



BOTSWANA

Progress Assessment

Global Fund Breaking Down Barriers Initiative

November 2023

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DISCLAIMER

This progress assessment was commissioned by the Global Fund to Fight AIDS, TB and Malaria and presents the findings of the independent research team that carried out the assessment. The views expressed do not necessarily reflect the views of the Global Fund.

Acknowledgements

The progress assessment of *Breaking Down Barriers* was led by a team of researchers assembled by the Drexel University Dornsife School of Public Health. For the Botswana assessment, the research team is comprised of Joanne Csete of Columbia University; Michaela Clayton, an independent health and human rights expert and former director of the AIDS and Rights Alliance for Southern Africa, and Peter Chibatamoto, an HIV program expert in Botswana.

The authors would like to acknowledge the participation of the many country stakeholders, program managers, technical partners and the others who shared their experience and insights and demonstrated dedication to rights-based approaches. Any errors are the responsibility of the authors.

1. Executive Summary

Since 2017 as part of the *Breaking Down Barriers* program, Botswana has received funding from the Global Fund to remove human rights-related barriers to HIV services. *Breaking Down Barriers* (BDB) provides funding for “comprehensive” programs to remove rights-related barriers, meaning the scaling up of a set of internationally recognized human rights programs. Countries are also supported to create enabling environments to advance comprehensive rights-based responses to HIV, TB and malaria.

In late 2021, Botswana was also reported to be the first high-burden country to have met UNAIDS criteria for being in the “silver tier” on the path to elimination of mother-to-child transmission of HIV. In 2022, it was announced that Botswana was the third country in the world to reach and exceed the 95-95-95 goal for HIV testing, treatment and viral suppression. The HIV testing and treatment cascade estimate was 95-98-98. Considering where Botswana started, with one of the highest national HIV burdens in history, the achievements have been truly remarkable. But concerns about stigma, discrimination and other human rights-related barriers remain especially for key populations, particularly sex workers, LGBTQI persons (that is lesbian, gay, bisexual, transgender, queer or questioning and intersex persons), and adolescent girls and other young people. The prevalence of HIV among sex workers, for example, is estimated to be 42%. There are not updated testing and treatment cascades for all key populations, but for adolescent girls and young women, for example, an estimated 82.3% of those with HIV know their HIV

status. In Botswana, people speak of the current phase of the HIV response as addressing the “5-2-2”, that is the mirror image of the 95-98-98 representing the people who are left behind who represent the “last mile” toward 100-100-100.

This assessment examines progress in HIV-related human rights programs made since the midterm assessment conducted in late 2020. The midterm assessment indicated fairly good progress across all human rights program areas, including in programs for key populations, in the GC5 grant (2019-2021). In the early stages of the GC6 grant – that is, early 2022 – unusual circumstances led to a delay in the contracting of sub-recipients (and thus sub-sub-recipients) to execute the programs. Thus, in a grant period meant to run from January 2022 to December 2024, as of late October 2023, there was only a partial disbursement of Global Fund monies for human rights-related interventions or other components of the grant. Since a significant proportion grant was allocated to human rights-related activities, this delay of Global Fund support was a serious setback to the implementation of human rights-related activities led by civil society.

Nonetheless, at times with support from other sources, including government, some program activity continued in the defined program areas. Activities exclusively or nearly exclusively supported by the Global Fund, such as the work of “REActor” community-based monitors, were curtailed because of the delay. Some human rights training of key stakeholders, such as the police, also has been stalled. But other activities went forward and held promise – for example, key population-oriented training for health workers funded by the U.S. Centers for Disease Control and Prevention (CDC) and rights literacy and paralegal support for sex workers funded by AIDSfonds. In addition, civil society groups made good use of the Constitutional review process to fan out to communities and promote the rights of key populations. BONELA (the Botswana Network on Ethics, Law and HIV/AIDS) managed to sustain important access to paralegal and legal services to pursue justice for key populations and people living with HIV. While Global Fund support was stalled, NAHPA (the government’s National AIDS and Health Promotion Agency) funding supported a number of groups working with key populations on addressing gender-based violence.

An important recent development is that USAID and PEPFAR seem poised to expand human rights-related activities in Botswana. A funding opportunity notice from USAID for activities that would begin in 2024 proposes more intensive support for key populations and support for human rights-related programs, including rights literacy, legal services, policy and legislative advocacy, and other areas also supported by the Global Fund. It will be crucial for the Global Fund and USAID/PEPFAR/CDC to work together with NAHPA and the Technical Working Group on Health and Human Rights to ensure that all of these human rights programs are well coordinated and rigorously monitored.

Because of the delay in contracting of sub-recipients (and thus also sub-sub-recipients), it will be a challenge to accelerate the movement of funds to ensure that human rights-

related objectives of the grant are met before the end of the GC6 grant cycle. This report attempts not only to discern progress in the implementation of the GF-supported human rights interventions in the period since the midterm review but also to suggest directions that might be fruitful for the rest of the GC6 grant period and for preparation of the GC7 funding request.

Scorecard for Programs to Remove Human Rights-related Barriers in Botswana

As part of Breaking Down Barriers, progress in countries is assessed on a 0-5 scale, with 0 demonstrating no programs present and 5 indicating that programs are at scale (national level), covering over 90% of key populations. Please see key below for full scale.

Key

- 0 – no programs present
- 1 – one-off activities
- 2 – small scale
- 3 – operating at subnational level
- 4 – operating at national level (>50% of geographic coverage)
- 5 – at scale at national level (>90% geographic coverage + >90% population coverage)
- ** – not a program area in the assessment periods

We are somewhat reluctant to assign scores in this progress assessment given the special circumstances that have delayed disbursement of grant funds for the human rights-related program activities. The scores noted below should be interpreted with these circumstances in mind. Accelerated implementation once the GC6 grant funds are completely disbursed could mean a dramatic acceleration in program progress and thus higher scores. These scores determined by the progress assessment team are based on the key informant interviews conducted in-country as well as documents reviewed (see methods below) and not from a stakeholder consultation or meeting.

Program Area	Baseline (2018)	MTA (2021)	Progress Assessment (2023)
Eliminate stigma and discrimination in all settings	3.1	3.8	3.4
Ensure non-discriminatory provision of health care	2.0	2.5	2.5
Ensure rights-based law enforcement practices	1.5	2.3	1.5
Improve legal literacy ("know your rights")	3.1	3.8	3.4
Improve access to justice (HIV-related legal services)	2.3	3.3	3.0

Improve laws, regulations and policies related to HIV and HIV/TB	3.0	4.3	4.0
Reducing HIV-related gender discrimination	2.5	3.4	3.3
Support community mobilization and engagement	*	*	2.5
Average Score	2.5	3.3	3.0[#]

*: no score assigned in previous assessments.

[#]: Note that the average scores only consider the first seven indicators to ensure consistency.

Although most scores in the progress assessment are higher than in the baseline, they are about the same or lower than the scores assigned in the midterm assessment. Again, acceleration of progress when GC6 funds are completely disbursed may change this picture.

2. Introduction

Since 2017, the Global Fund has provided more than US\$85 million in matching funds to scale up evidence-based programming to reduce human rights-related barriers to HIV, TB and malaria services through *Breaking Down Barriers*, catalyzing countries to commit additional financial support from within their allocations.

Breaking Down Barriers aims to support countries to have “comprehensive” programs to remove rights-related barriers. “Comprehensive” programs are those that: (a) comprise a set of activities that are internationally recognized as effective in reducing human rights-related barriers to health (see Text Box 1); (b) are accessible or serve the majority of the estimated numbers of key and vulnerable populations affected by such barriers; and (c) are adequately resourced to move from non-existence or one-off/small-scale activities to a level of implementation likely to significantly reduce human rights-related barriers to services (a sustained, mutually-reinforcing, broadly protective package at scale).

Text Box 1: Programs to Remove Human Rights-related Barriers to HIV Services

- Eliminating HIV-related stigma and discrimination in all settings
- Ensuring non-discriminatory provision of health care
- Ensuring rights-based law enforcement practices
- Legal literacy (“know your rights”)
- Increasing access to justice
- Improving laws, regulations and policies relating to HIV and HIV/TB
- Reducing gender discrimination, harmful gender norms and violence against women and girls in all their diversity
- Community mobilization and advocacy for human rights

To track progress in each of the 20 Breaking Down Barriers Program countries, the Global Fund commissioned baseline and midterm assessments in 2017 and 2019-20 respectively. In 2022-23, it commissioned second progress assessments to examine further progress and inform further investments in this area, a continuing objective of the Global Fund's Strategy for 2023-2028.

2.1 Breaking Down Barriers' Theory of Change

The theory of change for the *Breaking Down Barriers* initiative is based on evidence from the HIV and TB epidemics that human rights-related barriers to health services¹ increase vulnerability to infection and negatively affect access to, uptake of and retention in HIV and TB services, particularly for certain key and vulnerable populations. To effectively reduce these barriers, countries should implement – at appropriate scale and with high quality – a set of internationally-recognized, evidence-based, human rights and gender-related interventions (see Text Box 1). This will in turn accelerate country progress towards national, regional and global HIV targets. Efforts to remove rights-related barriers will also protect and enhance Global Fund investments and will strengthen health and community systems.

1.1. Breaking Down Barriers in Botswana

Botswana received *Breaking Down Barriers* support with US \$1 million in human rights matching funds for the GC6 grant cycle. The country matched these funds at more than two-to-one from the Global Fund main allocation. The funds were applied to all HIV program areas.

For Grant Cycle 7 (GC7), Botswana will have access to US \$750,000 in matching funds for programs to remove rights-related barriers and will be required to maintain the level of investment in human rights programming from the 2022-2024 grant cycle. Furthermore, it must (a) determine the baseline scores for the KPI E1 indicator (which measures the percentage of countries receiving human rights matching funds with increases in scale of programs to reduce human rights-related barriers) and reassess on an annual basis; (b) review and update its multiyear plan to remove rights-related barriers to HIV services; (c) maintain a functioning oversight mechanism to oversee implementation of the multiyear plan and related interventions, and (d) ensure that its funding request considers the findings of the most recent assessment of progress made in scaling up programs to reduce human rights-related barriers and aims to ensure full implementation of all human rights program essentials.

¹ The main categories of human rights and gender-related barriers to HIV and TB services include: Stigma and discrimination, including within the provision of health services; punitive laws, policies, and practices; gender inequality and gender-based violence; and poverty and socio-economic inequality.

The purpose of this progress assessment was to understand the progress of programs to remove rights-related barriers in Botswana, with attention to the quality, scale and sustainability of programmatic implementation, particularly regarding programs for key populations. It also aims to capture lessons learned related to human rights program implementation.

Specifically, the Botswana progress assessment focused on the following three priority areas:

- Assess programmatic progress since the midterm assessment;
- Assess the current national HIV policy and legal landscape and its impact on programs to reduce human rights-related barriers to access; and
- Inform the GC7 funding process.

1.2. Methods

The assessments took a differentiated approach to evaluate progress in the 20 Breaking Down Barriers countries. In Botswana, the assessment began with a desk review of relevant documents from the Global Fund and other key stakeholders. Most interviews were then conducted during a 10-day country visit from 18 to 27 October 2023. During the visit, the research team interviewed key implementers (mainly civil society organizations, government agencies, technical partners, donor representatives and other stakeholders (see full list, Annex 3).

1.3. Limitations

During the progress assessment, the team sought a diverse set of inputs and feedback from various stakeholders in Botswana, but particularly those involved in some way with human rights-related programs. Assessments such as these often find it challenging to reach everyone that has been identified as a key stakeholder, and the in-country visit occurred at what seemed to be a very busy period for the organizations most involved with rights-related programs, including the need to be present at two major conferences in the capital. It would have been useful to visit districts outside greater Gaborone, but distances between districts in Botswana are vast and visiting districts outside the capital region would have been difficult to achieve in a short time.

As was repeatedly noted at a UNAIDS-sponsored meeting on achieving the “last mile” in the Botswana HIV response during the country visit, detailed programmatic data in Botswana are often difficult to find. There was a lack of written documentation of many of the activities we heard about. A general weakness in monitoring and evaluation of many of these programs also made it impossible to base our conclusions on rigorous evaluation.

2. Background and Country Context

2.1. Overview of HIV epidemiology

HIV prevalence in persons aged 15-64 years in Botswana is estimated at 20.8%,² one of the highest national prevalence figures in the world. Remarkably, in 2022, Botswana became only the fourth country to reach and exceed the UNAIDS 95-95-95 goal for diagnosing 95% of all HIV-positive individuals, providing antiretroviral therapy (ART) for 95% of those diagnosed and achieving viral suppression for 95% of those treated by 2030. This achievement was announced to the world at the Montreal AIDS conference in 2022.³ Based on preliminary results of the fifth *Botswana AIDS Impact Survey* (BAIS V),⁴ it was estimated that 95.1% of adults living with HIV were aware of their status, 98.0% of those aware of their positive status were being treated with ART, and viral load was suppressed among 97.9% of those treated.

Botswana is also the first high-burden country to be awarded silver-tier status in prevention of mother-to-child transmission (PMTCT) of HIV.⁵ The PMTCT silver tier is accorded to countries where the rate of MTCT is less than 5%, over 90% of pregnant women receive antenatal care and ART, and HIV incidence is less than 500 per 100,000 live births. Again, as with the 95-95-95 results, the success is striking for a country that has been so profoundly affected by HIV and AIDS. HIV prevalence in persons aged 15-64 in Botswana is estimated at 20.8%.⁶

These are very considerable achievements in the general population. But for certain sub-populations, the picture is different. The HIV cascade for young people aged 15-24 years was estimated in BAIS V to be 84.5% knowing their HIV status (82.3% among girls and young women, 89.1% among their male counterparts), 98.5% of those living with HIV on treatment, and 91.6% viral suppression among those treated.⁷ It was estimated in 2019 that about one quarter of new HIV cases were among adolescent girls and young women even though they account for only 9% of the population.⁸

² *Botswana AIDS Impact Survey V 2021 (BAIS V)*, op.cit., p. 14.

