

Spectrum: A Tool for Key Population-Led Law and Policy Reform

Introduction

Key populations—including gay men and other men who have sex with men, transgender individuals, sex workers, and people who inject drugs—and people living with HIV often face widespread discrimination in various countries. This is especially true in places with deeply rooted cultural and social norms against key populations. Norms often shape laws and policies that hinder HIV prevention, care and treatment efforts, contributing to disproportionately higher rates of HIV among these communities. However, enacting and implementing positive laws and policies eventually establishes new norms. In 2021, key populations and their partners accounted for a significant proportion of new HIV infections globally. Many reports have highlighted the importance of fostering an enabling legal and policy environment to combat the epidemic and improve access to equitable HIV and other services for key populations. The Global Commission on HIV and the Law captures this aptly:

A legal environment that respects, protects and fulfils human rights and promotes overall health and well-being is an efficient and effective means of reducing the risks and the toll of HIV and other communicable infections on people, communities and resources. While laws alone are insufficient to achieve these objectives, bad laws are serious impediments to health and good laws can contribute to good health.¹

What is Spectrum?

Spectrum is an evidence-informed tool for advancing and accelerating law and policy reform by and with key populations. Key population-led organizations have long been working to understand and address the laws affecting them: from understanding their rights and country legal frameworks to engaging with key decision makers to reform bad laws and promote the implementation of good laws. Spectrum is informed by successful examples of community-led interventions for legal and policy reform that emerged from an evidence review of the work done by key populations to create enabling legal and policy environments.

Social change can be realized through different combinations of action, all moving towards a common goal. Similarly, Spectrum illustrates how law and policy reform to remove barriers to HIV services can be approached in a combination of different ways. It can be applied by key population communities to shape and structure which strategies and interventions for law and policy reform are best suited to their context, and to design a plan that systematically advances positive law and policy change.

How is Spectrum structured?

Spectrum has three main components: pathways, building blocks and critical enablers.

- **Pathways** are the specific procedures or processes in a country's legal system through which law and policy reform take place.
- **Building blocks** are the crucial foundation for a well-informed, strategic, effectively executed and impactful effort to bring about desired legal and policy changes.
- **Critical enablers** support and facilitate the building blocks and pathways, improving the chances of successful law and policy reform outcomes.

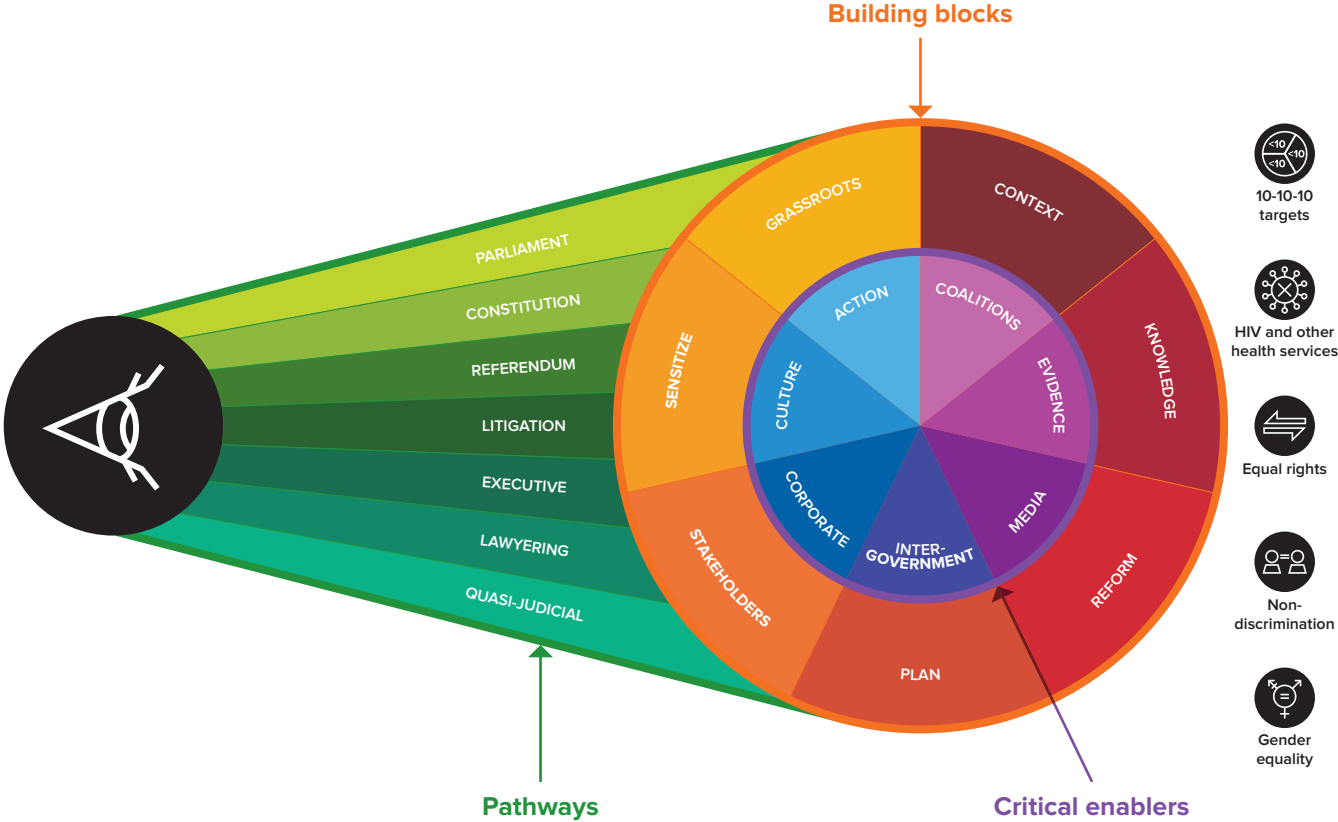
The pathways, building blocks and critical enablers each have seven elements. These elements are practical ways in which law and policy reform can be actioned.

