

PROTECTORS OR PERPETRATORS?

THE IMPACT OF UNLAWFUL POLICING
ON HUMAN RIGHTS AND HIV

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Produced in partnership with AIDS Foundation South Africa,
Alliance Public Health and Gender Dynamix

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At ten in the morning I left my house to go to a place where I had been offered work to discuss the salary and conditions. On the way I was stopped by a district police officer who accused me of stealing six hatches¹ and ordered me to hand over my bag. He searched it and produced a small bag which he claimed contained heroin, although it did not belong to me. I told the police officer this and explained that I had not used heroin for more than nine years, but he refused to listen.

While this was happening, two of my friends came along, a husband and wife. The police officer tried to make them leave, but they refused and were witnesses to the whole conversation. The officer said that I had one choice; to go to prison for the drugs or to admit the theft of the hatches. He threatened me, saying that with seven grams of heroin I would be charged with supply, although he never actually weighed it. He kept me a long time, brandishing a pair of handcuffs and continuing to pressure me with threats and stigmatising names. He called me 'a rotten drug addict', 'a damned convict' and 'a creature who will sell your mother for a dose'. He said that drug users were not even people and that nothing was sacred to them. He told my friends that no one would believe them, and that tomorrow he would put them in prison too.

”
After all of this, the police officer finally changed his tune, saying that he believed me but insisting that on the following day, I would have to bring him \$40. He searched my pockets and took \$5 then and there.

The following day, the man sought help from a local organisation who accompanied him to the police. They saw the Deputy Head of the Department of Internal Affairs who promised to resolve the issue and punish the police officer. They were asked to return the following morning, but that night the man, after so much stress, drank a bottle of vodka, went to bed and died of a cardiac arrest. His family refused to take any action, fearing repercussions from the police officer who they say continues to bribe community members, especially people recently released from prison.

Story based on a REAct report in Kyrgyzstan, February 2022

¹ Hatches are stormwater drain covers and are commonly stolen and the metal reused.

FOREWORD

Police abuses against marginalised people do not simply hurt feelings, they cost lives. And they are undoing our work to end AIDS as a public health threat.

In this report, real-life stories lay bare how unlawful policing impacts on human rights, on access to justice and on the HIV response. These stories capture the resilience and courage of marginalised people and communities in the face of persistent stigma, discrimination and violence.²

They also show the absurdity of laws that criminalise the communities most vulnerable to HIV. Laws that not only violate human rights but are impossible to enforce without undermining the values of democracy and good governance. Unlawful policing isn't simply about bad cops. The unlawful policing practices this report exposes are driven by the criminalisation of sex workers, people who use drugs, lesbian, gay, bisexual and transgender people (LGBT+)³ and people who are homeless. Criminalisation does not serve the public good. In fact, as these stories show, it only serves to reinforce the social and institutional stigmatisation and discrimination of people who have already been pushed to the margins of society. Criminalisation is denying millions of marginalised people access to justice and accountability, and it is undoing and undermining an effective response to HIV.

Every statistic and every case study in this report represents a real person's lived experience. This rich evidence base has not been collected by academics or researchers but by marginalised people themselves, using Frontline AIDS' unique, community-based monitoring tool *Rights, Evidence and Action*, or REAct. These stories are not easy to read, but they have been shared by brave individuals and communities and we should receive them not only with emotion but with a willingness to truly listen to what they are telling us. Whether you are a government representative, a UN staff member, a funder, an NGO worker, someone from a marginalised



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community or a law enforcement official, these stories will help you better understand how our societies and institutions treat the most vulnerable people and what that tells us about ourselves. They also provide an impetus and an agenda for change and will help

each of us to understand the actions we can take to support marginalised communities in their struggle to document, challenge and ultimately end unlawful policing practices, both as human rights violations in themselves and as barriers to our shared goal of ending AIDS for everyone, everywhere.



² At Frontline AIDS, we work with marginalised people who are denied HIV prevention, treatment and care simply because of who they are and where they live. This includes people living with HIV, sex workers, people who use drugs, transgender people, gay men and other men who have sex with men, as well as adolescent girls and women.
³ Throughout this report, 'LGBT+' is used to represent people who are lesbian, gay, bisexual and/or transgender plus other people who have diverse sexual orientations, gender identities and sex characteristics.

INTRODUCTION

The police exist to maintain peace, law and order, to protect and respect people's fundamental rights and freedoms, to combat crime, and to provide assistance and services to the public. But of all of the police's duties, the most fundamental is the protection of human rights. Indeed, the police's responsibility to protect rights is not only an objective, but also necessary for policing to be effective.

Respect for and protection of human rights is also critical to ending AIDS. UNAIDS' *Global AIDS Strategy 2021 – 2026* is crystal clear: ending inequalities is central to ending AIDS as a public health threat. Similarly, in its new strategic framework, the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund) states that maximising health equity, gender equality and human rights is essential to ending AIDS, tuberculosis (TB) and malaria. This high-level prioritisation of rights and equality is much needed, and it has been particularly welcomed by marginalised communities because they know better than anyone else the extent to which human rights-related barriers block access to HIV services.

This is the first in a series developed by Frontline AIDS and our partners, which draws on real-life stories of human rights violations documented by marginalised

communities through REAct. Frontline AIDS launched REAct in 2015 to address the fact that communities most affected by HIV are stigmatised, discriminated against and criminalised, there is often no reliable data even on their very existence, let alone the barriers people from these communities face when they try to access HIV services. Since then, marginalised communities in 31 countries have used REAct to generate **data that shows the true nature and scale of the human rights violations they face.**

Through this series, Frontline AIDS and our partners will reveal the key trends, themes and challenges that repeatedly appear in the data that marginalised communities collect. This first report focuses on unlawful policing practices because law enforcement officials are responsible for a startlingly wide range of human rights abuses and because the police play, or should play, a key role in ensuring other actors who violate marginalised people's rights are held accountable. While the report draws on data collected by partners in South Africa and six Eastern European and Central Asia (EECA) countries⁴, the issues it presents are universal across every single country in which REAct operates.

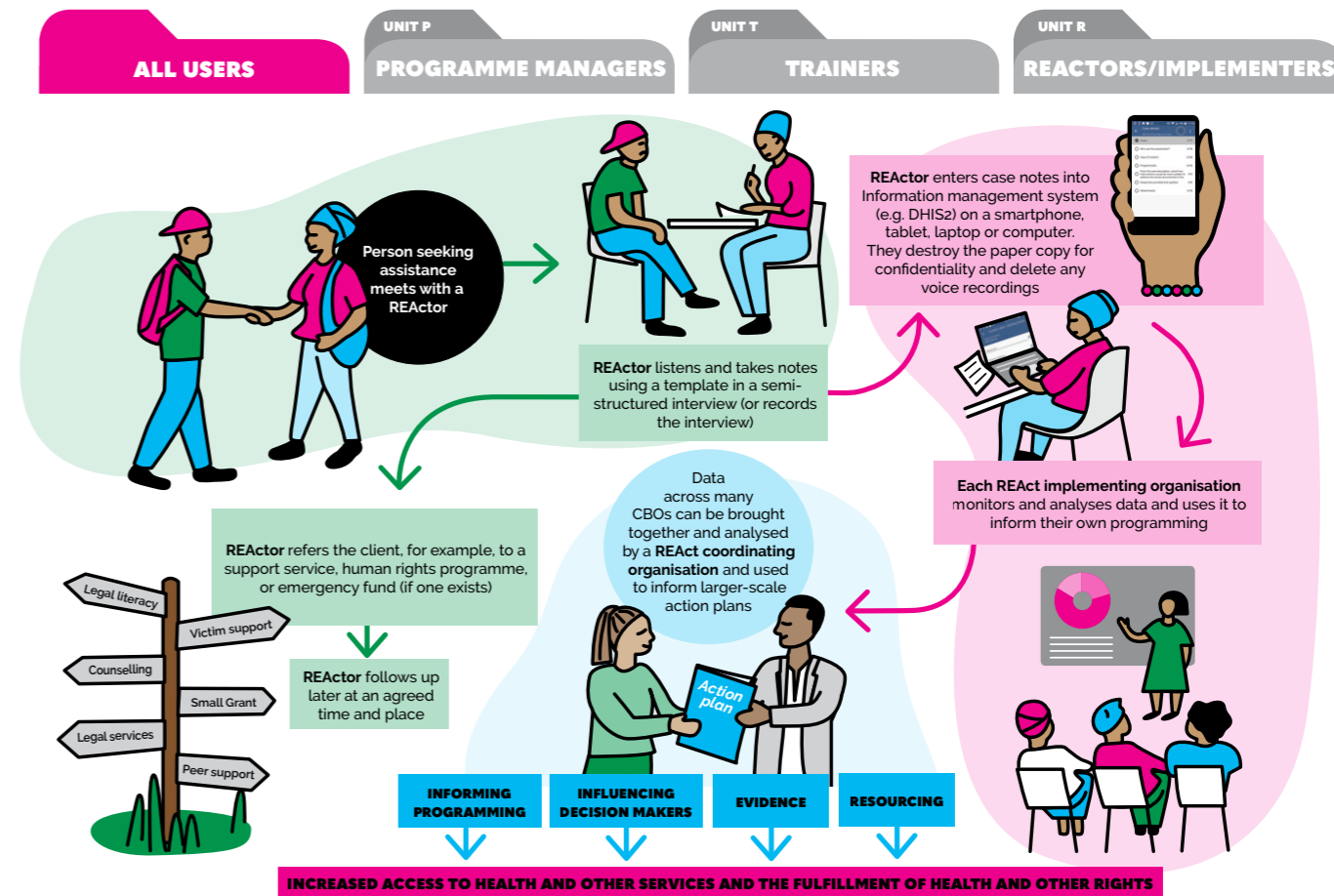
Also universal is the damage criminalisation does. This report is a call to action to all who read it – governments, multilaterals, donors and civil society – to work together with marginalised communities to change the laws that criminalise their innate qualities, their health status and their lives. It is also a call for more investment in community-led monitoring. **Community-led data is urgently needed to push for better programming, more targeted financing and the courageous policy decisions that are needed to remove the human rights barriers that are hampering an effective HIV response, and the creation of just and compassionate societies.**



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⁴ Georgia, Kyrgyzstan, Moldova, Uzbekistan, Tajikistan and Ukraine

INTRODUCTION TO REAct



REAct is a community-based human rights monitoring and response programme that Frontline AIDS launched in 2015. The REAct system is designed with two main purposes in mind: to enable community-based and civil society organisations to easily and systematically support people experiencing rights-related barriers to access HIV and health services, and to build an evidence base to inform programme improvements and policy and legal reforms.