³ See, e.g., Thornton J. Botswana's HIV/AIDS success. *Lancet* 2022 (13 Aug.); 400:480-81; and UNAIDS, U.S. Embassy in Botswana, "Botswana achieves UNAIDS 95-95-95 target with support from the U.S. government," 13 October 2022, <https://bw.usembassy.gov/botswana-achieves-unaid-95-95-95-targets-with-support-from-the-u-s-government/>

⁴ Government of Botswana. *Botswana AIDS Impact Survey V 2021 (BAIS V): Report*. Gaborone: National AIDS & Health, August 2023. <https://www.unicef.org/botswana/documents/botswana-hiv-aids-impact-survey-report-0>

⁵ World Health Organization. Botswana reaches key milestone in the elimination of mother-to-child transmission of HIV. Geneva, 2 Dec. 2021. <https://www.who.int/news-room/feature-stories/detail/botswana-award-feature>

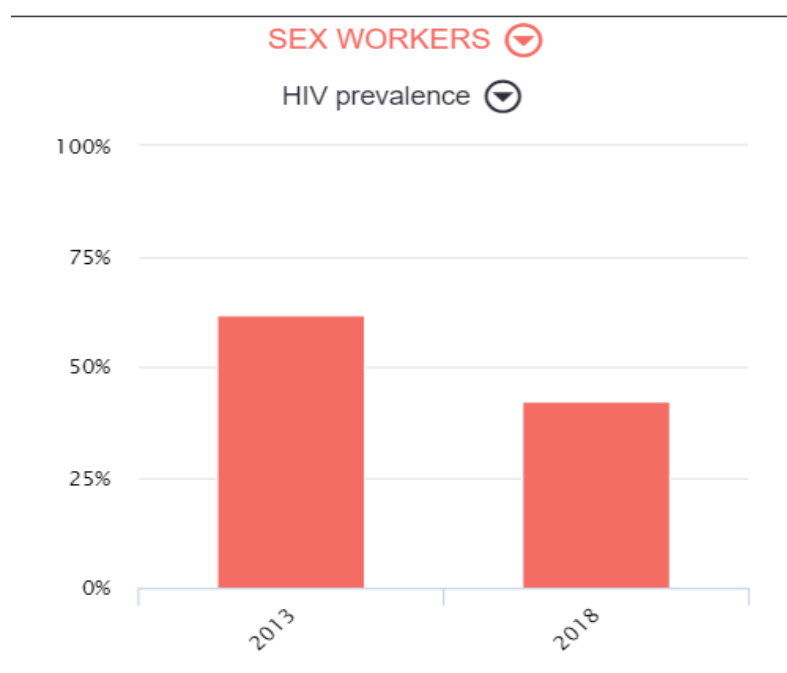
⁶ *Botswana AIDS Impact Survey V 2021 (BAIS V)*, op.cit., p. 14.

⁷ Ibid., p. 16.

⁸ Government of Botswana, National AIDS and Health Promotion Agency, *The Third Botswana National Strategic Framework for HIV and AIDS, 2019-2023*. Gaborone, 2019.

Full HIV cascades have not been calculated for all key populations. HIV prevalence among sex workers declined from 2013 to 2018 (see Fig. 1), but it was estimated in 2018 that only about half of female sex workers had been tested for HIV in the previous year or otherwise knew their HIV status.⁹ ART coverage among those sex workers known to be living with HIV was nearly 90%, but sex workers are clearly facing stigma, discrimination and criminalization-related barriers to seeking testing. ART coverage among gay men and other men who have sex with men (MSM) was estimated in 2018 at 78%.¹⁰ HIV prevalence of MSM was estimated at 15% in 2018 and of transgender persons 17%.¹¹ With respect to drug use, key informants generally suggested that injection drug use is not a significant factor in HIV transmission in the country, but there is little data on this population.

Figure 1: HIV prevalence among sex workers in Botswana, 2013 and 2018



Source: UNAIDS, Country progress report – Botswana, 2020.

In Botswana, HIV program implementers and policymakers speak of the 5-2-2 objective – a representation of those who still need to be reached as the remainders of the 95-98-98 achieved so far. 5-2-2 flips the thinking on HIV priorities. With enormous successes in the general population, there is a strong consensus in the country – including among key policy-makers -- that the “last mile” to attain in the national HIV response must lie in removing barriers, including human rights-related barriers, to HIV prevention and the seeking of HIV testing among key populations and access to and retention on treatment.

⁹ UNAIDS. Country progress report – Botswana. Geneva, 2020.

https://www.unaids.org/sites/default/files/country/documents/BWA_2018_countryreport.pdf

¹⁰ Ibid.

¹¹ Ibid.

2.2. Legal and policy context

At the time of this assessment, Botswana was in the process of reviewing its national HIV strategy. The Third National Strategic Framework (NSF III) for 2019-2023 included a commitment to rights-based approaches in HIV and especially attention to the rights and needs of key and vulnerable populations and, for the first time, a commitment to improve the policy and legal environment for the HIV response. Key and vulnerable populations identified in NSF III are as follows:

Key populations	Vulnerable Populations
<ul style="list-style-type: none">-People living with HIV (PLHIV)-Sex workers-Gay men and other men who have sex with men (MSM)-Transgender people-Other LGBT persons-People who inject drugs-Prison inmates	<ul style="list-style-type: none">Adolescent girls/young women'Non-citizens'—particularly refugees, asylum seekers, and undocumented foreignersPeople with disabilitiesRemote area dwellers

NSFIII emphasizes addressing the policy and legal environment not only related to key populations but also to eliminate harmful gender norms and gender-based violence.

Commitments from international law: With respect to international law commitments, Botswana is one of the relatively few UN member states that has not ratified the International Covenant on Economic, Social and Cultural Rights.¹² There is no national law guaranteeing the right to health or the right to be free from poverty. Botswana has also not ratified the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, which is relevant given the important presence of migrant sex workers in the country (see discussion of sex work law below).

Law on the rights of LGBTQI persons: Botswana's High Court drew the world's attention in 2019 when it struck down the Penal Code provisions that criminalized same-sex sexual conduct among consenting adults, which had been effectively defined as an "unnatural offense" in the law. Botswana thus became only the second African country to achieve such decriminalization. The detailed and thoughtful decision of the High Court was influenced by reports of discrimination and violence faced by LGBTQI persons in Botswana. It included a lengthy justification for the High Court's acceptance of an *amicus curiae* brief submitted to the court by the NGO Lesbians, Gays and Bisexuals of Botswana (LEGABIBO), whose *amicus* status was challenged by the Attorney General of Botswana. The government appealed the High Court decision. In 2021, the highest court in Botswana, the Court of Appeals, confirmed the earlier decision, finalizing the removal of

¹² See ratification status of major human rights treaties by country at <https://indicators.ohchr.org/>

the “unnatural offenses” provisions in sections 164 and 165 of the Penal Code. (Section 167 of the Penal Code prohibiting “any act of gross indecency with another person” or the inducement of a person to commit any such act was not removed as it was not raised in the plaintiff’s case before the High Court.)

Lawyers encountered by the assessment team as well as many cited in the press understood that the Court of Appeals decision put the matter of decriminalization to rest. But the Ministry of Justice in 2023 brought to the Parliament a bill that would have provided explicit protection against discrimination based on sexual orientation. The introduction of this bill was met with backlash, particularly from some faith-based groups. The Evangelical Fellowship of Botswana (EFB), a conservative Christian group, organized a march to the Parliament in July 2023 to push for defeat of the bill.¹³ The EFB contended that the bill would “open floodgates of immorality” in the form of measures such as same-sex marriage.¹⁴ The Minister of Justice withdrew the bill shortly after the march, saying that he sought to “satisfy myself that the views and concerns of all stakeholders...are considered”.¹⁵

Some legal scholars argued that the bill should never have been brought because the Court of Appeals essentially abolished sexual orientation as grounds for discrimination, removing the need for Parliamentary action.¹⁶ But several informants expected that the bill might reappear after the 2024 presidential elections. In any case, the events around the introduction of the bill underscore that a positive development from the courts is not enough to address the stigma and demonization faced in some quarters by LGBTQI persons in Botswana.

Botswana is in the process of a formal review of its 1966 Constitution. A “presidential commission of inquiry” on the Constitution was convened by President Masisi in December 2021 and presented recommendations for Constitutional reform in 2022.¹⁷ While the commission did not recommend Constitutional protections against discrimination based on sexual orientation or gender identity, it did recommend anti-discrimination protections for intersex persons. (A referendum on the Constitution is planned to be held after the presidential election in 2024.)

¹³ Dube M. Botswana churches urge Parliament to vote against bill on same-sex relations. VOA, 25 July 2023, <https://www.voanews.com/a/botswana-churches-urge-parliament-to-vote-against-bill-on-same-sex-relations-/7194996.html>

¹⁴ Ibid.

¹⁵ Dube M. Botswana parliament defers debate on controversial homosexuality bill. VOA, 1 August 2023. <https://www.voanews.com/a/botswana-parliament-defers-debate-on-controversial-homosexuality-bill/7207181.html>

¹⁶ See, e.g., Southern Africa Litigation Centre, “No need for debate, uphold the Court of Appeal decision on LGBTQI+ rights in Botswana,” 10 July 2023. <https://www.southernafricalitigationcentre.org/2023/07/10/no-need-for-debate-uphold-the-court-of-appeal-decision-on-lgbtq-rights-in-botswana/>

¹⁷ Report of the Presidential Commission of Inquiry into the Review of Constitution of Botswana. Gaborone, September 2022. <https://constitutionnet.org/vl/item/botswana-final-report-presidential-commission-inquiry-2022>

Law related to psychotropic drugs: Drug law in Botswana allows for severe penalties for relatively minor offenses. By the terms of the Drugs and Related Substances Act of 1992, conviction for use or possession of any “habit-forming drug” other than cannabis can draw a sentence of 10-15 years plus a large fine.¹⁸ For cannabis possession, the prison sentence is specified as 5-10 years with a fine, up to three years if the amount of cannabis involved is less than 60 grams. The text does not specify lower penalties for possession of minor amounts of other “habit-forming drugs”. The commission on Constitutional reform recommended an amendment of the country’s drug law to include a provision to enable the imposition of the death penalty for “drug lords and drug traffickers”.¹⁹ The commission recommended retention of the death penalty more generally. Botswana is not a party to the optional protocol to the International Covenant on Civil and Political Rights that aims at the abolition of the death penalty.²⁰

Law related to sex work: The stigma, violence and other abuse faced by sex workers in Botswana,²¹ at whatever level they occur, are reinforced by the sex work law and law enforcement in the country. As in a number of countries, in Botswana sex work *per se* is not unlawful, but many elements that make sex work a feasible livelihood are prohibited by law, including solicitation, brothel-keeping and managing a sex worker.

Article 155 of the Botswana Penal Code provides that anyone who “knowingly lives wholly or in [part] on the earnings of prostitution” or “persistently solicits or importunes for immoral purposes” is guilty of a criminal offense.²² Article 155, which takes aim at managers of sex workers, goes on to define as proof of “knowingly living on the earnings” a person’s being “habitually in the company of a male or female prostitute” or exercising “control, direction or influence over the movements” of a sex worker such that the person is demonstrably “aiding or abetting or compelling” sex work. Article 156 of the Penal Code hammers home a similar point by noting that anyone who lives off the earnings of “prostitution” and exercises control over a sex worker for the purpose of financial gain commits an offense. Article 149 prohibits procurement of “any person to have unlawful carnal connection” or of a person to become “a common prostitute” or procurement of a person “with the intent that the procured person may become an inmate of or frequent a brothel” in Botswana or elsewhere.

Article 157 of the Penal Code authorizes the police with a warrant to enter and search any house in which sex work takes place or is suspected to take place and to arrest persons within. A warrant in this case can be issued “if it appears to a magistrate by information on oath that there is reason to suspect that any house...is used by a person for purposes of

¹⁸ Republic of Botswana. Drugs and related substances, Act no. 18 of 1992, article 16.
<https://www.botswanalaws.com/StatutesActpdf/1992Actpdf/DRUGS%20AND%20RELATED%20SUBSTANCES%20ACT,%2018%20OF%201992.pdf>

¹⁹ Report of the Presidential Commission of Inquiry, op.cit., para 31.1.4.

²⁰ See <https://indicators.ohchr.org/>, op.cit.

²¹ See AidsFonds, Hands Off, BONELA et al. Facts about sex work and violence in Botswana. (Undated but based on a 2017 survey.)
[ADD URL]

²² Republic of Botswana. Chapter 8:01 – Penal Code. [complete with date, etc.]

prostitution” and that someone living in or frequenting the house may be living on the earnings of sex work. Article 158 specifies that it is an offense to keep or manage a brothel, and that this may include landlords or tenants or any “person in charge” if they know that the premises are “used as a brothel”.

In addition to the Penal Code provisions addressing sex work directly, other articles of the Penal Code are regularly used to justify the arrest of sex workers in Botswana, according to Sisonke Botswana, the principal sex worker organization in the country.²³ These include articles on “offensive conduct” in public, “common nuisance”, idling and being disorderly, and being a vagabond or otherwise unable to “give a good account” of one’s presence in a public place. Sex workers have reported frequent arrests and detentions under all of these provisions.²⁴ Virtually all of these offenses may be punishable by imprisonment.

As noted by key informants in the present assessment and in other sources,²⁵ a significant number of sex workers in Botswana are immigrants without legal resident status. The exact number is not known. Under the terms of Botswana’s Immigration Act of 2010, a person is defined as an “undesirable immigrant” if that person “is a prostitute or a person who lives or has lived or knowingly receives or has received any part of the earnings of prostitution or has procured another person for immoral purposes”.²⁶ “Undesirable” immigrants are subject to deportation. Immigrant sex workers are rightly fearful of involuntary deportation if they have contact with police.

Sex workers have repeatedly reported violations of their human rights by police and others in Botswana. In a 2023 submission for the fourth Universal Periodic Review (UPR) of Botswana in the UN Human Rights Council, Sisonke Botswana and its allies said that the legal framework, though not directly prohibiting sex work, nonetheless “posed a material risk to sex workers, and had violated their rights to work, to health, to bodily autonomy and to be free from violence.”²⁷ Their statement to the UPR further noted that the provisions of Article 157 with its reliance on the mere suspicion that sex work might take place undermines sex workers’ “ability to secure access to housing and to an adequate standard of living”.²⁸ They further noted that sex workers were excluded from government assistance to persons whose livelihoods were affected by COVID-19.

Gender-based violence: Regarding gender-based violence, Botswana’s Domestic Violence Act of 2008 defines domestic violence as “any controlling or abusive behaviour

²³ Interview with Tosh Beka, executive director, Sisonke Botswana, in Gaborone, 19 October 2023.

²⁴ Sisonke Botswana and BONELA, CEDAW Shadow Report, op.cit.

²⁵ See, e.g., Lame L. Sex workers irk Maun tribal leadership. *Midweek Sun*, 23 Sept. 2023, <https://www.pressreader.com/botswana/the-midweek-sun/20230920/281642489781346>

²⁶ Government of Botswana. Immigration Act 2010, no. 3, Government Gazette of 28 January 2011.

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91527/114123/F-2026944057/BWA91527.pdf>

²⁷ UN Human Rights Council, Working Group on the Universal Periodic Review. Summary of stakeholders’ submissions on Botswana. UN doc. A/HRW/WG.6/43/BWA/3, 13 February 2023. <https://www.ohchr.org/en/hr-bodies/upr/bw-index>

²⁸ Ibid., para 39.

that harms the health or safety of the applicant.”²⁹ As noted by the Botswana Network on Ethics, Law and HIV/AIDS (BONELA) and the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee), it remains of concern that Botswana does not criminalize rape within marriage.³⁰ The minimum sentence for a rape conviction increases from 10 to 15 years if the convicted person is HIV-positive but unaware of that status, and to 20 years if the offender is HIV-positive and aware of it.³¹ HIV testing is mandatory for persons convicted of rape.

