2. Service provision including Screening, Testing and Counselling

- Adapt the “Time Has Come” training package to the local context for local and national level health training curriculum to reduce stigma in healthcare settings.
- Introduce a process of quality assurance and certification of HIV testing in the private sectors and Gulf Cooperation Council Approved Medical Centers Association clinics by the National STD/AIDS Control Programme.

3. Furthering Recognition of Human Rights of People Living with HIV and Other Key Populations and Legal Reform:

- Take advantage of the current opportunities for constitutional and legal reform and ensure the Supremacy of the Constitution and broaden the Bill of Rights to include the rights to life, health, privacy, non-discrimination on the grounds of HIV status and sexual orientation and gender identity, and right of patients;
- Repeal and/or amend existing legislation, including section 365, 365A and 399 of the Penal Code, the Vagrants Ordinance and Brothel Ordinance, to ensure that the existing legislation is not used discriminatorily and arbitrarily against key populations including sexual orientation and gender minorities and develop corresponding SOPs for implementation to guarantee the equitable application of laws;
- Provide gender appropriate citizenship documents reflecting the preferred gender of the requesting person without any prior judicial or medical approval, in addition to the development of a clear, simple and uniformly applied supporting legal framework necessary to implement this law in accordance with international laws and standards.
- Further develop training modules through a consultative process to effectively combat stigma, discrimination and other rights-based violations from law enforcement personnel and healthcare workers on 1) law and human rights, 2) ethical professional practice, 3) public health issues and key populations, and 4) sexual orientation and gender.
- Enact internal non-discrimination and non-harassment policies for law enforcement and health departments that protect key populations, specifically people living with HIV and sexual orientation and gender minorities. These policies should be created in line with community and individual feedback.
- Create and implement Standard Operating Procedures (SOPs) for law enforcement agencies to address issues that arise when interacting with key populations. These SOPs should be informed by community input and individuals directly impacted by discriminatory policing.
- Support efforts to assist community organizations to unite in establishing a common advocacy platform.

4. Reducing sexual transmission of HIV

- Ensure greater coverage of adolescents through implementing the Healthy Sexuality component of the Essential Sexual and Reproductive Health Package.
- Access to HIV testing should be provided for adolescents (recognizing the age of discretion, 16 years of age).
- Continued advocacy work with the Ministry of Education and related institutions to implement age appropriate and culturally sensitive, comprehensive sexuality education in secondary schools to address sexual health risks for adolescents and young people.
- Increase awareness of STIs among all sexually active populations and publicize the availability of high quality services in the state health sector through mass media.

5. Improve support and care for key populations and people living with HIV

- Reactivate and strengthen the Legal and Ethics Subcommittee of the National AIDS Committee to examine the rights and welfare of people living with HIV and other key populations in order to effectively respond to rights violations experienced.
- Strengthen the Comprehensive Guideline on Management of HIV/AIDS through the introduction of elements of psycho-social counselling to reduce the impact of psy chosocial distress among key populations.

6. Further strengthen efforts concerning transmission of HIV through blood and blood products

- Secure the Government of Sri Lanka’s commitment through the approval of the National Blood Transfusion Act, which would include guidelines for testing of blood at blood banks.
- Require all private hospitals to register with the National Blood Transfusion Services and be monitored by the Blood Transfusion Monitoring Committee.

[1] The Government of Sri Lanka outlined its commitments to the HIV response in the National HIV/AIDS Policy. Specifically Section 3.11 on human rights states that “[t]he Government of Sri Lanka will ensure that the human rights of people living with HIV are promoted, protected and respected and measures taken to eliminate discrimination and combat stigma which will provide an enabling environment to seek relevant services.” This commitment was made prior to the August 2015 parliamentary elections.
To date 28 ESCAP members and associate member States within the Asia and the Pacific region have “initiated the review and/or consultation on legal and policy barriers to HIV responses.” UNESCAP, “National Reviews and Multisectoral Consultations on Policy and Legal Barriers to Effective HIV Responses,” 19 June 2015. Available from http://www.unescap.org/resources/national-reviews-and-multisectoral-consultations-policy-and-legal-barriers-effective-hiv.

[2] To date 28 ESCAP members and associate member States within the Asia and the Pacific region have “initiated the review and/or consultation on legal and policy barriers to HIV responses.” UNESCAP, “National Reviews and Multisectoral Consultations on Policy and Legal Barriers to Effective HIV Responses,” 19 June 2015. Available from http://www.unescap.org/resources/national-reviews-and-multisectoral-consultations-policy-and-legal-barriers-effective-hiv.