When REAct was conceived, civil society and community-based organisations were struggling with the reality that people most affected by HIV – particularly those from marginalised communities – were experiencing rights abuses due to stigma, discrimination, violence and criminalisation, which was making it difficult for people to access support. There was also a growing need for data that organisations could use to advocate for rights-based programmes, services, policies and laws.

REAct enables organisations to:

- RESPOND TO INDIVIDUAL CRISES:** REAct implementers identify and prioritise crisis situations and rapidly mobilise resources to avert or respond to individual emergencies.
- PROVIDE A SERVICE DIRECTLY OR REFER CLIENTS ELSEWHERE:** These services include legal support, HIV treatment, care and support, psychosocial support, sexual and reproductive health and rights support, HIV-related health services (such as for TB or hepatitis C), medical support, food and shelter.
- RECORD DATA ABOUT HUMAN RIGHTS VIOLATIONS** experienced by individuals in order to:

- ▶ build an evidence base for advocacy
- ▶ gather evidence to provide or recommend rights-based programmes to reduce the damaging impact of violations
- ▶ inform quality, human rights-based HIV programming, policy and advocacy at national, regional and global levels



REAct is at the heart of Frontline AIDS' vision for the future, as articulated in our *Global Plan of Action for 2020-2025*. One of our actions is to 'unlock barriers' and convening community networks to document and respond to human rights violations to hold governments and the private sector to account is key to this. The goal of this action is to improve national laws and policies so they respect, protect and fulfil the rights of those most marginalised, and in turn build a world whereby everyone, everywhere can enjoy their human rights.

Since it began, REAct has been implemented by community-based organisations in 31 countries in Africa, the Middle East, Central Asia and Eastern Europe.⁵

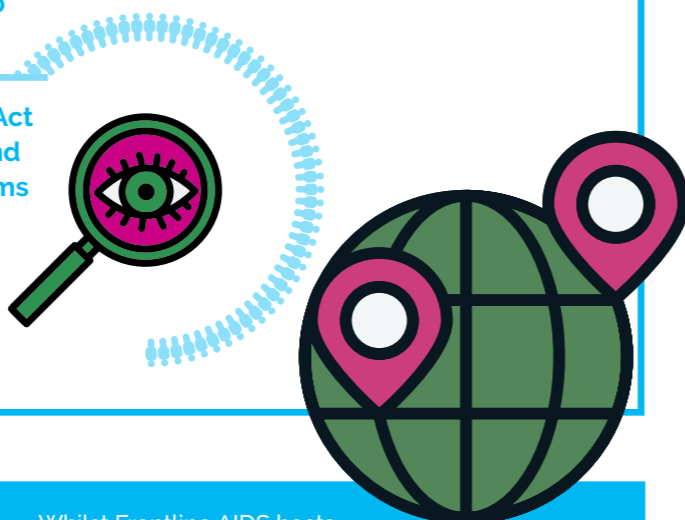
31
COUNTRIES

As of June 2022, 271 organisations in 20 countries were implementing REAct.⁶

271 ORGANISATIONS

Most REAct programming is funded by the Global Fund, the Swedish International Development Agency and the Department of Foreign Affairs of Ireland, with UNOPC and stop TB Partnership funding work in Tajikistan.

A wide range of stakeholders implement REAct nationally, such as National AIDS Councils and Global Fund country coordinating mechanisms (CCMs), including CCM sub-committees and technical working groups focused on human rights, and institutions established to protect rights, such as the Ombudsman's Office and National AIDS policy fora.



A CUSTOMISED INFORMATION MANAGEMENT SYSTEM

Since December 2019, Frontline AIDS has used Wanda, a customised version of DHIS2, to host the data collected through REAct. DHIS2 is a user-friendly, open-source platform commonly used by Ministries of Health and major donors, such as the President's Emergency Programme for AIDS Relief (PEPFAR).⁷ Using Wanda centralises REAct data under one roof, allowing easy global overviews and comparisons to be made.

Whilst Frontline AIDS hosts this data, REAct implementers own and manage it. In 2021, Frontline AIDS' partner the Alliance for Public Health (APH) in Ukraine created its own instance of Wanda, based on the Frontline AIDS' version, then migrated all its REAct data over. APH has continued to use its own instance in 13 countries for its regional SoS programme⁸ as well as for its national REAct project.

⁵ For more information, see Frontline AIDS' webpage '*Rights, Evidence, Action (REAct)*'.

⁶ Uganda, Kenya, Lebanon, South Africa, Jordan, Botswana, Senegal, Ukraine, Kyrgyzstan, Tajikistan, Georgia, Moldova, Uzbekistan, Russia, Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, and Belarus.

⁷ For more information, see the *DHIS2 website*.

⁸ The SoS programme's full name is Sustainability of Services for key populations in EECA region.





METHODOLOGY

This report is informed by the following sources:

- **Wanda, the REAct management information platform that securely stores qualitative data and testimonies and enables quantitative analyses for single or multiple countries, as well as filtering by data elements such as perpetrator, client gender etc.**
- **Interviews with partners to validate the initial data analysis and findings.**
- **Desk research on specific laws in the countries covered (i.e., drug laws, laws on sex work) and on international legal frameworks and jurisprudence relating to human rights and policing practice.**

PARTNERS AND COUNTRIES REPRESENTED IN THIS REPORT

Alliance for Public Health, Ukraine

Alliance for Public Health (APH) is a leading non-governmental organisation (NGO) in Ukraine. In cooperation with government partners and civil society, it has a significant impact on HIV, TB, viral hepatitis and other pandemics in Ukraine and the wider EECA region. It provides financial and technical support to programmes that reach more than 300,000 people, mainly from marginalised populations.

APH manages two REAct programmes, one in Ukraine under a national Global Fund grant and the other through a regional Global Fund grant (#SoS_project).⁹

The national REAct programme began in 2019. Currently, the programme is supporting 77 NGOs to implement REAct in 17 out of 24 regions' centres in Ukraine. A total of 103 'REActors' are documenting rights violations experienced by the marginalised communities they support and providing healthcare and access to legal aid in response. REActors are mainly social workers, project coordinators and specialists, those working on HIV prevention and lawyers. The most common groups receiving services from these NGOs are people who inject drugs, people on opioid substitution therapy (OST), people living with HIV, sex workers, transgender people and men who have sex with men.

In December 2019, APH began supporting civil society and community-based organisations in Moldova, Georgia, Kyrgyzstan, Tajikistan and Uzbekistan to implement REAct through the regional Global Fund-supported programme, *Sustainability of Services for key populations in EECA region* (SoS programme 2019-2021). This involved more than 60 civil society implementing partners and over 160 trained REActors. These partners were led by the following coordinating organisations: Positive Initiative (Moldova), Georgian Harm Reduction Network (Georgia), the Partnership Network Association (Kyrgyzstan), Soros-Kyrgyzstan Foundation (Kyrgyzstan), SPIN PLUS (Tajikistan) and ISHONCH VA HAET (Uzbekistan). In 2022, REAct implementation was transitioned to each country's national Global Fund grant, apart from Uzbekistan. Using funding from a new 2022-2026 SoS Global-Fund regional grant, APH is expanding REAct into 13 countries in south-eastern Europe and central Asia.

Impact of the Ukraine war

Russian aggression, as well as war crimes against communities most affected by HIV, has had a negative impact on ensuring marginalised people's rights to quality healthcare, social services and other support, and the ability to defend rights in cases of stigma and discrimination. The medical certificates, medical cards and personal documents that people had to leave behind when fleeing the war, or that they lost when their homes were damaged or destroyed, has made it difficult for marginalised people to get services in the regions they have fled to.

The war has also impacted APH's operations. In December 2020, APH had begun to expand into Russia, but it has now had to halt operations there. In Ukraine, APH's advocacy activities have slowed down as the organisation has prioritised and scaled up its crisis responses, including providing access to food, housing and medicines. However, APH and its partners have continued to document rights violations and have revised their monitoring tools to capture data relating to the war. This includes documenting the experiences of refugees and internally displaced people and identifying new perpetrators of human rights violations, such as Russian occupants and soldiers in Ukraine.

AIDS Foundation for South Africa

AIDS Foundation for South Africa (AFSA) is an NGO and the principal recipient of a national Global Fund grant to implement South Africa's human rights programme. AFSA has been managing the implementation of REAct

since 2020 and supports eight REAct implementing organisations across seven provinces. To date, there are 33 REActors in South Africa who come from the national network of people living with HIV, the national network of people who use drugs, plus sex worker and LGBT+ organisations.

Gender Dynamix, South Africa

Gender Dynamix (GDY) is a trans-led organisation, which exists to advance the rights of transgender and gender diverse people. GDY does advocacy work

on human rights, legal gender recognition, access to healthcare and inclusive education. It adopts a participatory approach, extensively engaging with community-based partner organisations to ensure its work centres on the lived experiences and needs of trans and gender diverse people in South Africa.

In 2021, GDY piloted REAct in Cape Town in collaboration with the Sistaazhoo, a collective of homeless transgender sex workers, to document and respond to human rights violations against trans and gender diverse people.

Understanding our data

Different case numbers in different countries

The difference in the number of cases reported by countries reflects programmatic and national issues, rather than the likely level of need or scale of violations taking place. For example, in the first SoS programme (2019 – 2021), Kyrgyzstan recorded the highest number of rights violations, at 1,696. But this partly reflects the fact that the programme involved 13 established community-based and civil society organisations, plus an existing scheme of street lawyers. Similarly, REAct in Ukraine operates at a national level, has a national OST hotline and benefits from 77 implementers that deploy many REActors, so it documents more cases than other REAct countries.

Number of cases recorded does not reflect the full situation

In all the countries where it operates, REAct is either the only monitoring system of its kind or a valued addition, which results in REAct implementers recording a significant number of human rights-related barriers to HIV services. Often, REActors document cases that would otherwise go unrecorded. However, the proportion of cases being documented compared to the scale of incidents taking place in communities is low. Again, this reflects contextual factors and limitations, such as the scale of REAct projects and the environments in which they operate. In Mozambique, the coordinating organisation describes the number of cases being documented by REAct as the 'tip of the iceberg' and says significant scale-up is needed to ensure a fuller and more accurate picture.¹⁰

Marginalised communities represented

The profiles of the implementing organisations affect which marginalised communities are most represented in the data. For example, in a country where most of the REAct implementing organisations are LGBT+ organisations, we are likely to see more people from these communities reporting violations (as is the case in South Africa, for example). In the EECA region, there is a bigger focus on people who use drugs, and so there are more cases being reported by this group than by others. This does not necessarily mean these marginalised communities are experiencing more human rights violations than other marginalised communities in those countries, it may simply reflect where the data is coming from, and what issues that group is facing.

