to sensitize officials regarding abuse against persons with albinism. With regard to LGBTI populations, a training manual has been developed and awareness raising has been conducted in selected police stations to reduce discrimination and violence, protect rights and increase access to justice. In relation to sex workers, there are no current interventions to protect sex workers from potential abuse. There are various challenges to protecting the rights of suspects, victims of crime and minorities, including resource constraints, lack of proper training and infrastructure, limited understanding of the needs of vulnerable populations and the legal framework. He recommended the need for increased resources and donor funding, improved training, community outreach programmes, strengthening of oversight mechanisms and law review and reform.



3.3 Malawi Human Rights Commission Public Inquiry

Participants were particularly interested in the methodologies and implications of the planned MHRC public inquiry into LGBTI rights. The MHRC, through the Director of Civil and Political Rights, Peter Chisi, gave the audience a brief overview of the planned engagement. The Commission intends to call an inclusive stakeholder meeting to present and discuss the research methodology and way forward. The MHRC has developed a comprehensive concept paper and proposes that mixed research methodologies are to be applied. The public inquiry and other methods will be conducted using a human rights lens and with assurance for the safety of all who come forth to participate in the process.

The participants advised the MHRC to ensure inclusivity and meaningful participation and not take a public/majority oriented approach and to work to get all key stakeholders to participate, so that the LGBTI community are involved and feel part and parcel of the process.



3.4 Participant observations, comments and questions

Key messages emanating from participant observations, comments and questions are set out below.

3.4.1 The need to be thoughtful in the use of terminology

There were several instances when members of the audience and even presenters used terminology that was or was perceived to be problematic and discriminatory. Words like ‘MSM activities’, these and they are already discriminatory, it was suggested that the convening use the words ‘the community’ for purposes of the meeting. It was also noted that it is helpful to begin such sessions with a set of agreed and acceptable language that clearly sets out what terminology might be considered hurtful and stigmatising, and why.

3.4.2 Inclusion of key populations: nothing about us without us

The need to ensure the inclusion and meaningful engagement of representatives of key populations in discussions affecting them, was emphasised.

3.4.3 Accessibility of national human rights institutions

Participants queried the accessibility of the MHRC to key populations, given some contradictions between Commissioners and technical staff in terms of the MHRC’s position towards key populations. The MHRC stressed that it has the primary mandate to promote and protect human rights in Malawi in the broadest sense possible, in terms of its constitutional and legislative mandate, and to investigate violations of human rights for all the people in Malawi. The MHRC also operates within approved international human rights standards and as such, is open to segments of the populations in the country. Peter Chisi reiterated that LGBTI rights are human rights and as the MHRC is mandated to protect and promote human rights, LGBTI are automatically included. ‘We first address the security of the person without discrimination, and once we do that then we can go ahead to promote their rights.’ The convening agreed that the MHRC should present the Public Inquiry methodology and roadmap to key stakeholders, before embarking on the Inquiry.

3.4.4 The need for legal clarity on the status of sex work

The legal status of sex work was clarified, in that sex work per se was not illegal. However, some aspects of sex work were illegal.

3.4.5 The need for further advocacy around the HIV Bill

Participants noted the need for further advocacy around the HIV Bill in order to ensure the removal of discriminatory and punitive provisions and those that would be counter-productive to public health.

4. Group Work: Plotting a way forward

4.1 Objectives

1. Increased understanding and awareness of key HIV, TB and human rights issues that affect key and vulnerable populations in Malawi
2. Strengthened national working group on preventing and addressing HIV and TB related human rights violations against key populations

4.2 Group work

The participants were divided into three groups – the non-state actors, the state actors, and the Malawi Human Rights Commission. Each group was asked to collectively consider the following three questions:

1. What are the gaps?
2. What are the opportunities?
3. From our annual plan what concrete actions will we take? What are the action points? What do you do already? How are you going to participate in the Public Inquiry?

| Issue | CSO presentation | Government presentation | MHRC presentation |
|----------------------------|---|--|---|
| Gaps and challenges | <ul style="list-style-type: none"> • Poor collaboration and coordination • Different levels of knowledge on key populations • Inconsistent data • Lack of networking platform • Conflict of interest among stakeholders - rights are not supposed to be separated • Inadequate engagement of key populations in national processes • Domestication and implementation of policies (legal and policy instruments) is a challenge • Religious institutions override the Malawi Constitution | <ul style="list-style-type: none"> • Communication gap between key populations and government stakeholders e.g. the issue raised by NAC and UN Women • Evidence gap to guide programming in government stakeholders • Lack of harmonization between the Constitution and laws (e.g the Penal Code) which brings confusion in practice and programming; • Inadequate awareness of key population issues amongst duty bearers and the public • No inclusiveness in decision making process on issues that involve key populations | <ul style="list-style-type: none"> • Ignorance • Lack of legal assistance • Homophobic attitudes • Stigma from religious leaders • LGBTI issues are not a priority |
| Opportunities | <ul style="list-style-type: none"> • Moratorium on prosecutions • Presence of policies and framework • There is growing interest in the issues • Independence of the judiciary • There is growing support and interest from development partners | <ul style="list-style-type: none"> • Government is showing commitment e.g police, prisons, NAC, MoJ and DNHA • Support from implementing partners e.g. ARASA • Freedom of speech on issues involving key populations • Judicial protection of key populations | <ul style="list-style-type: none"> • The strong mandate of the MHRC |
| Way Forward/ Action points | <ul style="list-style-type: none"> • Enhance advocacy for the implementation of policies • Create a platform for key populations' advocacy • Law reform (e.g. section 139, 145, 153 of the Penal Code) • Mindset change by conducting outreach programmes on key populations • Strengthening key population networks | <ul style="list-style-type: none"> • Formation of TWG solely for discussions of issues that involve key populations (NAC) • Coordination of data generation, repository and dissemination (NAC) • Law Commission must review laws that are inconsistent with the Constitution • Remove legal barriers so that services providers are able to give services • Review of curriculum of various service providers | |

Facilitator feedback on the presentations

In concluding the report back session Christian Tshimbalanga pointed out that the fear of human rights actors and activists to take a stand in difficult environments needs to be considered, amongst other issues. Chikosa Banda noted the need to constantly reflect on the adage of “leaving nobody behind” pointing out that none of the groups had remembered or referred to the needs of prisoners. The ongoing advocacy for reviewing punitive provisions within the proposed HIV and AIDS Bill was noted, including the upcoming meeting with Parliamentarians.

Conclusion

The closing remarks were made by Nthabiseng Mokoena from ARASA and Mr Harry Migochi from the Human Rights Commission.

Appendices

Attendance Register

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|--------------------|--|
| Host Institution: | Aids and Rights Alliance For Southern Africa / Africa Regional Grant On HIV |
| Venue Of Function: | Sunbird Capital Hotel, Lilongwe. Malawi |
| Activity Title: | Malawi National Advocacy Meeting On Reducing Violence And Discrimination Against Key Populations |
| Activity Date: | 14 – 15 June, 2017 |

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