[3] The review included Key Informant Interviews and Focus Group Discussions to ensure that the opinions and views of the communities, government ministries, civil society organizations and national AIDS Programmes were heard and included.

[4] Strategic Information Management Unit NSACP 2015.

[5] Ibid 11.

[6] Ibid 14.

[7] Report on the Technical Committee on Reversing the HIV Epidemic, NSACP February 2014.

[8] Annual Report of the NSACP 2014/2015.

[9] National Dangerous Drugs Control Board. 2014.

[10] National STD/AIDS Control Programme (2015) Annual Report 2015, Ministry of Health Sri Lanka & National STD/AIDS Control Programme.

[11] International guidelines and standards recognize prisoners, transgender people and all sex workers as key populations.

[12] Report of the External Review of the response to HIV and STI in Sri Lanka 2011.

[13] IBBS 2015, IBBS 2014, the People Living with HIV Stigma Index 2010, Exploratory study on the impact of HIV positivity on psychosocial aspects of people living with HIV) and their family members in Sri Lanka (2011), SAARC Situation Assessment of Women and Children infected and affected by HIV/AIDS in Sri Lanka.

[14] For example despite Chapter III of the Constitution of Sri Lanka providing for fundamental human rights, it is not the supreme law of the land. Unlike many constitutions, the Sri Lankan constitution does not contain a supremacy clause. Instead, Article 16(1) of the current Constitution provides, “[a]ll existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter. The failure to enshrine the supremacy of the Constitution results in the inability to legally challenge legislation that is incompatible or inconsistent with the fundamental rights provisions of the Constitution, including the sections 365, 365A and 399 of the Penal Code, the Vagrants Ordinance and the Brothels Ordinance, in addition to other of legislation either facially or as applied. The current Constitution does not include the right to privacy, the right to dignity, the right to security of the person, the right to work, the right to education, among others. The Constitution of Sri Lanka provides for the freedom of thought, conscience and religion; freedom from torture; right to equality; freedom from arrest, detention and punishment; freedom of speech, assembly, association, occupation and movement; right of access to information; and the remedy for the infringement of fundamental rights by executive or administrative action (only).