It's also important to note that people can belong to more than one marginalised community (for instance, someone might be a sex worker who uses drugs). Because of this, our findings on the number of people from each marginalised group should be treated independently from each other.

The types of violations the police perpetrate

When analysing the data on cases where the police were a perpetrator, we were careful not to make too many assumptions about the types of incidents the police would be involved in. This means we have not only focused on the types of incidents directly associated with police/law enforcement, such as arbitrary arrest and denial of protection by the police, we have also included cases of harassment, intimidation, extortion and blackmail. In many cases, police were the perpetrators of these incidents as well.

Customised indicators

On setting up their REAct project, each partner organisation can customise the data entry template to reflect its own programming and priorities. This means that some indicators, such as the type of incident, can vary from project to project, which can make it difficult to summarise or analyse data together.

⁹ Alliance for Public Health, #SOS Project 2.0 [website accessed July 2022].

¹⁰ Interview with Gabriel De Barros, REAct Mozambique.

DATA ANALYSIS AND FINDINGS

What data comparisons were made?

The data analysis we can conduct to explore cross-country comparisons depends largely on similarities in the design of the data monitoring tool and each data elements. In general, all REAct projects follow a similar design. But each REAct programme will customise its data monitoring tool differently, in line with its objectives, capturing different data elements of interest. Whilst all REAct projects capture data about communities most affected by HIV, perpetrators, incident type, services provided and referrals made, the kinds of communities, and so on will differ by project. Ukraine's national REAct programme, the EECA REAct programme, and the REAct programmes in South Africa each have their own monitoring tools.

We explored whether there were opportunities to compare common data captured across REAct programmes. Upon review, we found that all projects document:

- 1 Police perpetrators as a unique data element – this allowed us to compare the proportion of cases of police unlawful practices in relation to all cases.
- 2 Four common marginalised communities: sex workers, people who use drugs, LGBT+ people and people living with HIV.
- 3 Six common human rights violations attributable to unlawful policing (excessive use of force by law enforcement, arbitrary detention, harassment and intimidation, denial of protection by the police, denial of investigation by the police and blackmail and/or extortion).

Countries	Dates of documentation	Cases of unlawful policing practices reported (Total 2412)	Police cases as a percentage of country cases	Police cases as a percentage of the total (global) cases
Kyrgyzstan	01/20-05/22	867	51.1%	35.9%
Ukraine	08/19-05/22	680	16.6%	28.2%
Uzbekistan	01/20-05/22	292	38.5%	12.1%
South Africa	01/19-05/22	160	8.8%	6.6%
Tajikistan	01/20-05/22	158	15.6%	6.6%
Georgia	12/19-05/22	146	15.0%	6.1%
Moldova	01/20-05/22	109	12.7%	4.5%

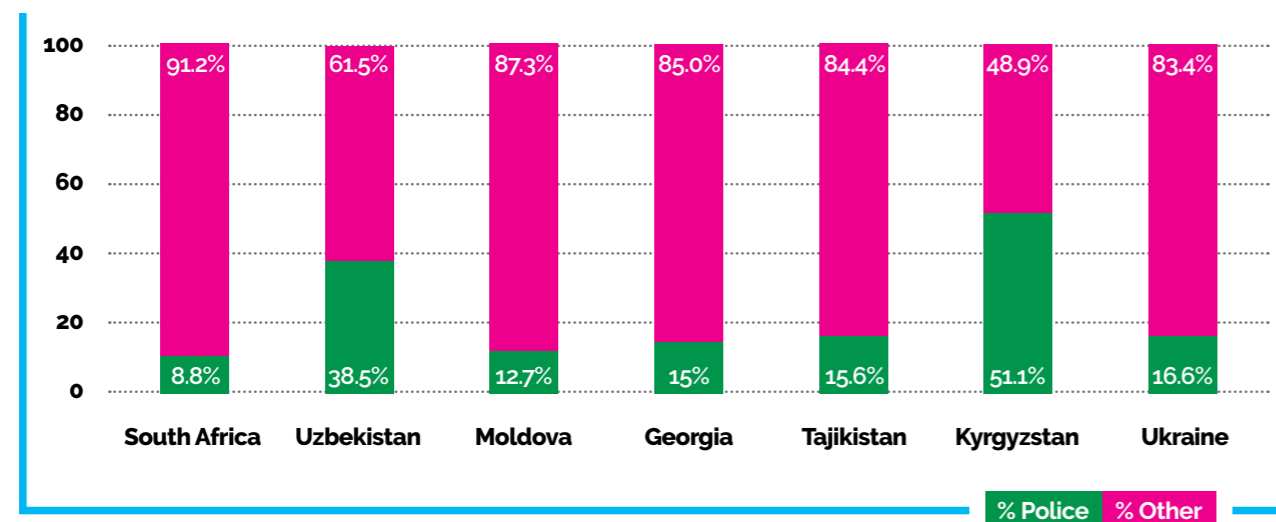
Cases of unlawful policing practices by country

Results of cross-country analysis:

Finding 1: The extent of unlawful policing practices varies across countries.

In Uzbekistan and Kyrgyzstan, unlawful policing was responsible for a large proportion of rights violations in each country. South Africa and Moldova were the countries where unlawful policing was responsible for a lower proportion of cases.

% DISTRIBUTION OF CASES AGAINST THE POLICE IN PROPORTION TO ALL CASES REPORTED IN EACH COUNTRY



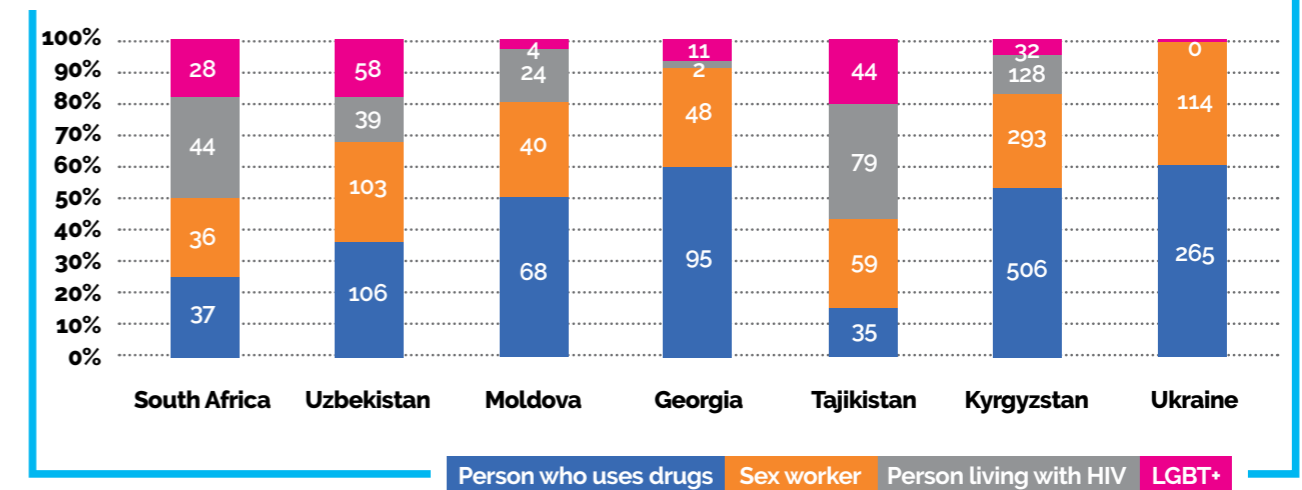
According to our partners, comparably higher rates of unlawful policing in Kyrgyzstan and Uzbekistan does not mean these countries are worse off. Rather, it can be attributed to high levels of documentation in relation to cases of unlawful policing, predominantly amongst sex workers and people who use drugs in both countries.

Equally, our partners in Tajikistan have cautioned against assuming that unlawful policing is not as much of a problem there as it is in other countries in the region. Rather, the reason that the rate of violations arising from unlawful policing is lower than in other EECA countries, such as Kyrgyzstan and Uzbekistan, is because stigma and discrimination against people most affected by HIV is so rife, and human rights violations are being perpetrated by so many actors, no single perpetrator group stands out.

Finding 2: Different marginalised communities in different countries are reporting a higher proportion of cases.

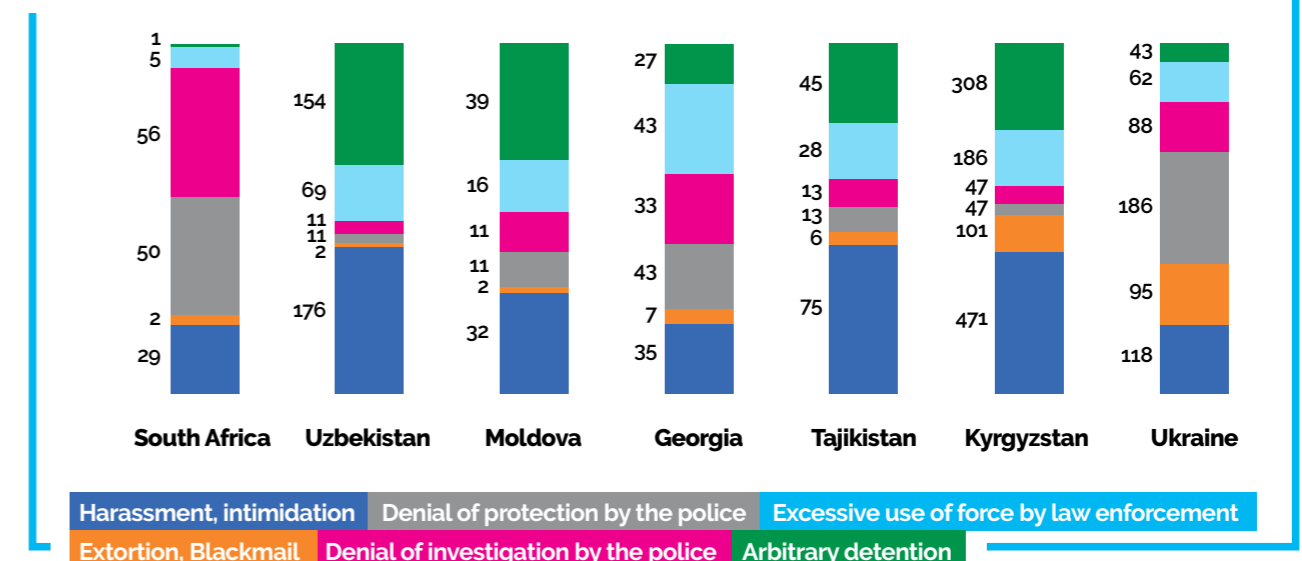
In EECA, people who use drugs are consistently reporting higher levels of human rights violations caused by unlawful policing than other marginalised communities. The only exception is Tajikistan where sex workers are reporting the most police-related violations. South Africa is different: people living with HIV are reporting more police-related violations, although other marginalised communities are not far behind.