Transmission and non-disclosure of HIV: Botswana’s legal framework on “willful” transmission and non-disclosure of HIV does not correspond to UN guidelines. Article 184 of the Penal Code defines as a criminal offense “unlawfully or negligently” undertaking any action known to be likely to transmit any “disease dangerous to life”; HIV is not specified.³² In the Public Health Act of 2013, however, HIV transmission offenses are specified. Section 116 of the law enables criminal prosecution of someone who knows his/her HIV status but fails to “take all reasonable measures and precautions to prevent the transmission of HIV to others....”³³ Under this law, people living with HIV who know their status are required to inform any prospective sexual partners of their status or face various forms of punishment. In section 58, the Public Health Act defines as a crime the act of “willful exposure of another to a communicable disease without taking proper precautions against spreading the disease” though it does not define “proper precautions”.³⁴ UNAIDS has argued that laws of this kind are too broad and may serve only to discourage people from being tested for HIV and may exacerbate stigma.³⁵ Rather, criminal sanctions are appropriate only in the very rare case where a person is aware of his/her HIV-positive status and acts with demonstrable intent to transmit HIV, there is proof that transmission has occurred, and there is evidence that the accused person is the source of the plaintiff’s infection.

2.3. National ownership and the enabling environment

There seems to be a strong consensus in Botswana that human rights-related barriers to health services are an important part of the remaining challenge to close the gap represented by 5-2-2, as is well reflected in the national human rights plan for HIV and TB. That consensus, which has been the basis for much of the Global Fund’s support in Botswana, was reflected strongly in statements by government, civil society and donors in the “last mile” conference organized by UNAIDS in October 2023. It is also reflected in the future funding priorities of USAID and PEPFAR. Given that consensus, the position of the

²⁹ Republic of Botswana. Domestic Violence Act 2008 (chapter 28:05). <https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/dv%20act%202008.pdf?vs=2806>

³⁰ Mosikare L. Botswana are against marital rape – BONELA. *Mmegi*, 23 April 2021. <https://www.pressreader.com/botswana/mmegi/20210423/282411287160681>

³¹ Penal Code, op.cit., section 142.

³² Ibid., section 184.

³³ Government of Botswana. Public Health Act 2008 (chapter 63:01), <https://www.laws.co.bw/download/public-health-act-chapter-6301/>

³⁴ Ibid.

³⁵ UNAIDS. Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations. Geneva: Joint United Nations Programme on HIV/AIDS, 2013.

Legal and Human Rights Officer in NAHPA is especially important. If NAHPA is to provide leadership on oversight, coordination, data collection and analysis, and monitoring and evaluation of human rights-related programs, especially for key populations, there is a case to be made for expanding the Legal and Human Rights capacity of NAPHA with more staff. Institutionalizing staff capacity in data collection and analysis and monitoring and evaluation of human rights programs is needed.

There are weaknesses in data on key populations which cannot be rectified by infrequent and expensive bio-behavioral surveys. As suggested above, building on existing efforts in community-led monitoring is likely to be necessary, including by key population-led organizations. For CLM to be effective, an investment of public-sector resources will be needed to ensure collection and analysis of CLM data to inform programmatic resource allocation and policy advocacy.

The Technical Working Group on Health and Human Rights has an important role to play especially as an entity where civil society and key population concerns can be prioritized. A strong secretariat for this group, preferably not housed in government, should ensure regular meetings of the group and agendas that cover issues of current concern and allow all voices to be heard.

Recommendations

- Technical staff should be added to the Legal and Human Rights office of NAHPA to strengthen capacity especially for monitoring and evaluation and data collection and analysis. If this expansion is supported by donors, it should include a plan for the new position(s) eventually to be paid for by government.
- NAHPA should ensure adequate funding for a secretariat or other coordinating body of the Technical Working Group on Health and Human Rights, at least for the period of the GC7 grant.

3. Towards Comprehensiveness: Achievements in Scope, Scale and Quality for Programmes to Reduce Human Rights-Related Barriers to HIV and TB Services

This section examines progress towards a comprehensive response to remove rights-related barriers for HIV. It starts with an overview of Global Fund-support human rights investments, and then presents detailed observations by program areas for HIV. It further discusses Botswana's progress in achieving the human rights-related program essentials

for HIV. Finally, this section concludes with some overall observations about programs to remove rights-related barriers to HIV in Botswana.

It should be noted that some Global Fund-supported human rights activities have not been intended to cover all 27 districts in the country. PEPFAR supports some human rights-related activities along with clinical services in more districts than those in which Global Fund support has dominated. As noted in the funding request for GC6, Global Fund-supported activities relating to addressing violence and stigma among adolescent girls and young women (AGYW) were intended for five districts -- Francistown, Tutume, Ngamiland, Selebi-Phikwe and Palapye. Community empowerment activities, including mentoring MSM organizations and more general GBV activities, were intended for Ghanzi, Goodhope, Jwaneng, Kgalagadi North, Kgalagadi South, Lobatse, and Tutume. All of these are classified by the government as high-priority districts for HIV programs. It was hoped that some community empowerment activities would expand to cover 12 districts but, according to key informants in government and civil society, the stalled GC6 funding may affect that goal.

3.1. Overview of Investments and Implementation Arrangements

Under GC6, in addition to a main allocation of US \$20.5 million for HIV, Botswana received \$1 million in catalytic funds for programs to reduce human rights-related barriers to HIV. The country matched the catalytic grant from the main allocation. The amounts requested for HIV human rights-related intervention areas in the human rights module of the GC6 funding request are shown in this table:

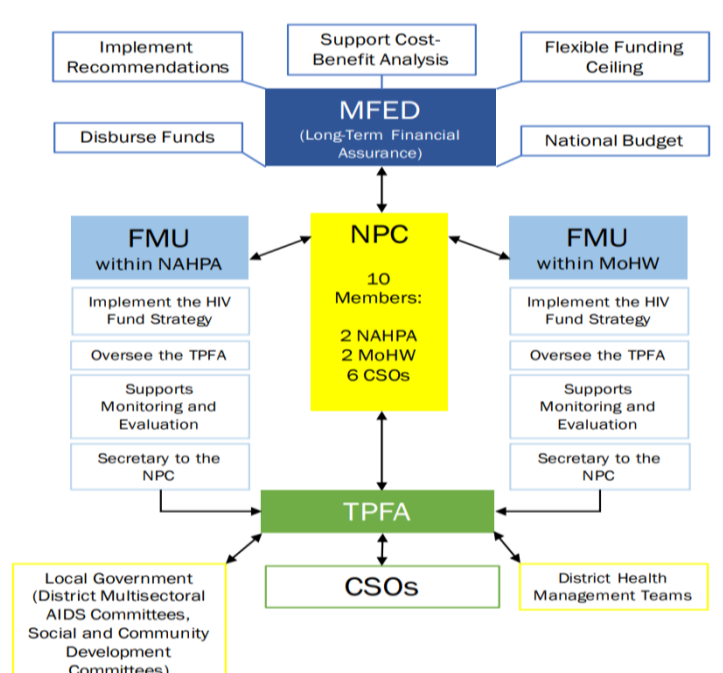
Intervention (from human rights module)	Total (US\$)
Community mobilization and advocacy (CLM and community-led advocacy included, but not in human rights module)	
HIV-related legal services	229,174
Human rights and medical ethics sensitization related to HIV for health care providers	424,499
Improving laws, regulations and policies relating to HIV	259,592
Legal literacy ("know your rights")	377,703
Reducing HIV-related gender discrimination, harmful gender norms and violence against women (\$2.1 mil for GBV in prevention module)	182,173
Sensitization of lawmakers and law-enforcement agents	
Stigma and discrimination reduction (HIV only)	912,315
TOTAL	2,385,456

Since the government of Botswana assumes costs for a large part of HIV commodities/medicines, a relatively large percentage of Global Fund support goes to prevention and human rights-related activities.

Implementation arrangements

The National AIDS and Health Promotion Agency (NAHPA), formerly the National AIDS Control Agency, is charged with coordinating the national HIV response “through a sustained multi-sectoral partnership to prevent new HIV infections and reduce the burden of NCDs and AIDS”.³⁶ In 2019, NAHPA conducted an exercise with civil society organizations (CSOs) to establish a process by which government funds could be effectively channeled to CSOs and NGOs “through grants, subventions, or contracts” to enable CSOs and NGOs “to deliver goods and services of the agreed quality and standard to communities on behalf of the government.”³⁷ The exercise concluded that a new National Planning Council (NPC) comprised of representatives of civil society, NAHPA and the Ministry of Health and Wellness (MOHW) should be created, which would work with fund management units within NAHPA and MOHW to ensure the channeling of money to a third-party fund administrator (TPFA) which would efficiently ensure disbursement of funds to CSOs. (See figure 2 below; MFED is Ministry of Finance and Economic Development.)

Figure 2: Proposed structure for disbursement of HIV funds to civil society-led efforts



³⁶ NAHPA description at <https://www.govserv.org/BW/Gaborone/400453160018514/National-AIDS-&-Health-Promotion-Agency>

³⁷ NAHPA and ACHAP. Botswana's Fund Strategy for CSO-led HIV Services. Gaborone, 2019. https://pdf.usaid.gov/pdf_docs/PA00WBSJ.pdf

It was planned that this structure would be used for the disbursement to CSOs of funds from the Global Fund GC6 grant. Following the delay of the disbursement of GC6 funding, according to the NAHPA human rights lead, it was decided to abandon this scheme. The assessment team was told that NAHPA would be the fund administrator to civil society – that is, in the case of the Global Fund, NAPHA as principal recipient would disburse to CSOs through civil society sub-recipients – without the Planning Council or the TPFA in the scheme above. Several civil society informants expressed concern that because government processes can be slow and cumbersome, a single governmental principal recipient would be unlikely to serve civil society-led efforts in a timely way.

There are 27 health districts in Botswana of which 12 are considered high-priority districts for HIV programming.³⁸ Health services are largely provided through District Health Management Teams, which run curative and preventive services. Most districts also have District Multi-Sectoral AIDS Committees, which are meant to bring together representatives of health, social service, law enforcement and other local authorities with civil society organizations and sometimes traditional leaders and private corporations.

As noted above, because of the delay in the launching of the complete GC6 funding, the current assessment was unable to examine some activities that were planned to benefit from this funding. Nonetheless, because of other funding added to partial Global Fund monies, including from other donors and NAHPA, many activities related to the goals in the HIV human rights plan went forward. According to NAPHA and BONELA, in 2021 and 2022, NAPHA made funds for key population and human rights-related work available to a number of civil society organizations through BONELA to streamline disbursement in a non-competitive process. Recipients included key population-led organizations such as Sisonke Botswana (sex workers) and LEGABIBO and Success Capital (LGBT persons), organizations working with key populations such as Nkaikela Youth Group (sex workers and their families), the Botswana Network of People Living with AIDS (BONEPWA), and organizations working against gender-based violence. The NAHPA funds disbursed for key population and human rights-related work in 2023 were not yet made available as of the end of October 2023.

All of the newly appointed Global Fund CSO sub-recipients – BONELA (human rights), ACHAP (AGYW) and BUMMHI (formerly known as Botswana-University of Maryland School of Medicine Health Initiative, but now registered officially as BUMMHI) (key populations) – were making plans to accelerate the disbursement of funds as soon as sub-sub-recipients could be identified and contracted.

Technical working group and other donors

³⁸ These are Kweneng East, Francistown, Gaborone, Mahalapye, Kgatleng, Selebi-Phikwe, Serowe/Palapye, Tutume, Bobirwa, North East, Goodhope and Boteti. See *ibid.*, p. 10.

A technical working group was formed to advise and oversee the HIV-related legal environment assessment in Botswana in 2017. In 2019, according to key informants, that group was re-established as a Health and Human Rights Technical Working Group to help oversee and coordinate implementation of the HIV-related human rights plan, *Removing Legal and Human Rights-Related Barriers to HIV/AIDS and TB Services in Botswana: A National Plan (2019-2024)*. The group includes representatives of NAHPA, the Ministry of Health and Wellness, the Ministry of Basic Education, the Botswana Police Service, the Botswana Prisons and Rehabilitation Service, UN agencies led by UNAIDS, USAID, PEPFAR, civil society organizations working on HIV-related human rights issues, including organizations led by and working with people living with HIV, sex workers, LGBTQI persons and people with disabilities, as well as other service providers and academic experts. The Technical Working Group (TWG) has continued to meet, though not every quarter. Respondents indicated that the TWG meetings were most effective and compelling when they dealt with a specific current issue or problem.

There are a range of donors supporting human rights-related work in Botswana in addition to the Global Fund. In subsequent sections, this report discusses a number of activities related to human rights and gender-based violence supported by PEPFAR, USAID and the U.S Centers for Disease Control and Prevention (CDC), which together constitute the biggest donor to Botswana's HIV response. AidsFonds in the Netherlands has supported the "Hands Off" project addressing violence and other human rights concerns of sex workers. Rainbow Identity Association, which promotes the rights of transgender and intersex persons in Botswana, has received support from Mama Cash, also based in the Netherlands. The European Union is funding a number of gender-related and GBV activities. Some organizations working with men on GBV issues have also received funds from the national alcohol levy.

3.2. Progress to Remove Barriers to HIV Services

(a) Eliminate stigma and discrimination in all settings

HIV program area	Score		
	Baseline	Mid-Term	Progress
Eliminate stigma and discrimination in all settings	3.1	3.8	3.4

The BDB midterm assessment found that programs to address HIV-related stigma and discrimination had expanded since the baseline assessment and were demonstrating a mix of approaches. Anti-stigma work seems to be built into many activities led by both civil society organizations and government, though there seems to be little coordination of these activities, and monitoring and evaluation is weak.

Botswana has also joined the Global Partnership for Action to Eliminate All Forms of HIV-Related Stigma and Discrimination. Countries in the Global Partnership are meant to designate priority settings for addressing stigma and discrimination – from among family/community, health sector, education, workplace, justice setting, and emergency setting – and to have a national plan for work in this area in the chosen settings. The assessment team was told that for Global Partnership purposes, Botswana is using the “National Strategic Plan to Reduce Human Rights-Related Barriers to HIV and TB Services 2020-2025”³⁹ (finalized in August 2020) as part of BDB activities. With respect to stigma, the plan includes developing a “harmonized national training manual” on HIV, TB and human rights; various trainings for government and civil society entities; community and school-based dialogues; and workplace and health-sector activities.

As noted in the midterm review, the Stigma Index 2.0 in Botswana was delayed because of COVID. In the present assessment, key informants told us that the report of Stigma Index 2.0 was drafted, but we were unable to obtain a copy as the report was not yet formally launched. A short summary that was made available indicated that the survey found internal stigma (also called self-stigma) to be more pronounced than external stigma – stigma resulting from actions, attitudes, etc. of other persons or the community as a whole –and experienced more deeply among younger persons (age 18-34) than older persons living with HIV. Stigma was judged to be felt more severely by LGBTQI persons than by sex workers and people who use drugs.

Some key informants said that this result was not surprising because “external” stigma had greatly declined in Botswana because HIV affects so many people and is to some degree “normalized”. Staff of BONELA, arguably the most prominent organization working on HIV-related human rights in Botswana, expressed another view, asserting that internal stigma could not be high if external stigma was low because internal stigma does not just appear on its own without external stimuli. At the time of this writing it is not clear how or when the results of Stigma Index 2.0 will be launched and/or used to advance anti-stigma programming.

Some examples of activities reported to the assessment team in the period since the BDB midterm assessment are noted in the table below. This is not an exhaustive list, and many of these activities have primary objectives not necessarily related to reduction of stigma and discrimination. (Given available data, it was not always possible to know the exact geographic scope of every activity.) Stigma activities in the health sector are noted in the next section.