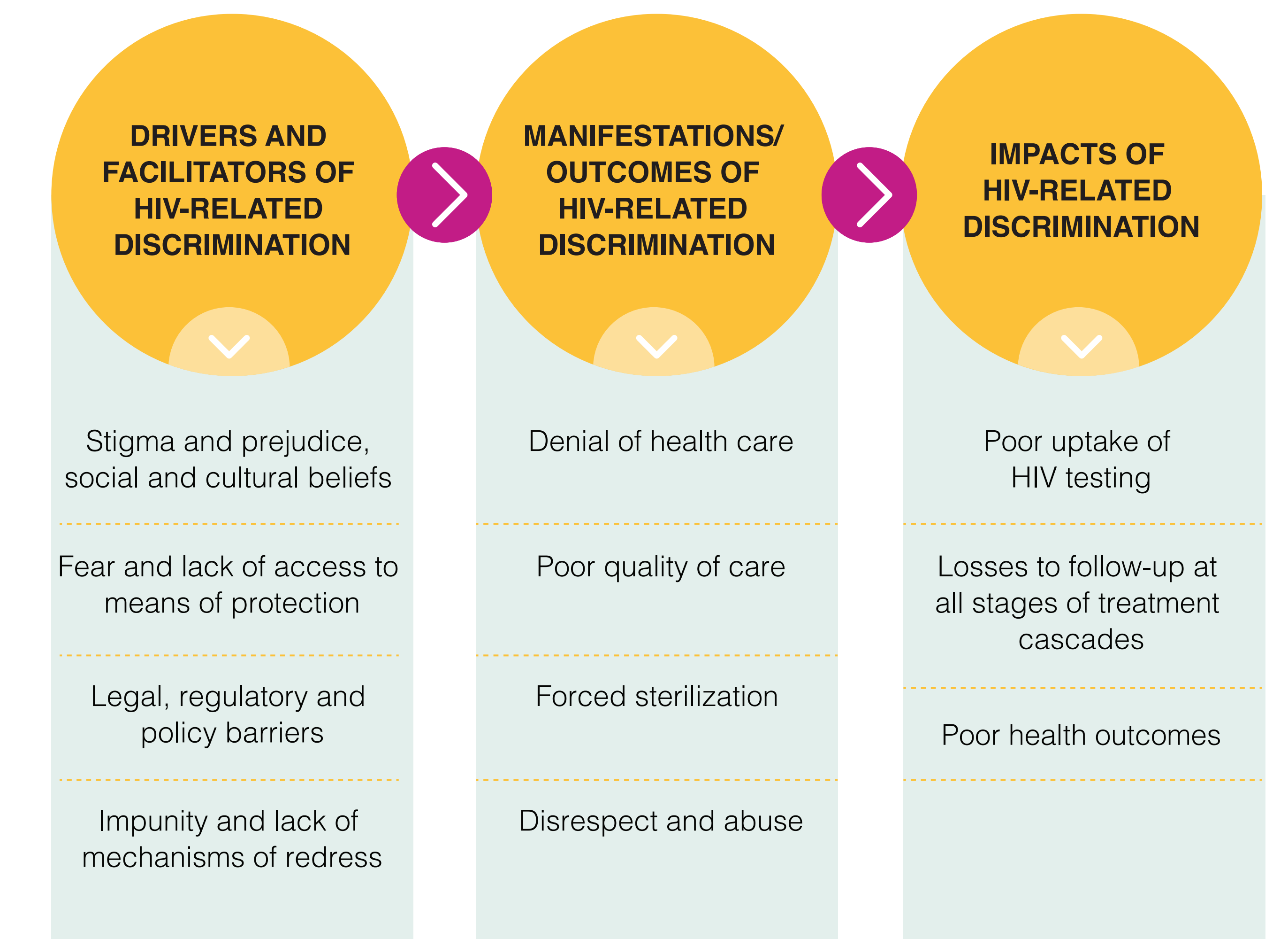
[15] See generally sections 365, 365A and 399 of the Penal Code, the Vagrants Ordinance and the Brothels Ordinance.
Healthy Policy Project, Asia Pacific Transgender Network, United Nations Development Programme. 2015. Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific. Washington, DC: Futures Group, Health Policy Project.

[16] Healthy Policy Project, Asia Pacific Transgender Network, United Nations Development Programme. 2015. Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific. Washington, DC: Futures Group, Health Policy Project.

fpa SRI LANKA
enriching relationships

ASSESSMENT OF THE LEGAL AND POLICY ENVIRONMENT FOR HIV IN SRI LANKA

PRELIMINARY FINDINGS



Source: UNAIDS, Agenda for Zero Discrimination in Health Care

INTRODUCTION

In the 2011 Political Declaration: Intensifying our Efforts to Eliminate HIV/AIDS, governments, including Sri Lanka, committed to review laws and policies that directly and indirectly affect access of people living with and affected by HIV to health and HIV services. This was further reinforced in ESCAP Resolutions 66/10 and 67/9 and the agreed Regional Framework for Implementation of the Political Declaration, which pledged to conduct 1) national reviews on policy and legal barriers and 2) national multi-sectoral consultations to assess progress in meeting the commitments in the Political Declaration and ESCAP Resolutions 66/10 and 67/9.[1,2] During 2015, Family Planning Association of Sri Lanka organized a team of legal and public health experts to review laws, regulations and policies impacting the HIV response in Sri Lanka towards creating a more enabling legal environments for people living with HIV and key populations at higher risk.[3] The review provides a set of concrete recommendations to assist individuals and organizations in Sri Lanka to work together on advocacy priorities for removing the legal and policy barriers that prevent key populations from the full realization and enjoyment of their fundamental rights, including the right to the highest attainable standard of physical and mental health in relation to access to HIV prevention, treatment and care.

EPIDEMIOLOGICAL BACKGROUND

Currently Sri Lanka is categorized as a low level HIV epidemic country based on an estimated HIV prevalence among adults (15 to 49 years of age) of less than 0.1 percent.[4] At the end of December 2014, a cumulative total of 2,074 HIV cases and a cumulative total of 548 AIDS cases was reported based on confirmed serological testing of samples received from state and private health sector institution.[5] Among HIV cases reported in 2014, 76 percent were 25 to 49 years of age, and 6.3 percent were 15 to 49 years of age.[6] The HIV prevalence rate in the 15 to 49 age group was less than 0.1 percent. Between 2009 and 2013, new infections among youth between 15 to 24 years of age, (considered as proxy for HIV incidence) increased by 92 percent.[7] The cumulative proportion of prenatally acquired infections (children less than 15 years of age) is 3 percent.[8] No HIV cases have been reported due to blood transfusion since 2000, and HIV among injecting drug users appear to remain low (1 percent) at present.[9] Between 2009 and 2013, the number of people reported to be HIV positive in each quarter doubled with a gradually increasing trend in male to male transmission, including among male bisexuals, has emerged with a concomitant decline in heterosexual transmission.[10]