% DISTRIBUTION OF KEY POPULATIONS GROUPS REPORTING POLICE CASES BY COUNTRY



Finding 3: In all countries, the police are perpetrating a wide variety of human rights violations against marginalised communities, but the most common type of violation differs between countries.

% DISTRIBUTION OF COMMON FORMS OF POLICE ABUSE



DISCUSSION OF FINDINGS

This section concerns findings from across the EECA region and South Africa. Whilst the examples and case studies are from specific countries, many of the issues are common in several of the countries studied and are apparent in other REAct data collected by Frontline AIDS and partners. While case studies have been selected to illustrate particular issues, they are by no means an exhaustive description of the types of violations affecting particular communities.

The findings are based on data from the Data Analysis and Findings section above plus other country-specific data.

In many cases, the policing practices described in this report directly violate the laws of the countries where they happened. States grant the police a wide degree of discretion, enabling them to temporarily deprive people of their freedom or limit their enjoyment of certain rights. But very few legal systems openly permit practices such as blackmail, extortion, harassment and intimidation. And while the police can place limitations on personal liberty, and can use physical and even lethal force, they cannot do so arbitrarily. In law, the police can only exercise their powers in ways that meet the objectives of their duties, and only to the extent that it is necessary to do so. In some cases the police may have to deny a person their protection, or may be unable to investigate or prosecute particular crimes, but this needs to be done for a legitimate reason, provided for in law. Human rights and human dignity are precious; they cannot be limited without justification. Indeed, international principles on democratic and lawful policing recognise that successful policing is only possible with public support and this, in turn, is influenced by the police's conduct towards members of the public. This demands the police visibly protect and respect human rights and dignity.

But what happens when people who are criminalised experience unlawful policing? What happens when it is experienced by people and communities who, due to stigma and discrimination, are seen by the wider public as unworthy of human rights protection? The stories documented in this report take place in these very contexts. REAct clients describe how police apprehend them in virtually every civic space: in their homes, on the street, in healthcare facilities, on their way to work, to the supermarket, to social events. For marginalised people, there is simply no safe place.

It must be recognised that this lived experience does not simply describe the flawed conduct of individual police personnel, but a system that authorises and even necessitates the police to overstep the limits of their discretionary powers to perform their duties.

Combatting drug use and sex work, for instance, requires the police to 'suss out' people they suspect of using drugs or selling sex. By law, they must have good reason for believing that individuals are engaged in these activities. But conduct that might

suggest drug use or sex work is not easily identifiable. In reality, if the police consistently performed their duties in accordance with the rule of law and in strict observance of human rights, it would be very difficult to implement criminalisation. This difficulty is overcome by targeting individuals themselves, regardless of what they may actually be doing at that given moment. The ultimate effect is that it is not sex work or drug use that is criminalised, but people themselves. Fuelled by stigma, the criminalisation of marginalised communities and people living with HIV is enabling and exacerbating unlawful policing practices. This is allowing the police to violate rights with impunity, which is severely compromising public health efforts to end AIDS.

CRIMINALISATION AND UNLAWFUL POLICING VIOLATING THE RIGHTS OF PEOPLE WHO USE DRUGS IN EASTERN EUROPE AND CENTRAL ASIA

In the EECA countries analysed, except for Tajikistan, people who use drugs and sex workers are reporting disproportionately high levels of unlawful policing.

In each EECA country reported upon, drug use is criminalised. The exception here is Kyrgyzstan, where drug use is partially decriminalised, but in practice the environment remains highly punitive. The quantitative thresholds introduced for possession as part of Kyrgyzstan's decriminalisation reforms are unrealistically low. Individuals found to be in possession of drugs below these quantities still face a minimum fine of 30,000 soms, equivalent to US \$350, which is roughly 16 times the minimum monthly wage. On top of fines, the authorities can restrict an individual's freedom of movement for up to six months, require them to undergo compulsory drug treatment or educational courses, and impose further sanctions.¹¹ The very presence of such restrictive penalties – combined with stigma, discrimination and a focus on punishment rather than individual wellbeing and public health – creates a breeding ground for unlawful policing practices, including corruption, extortion and the systematic abuse of people who use drugs.

KYRGYZSTAN

"At the time I was on probation for drug possession when policemen came to my home. They found two grams of cannabis resin, to which I admitted being for my own personal use. At this point the police then attempted, successfully, to extort money from me – promising that I could either pay them directly or receive an official fine for a larger amount. They demanded 20,000 soms from me, but I was only able to provide 10,000, after which they left."

Person who uses drugs, Kyrgyzstan

This pattern of discriminatory policing practices is repeated throughout EECA, often abetted by the hostile climate and punitive drug policies facing people who use drugs.

UZBEKISTAN

"I was returning home and was close to the house, but a car with militiamen was already waiting for me. Without explaining anything, they put me in a car and brought me to the police department. They found that I had drug injection sites and all they told me was that I was suspected of a crime. They ended up holding me for three days before releasing me. For three days I was tortured and, having not given them the confession they wanted, they then tried to recruit me as an informant. Throughout this whole process they treated me humiliatingly."

Person who uses drugs, Uzbekistan

Several civil society groups, organisations for people who use drugs and medical professionals have sought to improve the legal environment around drug use and to promote access to harm reduction and HIV services. But a mixture of misconceptions, prejudice and a lack of evidence-based debate continues to emphasise the punishment of people who use drugs and the perceived deterrent effect of criminalisation over approaches that promote health for people who use drugs and their communities. This is disastrous for the HIV response.

POLICE-RELATED VIOLATIONS AGAINST PEOPLE RECEIVING OPIOID SUBSTITUTION THERAPY IN UKRAINE

Partners in Ukraine monitor REAct cases reported by people receiving OST as a separate indicator. This enables us to monitor the particular human rights barriers these individuals experience when they try to access OST services.

In Ukraine, 31.4% individuals said that they were OST patients. People describe being apprehended by the police on their way to OST facilities. Police officers will often wait outside harm reduction services and take individuals into custody, physically and verbally abusing them, detaining and interrogating them for several hours, and causing them to miss their regular treatment and to go into forced withdrawal. The police also confiscate condoms and medications. Police often state they believe illicit drugs are being sold in OST sites. These practices show a deep distrust and lack of understanding about harm reduction. Police will threaten people, saying that if they see them coming to the OST site again, they will arrest them. So, people who stand to benefit so much from OST then avoid the potentially life-saving treatment on offer.

Testimonies from people on opioid substitution therapy in Ukraine

"Just as I was about to enter the OST site, a police officer stopped me and refused for me to go in to receive my methadone treatment. Instead, I was put in police car and driven to the police station where I was forced to clean the station. Through it all, police officers insulted and humiliated me, until the office closed and I was released. I never did receive my methadone that day."

"I was on my way to meet a friend at the AIDS centre, I was stopped by the police in a car that was parked nearby. They asked me where I was going, and I told them. They told me to get into the car, which I did. Then they started to insult me, saying that I was a 'drug addict' and that I was going to 'breed drugs'. They said that they know that the OST site was selling marijuana and heroin. Then they told me to take everything out of my pockets, which I did. They asked what my friend's name was, and I was confused who they meant. I said that they must have the wrong person and then one of them hit me suddenly in the chest and started threatening me, saying that they would take me to the police station where I would tell them everything, and where I was going, and why. Then they asked me if I know 'RA', the one who drinks methadone. I said no. Then they released me and said that if they saw me here again, that I would have problems."

"I was returning from the OST site carrying methadone when the police approached me and began to humiliate me, calling me rude names and reaching into my pockets without reason. I tried to tell them that I am a member of the OST programme and showed them all the documents I could, but they took my methadone pills and took me to the police station. There they beat me and kept me until the evening, and then they charged me with crossing the road at the wrong place. They only gave me back half of my pills."

¹¹ Talking Drugs, 'Drug Decriminalisation Across the World' [web page, accessed July 2022].



CRIMINALISATION AND UNLAWFUL POLICING VIOLATING SEX WORKERS' RIGHTS IN EASTERN EUROPE, CENTRAL ASIA AND SOUTH AFRICA

In South Africa, sex work is criminalised by the Sexual Offences Act, an archaic piece of legislation from 1957. This makes it a criminal offence to 'procure any female to have unlawful carnal intercourse with another person'¹². The law also bans brothels, solicitation and receiving proceeds from sex work. In 2007, the Sexual Offences Amendment Act made it a criminal offence for both men and women to sell sex or to buy it.¹³ As is the case for many other criminalised activities, this approach results in clandestine meetings, a lack of protection for sex workers, and sex workers being exploited by private individuals and those in authority.

In EECA, sex workers reported cases of unlawful policing at the second highest rate of the marginalised communities documented.

Testimonies from sex workers in Eastern Europe and Central Asia

The policy environment surrounding sex work within EECA has changed in recent decades, with countries implementing varying approaches and levels of criminalisation. The individual context, social, economic and political settings – as well as the history – of each country means that, while similarities exist across the region, there are also marked differences in legal approaches to sex work. Sex work is only legalised or regulated in four EECA countries, all of which are outside the scope of this report (Hungary, Latvia, Turkey and Greece). Most EECA countries penalise sex workers by charging them with administrative offences, often dubbed misdemeanours or petty crimes.¹⁴ But across the countries surveyed, sex workers are regularly targeted through other laws and administrative offences.

The criminalisation of sex work gives a green light to law enforcement to indiscriminately criminalise, abuse and extort sex workers. When combined with conservative or prejudicial attitudes about sex workers and people living with HIV, this creates a breeding ground for systematic abuse of some of the most marginalised members of society. This is clearly shown in the testimonies from EECA below.