³⁹NAPHA, The Global Fund, UNAIDS. National Strategic Plan to Reduce Human Rights-Related Barriers to HIV and TB Services: Botswana 2020-2025 https://bonela.org/wp-content/uploads/2022/07/crg_humanrightsbotswana2020-2025_plan_en.pdf

Selected activities to reduce HIV-related stigma and discrimination, 2022-2023

Activity	Implementer/informant	Location / reach
Dialogues with chiefs and other community leaders on intersex and trans rights and need for non-discrimination, sometimes including school officials, village development committee members; also some radio appearances	Rainbow Identity Association	Villages and districts since Jan. 2022: Goodhope, Artesia, Mogowano and other villages near Molepolole, Ranotswa, Shadishadi, Letlhakeng, others where chiefs were welcoming (funding from Kaleidoscope Trust); some encounters with religious leaders
REAct monitoring of cases of HIV-related and key population-related discrimination, non-consensual disclosure of HIV status, etc.	BONELA	Was 11 districts; paused due to delay in Global Fund support
Community dialogues and other meetings to raise awareness on the LGBT court cases and need for non-discrimination	LEGABIBO support group members	16 locations nationwide
Awareness-raising in the community to reduce stigma against sex workers and their children and thereby help keep the children in school; includes dialogues with faith leaders and traditional chiefs	Nkaikela Youth Group	Gaborone, Kweneng East, South East, Jwaneng. Working on expansion to Goodhope and Lobatse (funding from USAID/PEPFAR through FHI360; some funding from NAHPA)
Radio messages covering, among other issues, the need for supporting people living with HIV and key populations	NAPHA sometimes with civil society guests	Weekly on GABZ FM, which calls itself Botswana's "leading adult contemporary radio station, with mature, well researched, balanced and well-presented content".
Awareness-raising on facts of HIV with men's groups and faith leaders to reduce internal stigma among men and improve acceptance among faith leaders	Men and Boys for Gender Equality	Selected districts (some funding from NAPHA)
Radio messages in the national language on stigma, discrimination and violence faced by sex workers and the need for rights protections	Sisonke Botswana	(Supported by AIDS Fonds as part of the Hands Off! Project)

As noted in the midterm assessment, community dialogues of various kinds are a mechanism that seems to hold promise in Botswana, particularly where traditional chiefs (*dikgosi*) and local officials can hear from people living with HIV and groups working with

or led by key populations. But, as key informants noted, there has yet to be rigorous evaluation of the community dialogues, an area in which technical assistance may be needed.

Looking ahead, BONELA noted that it hopes to conduct a national campaign to raise awareness of U=U messages to counter myths about HIV transmission and thereby reduce stigma. While U=U has been part of information available to people in some forms, it has not been the center of a national campaign. One key informant whose organization works with men on questions of GBV and HIV also noted that they find in talking to men's groups that many men do not understand U=U. (He also said that some men think that they can prevent HIV transmission by praying before sex.)

Botswana is planning an integrated bio-behavioral survey (IBBS) that, according to key informants who have worked on the planning, has been delayed for some time and is meant to include transgender persons and people who use drugs, two populations about which there has been little systematic data collection. It is hoped that the survey will shed some light on stigma faced by these populations as well as other indicators related to access to HIV services and HIV status. The assessment team was told that data collection will begin in early 2024 in the hope that results will be available mid-2024. We asked Rainbow Identity Association, which works with transgender persons, whether transgender persons would be likely to come forward to participate in the survey, given the fear they may have. A representative of RIA said they would participate if it is clear that the survey respects them as a distinct population and does not lump them together with MSM.

In the current assessment, numerous informants asserted that some civil society organizations, even those working with key populations, do not have a good working understanding of human rights issues related to HIV. It was reported by a number of NGOs that when they needed training or technical help on human rights issues, they turned to BONELA for assistance. While this is a sensible strategy given the depth of BONELA's experience in the area, there is a need to strengthen human rights knowledge among civil society organizations in the HIV response beyond BONELA and a few others, as several informants noted. NAPHA has organized a major two-day human rights training for civil society organizations and community-led networks in November 2023 that will cover human rights-related barriers to services, including stigma and discrimination, and principles for designing programs to address them.

There seem to be relatively few activities that aim to confront HIV-related discrimination (not just stigma). BONELA manages a REAct system, by which trained agents ("REActors") document HIV-related human rights violations, including discrimination, in several locations in the country. BONELA has the capacity to help resolve cases with the assistance of its paralegals through mediation or other processes and, where necessary, legal assistance. (See access to justice section below). Botswana does not have a law explicitly prohibiting HIV-related discrimination, as found in many countries. Informants told

the assessment team that the Constitution is interpreted as protecting against discrimination based on health status such as HIV-positive status. As BONELA's lawyers noted, the Employment Amendment Act of 2010 also has extensive protections against discrimination based on health status in the workplace, though HIV is not mentioned explicitly

Recommendations

- NAHPA and the Technical Working Group should develop and implement nationwide dissemination of the results of the Stigma Index 2.0 study, particularly those related to the stigma and discrimination faced by key populations. This should include messages in Setswana disseminated through mass and social media.
- The Technical Working Group on Human Rights under NAHPA's guidance should map and catalogue all activities meant to address HIV-related stigma and discrimination in the country and should develop and implement tools for rapid evaluation and identification of most effective activities. An evaluation tool for assessing the impact of community dialogues should be developed as a priority. Findings of any such evaluations should be used to inform further investment in anti-stigma activities.
- The Technical Working Group on Human Rights should revisit the stigma and discrimination elements of the "National Strategic Plan to Reduce Human Rights-Related Barriers to HIV and TB Services" in light of the Stigma Index 2.0 results and the mapping and evaluation exercise recommended above. Interventions to address HIV-related stigma and discrimination should be reprioritized as needed.

(b) Ensure non-discriminatory provision of health care

HIV program area	Score		
	Baseline	Mid-Term	Progress
Ensure non-discriminatory provision of health care	2.0	2.5	2.5

The BDB midterm assessment found that there was training of health care workers on human rights in a number of districts, but that a comprehensive national approach to pre-service and in-service training was still needed lacking. The midterm assessment reported numerous accounts of sex workers and LGBTQ persons being treated disrespectfully in health services. The current assessment team heard similar accounts. While the emergency of the effort by BONELA with BUMMHI described below is promising, it remains small, and recommended progress on pre-service training has not progressed.

The NGO BUMMHI has long experience in working with health facilities in all 27 health districts and, for example, has had some success in supporting the roll-out of PrEP in the

country.⁴⁰ A promising development is that BONELA has been contracted by BUMMHI to contribute human rights content to the three-day training of health-care workers that BUMMHI conducts with support from the U.S. Centers for Disease Control and Prevention (CDC). The course aims to help health professionals make their facilities and services key population-friendly and to ensure they offer a minimum package of services for key populations.

As of October 2023, nine districts benefited from this updated training led by BONELA, according to key informants, with about 20 participants in each district. The updated course now includes a wide range of human rights topics, including the legal framework in Botswana, addressing stigma and discrimination, examining attitudes toward people living with HIV and key populations (“values clarification”), and best practices and practices to avoid in providing care to key populations. Years ago BONELA developed and has continued to use and refine a Human Rights Training Manual, which it says has now been accepted by NAHPA for regular training of health workers in the public health sector. NAHPA informed the assessment team that the plan for a full roll-out of human rights pre-service and in-service training for all health workers in the public health sector is not yet complete, but the courses with BUMMHI appear to be a good start. In November 2023, BONELA estimated that over the years it has trained over 629 health workers. It is not clear what kind of follow-up or evaluation of these CDC-supported training sessions is planned.

BONELA also reported that it operates drop-in centers in Maun, Francistown, Palapye, Tutume and Boteti where integrated services and referrals are provided to people living with HIV and key populations. Nkaikela Youth Group also has drop-in sites for HIV testing, counseling and referral to friendly facilities for treatment in the four districts where it has worked. LEGABIBO has five drop-in centers in the country estimated to be serving some 6555 LGBTQI persons with health services and referrals to LGBTQ-friendly service providers.

Since the midterm assessment, a number of other CSO-led activities have been undertaken to directly address the attitudes and practices of health-care providers or students in institutions that train health professionals. These include:

- Sisonke Botswana reported that it has assisted health facilities in Palepye, Francistown and Gaborone to be “sex worker-friendly”, ensuring especially that sex workers living with HIV are promptly referred for treatment and support and that sex workers who are survivors of gender-based violence get the services they need.
- For years, Nkaikela Youth Group (NYG) staff reported that they have worked closely with matrons at health facilities in the four districts where it works to promote respectful services for sex workers, including services related to GBV. Peer

⁴⁰ University of Maryland School of Medicine, “BUMMHI assists national rollout of PrEP in Botswana,” 2022, <https://www.ciheb.org/news/impact-stories/2021-impact-stories/bummhi-assists-national-rollout-of-prep-in-botswana.html>

educators and navigators supported by NYG have helped to build relations with health facilities to the point where NYG personnel are notified by health-care workers if, for example, a sex worker misses a follow-up visit. NYG also persuaded matrons and nurses in health facilities not to call the police when migrant sex workers present for care. NYG also operates three drop-in locations where sex workers and others can receive HIV testing and counseling, PrEP or referral for PrEP, condom education, and cervical cancer screening, among other services. NYG also participates in District Health Management Team meetings to raise key population concerns.

- Rainbow Identity Association (RIA) conducted sensitization sessions with health-care workers in Sekgoma Memorial Hospital, in Goodhope District, Kasane and Boipelego Clinic in the second half of 2022 and is continuing this work in 2023 as funding allows. Focusing especially on nurses and midwives, RIA reported encountering health-care providers who were unaware that intersex and transgender persons existed in Botswana. In November 2023, RIA also lectured to second-year public health students at IDM College in Gaborone on needs and rights of transgender and intersex persons.

Community-led monitoring (CLM) in the health sector is also potentially important for ensuring non-discriminatory attitudes and practices in health service delivery. PEPFAR has for several years contracted CSOs in 20 of Botswana's 27 health districts⁴¹ to "provide a direct feedback mechanism to clients and beneficiaries of these services throughout the health service delivery experience to diagnose persistent issues and barriers to service uptake".⁴² According to the PEPFAR acting coordinator in Botswana, PEPFAR-supported CLM is designed to collect both quantitative (rapid survey) and qualitative (focus group, etc.) data. The quantitative data covers two indicators of stigma having to do with confidentiality and privacy in health services. Focus group discussions can include a broader range of questions about whether services are, for example, friendly to key populations. CLM results are analyzed and discussed with community representatives, service providers and managers of health facilities to inform dialogues and collaborative development of follow-up activities. District Health Management Teams are involved if issues are pertinent to their jurisdiction.

The qualitative and quantitative CLM data informs feedback to health sector decision-makers and enables the organization to prioritize its activities that involve the health sector. Incidents of stigma and discrimination are monitored in addition to other lapses in service delivery. Both Victus Global Botswana, one of the CSOs PEPFAR supports for CLM in the health sector, and BONELA staff noted the importance of integrating HIV services with other primary health care services, which is a goal of the National Strategic

⁴¹ The 20 districts are Bobirwa, Boteti, Francistown, Gaborone, Goodhope, Kasane, Kgatleng, Kweneng East, Lobatse, Mabutsane, Mahalapye, Moshupa, Ngamiland, North East, Palapye, Selebe Phikwe, Serowe, South East, Southern and Tutume.

⁴² Funds for NGOs. PEPFAR Botswana community-led monitoring program. July 2022, <https://www2.fundsforngos.org/latest-funds-for-ngos/pepfar-botswana-community-led-monitoring-program/>

Framework and a recommendation of the Stigma Index 2.0 study. For key populations, for example, stigma can be amplified if one has to explain one's situation as a sex worker or an LGBTQ person several times in a single health facility because of siloed services for different conditions.

While the main purpose of the PEPFAR-supported CLM is to improve services at the facilities monitored, several informants noted that it would be helpful to have all of the human rights-related CLM data from the health sector centralized, analyzed and monitored over time to track trends over time and location.

Recommendations

- The key population-oriented training that BONELA has conducted in collaboration with BUMMHI should be evaluated. This evaluation should inform plans to expand or revise the training program.
- NAHPA should use tested human rights-related training materials from BONELA and others to ensure that all health-care providers working with patients have pre-service and regular in-service exposure to HIV-related human rights information. In-service human rights training should not be one-off but rather one component of a package of institution-level changes to ensure a rights-based approach to service delivery, including having client-friendly mechanisms of registering complaints and seeking redress.
- NAHPA or the Ministry of Health and Wellness should create an electronic platform (or combine with an existing platform) that would enable compilation and analysis of CLM and other data on human rights violations in health services and would inform the prioritization and placement of human rights-related interventions in the sector.

(c) Ensure rights-based law enforcement practices

HIV program area	Score		
	Baseline	Mid-Term	Progress
Ensure rights-based law enforcement practices	1.5	2.3	1.5

The BDB midterm assessment found that activities to sensitize the Botswana Police Service (BPS) to human rights -- especially key population -- issues were somewhat sporadic. There was little progress on institutionalizing HIV-related human rights pre-service and in-service training for police, which are goals of the national plan for reducing HIV-related human rights barriers. The current assessment finds that these observations are still pertinent, and the need to sensitize BPS officers and leadership remains significant. We judge the situation to be comparable to the baseline in that regular sensitization of the police has not moved forward, and the police seem as closed to understanding LGBTQ rights as before the court decisions of 2019 and 2021.

The assessment team heard reports of sex workers continuing to be detained by police, often without formal charges being brought, sometimes facing extortion and other abuse, and fearing or not finding it useful to report to the police incidents of violence by clients, for example. Sisonke Botswana also reported that fines are imposed on detained sex workers, but the police refuse to give them receipts to prove that the fines are paid. The BPS senior superintendent charged with health and wellness, interviewed in this assessment, emphasized that the police are obliged to arrest and detain anyone for idling or loitering who cannot justify his or presence in a public place.⁴³ He noted that this practice is generally for the safety of the sex worker and not for the purposes of bringing charges. Failure to protect sex workers in this way, in his view, would constitute neglect on the part of police.

Following the 2021 decision of the Court of Appeals removing Penal Code prohibitions of same-sex sexual conduct, it might be hoped that LGBTQI persons in Botswana would face less rejection and abuse and would also be readily assisted by the police when they are subjected to abuse. In the days just prior to the in-country part of this assessment, mass media reports recounted a brutal stabbing of a gay man with a broken bottle in Maun.⁴⁴ The attacker is reported to have hurled homophobic insults at the victim, who reported that even the person kind enough to take him to the hospital told him that he should not have chosen to be gay. The police took note of the incident but had not apprehended the perpetrator by the time of the media reports.

In June 2023, LEGABIBO made a public statement alleging that the BPS was turning away LGBTQI persons who had suffered gender-based violence and sought the help of the police.⁴⁵ The organization alleged that many cases of GBV in same-sex relationships are not pursued or resolved in the same way that the GBV units of the police handle GBV cases among heterosexual couples.