KEY FINDINGS IN SRI LANKA

Strong and effective health sector leadership has enabled the maintenance of the prevailing low epidemic status for almost three decades. The adoption of integrated service delivery led to HIV being integrated with on-going STI services and more recently, Sexual and Reproductive Health components namely family planning counseling and commodities being incorporated into STI/HIV services. STI/HIV clinics provide a comprehensive range of services including free of cost including aetiologic management of STIs, HIV testing, antiretroviral treatment and related investigations, condoms, cervical cancer screening and referral or other services as required. Moreover Sri Lanka adopted the Joint Strategy for the Elimination of Mother to Child Transmission and Congenital Syphilis (2014-2017) and is aiming to achieve the elimination of mother to child transmission in 2017.

However despite the progress, this scan identified a number of on-going challenges relating to HIV, law, policy and human rights in Sri Lanka. First, there are a number of key populations who have been shown to be at higher risk of HIV exposure and/or to experience the impact of HIV more severely. The National HIV/AIDS Policy recognizes the following as key population groups: female sex workers, men who have sex with men, people who use drugs, people who inject drugs and beach boys.[11] Other populations that were identified to be more vulnerable to HIV include women, children, youth, migrant workers, armed forces personnel, prisoners and police personnel. Prisons and correctional facilities are recognized as high risk environments where drugs, and unsafe sex is common.[12]

Second, HIV-related stigma and discrimination was found and was reported to exacerbate the negative impact of HIV.[13] In addition, stigma and discrimination on the basis of sexual orientation or on the basis of being a sex worker or as a person who injects drugs was also found and was reported to hinder access by members of these groups to HIV prevention and treatment services. Third, the scan revealed a weak legal environment for the full realization of human rights and fundamental freedoms for all, which is an essential element in the HIV response. Part of this included identified gaps in the current provisions in the Constitution.[14] HIV is not specifically listed as a protected grounds for non-discrimination in the Constitution, nor is there specific HIV legislation in Sri Lanka. Due to the continued low HIV prevalence status of the country, the need for a HIV specific legislation has not been viewed as a pressing concern for the government. Additionally there are a number of punitive or coercive provisions in the law, which create barriers to the response to HIV. For example, the penal code provisions that criminalize same-sex relations and the Vagrants and Brothel Ordinances are used to criminalize aspects of sex work and result in making access to services for key populations more difficult.[15]

Fourth, access to law enforcement and justice for human rights violations is limited. Despite certain legal provisions for access to justice and redress in Sri Lanka, punitive laws and policies further entrench the feelings of inequality, stigma and discrimination resulting in a lack of trust in authorities due to actual or perceived stigma and discrimination being attached to identification as part of a key population, the criminal laws targeting key populations, and inaction or violence from state actors, including police.[16] Moreover these laws and policies can contribute to an increase in the acceptability and prevalence in harassment and violence against key populations, in addition to reinforcing self-stigma, which reduces access to key programs and services.[17]

KEY RECOMMENDATIONS

1. Strengthening the National HIV/AIDS Policy

- Strengthen the National AIDS Committee to general political commitment to support and direct the national HIV prevention responses;
- Ensure greater commitment and facilitate policy coherence of all sectoral partners, including clarification of the roles and responsibilities;
- Enhance gender responsiveness by including a dedicated strategy for women to enable a response to the unique HIV-related risks for women and complement the relief measures provided through the Prevention of Domestic Violence Act, in addition to ensuring the representation of the Ministry of Women and Child Development in the National AIDS Committee;
- Engage in further epidemiological studies to determine whether the definition of key populations as currently used the National STD/AIDS Control Programme (NSACP) and NSP should be amended to include additional populations that may currently be hidden or under-reported.

In order for the recommendations to be implemented and contribute to creation of an enabling legal and policy environment, there is a need for a holistic approach involving multiple interdependent actors and stakeholders.