CASE STUDY: KYRGYZSTAN

I was standing outside the massage parlour when a police officer walked by and started demanding money from me. I told him I only have \$10 and quickly walked back inside to get away from him. He kept yelling from outside, and I kept saying that I only have \$10. Then he came into the parlour with another police officer. They immediately began to twist my arms and threaten that if I don't let them, they will take me to the police department and draw up a statement against me that I run a massage parlour and that then it will be worse for me. Then they extorted \$20 from me. They kept constantly

humiliating and insulting me, saying that I won't do anything to them since I am a prostitute. Then they took my passport and left, saying that they would give me back my passport when I brought them money. And then they left. The next day, I called the district police officer and said that I would bring the money. I went to meet him later and gave him the money. But he didn't give me my passport. He said it was someone else's passport. They said when the owner of the passport comes that they would call me, but they still haven't called. I myself am afraid to call so as not to anger them. I will wait for their call.

SEX WORKER

¹² See Government of South Africa, *Section 10(a) of the Sexual Offences Act, 23 of 1957*.

¹³ See Government of South Africa, *Criminal Law (Sexual Offences and Related matters) Amendment Act, Act 32 of 2007*.

CASE STUDY: TAJIKISTAN

I am a drug user living with HIV who is currently undergoing OST. A couple of weeks ago I received a threatening phone call summoning me to the police department to testify. When I entered the office, I saw two familiar men that I met in February. Police officers took a statement from both about me... I have had encounters with the two men previously, but before having sex with either of them I offered them both a condom, however they refused to have sex with a condom. I only ended up having intercourse with one of them and only on one occasion. I did not have sex with the other. On the same day, I was detained and taken to a special holding cell in

the evening. Because of this I missed taking both my ARV [antiretroviral] therapy and methadone. The next morning they took a statement from me. On the table, the operatives had records of my incoming and outgoing calls. They called all my friends and they asked if they 'had a connection' with me. A criminal case was initiated against me under Part 1 of Article 125 of the Criminal Code of the Republic of Tajikistan: knowingly putting another person at risk of HIV.

SEX WORKER

CASE STUDY: GEORGIA

I was picked up in a car by two plain clothes police officers while I was working. The police officers demanded a free service from me. When I refused, they threatened me, sexually harassed me and locked me in their car. With the help of a friend, I escaped. When I went to the police station to report

the case, the officers there said that it would be best to sort out the issue with the perpetrators directly. They said if I did this, I would no longer have any problems with the officers who abused me.

SEX WORKER

¹⁴ The Sex Workers' Rights Advocacy Network (Swan) (2019), *Sex Work Legal Frameworks in Central-Eastern Europe and Central Asia (CEECA) Briefing Paper*, p.6, 12-13.

CRIMINALISATION OF PEOPLE LIVING WITH HIV, TAJIKISTAN

Twenty-three people who only identify as living with HIV reported unlawful policing practices related to the criminalisation of HIV transmission resulting in court cases. Nine cases were reported in Tajikistan, nine in Kyrgyzstan and five in Uzbekistan.

Unlike other EECA countries in the study where people who use drugs predominantly reported police-related violations, in Tajikistan people living with HIV and sex workers reported the highest number of unlawful policing practices.

Transmission of HIV is a serious crime in Tajikistan, punishable by between two to five years in prison, and up to ten years if more than one person is infected.^{15 16} As a result, people living with HIV there face unrelenting, heavy-handed criminalisation.

People living with HIV in Tajikistan describe how they are arbitrarily detained by the police for long periods, verbally abused, interrogated about their sexual partners and history, and denied access to antiretrovirals or the opportunity to call a family member or friend. The police often conflate HIV with drug use and sex work, further exacerbating the abuse people face. The police often know a lot of personal information about individuals, including where they live and their medical history, which they regularly disclose to people in the local community. This causes individuals deep psychological harm.

Testimonies from people living with HIV in Tajikistan

CASE STUDY: TAJIKISTAN

“ I am a housewife who has been living with HIV for a long time. Last week, I was summoned to the Ministry of Internal Affairs where the officials interrogated me about my condition. They asked me where I had gotten the disease and whom I had infected. They tried to make me write these things down and sign some documents, but I refused. Then they let me go. After that, they started calling my friends and relatives, telling them about my HIV status and to go get tested. My relatives began to call me, worried and wondering what was going on. They all

went to get tested, and everyone was negative. But I am still afraid that they can initiate a criminal case against me even though I am not having sex. I am psychologically stressed, and I want to kill myself now that all my relatives, neighbours and even classmates know my status. ”

CASE STUDY: TAJIKISTAN

“ When I was driving, I was stopped by traffic police officers on my way home. They checked the documents and then claimed that my seatbelt was not fastened, to which I said that it was, but they kept denying so. Then the police officer accused me of not being sober and insisted that I took a breathalyser test, and I agreed. The test showed no sign of alcohol. Then they saw a bottle of my ARVs in my bag and started to insult and humiliate me calling me a drug addict. They said I was 'running on wheels'. One said, 'You get drunk on wheels and then you crash into people with their cars, damn it!' We got into a verbal skirmish. I tried to explain that the bottle of pills were medicine, though I did not say what illness they were for. The police then decided to take me for drug tests, to which I agreed. No drugs were found in my body. I don't want to report the police because I've had negative experiences with them. ”

¹⁵ See Government of Tajikistan, *Criminal Code of the Republic of Tajikistan of May 21, 1998 (as amended on 23-12-2021)*, Articles 125 and 142.

¹⁶ *HIV Justice Network, 'Tajikistan'* [web page, accessed July 2022].

THE IMPACT OF CRIMINALISING HOMELESSNESS ON ALREADY CRIMINALISED GROUPS IN SOUTH AFRICA

Legislation in South Africa requires the police to perform their duties in a reasonable manner.¹⁷ During an arrest, police may only use force as is reasonably necessary and proportional to the circumstances.¹⁸ The reality is often very different. As this report shows, police brutality – through harassment, intimidation and denial of protection – is an all-too-common occurrence, especially for marginalised communities.

The right to housing is entrenched in Section 26 of the South African Constitution.¹⁹ This is the supreme law of the Republic of South Africa which imposes obligations on the state to uphold certain basic human rights.

South Africa's constitution and other legislation protects the right to housing, but municipal by-laws in various regions criminalise homelessness. For example, in 2007 the Cape Town Municipality introduced the Streets,

Public Places and the Prevention of Noise Nuisances By-Laws²⁰, which effectively criminalise homelessness, giving authorities the power to impose fines, jail sentences of up to six months, or both.

The table below shows that many of the individuals from various marginalised groups who reported cases of rights violations caused by unlawful policing were also homeless. While homeless people are the general target of such policing practices, homeless people from LGBT+ communities are particularly targeted, as are people suspected of possessing and using drugs.

"There is a lot higher levels of violence as a result of being a transgender person, as we are seen as being objectionable in the eyes of the police in other ways than just being homeless"

GDX STAFF MEMBER



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INTERSECTIONAL IDENTITIES OF INDIVIDUALS REPORTING CASES IN SOUTH AFRICA

	Person living with HIV	Person who uses drugs	Sex worker	LGBT+ person	Man who has sex with men	Homeless person
Person living with HIV	44	10	13	12	0	12
Person who uses drugs		37	12	12	0	22
Sex worker			36	12	0	11
LGBT+				28	0	19
Man who has sex with men					5	0
Homeless person						31

¹⁷ See Government of South Africa, *Section 13(3)(b) of Act 68 of 1995. The South African Police Service Act (68 of 1995)*.

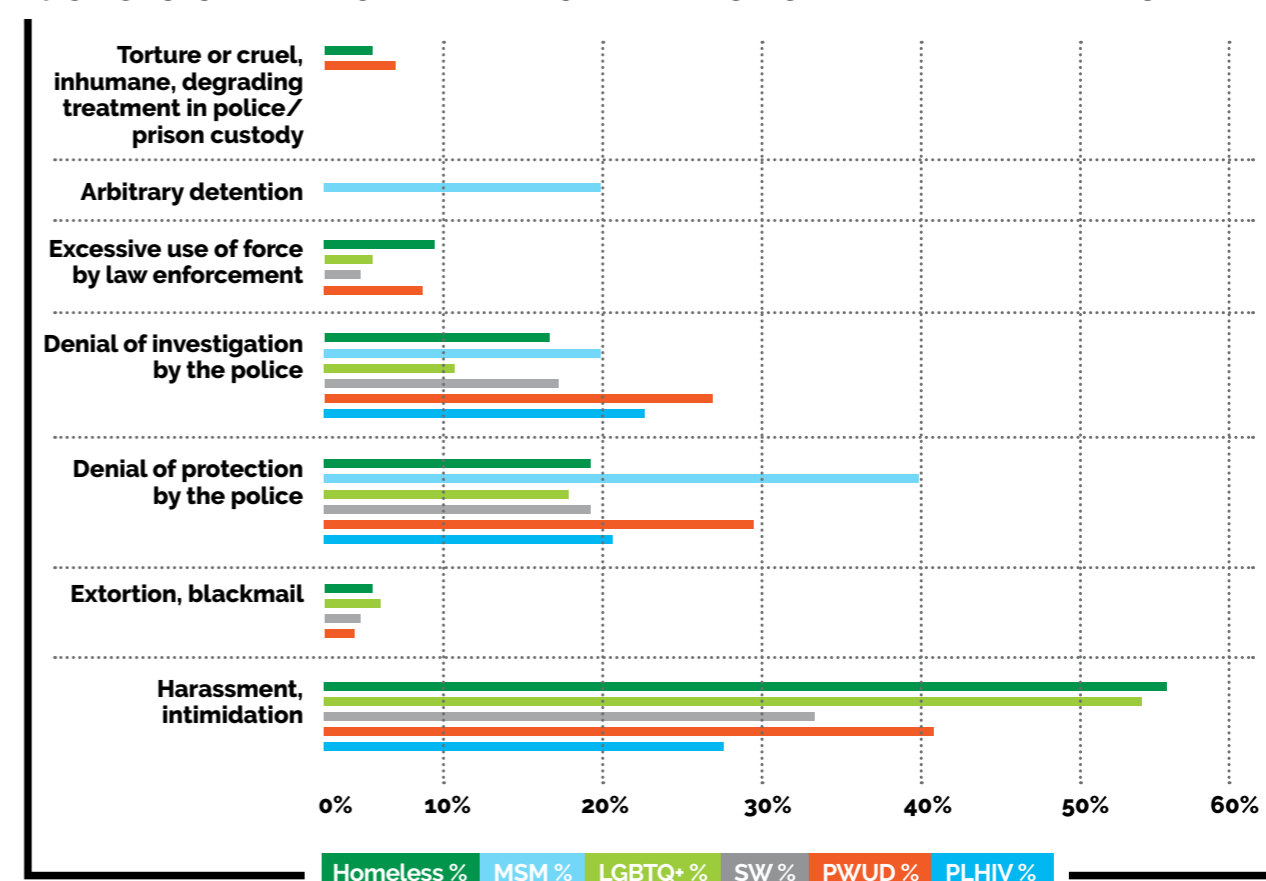
¹⁸ See Government of South Africa, *The Criminal Procedure Act 1977* (as amended).