According to the BPS key informant for this assessment, the pre-service training received by new officers includes information about HIV transmission and prevention of HIV in the workplace as well as gender-based violence, but HIV-related human rights issues are generally not included. The BPS officer for health and wellness attended a 2019 meeting in Cape Town organized by the Dutch NGO COC International and the South African Police Service (SAPS) on a curriculum used by SAPS called “Dignity, Diversity and Policing” that focused on the rights of key populations. He said he did not, however, see the curriculum as appropriate to bring to Botswana.

The assessment team inquired with the BPS senior superintendent as to whether the BPS has trained or sensitized its rank and file to the change in the Penal Code realized by the

⁴³ In-person interview with Senior Superintendent BM Bengani, Desk Office for Health and Wellness, Botswana Police Service, 25 October 2023.

⁴⁴ “Man brutally attacked with broken bottle and knife for being gay,” *Botswana Guardian Sun*, 11 October 2023. <https://guardiansun.co.bw/news/man-brutally-attacked-with-broken-bottle-and-knife-for-being-gay/news>

⁴⁵ “Police not committed to resolving GBV cases among lesbians and gays: LEGABIBO” *Parrot News Online*, 3 June 2023.

2021 Court of Appeals decision. We were informed that the BPS will not train its officers on this matter until the Penal Code provisions are removed by an act of Parliament. Legal scholars contacted by the assessment team and several quoted in the press (as noted above) did not agree with this view. They said, rather, that the Penal Code is properly and definitively amended by the decisions of the High Court and the Court of Appeals. This legal interpretation on the part of the BPS leadership may contribute to the non-pursuit by the police of cases of violence and other abuse faced by LGBTQ persons. The BDB midterm assessment noted that civil society organizations had concluded that as long as punitive laws remain on the books, there will be an antagonistic relationship between the police and key populations. Unfortunately, as noted by several key informants, in the case of LGBTQ persons, even removing the punitive laws may be inadequate to change police behavior.

An important programmatic consideration, according to the BPS key informant, is that the BPS leadership, at least at the central level, does not wish to be contacted directly by civil society organizations for purposes of organizing meetings on HIV-related issues. They wish to deal only with government entities.

It was also noted that the BPS is generally represented – along with health-care providers, local authorities and civil society organizations -- in the District Multisectoral AIDS Committees (DMSAC) found in all health districts in Botswana. The assessment team asked whether the DMSAC are a good venue for raising concerns about police conduct regarding sex workers or other key populations. We were told by the BPS health focal point that raising such issues in the DMSAC would be inappropriate; rather, such issues should be raised in less public ways. At the central level, the BPS also has regular early-morning meetings on Wednesdays to which it sometimes invites civil society organizations to engage with police officials about current issues. Sisonke Botswana has been part of some of these encounters over the years.

While it may seem more challenging at the national level, a number of organizations have found it possible to engage with frontline law enforcement officers in selected districts where officers or station commanders are open to engagement or where police are invited to multi-sectoral community dialogues. These include:

- Rainbow Identity Association, which works to promote the rights of transgender and intersex persons, has sought to explain the human rights issues faced by intersex and transgender persons in community dialogues that have included police in selected districts. RIA reported that it has consistently found that police officers do not understand the meaning of “intersex” and “transgender”.
- Sisonke Botswana (and its paralegals) and the Nkaikela Youth Group (NYG) have worked with the gender-based violence focal points in police stations, seeking to ensure that the cases of sex workers surviving GBV are treated correctly and respectfully. Finding in some cases that more oversight was needed in this area, NYG

reported that in the last three years it has helped to form Violence Prevention Committees that meet every three months in Gaborone, Kweneng East, South East, Jwaneng where they work. These committees include social workers, police, LEGABIBO representatives, NGOs working with men, and District Health Management Team officials. Meetings are an occasion for raising concerns about GBV incidents and trends and how GBV cases are handled. NYG conducted some trainings on sex work and violence with station commanders and senior cadets in the districts where NYG is known, but it is unable to continue that work with some of its regular project funding. It also hopes to expand its activities to the districts of Goodhope and Lobatse. Funds received recently from NAPHA via BONELA may enable this work to continue.

- The NGO Men and Boys for Gender Equality works with GBV officers in police stations to encourage them to refer both survivors and perpetrators of GBV to the organization for counseling.
- In addition, at the central level, following its historical meeting with President Masisi in January 2022,⁴⁶ LEGABIBO met with the BPS Commissioner, raising the need for sensitizing police to the new developments in the legal environment for LGBT persons brought about by the 2019 and 2021 court decisions.

With respect to training of corrections officials on HIV-related human rights issues, there appear not to be many activities. Rainbow Identity Association addressed a letter to the Botswana Prison Service to raise the issue of transgender women being housed in prisons with men. The policy did not change, according to RIA. Key informants also expressed concerns about the unavailability of condoms in prisons, a policy that also merits re-examination in light of the 2019 and 2021 court decisions.

The BDB midterm assessment noted as of 2021 that training of judges and magistrates on HIV-related human rights issues was isolated and sporadic. Key informants for this assessment noted that with the delay in Global Fund support since early 2022, this activity had ceased.

Key informants told us of various efforts to reach out to members of Parliament. (See also “monitoring and reforming laws” below.) But generally, members of parliament and parliamentary committees were reported to be hard to reach on a regular basis, and there are not organized civil society consortia that might impress MPs as a united front.

Recommendations

- NAPHA at the highest level should work with the police at the central level to (1) build on the existing HIV and GBV elements in the pre-service and in-service training curricula to include HIV-related human rights issues; (2) to develop standard operating procedures for police conduct with key populations, particularly sex worker and LGBTQ

⁴⁶ Igaul R. “You are fully embraced,” Botswana president tells LGBTQ leaders. *Mambaonline.com*, 25 January 2022, <https://www.mambaonline.com/2022/01/25/you-are-fully-embraced-botswana-president-tells-lgbtq-leaders/>

persons, including GBV cases and a concrete plan for rolling them out to all stations; and (3) bring the police together with legal experts to clarify that the Penal Code change regarding same-sex conduct is final without an act of Parliament with the objective of encouraging the BPS leadership to issue orders and appropriate training in this matter. NAPHA should fund these activities even if it requires reprogramming of Global Fund monies.

- NAPHA should map and evaluate existing activities at district or village level that have included local or district-level police, such as the NYG Violence Prevention Committees and various community dialogues with key population groups, to identify good practices and strategize to scale up and maintain them.
- NAPHA should organize a meeting or perhaps regular meetings with the Botswana Prison Service to raise issues related to gender-sensitive housing of transgender persons and provision of comprehensive HIV prevention services in prisons, which include condoms. If civil society organizations are able to work with prison officials, they should also advocate in these directions.
- The Technical Working Group on HIV and Human Rights should engage with high-level representatives of the BPS as much as possible and should continue to explore ways to promote rights-based law enforcement practices related to people living with HIV and key populations.
- Advocacy opportunities with lawmakers should be pursued as noted in the next section.

(d) Improve legal literacy ("know your rights")

HIV program area	Score		
	Baseline	Mid-Term	Progress
Improve legal literacy	3.1	3.8	3.4

The activities described in the stigma/discrimination section above virtually all have elements of legal literacy in addition to elements of sensitization of the general population or particular community members on human rights and the legal environment. Community dialogues may serve not only to sensitize key community leaders as to human rights challenges and opportunities but may also more broadly inform persons living with and affected by or at risk of HIV of their rights. Some activities in this area were slowed compared to the midterm because of a lack of funding.

BONELA continues through its paralegals and mass media activities to bring human rights literacy and awareness to large audiences. In November 2023 BONELA estimated that it had reached over 500,000 persons (in a country with a population of about 2.3 million) with rights literacy activities covering GBV, gender inequality, stigma and discrimination and patient rights and responsibilities, among other topics. Connecting rights literacy activities with referrals to legal and paralegal services is a particularly good strategy, which BONELA has been able to realize (see section on improving access to justice section

below). According to BONELA, it was not possible to sustain all paralegals in the period covered by this assessment because of delays in funding.

Peer outreach workers and paralegals of Sisonke Botswana, many of them trained by BONELA, work to inform sex workers of their rights, including in dealing with police, in Gaborone, Francistown, Palepye and Selebi-Phikwe. Migrant sex workers, who have a particular need to know their rights with respect to receiving health services and the like, are included. The Sisonke Botswana director estimates that two thirds of sex workers in the country have been exposed to rights literacy activities and have a solid understanding of their rights. Sisonke has been supported in this work by AidsFonds, but that funding is coming to an end in early 2024. Nkaikela Youth Group-supported peer educators are also trained to disseminate rights literacy for sex workers and their families, reaching about 2000 sex workers in the four regions of their work (Gaborone, Francistown, Palepye and Selebi-Phikwe). LEGABIBO reported that its support groups in 16 locations also service a rights literacy function for LGBTQ persons.

A number of organizations have taken advantage of the process of the review of the Constitution of Botswana to organize community dialogues that also have a rights literacy value. (See “monitoring and reforming laws and policies” below.)

There has been an official ombudsman in Botswana since 1995, but it was only in 2021 that the Parliament conferred a human rights mandate on the ombudsman, which came into effect in 2023 with the required presidential assent.⁴⁷ The ombudsman’s mandate was previously limited to dealing with cases of government “maladministration”. The new mandate effectively establishes the ombudsman as Botswana’s national human rights institution. In announcing the change in July 2023, the Minister of Justice said: “The Office of the Ombudsman is now in a position to advance the human rights of all persons, including people living with disability, the vulnerable and marginalized members of our society.”⁴⁸ Informants to this assessment said they were unaware of any cases reported to or statements made by the ombudsman regarding HIV or key populations. Filing a complaint with the ombudsman is meant to be a measure of last resort when conventional legal and judicial remedies have been exhausted. Before this change, as noted in media reports, the ombudsman was active in traveling around the country and using mass media to inform the population of the possibility to report instances of government malfeasance to his office.

Recommendations

- The Technical Working Group on Human Rights with NAHPA guidance should map rights literacy activities and design a rapid evaluation to assess the most effective practices to inform future investment into rights literacy interventions.

⁴⁷ “Government fulfills ombudsman mandate promise,” *Botswana Daily News*, 6 July 2023. <https://dailynews.gov.bw/news-detail/73935>

⁴⁸ Ibid.

- NAHPA should convene a meeting with the ombudsman and his staff and key representatives of civil society to ensure that the ombudsman's office is aware of the human rights challenges faced by people living with HIV and key populations and to investigate whether that office needs capacity-building in this area.

(e) Improve Access to Justice

HIV program area	Score		
	Baseline	Mid-Term	Progress
Improve access to justice	2.3	3.3	3.0

The BDB midterm assessment found that a number of organizations had mobilized paralegals or peer paralegals handling cases involving people living with HIV and key populations. Unfortunately, key informants in this assessment noted that this was an area in which funding delays reduced the number of persons able to sustain the work of identifying cases of human rights violations that might need legal or paralegal support.

BONELA has for several years maintained a network of paralegals and “REActors”, agents working in the “Rights-Evidence-Action” system promoted by the NGO Frontline AIDS (UK). REAct is a system of community-based monitoring of human rights violations that may constitute barriers to HIV services or otherwise threaten people living with HIV and key populations. Since 2020, REActors working with BONELA have been able to record cases of abuse electronically using a mobile phone app. For BONELA, REAct is not mere documentation; the organization is able to link persons facing human rights abuse to legal or paralegal assistance, as BONELA staff reports. The Global Fund has supported this work for several years.

In November 2023, BONELA estimated that it had documented almost 20,000 cases of human rights concerns since 2002. During 2022, BONELA documented 245 cases, of which almost one quarter were violations of the Children's Act, 21% involved access to social services, 15% involved GBV, rape or assault, and others were concerned with access to health services, labor issues, defamation of character, access to official documents and the like. (BONELA has records of the disposition of all of these cases, many of which were referred to mediators or regional authorities, though the final outcome at those levels is not known in all cases.)

REActors working under BONELA's auspices with Global Fund support were active under GC5 in 11 districts, according to BONELA ,but more recently been active only in six districts.

Not all cases identified by paralegals and REActors require the assistance of a lawyer. BONELA has trained paralegals in mediation techniques and in assisting people to represent themselves in mediation or court proceedings. In October 2023, BONELA's in-house lawyer reported that she was handling 24 active cases, which included cases

related to non-consensual disclosure of HIV status, child rights including the right to education, access to justice, GBV, denial of health services, stigma and discrimination, and “willful” transmission of HIV. BONELA also maintains a regular relationship with Rammika Tafa, a private law firm in Gaborone, to which it can refer cases. (See case story below.) As of October 2023, Rammika Tafa was assisting BONELA with a case involving disclosure of HIV status by a media outlet. The case was expected to be argued in court in late 2023.

As noted above, Sisonke Botswana supports peer paralegals working with sex workers in Gaborone, Francistown, Palepye and Selebi-Phikwe. According to the Sisonke Botswana director, the paralegals accompany sex workers to make complaints to the police, including for such matters as clients who refuse to pay or who are abusive. Paralegals also guide sex workers to key population-friendly health facilities and assist them with obtaining official documents. They also assist migrant sex workers who are particularly vulnerable to legal problems. Sex workers who live outside the four areas where paralegals are located are informed of where to contact them using WhatsApp or other means.

BONELA’s in-house lawyer, Leungo Mafanetsa, said that BONELA at times has received reports of cases of violence against sex workers but was unable to pursue them through the court system because the sex workers did not want their names to be made public in a court proceeding or because they were undocumented migrants and feared deportation. In such cases BONELA just ensures that the sex workers involved are accompanied to a friendly health facility and get whatever health services they need without involving the police.

LEGABIBO does not have paralegals but has referred cases of violence and other issues to BONELA.

The public-private partnership ACHAP, which has been a Global Fund principal recipient in the past, reported that it kept lawyers on retainer in GC5 particularly to assist adolescents and young persons in need of legal support (see section on gender-related activities below). That legal assistance stopped with the delay of GC6 funds.

Case story: Sustaining access to legal services for people living with HIV and key populations

Many countries have mobilized paralegals and peer paralegals to assist people living with HIV and key populations with human rights abuses that they face. Well-trained paralegals know when a case is something they can handle and when a referral to a lawyer is needed. But often there are not enough lawyers available and willing to handle such cases. Engagement of private law firms in HIV-related work is often impossible unless clients have access to significant financial resources.

Although all cases of human rights violations cannot be handled optimally and many cases of HIV-related rights violations are undoubtedly unreported, BONELA seems to

have been able to sustain a model of legal and paralegal services that may hold lessons for other jurisdictions.

An important key to their success is pursuing all possible avenues that may keep a case from requiring the involvement of a lawyer or legally assisted court proceeding. A paralegal familiar with a case of refusal of health services, for example, might accompany the complainant to a health facility to see where the problem lies or, if that doesn't work, to make a complaint to the police. Paralegals and the in-house lawyer in Botswana can also act as mediators in some cases before further legal help is needed. BONELA's in-house attorney, Leungo Mafanetsa, noted, for example, that many of the stigma-related cases reported by REActors happen in community settings or from within families. A lesson here is to ensure that paralegals are well trained assess whether they are able to resolve the case on their own or if cases need to be referred for more expert legal help. Ms. Mafanetsa noted that this is an important feature of BONELA's training of paralegals.