¹⁹ See Government of South Africa, *The Constitution of the Republic of South Africa*, Act 108 of 1996.

²⁰ See Cape Town Municipality (2022), *Streets, Public Places and the Prevention of Noise Nuisances*.

REAct data reveals that police harassment and intimidation is one of the most common unlawful policing practices experienced by marginalised groups, particularly homeless people and LGBT+ people.

% OF CASES WITH INCIDENT TYPES WHERE POLICE WERE A PERPETRATOR





CASE STUDIES: SOUTH AFRICA



“ I was walking to the place that I sleep every night after finishing work and got my stuff and something to eat for the night. I sleep on the corner of two streets and the police were waiting there and were talking to the others that sleep there. I tried to turn and walk away but they saw me and called me back. When I got to them, they asked me why I had tried to run away and I said I was not trying to run. Then the constable slapped me and said I must not lie to him. They then started to search me and they found my syringes and crack pipe.

They asked what I'm doing with these syringes, and I said nothing, and they started to beat me. After that they started to call me 'nayope [cannabis] boy'. They kept on beating me and the other guys. They then took all of our blankets and all documents that they could find. I am scared that they will come back as they have done this for a couple of weeks now and I don't want to get beaten anymore. I fear opening a case as they will kill us. I am telling my story to see if you can help us to get a place to sleep or if you can talk to South African police services people to stop doing this and beating us. ”

“ I stay next to a church where the police came and arrested us. At night they came and woke us up and told us to take our stuff and then we were left in the cold with nothing. Then in the morning they woke us up and told us that we cannot sleep here. Then they started to put us in the van. I noticed that I was the only transgender woman there. It was only me. I told

the sergeant that I am a transgender woman but, he told me that he did not want to hear fok-all [swearword meaning 'nothing']. He grabbed me by my clothes and threw me in the van. I asked the sergeant where he was taking us and he said the police station. When I was released, everything I owned was gone: my money, medication, blankets, clothes, tents. Everything was gone. ”

“ It was on a Friday morning that it happened; the 10 July 2021. Law enforcement came to break down my place that I call home. They came without warning and confiscated my stuff and I couldn't take anything, not even my personal belongings. They surrounded us like we were a bunch of criminals who were on the run. And they just started to confiscate our things. It happened under a bridge.

They called us names like 'Moffies' [homophobic insult], and they said we are men, and they will treat us like men. Why do they act this way? They don't know the emotional harm they bring to us by doing and saying all those dehumanising words to us. I did not choose to be a transgender woman; I was born this way. Most of them don't even wear name badges, or they wear them back to front, so I can't even identify them. ”



These testimonies show that South African law enforcement officials specifically target homeless people and treat them in a degrading and dehumanising way. Our evidence clearly shows a link between being homeless and experiencing police violence and excessive use of physical force, suggesting the police are abusing their position of authority and acting in an arbitrary manner. Municipal law enforcement officers routinely attack homeless people in the middle of the night, using an element of surprise as a form of intimidation, and often harass and physically assault them. They destroy shelters, and confiscate and destroy identification documents and medication – not only is this physically and mentally damaging, it means people are then unable to obtain often lifesaving services due to a lack of documentation. Homeless people seldom press charges against the police, saying they do not want to become entangled in court cases and subject to the law. After such attacks, no provision is made for alternate accommodation, meaning the police are causing a form of micro internal displacement and are also exacerbating homelessness.



UNLAWFUL POLICING PRACTICES AGAINST TRANS WOMEN'S RIGHTS IN SOUTH AFRICA

South Africa is the only African country to offer constitutional protections against discrimination based on sex sexual orientation and gender. Various legislative provisions explicitly protect the rights of transgender people and prohibit unfair discrimination and harassment against them, such as the 2000 Promotion of Equality and Prevention of Unfair Discrimination Act (the Equality Act). Transgender people also have the right to change their sex description in the national birth register due to the 2003 Alteration of Sex Description and Sex Status Act.

Despite these laws, harassment, violence and discrimination against transgender people in South Africa remain rife, including at the hands of the police. Transgender women in particular face high levels of human rights violations from the police. It is common for the police to make humiliating and stigmatising comments about transgender women's gender identities. The police also perpetrate extreme physical

violence against transgender women, who often report being beaten up and even tear gassed. Even when individuals tell police officers, they are a transgender woman, male police officers will still conduct illegal bodily searches in public, and in aggressive ways that show their intention to humiliate and degrade that person because of their gender. At times, police will apprehend individuals on pretext of drug searches, but there are many instances in which the police harass transgender women virtually anywhere and for no other reason other than their gender identity. In some cases, the police make it explicitly clear they are searching individuals simply to see their sexual attributes. They often confiscate belongings, including medication and personal identification documents. From the cases described, it is clear the police know their behaviours are illegal.

For transgender people, identity documents are not only important because they enable them to access public services, including healthcare, they are also a precious affirmation of their gender. Despite the law allowing transgender people to reapply for and replace their identity documents, widespread social and institutional stigma inevitably puts transgender people at risk of further abuse if they attempt to do this.

TESTIMONIES FROM TRANS WOMEN IN SOUTH AFRICA



"One day in the night-time the police came to where we were staying to raid our area for drugs. After searching our place, they did not find any drugs. They searched my boyfriend and other people and did not find any drugs on them either. All the police officers were men. They wanted to search me but I told them that I am a woman and that they are not allowed to search me. I had my surgery done about a few months ago so my private parts were still sensitive. The police officers didn't care about the fact that I'm a woman. They searched me anyway. The police officer touched my breast and then put his hand in my pants and touch my vagina very rough, so rough that I got sore. After he was done he said to me that if I wanted to be searched by a female officer that he could take me to the police station for that. But yet he had already touched me. They did not find any drugs so they left. This isn't the first time this has happened. A few years ago, I went to the bus station to look for someone when I was stopped by the police who wanted to search me. I told them that I was a transgender woman. The female officer asked me what a transgender woman is and I explained, and

this is why the male officers insisted that I must show them my penis. I felt so powerless and humiliated because I had to show my penis to them in public and in front of all the people there.

The police came to my home and took all my personal belongings and literally left me with nothing but two blankets. They were very rude to me and asked me my name, and I told them Patricia [not real name], so they abused me because I gave them a woman's name. I asked them, 'Are you here to do your job or are you here to abuse me?' One officer asked me, 'What is your fucken name? Your right name!' I replied, 'It is Patricia'. Someone screamed out my dead name [old name] in the street... So, they wrote me a fine out on my dead name. And they took my ARVs, my ID document. They basically took my whole bag with all my personal documents and medications. There was a female officer that was shouting and provoking us, and when we try to defend ourselves, the male officers jump in and intimidate us. They were about to pepper spray me and my partner but there were people nearby, so they stopped."

HOW FEAR STOPS PEOPLE SEEKING JUSTICE

REAct implementers in EECA regularly and consistently document how cases are resolved²¹. This provides data on the extent to which marginalised communities can access justice – and what forms this takes. The resolutions described in this section relate to cases where marginalised people reported violations committed by the police and needed legal recourse.

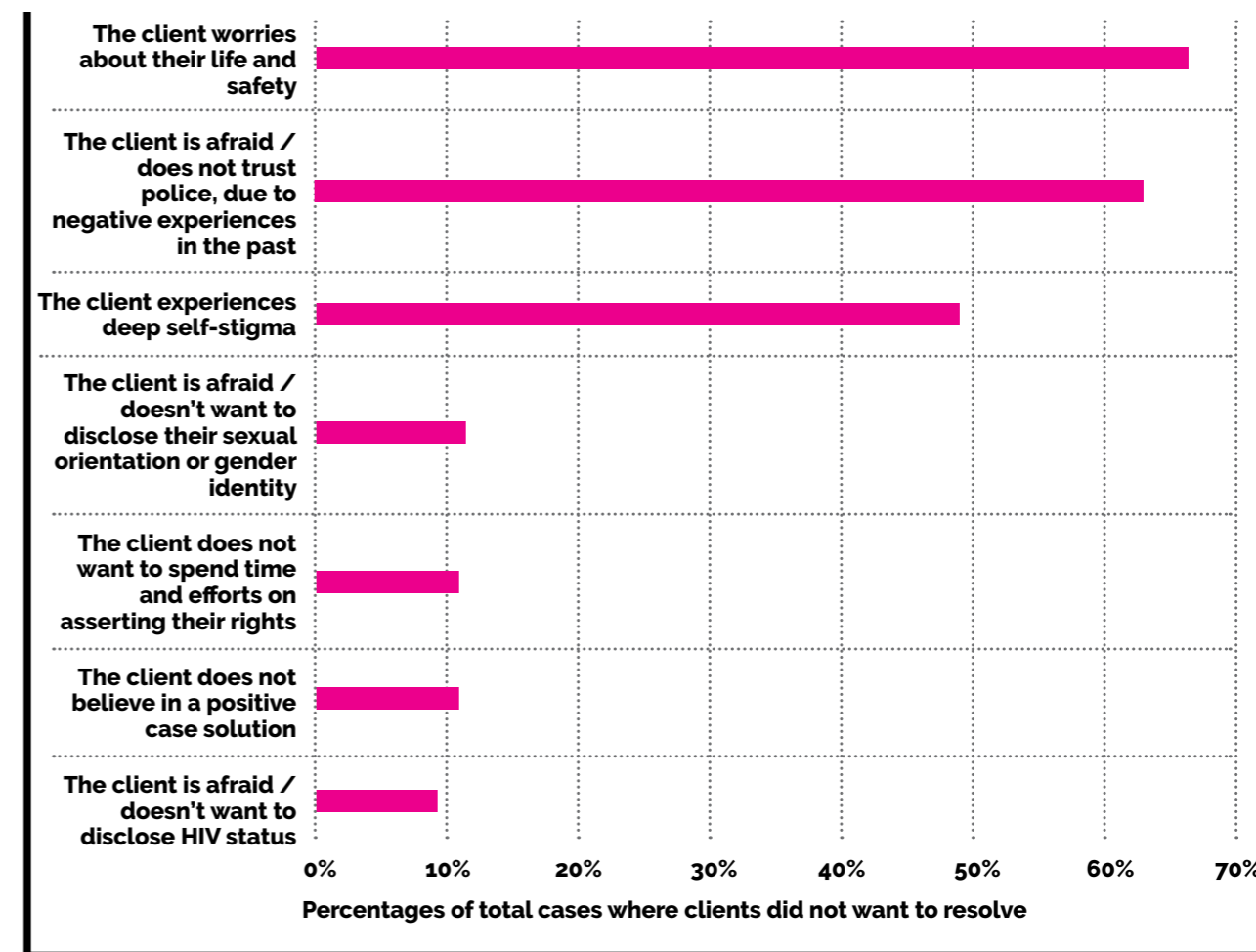
Over half of these cases were unresolved because people did not want to take action to try to resolve their case.

In 2022, APH's regional REAct programme began to explore the reasons why clients were reluctant to take legal action against the police, and the findings are concerning. As the data shows below, the top two reasons given by clients were fears for health and safety, and other fears based on actual experiences of police abuse. The third reason was a reluctance to report due to a deep sense of self-stigma.

Case resolutions relating to unlawful policing	% Distribution
Case unresolved because the client did not want to take legal action	50.26%
Resolved positively	18.08%
Unresolved - Lost contacts with a client	8.22%
In progress	7.11%
No resolution required	6.85%
Resolved negatively	3.26%
Partially resolved	2.42%
Unresolved - no support provided	1.83%
Unresolved (no specific reason given)	1.11%
Client has died	0.13%

²¹ Explanation of case status: <https://react-aph.org/en/response-methodology-in-react-tool/>

REPORTED REASONS WHY A CLIENT DID NOT WANT TO RESOLVE A CASE





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For policing to be lawful and democratic, the police must be transparent in their actions and accountable for them, and individuals must be able to seek justice without fear of police reprisal. For this to happen, individuals must know their rights and the rules governing police powers, and they must have access to accountability mechanisms to raise complaints if they need to.

But this report highlights how, in reality, police harass and intimidate marginalised people, threaten reprisal if individuals report them, and abuse human rights with impunity. Repeatedly and across countries, REAct data documents how marginalised people are being forced into silence out of fear of further persecution and abuse, and even out of fear for their lives. The police patrol the neighbourhoods of marginalised communities, often apprehending people in their homes and workplaces. This means many people are afraid to report unlawful policing because the police know where they live or work and can go there to abuse them. Our data shows these fears are real, not imagined – police often threaten reprisal if they are reported. In this context, a fear of reporting police officials to the police is not surprising. The decision not to pursue legal action is understandable and even rational, considering that to do so would entail people confronting the very individuals and state structures that perpetuate abuse against them, putting them at risk of more violence and rights violations.

Sex workers' ability to continue working on the street and in brothels often depends on them paying police bribes. Sex workers fear that if they report the police

for demanding bribes, they will just bring charges against them, sometimes fabricated ones. As one REAct client puts it: "Sex workers don't report police extortion because they will not let them work further, and this will create various kinds of problems for sex workers." A REAct client who refused to complain about the police, simply said: "If I do that, there will be no rest from them."

In South Africa, people reporting violations perpetrated by the police are also reluctant to report cases. As a GDX staff member explains:

"Individuals from key populations who are homeless report on the condition that their cases are not reported to the police out of fear of repercussions of being further targeted. They say, 'We want you to keep this confidential.' People are fearful of being identified and singled out because they are still on the streets."

The fact that some people do not want to report cases because of deep-seated stigma is equally troubling. This shows the damage social stigma, criminalisation and other forms of discrimination does to marginalised people's lives, rights and health, and this is being reinforced by police abuses. This is evidence that individuals internalise the stigma they experience from society and state actors, which causes them to believe they either deserve the treatment they receive or that it is normal and to be expected. It is well documented that self-stigma has a detrimental effect on health interventions aimed at people living with HIV and marginalised communities, as it makes people more likely to acquire HIV but less likely to access treatment or stay on it.

A FAILURE TO PROTECT AND INVESTIGATE IN SOUTH AFRICA

The police have a responsibility to protect marginalised communities from the discrimination and violence they experience at the hands of other aggressors. This includes other state actors, such as healthcare workers and other public service providers, and people from the local community. However, the police often refuse to provide this protection. They will refuse to open and investigate cases and often fail to help people access justice. **Marginalised communities are aware that the police will do nothing to exact justice for them and this gives others the licence to perpetrate human rights violations against them with impunity.**



TESTIMONIES FROM TRANS WOMEN IN SOUTH AFRICA

"I went to the local police station to open a case of abuse as I was abused by my wife in my own house. I reported the case to the police official who was on duty that day. He went out to the other officers and called another male officer to listen to my case and they both laughed at me and told me that they won't open a case because I am a man and it is 'impossible' for me to be abused and beaten by a woman. There was nothing I could do. I went back home without any assistance and the case was not opened.

About six months ago I was raped by my ex-boyfriend and I tried lodging a case with the police but they refused because it was my boyfriend. They said they don't want to lodge a complaint, only to cancel it, because I would get back together with my boyfriend.

"I was raped by other men, and when I went to the police station to open the case, they laughed at me and discriminated against me because of my gender identity and sexual orientation. I didn't get any assistance because I am gay. I went home without being assisted."

IMPACT OF UNLAWFUL POLICING ON SERVICE ACCESS AND THE HIV RESPONSE

These stories show not only that unlawful policing and criminalisation are deeply harmful to human rights, but they are also undermining public health efforts.

This report has documented multiple cases where the police have confiscated individuals' property, including withholding or destroying their medicines and harm reduction commodities, as well as their identity documents which are often needed to receive social and health services. It has also described several stories of individuals being targeted at medical facilities, particularly OST sites, deterring them from returning to access the critical HIV and health services on offer. This report also conveys the problem of drug policies that disproportionately focus on apprehending people who use drugs. This is despite a wealth of evidence on the damage such punitive approaches have, not only on policing practices and rates of imprisonment, but on the prevalence of HIV, viral hepatitis and other infections, and on the overall health and lives of people who use drugs, their families and their communities.

REAct data shows the police are arbitrarily targeting people living with HIV. In one of the case studies in this report, police made unfounded allegations against someone living with HIV under laws criminalising HIV transmission. Then they shared that person's private information with their family, friends and community, making them even more vulnerable to human rights violations from others and severely impacting their health and wellbeing. In another case, a person was arbitrarily arrested and subjected to drug testing simply because they were found to be in possession of antiretroviral treatment, and in a third a volunteer at an HIV centre was relentlessly harassed by police to disclose the names of people using the service. Equally striking was evidence from South Africa of the police's routine and deliberate harassment of people who are living on the streets, with those from communities most affected by HIV, such as LGBT+ people, disproportionately affected. These assaults do nothing to reduce levels of homelessness. They simply exacerbate the challenges that homeless people face in their day-to-day lives while pushing a community that is already at heightened risk of HIV further away from the HIV, harm reduction and support services they need.

Our evidence clearly shows how human rights barriers impede access to HIV services. These barriers also impede efforts to gather the very data that is needed to overcome them. Where marginalised communities are



criminalised, governments fail to collect public health data about them. In contexts where marginalised communities are criminalised for their health status, lifestyles, innate qualities or inalienable characteristics, government-led monitoring systems place the focus firmly on criminality and punishment, rather than health and human rights. This is disastrous for several reasons. It prevents countries from allocating their limited HIV and health funding most effectively. It also stops governments from accessing funds from donors, as the data they need for their proposals to be successful is either non-existent or inadequate. It also undermines monitoring and evaluation efforts because it prevents adequate insights into grant performance and impact evaluations. All this adds up to a lack of necessary resources and assessment capacity within countries, which in turn reduces the impact of HIV prevention, testing and treatment programmes for vulnerable populations. But without these programmes in place, no country will end AIDS.

THE VALUE OF COMMUNITY-LED MONITORING

While currently underutilised, community-led monitoring (CLM) systems like REAct play a crucial role in monitoring marginalised communities' access to HIV services – and in challenging human rights barriers.

For example, REAct monitoring in Ukraine led to the successful renewal of HIV treatment for a man who was unlawfully being denied freedom of movement and residence. In Kyrgyzstan, REAct documentation and advocacy helped to secure the dismissal of police officers who subjected a man to unlawful detention, abuse and harassment.

In other EECA countries, evidence generated by REAct has contributed to institutional and policy reform. In Moldova, for example, 27 cases were recorded in the city of Orhei showing that people who use drugs had to travel 50 km every day to receive OST, which was detrimental to their health, job prospects and lives. This evidence helped to open up negotiations with the Ministry of Health, which led to an OST site opening in Orhei. It also helped to catalyse the opening of another site in the city of Călărași, in this case with the process of opening the site taking less than a week.

In Kyrgyzstan, REAct partners had documented a significant number of cases where people who use drugs had experienced harassment or blackmail from police officers, but none of the victims agreed to take a complaint to the prosecutor's office. Instead, a lawyer working on the project and providing advice to a network of street lawyers or REActors wrote an official letter of complaint to the Ministry of Internal

Affairs. The letter made clear that REAct implementers had documented evidence of regular abuses of authority by policemen in the form of unlawful arrests and detention of people using OST sites. The letter was accompanied by video recordings from street surveillance cameras in neighbouring buildings, which showed the regular presence of police cars near OST sites. The partners received an official response to this letter, with the leadership of the Ministry acknowledging the reports that we had shared and committing to strengthen their oversight and control over the legality of the police's actions. While partners felt that this official letter didn't go far enough in terms of firm commitment to action, they made copies of it and distributed them to their network of REActors. These street lawyers now use this document when interacting and negotiating with law enforcement officials. REAct data gathered since then shows that this has had a positive effect, with the number of human rights violations being documented decreasing as law enforcement officials realise that the Ministry is aware of and may hold them accountable for their actions.