Another factor of BONELA's success is its partnership with Rammika Tafa, a small law firm in Gaborone founded by Mr Lesedi Refilwe Rammika. Rammika Tafa calls itself a "lean boutique firm" that, among other things deals with "novel unprecedented legal issues" and "high-profile public interest matters", which seems ideal for HIV-related cases. The connection with BONELA came about because Mr. Rammika was a law school classmate of Ms. Ramatoulie Jallow, a lawyer at BONELA who sought Mr Rammika's engagement with special cases that come to BONELA. Mr Rammika said he found this work a joy to be part of. Ms. Jallow said Mr. Rammika's firm is the kind one needs to seek out for these cases – a firm with young and public-spirited lawyers ready to share their talents on behalf of some of the most marginalized persons in society. As in many other countries, Botswana has a government-affiliated legal assistance agency, Legal Aid Botswana. Mr. Rammika and Ms. Mafanetsa noted that Legal Aid Botswana's requirements that people be below a certain income level to qualify for official legal assistance may be a barrier for many people. In addition, Ms. Jallow observed that it may take so long for people to be certified for assistance that they may give up before Legal Aid Botswana can determine that their case qualifies for assistance. Moreover, Legal Aid Botswana cannot take cases where the complaint is against a government entity.

Lawyers in Botswana have a requirement to do 42 hours of *pro bono* work in a year, which may be a source of other legal assistance. However, 42 hours may not be long enough to see some of the more complex cases through to the end. In addition, Mr. Rammika noted, firms may also be waived out of their *pro bono* requirement by taking *pro deo* cases – that is, those involving murder and other capital crimes.

A suggestion by Mr. Rammika is that if overtures are made to other firms to assist in HIV and key population-related work, those firms should be given new cases – not yet

started by other parties -- and not be asked to pick up cases midstream, which can be difficult.

BONELA's experience shows that sustaining the legal services element of HIV-related access to justice has some clear lessons. Maximize what paralegals can do without recourse to lawyers. Be sure that paralegals have a good sense of when formal legal help is needed and when not. Explore all avenues for *pro bono* legal help. And if a law firm is to be retained for these cases, seek out one with a commitment to public service and an interest in cases involving marginalized persons. And keep in touch with law school classmates!

Recommendations

- The Global Fund and NAHPA should ensure that funding is available to sustain the REActor function at the most extensive level that BONELA is able to manage.
- In view of BONELA's being a "go to" source of legal services for key populations and people living with HIV, NAHPA as principal recipient should ensure for the remainder of GC6 and in planning for GC7 that BONELA has sufficient funds to sustain legal services in this area.
- Engage Legal Aid Botswana to explore avenues that can allow them more flexibility to take on HIV and key population-related cases.
- NAHPA and key civil society representatives should engage with the office of the national ombudsman not only on legal literacy, as noted above, but also on how the ombudsman might handle HIV-related cases that have not been resolved by other means.

(f) Improve laws, regulations and policies related to HIV

HIV program area	Score		
	Baseline	Mid-Term	Progress
Improve laws, regulations and policies related to HIV and HIV/TB	3.0	4.3	4.0

Donors want us to give out condoms; they don't want us to do advocacy.

--Cindy Kelemi, executive director of BONELA, "Last mile" conference, Gaborone, 23 Oct. 2023

At the time of the midterm review, the decision of the Court of Appeals to confirm the High Court's decriminalization of same-sex sexual conduct was still being awaited. Civil society groups, especially LEGABIBO, which was admitted as an *amicus curiae* in the High Court case, celebrated the decision of the Court of Appeals, but recognized that much more would need to be done to promote, protect and fulfill the rights of LGBTQI persons, and improve laws, regulations and policies related to key populations in Botswana. Since then, civil society organizations have managed to take advantage of some opportunities such as the constitutional review to raise important issues on the legal and policy framework for the HIV response. But a regular and coordinated

advocacy platform that could engage systematically with lawmakers and policymakers, as envisioned in the national human rights plan, has yet to be realized.

LEGABIBO managed to secure a ground-breaking meeting with the President of the Republic in January 2022.⁴⁹ LEGABIBO used the occasion to raise remaining legal and policy concerns, including the following:

- Though some offending provisions of the Penal Code were removed by the court decisions of 2019 and 2021, section 167 of the Penal Code, which prohibits “any act of gross indecency with another person” or the inducement of a person to commit any such act. This act was not removed by the court decisions since the appellant did not refer to it in his case. LEGABIBO asserted that this provision could be used readily against gays and lesbians.
- That transgender persons should be permitted to have the gender marker on their identification documents changed to reflect the gender with which they identify.
- That the government commit itself to do more to address discrimination against LGBTQI persons in the workplace, which the LEGABIBO executive director noted as an economic development issue as LGBTQI persons were being prevented from contributing their productivity to Botswana’s development.
- That the government help to open doors for dialogue between LGBTQI persons and community authorities, police and security officials, especially to address the continuing problem of hate crimes against LGBTQI persons.
- That the President and his colleagues do more to ensure that the democratic process and political debates in Botswana are a “safe space” for LGBTQI persons.

The LEGABIBO director noted that concrete results from this meeting may not be fully discernible until after the presidential election of 2024 when there may be a reopening of debates on an anti-discrimination law related to sexual orientation and gender identity. But LEGABIBO appreciated the media attention to the meeting and the president’s general commitment to the rights of LGBTQ persons.

Since the midterm assessment, Botswana has undertaken to review and possibly reform its national Constitution. At this writing, the review process is still ongoing. The President of the Republic convened an expert review commission in late 2021 with a mandate to conduct wide consultations to hear from all segments of Botswana society. A number of civil society organizations have seen the review of the 1996 Constitution as an opportunity to influence the national legal framework in ways that are relevant to the national HIV response. Among these efforts are the following:

⁴⁹ A video recording of the meeting is available at <https://www.youtube.com/watch?v=pjiSpUwEnKc&t=1315s>

- **BONELA:** BONELA's submission to the review commission focused on five areas:⁵⁰
 - The need for Botswana to have explicit recognition of economic, social and cultural (ESC) rights in the Constitution. As noted above, Botswana is not party to the International Covenant on Economic, Social and Cultural Rights. BONELA noted that the state makes provisions for some ESC rights, but they could be curtailed at any moment without legal protections.
 - Among ESC rights, the need for Botswana to have explicit articulation of a guaranteed right to health in the Constitution. The submission articulates elements of the right to health as developed in UN treaties and asserts that a constitutional provision on the right to health would require the government, among other things, to ensure that the number of health facilities is adequate to ensure availability and accessibility of services for all.
 - The need for the Constitution to be explicit in guaranteeing the rights of vulnerable persons, including, amongst other women, children, the elderly, persons with disabilities, persons in state custody, persons living with HIV, LGBTQI persons, refugees and asylum seekers, and sex workers.
 - Emphasizing one element of the previous point, the submission calls for any revised Constitution to "make specific reference to sexual orientation and gender identity as grounds for equality and non-discrimination."
 - The submission advocates for changing parts of the Constitution that seem to restrict women's rights with respect to property, marriage, divorce and other "personal law" matters, and for aligning customary religious and marriage laws with civil law grounded in human rights norms.

In addition, in September 2023 BONELA hosted a dialogue on a "people-driven Constitution" for civil society organizations particularly to raise the importance of economic, social and cultural rights for marginalized persons, and in the same month, BONELA spoke about the importance of the Constitutional review process on GABZ FM radio, a popular station. BONELA also participated in several community dialogues around the country as part of awareness-raising about the constitutional review process.

- **LEGABIBO:** LEGABIBO similarly argued in its July 2022 submission that the Constitution should explicitly add "...sexual orientation, gender identity and expression, sex characteristics, age or disability" as grounds for protection from discrimination. LEGABIBO emphasized that the court decision of 2019 and 2021 were a recognition of the right to non-discrimination on the grounds of sexual orientation and that constitutional protections would help to curtail the continuing discrimination, harassment and other abuses faced by LGBTQI persons in workplaces, housing, the health sector and other realms of society in Botswana.

⁵⁰ BONELA. Leaving no one behind: Towards an inclusive Constitution. Gaborone, 2022, <https://bonela.org/leaving-no-onebehind-towards-an-inclusive-constitution/>

- Rainbow Identity Association: The community dialogues and especially dialogues with traditional leaders (*dikgosi*) described in the stigma section above by RIA were meant to influence the House of Chiefs (*Ntlo ya dikgosi*), which is a body of traditional leaders that sits in an advisory capacity in the Parliament of Botswana.⁵¹ RIA hoped that the traditional leaders would influence the Constitutional review process as well as eventually the Parliament. Remarkably, as noted above, the Constitution reform commission did recommend anti-discrimination protections for intersex persons (though not for transgender persons).

Another opportunity around which civil society groups came together to advocate for legal and policy changes was the fourth cycle of the University Periodic Review (UPR) of Botswana in the UN Human Rights Council. UPR is a process by which member states of the United Nations undergo peer review of their human rights records – that is, by other member states – every four or five years. The government under review presents a report about its compliance with obligations in international human rights law. Civil society organizations in the country under review are invited to submit statements.

In the case of the UPR for Botswana in 2023, one consortium of civil society organizations that made an official submission to the UPR included Ditshwanelo (the Botswana Centre for Human Rights), LEGABIBO, the Botswana Council of NGOs, Letloa Trust (which works with the San people of northern Botswana), and the Media Institute of Southern Africa (Botswana Chapter). This group commented on a number of human rights issues, including:

- A lack of transparency on the state of implementation of Botswana's Draft Comprehensive National Human Rights Strategy and National Action Plan and the human rights tracking database that was meant to be instituted;
- The lack of civil society participation in the human rights training modules for the Botswana Police Service and the Botswana Defence Force;
- The exclusion of lesbian, gay, bisexual and transgender women from discourse and policy on gender-based violence; and
- The long waiting period for trials and processes of the new specialized GBV courts set up partly in response to GBV incidence linked to COVID-19.⁵²

Separately from the UPR process, this consortium remained together to make a complaint in 2023 to Botswana's security agency, the Directorate on Intelligence and Security Services (DISS), alleging harassment and a violation of press freedom related to the arrest and detention of a journalist and media editor.⁵³

⁵¹ Reference from RIA website

⁵² Human Rights Council, Working Group on the Universal Periodic Review. Summary of stakeholders' submissions on Botswana. UN doc. A/HRC/WG.6/43/BWA/3, 13 Feb. 2023. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/024/15/PDF/G2302415.pdf?OpenElement>

⁵³ Mokwena N. Human right groups rebuke DISS. *Botswana Guardian Sun*, 18 August 2023. <https://guardiansun.co.bw/news/human-rights-groups-rebuke-diss/news>

A second group of CSOs to make a 2023 UPR submission was comprised of Sisonke Botswana Organization, the African Sex Workers Alliance (Nairobi) and Sexual Rights Initiative (Geneva). This group highlighted the impact of criminalization of sex work on the rights and well-being of sex workers. They noted, among other things, that even the suspicion without evidence that a house was serving as premises for sex work would be enough for a magistrate to authorize the police to enter the house and make arrests. This practice, they asserted, undermined sex workers' ability to obtain housing. They further emphasized that stigma and discrimination, exacerbated by criminalization, continued to be powerful barriers to health services in spite of the government's recognition of sex workers as a key population needing priority actions.

NGO informants to this assessment asserted that it was important to get issues on the record in a process such as the UPR, but the Ministry of Justice did not show many signs of constructive follow-up to the issues raised.

NAHPA has continued to conduct workshops related to the Legal Environment Assessment conducted with UNDP and Global Fund support in 2017.⁵⁴ That assessment raised concerns about, among other things, section 167 of the Penal Code (noted above), the criminalization of aspects of sex work, and the provisions in the Public Health Act that allow for criminal prosecution of "willful" HIV transmission and non-disclosure of HIV status. On the matter of criminalization of aspects of sex work, Sisonke Botswana has been in touch with the Southern Africa Litigation Centre, which assisted LEGABIBO in the successful court cases related to same-sex conduct, about a possible litigation strategy to address criminal law provisions related to sex work. But, among other concerns, there is not adequate funding to sustain a long case in this matter.

BONELA, Sisonke Botswana Organization and the UPR working group led by Ditshwanelo made statements against the Criminal Procedures and Evidence (Controlled Investigations) Bill brought to Parliament by the Minister of Defense, Justice and Security in early 2022. They alleged that if passed into law, the bill would enable the government to intercept communications and conduct surveillance on citizens without a warrant.⁵⁵ The government contended that such powers were needed to confront the crimes of money laundering and the financing of terrorism.⁵⁶ Sisonke Botswana's statement challenged the notion that security concerns justified the violation of people's right to privacy and protection of personal information. In the end, the provision of the bill that would have allowed for unfettered phone tapping and other surveillance by the government was

⁵⁴ Ministry of Health and Wellness and UN Development Programme. *Assessment of legal and regulatory framework for HIV, AIDS and tuberculosis*. Gaborone, 2017. <https://hivlawcommission.org/wp-content/uploads/2018/03/Dec-2017-FINAL-Botswana-LEA.pdf>

⁵⁵ See, e.g., Ndlovu T. Botswana civil society organizations rebuff criminal procedures bill. Association for Progressive Communications, 23 Aug. 2022, <https://www.apc.org/en/news/botswana-civil-society-organisations-rebuff-criminal-procedures-bill>; and Criminal Procedure and Evidence (Controlled Investigations) Bill 2022. *Botswana Guardian* (via Press Reader), 4 Feb. 2022. <https://www.pressreader.com/botswana/botswana-guardian/20220204/281754157723460>

⁵⁶ Committee to Protect Journalists. CPJ calls on authorities in Botswana to reject bill on warrantless surveillance (media statement). New York, 31 Jan. 2022, <https://cpj.org/2022/01/cpj-calls-on-authorities-in-botswana-to-reject-bill-on-warrantless-surveillance/>

changed; more oversight of government surveillance would be needed.⁵⁷ Even following that change, BONELA said more extensive public consultation was warranted for legislation on such matters.⁵⁸

A notice of funding opportunity from USAID in August 2023 for activities to begin in 2024 signals future USAID support for a “KP advocacy forum” as “an entity of KP leaders and KP-led organizations to advocate for their rights and KP-competent services”.⁵⁹ This is a promising prospect as Botswana looks to an era in which the human rights of key populations, protected by law, will be central to a successful HIV response in the long term.

In short, in spite of not always having budgets for policy advocacy and not having been able to budget for events such as the constitutional review, a number of civil society organizations have been able to take advantage of that review, the UPR and the LGBTQ court decisions to raise cogent legal and policy arguments at appropriate levels on important human rights issues.

Recommendations

- NAHPA should encourage sub-recipients and sub-sub-recipients of Global Fund support for human rights programs to include dedicated budget lines for policy and legislative advocacy.
- The Technical Working Group on Human Rights should facilitate the formation of consortia and other collaborative efforts and joint strategizing among civil society groups to optimize advocacy potential around issues such as section 167 of the Penal Code, criminalization of sex work, transgender rights with regard to identity documents, and other issues. If a USAID-supported KP advocacy forum comes about, the Technical Working Group on Human Rights should consider how it might work closely with or merge with that forum.
- The Technical Working Group should endeavor to meet with members of Parliament periodically with regard to key legislative issues.
- NAHPA and the Technical Working Group, perhaps with the help of UNAIDS, should organize a session to explain to members of Parliament that the current law on “willful” transmission and non-disclosure of HIV status does not conform to international standards. Sensitization of members of Parliament should also cover the criminal law issues mentioned in the second bullet above.

⁵⁷ Dube M. Botswana government waters down phone tapping bill after public outcry. VOA, 4 Feb. 2022. <https://www.voanews.com/a/6426756.html>

⁵⁸ Ibid.

⁵⁹ USAID Southern Africa. Notice of Funding Opportunity no. 72067423RFA00017. 29 August 2023.

(g) Reducing HIV-related gender discrimination, harmful gender norms and violence against women and girls in all their diversity

HIV program area	Score		
	Baseline	Mid-Term	Progress
Reducing HIV-related gender discrimination	2.5	3.4	3.3

The BDB midterm assessment noted that there was a coming together of civil society around the then pending court case on same-sex sexual conduct, but there now seems to be less coalescing of civil society around the remaining challenge of the transformations of attitudes and practices that will bring the spirit of the court decisions into a concrete reality. While there is a lot of activity to address GBV in Botswana, the national GBV plan remains unfunded, and GBV activities are reportedly not well coordinated. Activities targeting men and boys have remained small-scale.

U.S.-supported programs through USAID and PEPFAR are major players in addressing gender-related discrimination in the context of HIV. The PEPFAR-funded DREAMS (Determined, Resilient, Empowered, AIDS-Free, Mentored and Safe) program, providing comprehensive HIV prevention for adolescent girls and young women (AGYW), has been in Botswana since 2017. It began in two districts – Kweneng East and Gaborone – but now is in eight districts with the expansion to Southern, Kgatleng, Mahalapye, Bobirwa, Serowe and North East. Girls and young women are encouraged in DREAMS to complete a nine-month program that covers violence prevention, “social asset building”, youth-friendly sexual and reproductive health information, and access to HIV testing and other services, among other elements. DREAMS also reaches out to male sexual partners of AGYW as well as thought leaders and community officials to confront harmful gender norms.

According to the DREAMS coordinator in Botswana, PEPFAR takes completion of the nine-month program to be the main indicator of success of DREAMS. According to PEPFAR, since the early years of DREAMS in Botswana, the rate of completion of the program has gone from 35% of the girls and young women who begin the activities to 72%. The program is visible, having a strong social media presence as well as a television drama series on DREAMS themes.

A recent USAID notice of funding opportunity for future U.S.-funded HIV activities in Botswana suggests that DREAMS will strengthen its emphasis on identification of AGYW who are particularly vulnerable to GBV, with attention to girls who are out of school, those engaging in transactional sex, and those with disabilities.⁶⁰

A salient feature of DREAMS in Botswana is a PEPFAR-funded coordination unit sitting in NAHPA that includes a national coordinator, a program manager, a monitoring and evaluation manager, and a data base specialist. Emmanuel Mafoko, the PEPFAR

⁶⁰ USAID Southern Africa. Notice of Funding Opportunity no. 72067423RFA00017. 29 August 2023.

DREAMS coordinator, said the hope is that this unit, which has ensured good oversight of DREAMS, can be institutionalized in NAHPA over the long term, even when PEPFAR funding is no longer available. He also said that the goal of the unit should be to coordinate and oversee all HIV-related activities for AGYW, and not just those of the DREAMS program. (See more on this in the section titled “food for thought” below.)

USAID supports a wide range of activities to address GBV in the districts traditionally supported by PEPFAR, according to the USAID focal point for gender activities in the country. In addition to the GBV components of DREAMS, these activities include GBV awareness-raising and services as part of programs for orphans and vulnerable children; programs for children and young people in and out of school; engaging with community authorities and faith leaders on GBV; and supporting NGOs and health facilities that are providing services to GBV survivors. USAID plans to expand its focus on key populations with continued attention to GBV among key populations.

ACHAP, a public-private partnership working in Botswana since 2000, has had Global Fund support especially to work on HIV prevention among adolescents and young people. This has included promoting access to HIV testing, voluntary male circumcision and sexual and reproductive health services, but also some human rights-related activities. ACHAP’s program coordinator noted that ACHAP has helped to pursue legal cases for young survivors of gender-based violence, some of whom were not supported by their families to seek justice. ACHAP also assisted young people whose parents were not citizens to obtain documents needed to gain access to health services. This work unfortunately has been stalled with the delay of the GC6 Global Fund grant implementation.

There are many activities related to prevention of gender-based violence and services for survivors of gender-based violence in Botswana. With respect to key populations other than AGYW, Sisonke Botswana and Nkaikela Youth Group in their respective locations accompany sex workers to make GBV-related complaints with the police and inform sex workers of their rights with respect to incidents of violence. As noted above, LEGABIBO has advocated for more effective and supportive action by police in cases of GBV affecting LGBTQ persons.

FHI360 with USAID support manages the Advancing Progress in Communities (APC 2.0) project, which supports GBV prevention in addition to mobilizing community health workers to promote adherence to care and treatment for people living with HIV. APC 2.0 supports a number of organizations that work with communities and faith leaders to address harmful gender norms.

Some organizations in Botswana work directly with men based on the idea that gender norms affect men as well as women and cannot be transformed without changes in attitudes and practices of men. The NGO Men and Boys for Gender Equality (MBGE), which receives some NAHPA funding and some funds from the national alcohol levy, works with men’s groups, traditional leaders, and faith leaders with the goal of reducing

gender-based violence. As its staff noted to us, the organization provides free counseling services for men and encourages the police to refer male perpetrators of GBV to counseling in addition to whatever legal proceedings they may face. The geographical scope of the organization's activities and its capacity to provide free counseling are limited by funding. MBGE has also for some years joined with the UN Development Programme to give an annual award to an individual or organization with outstanding achievements against GBV. The organization also speaks with faith leaders about the rights and situation of LGBTQ persons. Desmond Lunga, the leader of MBGE, said that the march against LGBT rights organized by the Evangelical Fellowship of Botswana did not reflect the views of the majority of the faith community, which mostly has moved to a more informed understanding of sexual orientation and gender identity. The NGO Men for Health and Gender Justice, which receives support from the U.S.-funded FHI360, works with men's groups and sports clubs, providing information and referrals for HIV testing and counseling, voluntary circumcision and condom use.

Other gender-related issues have been taken on. In 2023 BONELA conducted community awareness-raising sessions in Francistown, Selebi-Phikwe and Palapye, among other locations, on the Maputo Protocol, which is the protocol to the African Charter on Human and Peoples' Rights on the rights of women. Botswana is not a signatory to the Maputo Protocol, which provides for extensive protections of women in such areas as GBV, harmful traditional practices including child marriage, reproductive rights, gender-related discrimination, and barriers to women's civic participation. BONELA has also continued its advocacy on child marriage, including arranging for an informed traditional leader to speak against the practice on the radio.

Informants consulted in this assessment noted a need for coordination and oversight of the many activities addressing gender-based violence in Botswana. There is a national strategy, which is in the process of being renewed, but civil society organization representatives said they are not guided to work collaboratively against strategic goals and to ensure that they do not duplicate efforts.

Food for thought: Coordination and data in AGYW, GBV and KP programming in the 5-2-2 era

An October 2023 conference organized by UNAIDS and NAHPA in Gaborone focused on "reaching the last mile" in the HIV response in Botswana. In light of Botswana's achievement of the 95-95-95 objective – 95-98-98 in Botswana's case – the conference was meant to identify the actions needed to ensure that Botswana's HIV successes could be sustained, and the last challenges could be met. The expression "5-2-2" was frequently heard in the meeting – that is, the mirror image of 95-98-98, representing the job that is left to finish before attaining 100-100-100. "5-2-2", as was noted, is all about key populations and the fact that their cascade scores are far from 95-95-95.

Many discussions in this conference, which included wide representation of civil society organizations, government agencies, UN partners and donors, came back to the question of the weakness of data, not only on HIV status and other health indicators but also on the existence, quality and geographical reach of programs needed to inform decision-making on how best to use scarce resources to meet the challenges of the 5-2-2. While Botswana is a small country in total population, its population is distributed over a wide area, including locations with relatively weak infrastructure. Individuals in key populations, moreover, are often hidden by choice as the intersectional stigma individuals face constitutes a barrier to seeking health services and community participation.

In spite of the many challenges of reaching and providing respectful services for key populations, there are a number of organizations serving key populations, including several that are led by key population representatives. The DREAMS program described above and supported by PEPFAR is confronting data weakness in a way that may hold lessons for other activities in Botswana. As already noted, DREAMS has a coordination unit that includes a full-time data analyst. Technical and financial assistance from USAID enabled the DREAMS coordination unit in NAHPA to create a user-friendly electronic system that tracks all DREAMS-related services with the help of staff in all DREAMS districts who have been trained to enter and report data.⁶¹ The system is enabling NAHPA and PEPFAR to pinpoint locations where more efforts are needed to reach vulnerable girls and young women. Trends in the program's impact over time are easily tracked.

The existence of this data platform raises interesting possibilities for addressing Botswana's HIV-related data challenges more broadly. Could there be, for example, a key population-focused data platform that would track both GBV and other rights abuses faced by key populations (outside the health sector) and also indicators of access to health services? The funding opportunity announcement of USAID in September 2023 indicates that USAID seeks to support a "secretariat to coordinate all KP activities in Botswana", perhaps as part of a reactivated KP technical working group at the Ministry of Health and Wellness.⁶² Improved data collation and analysis would presumably be part of the mandate of this group. A data platform that includes well defined indicators on key populations beyond AGYW could be a centrally important tool to power a rights-based approach to the 5-2-2 era. It would also be a key to strengthening monitoring and evaluation of KP programs, which has been generally weak.

1. ⁶¹ U.S. Embassy in Botswana. The U.S. Government strengthens Botswana's HIV response through the DREAMS data system for adolescent girls and young women. Gaborone, 12 July 2021. <https://bw.usembassy.gov/the-u-s-government-strengthens-botswanas-hiv-response-through-the-dreams-data-system-for-adolescent-girls-and-young-women/>

⁶² USAID Southern Africa. Notice of Funding Opportunity, op. cit.

Gender-based violence, as noted above, is the object of both prevention and care services supported by many actors in Botswana. But, as key informants noted, there is a need for both coordination among these many actors and improved data collection to follow trends and inform evaluation of the varied activities addressing GBV. In this case, the Ministry of Health and Wellness, Ministry of Education, Ministry of Local Government and Rural Development, and Ministry of Youth, Gender, Sport and Culture are all involved, along with many civil society and private-sector actors. But informants noted there is no national system for gathering data on GBV outcomes and GBV services, including GBV concerns of members of key populations.

While donor support might help to establish coordination and data gathering mechanisms for these important intersectoral human rights programs, they must be government functions over the long term. Institutionalizing more comprehensive gender-sensitive and KP-inclusive human rights data collection and analysis and coordination of programs, along with systematic and rigorous monitoring and evaluation, perhaps by expansion of the legal and human rights personnel of NAHPA (see below), seems necessary. And any such expansion would also have to institutionalize mechanisms to ensure meaningful participation of key populations and other civil society actors in decision-making

Recommendations

- NAHPA should consider a plan for the DREAMS coordination unit to be a more expansive AGYW unit that would monitor and analyze data on AGYW activities in the country and not just those formally under DREAMS auspices.
- NAHPA and the Technical Working Group on Health and Human Rights should organize a consultation with key population-led organizations and those working closely with key populations to assess the extent to which GBV concerns among key populations are being addressed and, if not, to formulate a costed strategy for accelerating work in this area.
- NAHPA and the Technical Working Group on Health and Human Rights should also work with key population-led organizations to identify needs for data that would be particularly useful to inform programming for key populations and to identify sustainable, cost-effective data collection methods.
- The Global Fund and USAID/PEPFAR should consider organizing a consultation of the several ministries and key civil society actors working on gender-based violence in the country with a view to establishing a coordinating body for GBV work and a plan for eventual government funding of such a body.

(h) Support HIV-related community mobilization and human rights advocacy

HIV program area	Score		
	Baseline	Mid-Term	Progress
Support community mobilization and human rights advocacy	*	*	2.5

This program area was not included in the BDB baseline and midterm assessment exercises. As noted above, key informants noted that there is no effective coordination mechanism for human rights advocacy in the country, though a number of organizations engage in legal and policy advocacy. At the time of the assessment, the REAct activities were scaled down due to lack of funding. Hence the score noted here.

As noted in the sections above, having had remarkable achievements in its HIV response in the overall population, Botswana now faces the challenge of improving access to services for key and vulnerable populations that face barriers to services that are related to discrimination, stigma, criminalization and other violations that might be remedied by better access to justice. As recounted above, community-led monitoring, particularly in the health sector, is a mobilizing tool, but for the 5-2-2 era it requires a more explicit focus on key populations.

BONELA's documenting of human rights violations through its REActors and paralegals is a community-based system that detects violations beyond the health sector. NAPHA and BONELA reports that the geographic scope of REAct was curtailed by the delay of Global Fund monies in GC6, and it was not nationwide even with funding support. If expanded and if data could be collated and analyzed from all parts of the country, this system could help to inform a program of human rights advocacy with national scope and not limited to the health sector. Such expansion would require considerable capacity-building and coordination of community-based organizations and training to ensure that intersectional human rights concerns are well understood by CBOs. To optimize the usefulness of expanded CLM, there should be central-level capacity for using CLM data to improve programming and resource allocation.

It is encouraging that PEPFAR is interested in exploring the addition of more human rights-related indicators in the community-based monitoring it has already established in the health sector. The degree to which some of this CLM could be built on to include some monitoring outside of health facilities-based work in worth exploring – that is, monitoring of violations in the community, especially in those locations not covered by REAct.

As noted above, in 2022 civil society organizations managed to find the time and other resources to participate meaningfully in advocacy related to the Constitutional review process, which was not foreseen. In an earlier period (not covered by this assessment), civil society also found resources to focus on the court cases related to same-sex sexual

conduct. But informants interviewed in this review generally asserted that there was insufficient dedicated funding for advocacy. (In the GC6 grant's human rights module totaling US \$2.38 million, the sum of US\$259,592 is devoted to improving laws and policies, though about half that amount is meant to support the salary of a policy and law advisor. Community-led monitoring as such is not funded in the human rights module.) Some informants also noted that there is no institutional structure to coordinate civil society advocacy and enable rapid response to developments of concern. One informant noted that the strong dependence of civil society organizations on government funding was also an impediment to advocacy on some issues.

The human rights challenges remaining in address the 5-2-2 would be most effectively met by coalitions of civil society organizations guided by a common strategy with clear and measurable goals. Remaining legal and policy challenges should be prioritized in a collaborative way by civil society organizations. USAID's plan to support a key population advocacy coalition⁶³ could help establish a coordination mechanism that would coordinate and oversee advocacy on human rights challenges faced by key populations.

Safety of key population groups should also be an important component of mobilization of key populations and their organizations, particularly if key population-led organizations are supported to assume a higher profile in advocacy and if key populations continue to face organized opposition from religious or other groups. Sisonke Botswana Organization has an emergency fund for sex workers facing violence and other problems in their work and to help migrant sex workers. LEGABIBO's support groups assist LGBTQ persons facing abuse, including those whose lives have been affected by discrimination in the workplace and in the community. Community-based organizations are challenged to find resources to sustain these efforts, including engagement with community leaders and the police.