Growing support for community-led monitoring is reflected in the latest UN Political Declaration on HIV and AIDS. It is also apparent in UNAIDS' *Global AIDS Strategy 2021 – 2026*, which emphasises the importance of CLM systems for creating more targeted human rights responses. National and regional Global Fund grant recipients are also introducing systems for monitoring human rights barriers to services into their national HIV and TB programmes and policies. Many grant recipients have done this through the 'Breaking Down Barriers' initiative²², although recent mid-initiative assessments found that existing human rights programming is still too small to make a significant difference and requires increased technical capacity and investment. Other donors and civil society organisations are also implementing community-led monitoring, including the Stop TB Partnership, Expertise France, PEPFAR, the French 5% Initiative, the International Treatment Preparedness Coalition and many others.

As long as criminalisation, stigma and discrimination exist, communities most affected by HIV will be best placed to monitor and challenge the rights-related barriers they experience. The place to start is to ensure these communities have the opportunities and technical support they need to collect data and influence the decisions that affect them. What doesn't work is relying on external recording mechanisms to collect data, as these often lack the contextual knowledge held by communities themselves. By contrast, community-led monitoring systems are designed to provide localised and contextualised



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knowledge, and the expertise and leadership of the community representatives implementing them, complemented by community trust and rapport, means these systems are extremely effective. Community-led monitoring is an essential element of successful human rights-based monitoring programmes. It gives power back to marginalised communities and ensures that the monitoring of service availability, accessibility, acceptability, affordability and quality presents an accurate picture. It is also essential for informing impactful advocacy based on the realities of life for marginalised communities, something that is crucial for improving services and reforming harmful laws and policies.

As one REAct implementer told Frontline AIDS, community-led monitoring "will empower us to come to those spaces with evidence and advocate for changes to behaviour, policies or law, reducing human rights violations within the LGBT community... and [it] will create the opportunity to have a conversation with national stakeholders about the decriminalisation of LGBT people, sex workers and people who use drugs.

²² Through the Global Fund's *Breaking Down Barriers* initiative, 20 countries globally receive additional funds to vastly scale up evidence-based programming to reduce human rights-related barriers to HIV, TB and malaria services [web page, accessed July 2022].



CALL TO ACTION



Here we set out six actions that are critical to ending unlawful policing practices against people living with HIV and marginalised communities and dismantling the wider human rights barriers that are damaging the HIV response.

While some of these actions may be more relevant for a particular group – be that government representatives, UN staff, donors, civil society and community-led organisations, or people living with HIV and marginalised communities – most will require input and action from all these groups. With this Call to Action, we have a blueprint for the change that is desperately needed, not only to improve the lives of marginalised communities but to address the human rights barriers that continue to fuel the HIV epidemic. It is now down to each and every one of us to come together and drive this forward.

2 REPEAL DISCRIMINATORY AND PUNITIVE LAWS TARGETING PEOPLE LIVING WITH HIV AND KEY POPULATIONS

Criminalisation is a central driver of unlawful policing practices, fuelled by stigma and discrimination. To remove human rights barriers to an effective HIV response, governments need to adopt human rights and health-based approaches. This includes acting on calls made by expert groups like the EECA Commission on Drug Policy, and “repealing criminal, administrative and other discriminatory laws that punish in any way behaviour related to drug use, including non-medical use, possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption”²³, as well as restricting the application of criminal laws to large-scale commercial drug trafficking and ensuring that the thresholds for personal possession are not unrealistically low²⁴.

Beyond drug use, the evidence highlighted in this report makes a case for the decriminalisation of consensual adult sex work²⁵, same sex relationships, HIV transmission and homelessness in order to break the vicious circle of stigma, criminalisation and unlawful policing. Advocacy led by marginalised communities and wider civil society has a vital role to play in pushing for these changes, with support from parliamentarians, the media, human rights bodies and international allies. Alongside legislative reform, awareness campaigns are needed to counteract negative stereotypes of marginalised communities, as are wider reforms to build better policing practices that respect human rights.

3 BRING AN IMMEDIATE STOP TO UNLAWFUL POLICING PRACTICES TARGETING PEOPLE ACCESSING OPIOID SUBSTITUTION THERAPY

It would be beneficial for community-led monitoring efforts to incorporate questions specifically on people receiving OST into their data systems, in order to understand how widespread these practices are, and to bring them to an end. In settings where police are targeting people using OST sites or other harm reduction services, Ministries of Health should intervene, by issuing clear directives that this is not permitted. In some countries, civil society and other actors have sought to address policing challenges relating to harm reduction delivery through the provision of training. These approaches can improve police understanding of and support for OST and wider harm reduction efforts, particularly when they are conducted in partnership with people who use drugs, but Ministerial Directives and other decisive government action are likely to have a more rapid impact. Donors and UN agencies can also play a persuasive role by urging governments to take early action in order to ensure that internationally funded harm reduction programmes are not undermined by unlawful policing practices targeted at individuals using these services.

1 END IMPUNITY FOR UNLAWFUL POLICING PRACTICES AND HUMAN RIGHTS VIOLATIONS BY OTHER STATE ACTORS

States have a duty to ensure that effective mechanisms are in place to hold the police accountable for the lawful exercise of their powers, and that these are known about by the public and can be used without fear of retribution, including by people from criminalised communities. Civil society and community organisations and national human rights bodies have an important role to play in ensuring that people living with HIV and key populations know their rights and are supported to seek justice for violations by the police and other state actors, as well as to challenge impunity at the political level. UN agencies such as the Office of the High Commissioner on Human Rights and the Special Rapporteurs can also support the push for accountability at the international level, supported by UNAIDS, donors and other key actors.

4 INTRODUCE SPECIFIC REFORMS TO STOP UNLAWFUL POLICING PRACTICES TARGETING TRANSGENDER PEOPLE

Governments and law enforcement agencies must take urgent steps to address the high levels of police harassment and intimidation transgender women experience in some countries. Clear and enforceable directives should be issued on the circumstances in which the police can and cannot approach or arrest transgender people. Outright bans on unnecessary strip searching and intimate body searches are urgently needed, with strict penalties for police officers who violate these orders. Ministries should also develop specific guidance on the police's responsibility to protect the personal safety of transgender women who are arrested or detained, and this includes not placing them in holding cells with cisgender men. Government actors should also support other measures to reduce the marginalisation of trans communities, such as the introduction of legal gender recognition and gender-affirming healthcare. National and local governments need to work in closer collaboration with trans community organisations and representatives to ensure transgender people's experiences and perspectives are reflected in the decisions that affect them, and that community-led data gathered by transgender organisations is utilised. Greater engagement with trans people will bring about a better understanding of and respect for gender diversity. Ultimately, this will reduce violence and discrimination against trans and gender non-conforming people and bring countries a step closer to achieving gender equality.

5 INVEST IN COMMUNITY-LED MONITORING TO REMOVE HUMAN RIGHTS BARRIERS TO HIV SERVICES AND TO AN EFFECTIVE AIDS RESPONSE

All actors should take steps to make community-led monitoring mechanisms an essential part of national HIV responses. This is also key to ensuring that existing and future HIV and human rights programmes meet the genuine needs of communities most affected by HIV by adapting to what the community-led data is telling us. Governments will need to display political leadership to implement the policy and legal reforms that community-led data shows are necessary. In some contexts, donors and UN agencies will need to insist that governments make these changes, rather than continuing to invest financial resources and technical assistance in responses that ignore human rights barriers. This will also require major donors like the Global Fund to learn from recent evaluations and ensure that human rights programming is fully funded, on an adequate scale, and has the technical, monitoring and evaluation support it needs to succeed.

6 SUPPORT COMMUNITY-LED, EVIDENCE-BASED ADVOCACY

Governments, donors, UN agencies and international organisations must invest in civil society and community-led organisations so they can access the funding and technical support they need. This is critical for enabling civil society and community-led organisations to document human rights violations, and to increase their overall understanding of human rights and of the legal environment in which they operate. Civil society and community actors also require advocacy support so they have the resources and skills they need to bring their data into national and international spaces and conversations. This is essential for persuading decision-makers to take action to remove human rights barriers. Finally, all actors need to ensure they are actively working with and listening to civil society and community-led organisations involved in community-led monitoring and advocacy to ensure that policy, programming and financial decisions reflect the experiences, needs and priorities of communities on the frontline of the HIV and human rights response.

²³ Eastern and Central European and Central Asian Commission on Drug Policy (ECECACD). 'Drug Laws and Policies in Four Regions of Eurasia' [web page, accessed July 2022].

²⁴ The EECA Commission recommends that thresholds for personal possession should equate to an amount equal to 10 days' worth of average daily use, with the average daily dose to be determined based on the tolerance of the individual concerned.

²⁵ Global Network of Sex Work Projects (NSWP). 'The Impact of Criminalisation on Sex Workers' Vulnerability to HIV and Violence' [web page, accessed July 2022].



CASE STUDIES: SOUTH AFRICA



“ My friends and I were living under the bridge when, in the very early hours of the morning, a group of police came to harass us and lock us up. They just said, ‘come, come, come, get into the truck’, and we were all confused and cold. They broke down our shelters and confiscated all our belongs, including our medication and ID documents. They took everything. We asked where we are going, and they said we going to the station. They said a lot of things to us. Things like ‘you are moffies’ [a homophobic insult]. They were really rude to us.

People came to take pictures of us and we tried to stop them, but they just carried on, not caring about how we felt. We were just sitting in the truck watching them break down our homes, throwing everything around and loading everything in the big truck. We were traumatised about what is happening, and we started singing and banging against the truck on the inside because we didn’t know what to do. I mean, that was our lives that they were breaking down.

At the police station, they took our fingerprints, saying they wanted to see if any of us had criminal cases pending or warrants against anyone. Those of us with these things were arrested. When we got back to the bridge, there was not a brick left. Everything was just cleaned out and there were security guards there now with dogs. When we tried to get close, they put the dogs on us. So, we were left with nothing.

We had to get boxes to sleep next to the road. There were a few people who still cared about us. The rest just didn’t care. From there, we moved to the other side of the bridge. There were a lot of gangsters there but we had to make it work. I moved away again to another place. It is really traumatising because you have to build up everything again. Sometimes it feels like you wanna give up, but I can’t. Because I need to make a living for myself and move forward. ”

TRANS WOMAN, LIVING ON THE STREETS IN SOUTH AFRICA



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