Recommendations

- NAHPA should ensure that adequate funding is available to sustain community mobilisation and human rights advocacy including the REAct monitoring in the original districts where REActors were trained and to expand this activity to other districts, depending on the capacity to manage expansion.
- As with the health sector recommendation above, NAHPA or the Ministry of Health and Wellness perhaps with the Ministry of Justice should create an electronic platform (or combine with an existing platform) that would enable compilation and analysis of CLM/REAct data (beyond the health sector) to trace the nature and location of human rights violations as a means of informing programming and policy.
- The Global Fund and PEPFAR/USAID should work with NAHPA and civil society organizations to develop and implement a strategy for nationwide coverage of CLM that would include monitoring of key human rights indicators in the health sector (as

⁶³ See Notice of Funding Opportunity, op.cit.

with the current PEPFAR-supported monitoring) and in the community (as with REAct). This process should include planning for eventual institutionalization of a mechanism of collation and analysis of CLM data and feeding of it to policymakers and program implementers.

- NAHPA and civil society organizations working on rights and needs of key populations should document safety concerns for key populations and their advocates and develop and implement a plan for raising awareness of these concerns among police and community leaders.

3.3. Implementation of human rights Program Essentials

Starting with GC7, HIV grant applicants to the Global Fund are required to report on the implementation status of program essentials for HIV. Program essentials are a set of standards for the delivery of services by Global Fund-supported programs. In the Essential Data Tables as part of their funding requests, applicants are asked to provide an update on their country's status towards achieving program essentials. In addition, the conditions for countries qualifying for the human rights matching fund require funding requests to consider the findings of the most recent assessment of progress made in scaling up programs to reduce human rights-related barriers and also to ensure the full implementation of all human rights program essentials.

HIV and human rights-related program essentials are:

- Prevention and treatment programs for key and vulnerable populations integrate interventions to reduce human rights- and gender-related barriers to these programs.
- Stigma and discrimination reduction activities for people living with HIV and key populations are undertaken in health care and other settings.
- Legal literacy and access to justice activities are accessible to people living with HIV and key populations.
- Support is provided to efforts, including community-led efforts, to analyze and reform criminal and other harmful laws, policies and practices that hinder effective HIV responses.⁶⁴

The tables below present the progress assessment team's summary observations on progress in Botswana on the program essentials for HIV.

Progress on the Global Fund's HIV Program Essentials

⁶⁴ "Technical Brief: Removing Human Rights-related Barriers to HIV Services," The Global Fund. https://www.theglobalfund.org/media/12445/core_removing-barriers-to-hiv-services_technicalbrief_en.pdf

Program essential area	Are all elements of a supportive environment ⁶⁵ for operationalization of program essentials in place?	Implementation status
HIV programs for key and vulnerable populations integrate interventions to reduce human rights- and gender-related barriers.	Yes	Some programs, particularly for sex workers
Stigma and discrimination reduction activities for people living with HIV and key populations are undertaken in health care and other settings.	Yes	There are activities in the health setting and community settings; better coordination and institutionalization needed. Plan needed for roll-out and follow-up to Stigma Index 2.0.
Legal literacy and access to justice activities are accessible to people living with HIV and key populations.	Yes	Legal services particularly through BONELA; paralegals in a few organizations.
Support is provided to efforts, including community-led efforts, to analyze and reform criminal and other harmful laws, policies and practices that hinder effective HIV responses.	Yes	Some support provided through Global Fund; more funds needed for advocacy, including for coordination and coalition-building.

Annex 1: Summary of Recommendations

The assessment offers recommendations for continuing to scale up and strengthen comprehensive programs to reduce human rights-related barriers to HIV services. These are summarized below:

Program Area	Recommendations
HIV	
Eliminate stigma and discrimination in all settings	<ul style="list-style-type: none"> NAHPA and the Technical Working Group should develop and implement nationwide dissemination of the results of the Stigma Index 2.0 study, particularly those related to the stigma and discrimination faced by key populations. This should include Setswana communications in use of mass media and social media.

	<ul style="list-style-type: none"> ▪ The Technical Working Group on Human Rights under NAHPA's guidance should map and catalogue all activities meant to address HIV-related stigma and discrimination in the country and should develop and implement tools for rapid evaluation and identification of most effective activities. An evaluation tool for assessing the impact of community dialogues should be developed as a priority. Findings of any such evaluations should be used to inform further investment in anti-stigma activities. ▪ The Technical Working Group on Human Rights should revisit the stigma and discrimination elements of the "National Strategic Plan to Reduce Human Rights-Related Barriers to HIV and TB Services" in light of the Stigma Index 2.0 results and the mapping and evaluation exercise recommended above. Interventions to address HIV-related stigma and discrimination should be reprioritized as needed.
Ensure non-discriminatory provision of health care	<ul style="list-style-type: none"> ▪ The key population-oriented training that BONELA has conducted in collaboration with BUMMHI should be evaluated. This evaluation should inform plans to expand or revise the training program. ▪ NAHPA should use tested human rights-related training materials from BONELA and others to ensure that all health-care providers working with patients have pre-service and regular in-service exposure to HIV-related human rights information. In-service human rights training should not be one-off but rather one component of a package of institution-level changes to ensure a rights-based approach to service delivery, including having client-friendly mechanisms of registering complaints and seeking redress. ▪ NAHPA or the Ministry of Health and Wellness should create an electronic platform (or combine with an existing platform) that would enable compilation and analysis of CLM and other data on human rights violations in health services and would inform the prioritization and placement of human rights-related interventions in the sector.
Ensure rights-based law enforcement practices	<ul style="list-style-type: none"> ▪ NAPHA at the highest level should work with the police at the central level to (1) build on the existing HIV and GBV elements in the pre-service and in-service training curricula to include HIV-related human rights issues; (2) to develop standard operating procedures for police conduct with key populations, particularly sex worker and LGBTQ persons, including GBV cases and a concrete plan for rolling them out to all stations; and (3) bring the police together with legal experts to clarify that the Penal Code change regarding same-sex conduct is final without an act of Parliament with the objective of encouraging the BPS leadership to issue orders and appropriate training in this matter. NAPHA should fund these activities even if it requires reprogramming of Global Fund monies. ▪ NAPHA should map and evaluate existing activities at district or village level that have included local or district-level police, such as the NYG Violence Prevention Committees and various community dialogues with key population groups, to identify good practices and strategize to scale up and maintain them. ▪ NAPHA should organize a meeting or perhaps regular meetings with the Botswana Prison Service to raise issues related to gender-

	<p>sensitive housing of transgender persons and provision of comprehensive HIV prevention services in prisons, which include condoms. If civil society organizations are able to work with prison officials, they should also advocate in these directions.</p> <ul style="list-style-type: none"> ▪ The Technical Working Group on HIV and Human Rights should engage with high-level representatives of the BPS as much as possible and should continue to explore ways to promote rights-based law enforcement practices related to people living with HIV and key populations. ▪ Advocacy opportunities with lawmakers should be pursued as noted in the next section.
Improve legal literacy ("know your rights")	<ul style="list-style-type: none"> ▪ The Technical Working Group on Human Rights with NAHPA guidance should consider mapping rights literacy activities and designing a rapid evaluation to assess the most effective practices. ▪ NAHPA should convene a meeting with the ombudsman and his staff and key representatives of civil society to ensure that the ombudsman's office is aware of the human rights challenges faced by people living with HIV and key populations and to investigate whether that office needs capacity-building in this area.
Improve access to justice (HIV-related legal services)	<ul style="list-style-type: none"> ▪ The Global Fund and NAHPA should ensure that funding is available to sustain the REActor function at the most extensive level that BONELA is able to manage. ▪ In view of BONELA's being a "go to" source of legal services for key populations and people living with HIV, NAHPA as principal recipient should ensure for the remainder of GC6 and in planning for GC7 that BONELA has sufficient funds to sustain legal services in this area. ▪ With Global Fund support, NAHPA and BONELA should consider convening a meeting with Legal Aid Botswana to explore avenues that might allow Legal Aid Botswana more flexibility to take on HIV and key population-related cases. ▪ With Global Fund support, NAHPA and key civil society representatives should engage with the office of the national ombudsman not only on legal literacy, as noted above, but also on how the ombudsman might handle HIV-related cases that have not been resolved by other means.
Improve laws, regulations and policies related to HIV and HIV/TB	<ul style="list-style-type: none"> ▪ NAHPA should encourage sub-recipients and sub-sub-recipients of Global Fund support for human rights programs to have dedicated budgets for policy and legislative advocacy. ▪ The Technical Working Group on Human Rights should facilitate the formation of consortia and other collaborative efforts and joint strategizing among civil society groups to optimize advocacy potential around issues such as section 167 of the Penal Code, criminalization of sex work, transgender rights with regard to identity documents, and other issues. If a USAID-supported KP advocacy forum comes about, the Technical Working Group on Human Rights should consider how it might work closely with or merge with that forum. ▪ The Technical Working Group should endeavor to meet with members of Parliament periodically with regard to key legislative issues.

	<ul style="list-style-type: none"> ▪ NAHPA and the Technical Working Group perhaps with the help of UNAIDS should organize a session to explain to members of Parliament that the current law on “willful” transmission and non-disclosure of HIV status does not conform to international standards. Sensitization of members of Parliament should also cover the criminal law issues mentioned in the second bullet above.
Reducing HIV-related gender discrimination	<ul style="list-style-type: none"> ▪ NAHPA should consider a plan for the DREAMS coordination unit to be a more expansive AGYW unit that would monitor and analyze data on all AGYW activities in the country and not just those formally under DREAMS auspices. ▪ NAHPA and the Technical Working Group on Health and Human Rights should organize a consultation with key population-led organizations and those working closely with key populations to ensure that GBV concerns among key populations are being addressed and, if not, to formulate a costed strategy for accelerating work in this area. ▪ NAHPA and the Technical Working Group on Health and Human Rights should also work with key population-led organizations to identify needs for data that would be particularly useful to inform programming for key populations and to identify sustainable, cost-effective data collection methods. ▪ The Global Fund and USAID/PEPFAR should consider organizing a consultation of the several ministries and key civil society actors working on gender-based violence in the country with a view to establishing a coordinating body for GBV work and a plan for eventual government funding of such a body.
Support community mobilization and engagement	<ul style="list-style-type: none"> ▪ NAHPA should ensure that adequate funding is available to sustain community mobilisation and human rights advocacy including the REAct monitoring in the original districts where REActors were trained and to expand this activity to other districts, depending on the capacity to manage expansion. ▪ As with the health sector recommendation above, NAHPA or the Ministry of Health and Wellness perhaps with the Ministry of Justice should create an electronic platform (or combine with an existing platform) that would enable compilation and analysis of CLM/REAct data (beyond the health sector) to trace the nature and location of human rights violations as a means of informing programming and policy. ▪ The Global Fund and PEPFAR/USAID should work with NAHPA and civil society organizations to develop and implement a strategy for nationwide coverage of CLM that would include monitoring of key human rights indicators in the health sector (as with the current PEPFAR-supported monitoring) and in the community (as with REAct). This process should include planning for eventual institutionalization of a mechanism of collation and analysis of CLM data and feeding of it to policymakers and program implementers. ▪ NAHPA and civil society organizations working on rights and needs of key populations should document safety concerns for key populations and their advocates and develop and implement a plan

	for raising awareness of these concerns among police and community leaders.
Cross-cutting	
Cross-cutting HIV-related recommendations	<ul style="list-style-type: none"> ▪ Technical staff should be added to the Legal and Human Rights office of NAHPA to strengthen capacity especially for monitoring and evaluation and data collection and analysis. If this expansion is supported by donors, it should include a plan for the new position(s) eventually to be paid for by government. ▪ NAHPA should ensure adequate funding for a secretariat or other coordinating body of the Technical Working Group on Health and Human Rights, at least for the period of the GC7 grant.

Annex 2: Scorecard Methodology

Scores for the progress assessment are calculated according to the following definitions:

Rating	Definition
0	No formal programs or activities identified.
1.0	One-off activities that are time-limited, pilot initiative.
2.0	Small scale on-going initiative with limited geographic scale (e.g., a single or small number of locations – less than 20% of national scale) and capacity for reaching <35% of targeted population.
2.3	Small scale on-going initiative with limited geographic scale (e.g., a single or small number of locations – less than 20% of national scale) and capacity for reaching 35-65% of targeted population.
2.6	Small scale on-going initiative with limited geographic scale (e.g., a single or small number of locations – less than 20% of national scale) and capacity for reaching >65% of targeted population.
3.0	Operating at subnational level (btw 20% to 50% national scale) and reaching <35% of targeted population
3.3	Operating at subnational level (btw 20% to 50% national scale) and reaching 35-65% of targeted population
3.6	Operating at subnational level (btw 20% to 50% national scale) and reaching >65% of targeted population
4.0	Operating at national level (>50% of national scale) and reaching <35% of targeted population
4.3	Operating at national level (>50% of national scale) and reaching 35-65% of targeted population
4.6	Operating at national level (>50% of national scale) and reaching >65% of targeted population
5	At scale is defined as more than 90% of national scale, where relevant, and more than 90% of the population
Program is assessed to have achieved the goal when there is impact on service continuum	
Goal	<p>Impact on services continuum is defined as:</p> <ul style="list-style-type: none"> a) Human rights programs at scale for all populations; and b) Plausible causal links between programs, reduced barriers to services and increased access to HIV/TB services.

Annex 3: Key informants

- Diana Meswele, program lead for human rights, National AIDS and Health Promotion Agency (NAHPA)
- Evelyn Reetsang, chief research officer, NAHPA
- Cindy Kelemi, executive director, BONELA
- Nana Gleeson, finance officer, BONELA
- Sarafina Molapisi, project lead and drop-in centres manager, BONELA
- Katlego Sechele, program coordinator, BONELA
- Leungo Mafanetsa, legal and liaison officer, BONELA
- Kgoreletso Molosiwa, executive director, BONEPWA (Botswana network of People Living with HIV and AIDS)
- Grace Ajayi, acting country coordinator, PEPFAR
- Emmanuel Mafoko, DREAMS coordinator, PEPFAR
- Tosh Beka, executive director, Sisonke Botswana
- Alankar Malviya, country director, UNAIDS
- Demond Lunga, team leader, Men and Boys for Gender Equality
- Francis Kebalepile, executive director, Nkaikela Youth Group
- Neo Monnapula, monitoring and evaluation officer, Nkaikela Youth Group
- Dr. Khumo Seipone, chief executive officer, ACHAP
- Blessed Monyatsi, program manager, ACHAP
- Skipper Mogapi, executive director, Rainbow Identity Association
- Thato Moruti, chief executive officer, LEGABIBO (Lesbians, Gays and Bisexuals of Botswana)
- Bulayai Bengani, senior supervisor and desk officer for health and wellbeing, Botswana Police Service
- Lesedi R. Rammika, attorney and founder of the firm Rammika Tafa
- Gadzikanani Gokatweng, senior mentor and nursing care specialist, BUMMHI
- Ramatoulie Jallow, postdoctoral fellow, University of Pennsylvania, USA; former lawyer at BONELA
- Tshoganetso Ramosweu, project management specialist – gender and marginalized populations, USAID Botswana

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