Approaching the removal of barriers to HIV services as a spectrum recognizes that the goal of comprehensive health services for key populations can be achieved in multiple and interconnected ways. Depending on which pathway is followed, the most important building blocks and critical enablers to support it can be selected, to ensure that measurable progress is made. Similarly, you may start action with one or more of the building blocks, which then leads to the most relevant and suitable pathway and its enablers. Spectrum's approach is about how the pathways, building

¹ Global Commission on HIV and the Law. *Risks, Rights and Health: Supplement*. 2018, page 10. Available at <https://hivlawcommission.org/wp-content/uploads/2018/09/HIV-and-the-Law-supplement-FINAL.pdf>.

blocks and critical enablers work together—in a combination of ways that are shaped by need, priority and context. Action may be initiated from any point across and within Spectrum, but aspects of each of the three components are needed, as they build on and reinforce each other.

Figure 1: Spectrum



Pathways	Building blocks	Critical enablers
1. Law reform through parliament	1. Assess your legal, policy, political, and socio-cultural context	1. Coalitions and alliances
2. Constitutional amendment	2. Understand your rights and know the latest epidemiological data on key populations	2. Evidence led and generated by communities
3. Referendum	3. Identify the specific law or policy that needs reform	3. Pop culture, social media and digital platforms
4. Strategic or impact litigation	4. Develop a comprehensive reform plan	4. International and regional intergovernmental mechanisms
5. Policy reform and executive orders	5. Analyse stakeholders and gather strategic information	5. Corporate and private sectors
6. Everyday lawyering	6. Train and sensitize the law and justice sectors	6. Inclusive religious and cultural perspectives
7. Quasi-judicial bodies and processes	7. Change hearts and minds at the grassroots level	7. Direct public action

In the sections that follow, each component of Spectrum is described in more detail, together with its seven elements—what they entail and what questions to consider in applying them for law and policy reform.

Pathways to law and policy reform

The seven pathways are:

1. Law reform through parliament
2. Constitutional amendment
3. Referendum
4. Strategic or impact litigation
5. Policy reform and executive orders
6. Everyday lawyering
7. Quasi-judicial bodies and processes

Pathways are the ways in which law and policy reform can occur within a country’s legal system. They are often strict technical processes that require a sophisticated understanding of the legal system. Each pathway represents a distinct route through which stakeholders can work to influence, shape and transform existing laws

and policies to align with desired principles, values and human rights standards. Parliament is charged with the primary responsibility of making laws in most countries, while the judiciary and the executive branches are responsible for interpreting and implementing laws and policies. However, the court’s interpretation of a law could trigger a law reform—for example, where the courts hold that a law is inconsistent with the country’s constitution. Understanding this division of responsibilities among the executive, the legislature (parliament) and the judiciary is crucial to applying the pathways. In contexts where resistance, hostility or challenges are present, these pathways may require innovative, persistent and collaborative efforts to overcome obstacles and achieve meaningful reform. Whichever pathways are taken, perseverance, strategic thinking and collaboration are key.

Because the pathways require engagement with relevant parts of government, much preparatory work must be taken through the building blocks, supported by the critical enablers, to ensure a higher likelihood of success.

	1. Law reform through parliament	2. Constitutional amendment	3. Referendum	4. Strategic or impact litigation	5. Policy reform and executive orders	6. Everyday lawyering	7. Quasi-judicial bodies and processes
What does this entail?	Engaging the legislative branch of government at national and/or provincial level to reform a law	Modifying the country’s constitution to include provisions that advance human rights and/or democratic principles	Getting citizens to vote directly through the ballot for or against a specific issue or legal amendment	Bringing targeted cases to courts to challenge unjust laws and establish a legal principle or precedent	Engaging with the executive arm of government to develop policies and executive orders to implement existing laws in greater detail	Ensuring continuous legal representation of key population communities to amass positive decisions that make a case for reforming harmful laws or policies, or that limit the harmful impact of punitive and discriminatory laws and policies	Using administrative and similar bodies, including national human rights institutions, religious and traditional authorities, and councils of elders, to support the case for legal and policy reform
What questions should you consider?	<p>What are the various avenues for introducing a bill to parliament (e.g. thematic parliamentary committees on health, HIV, gender, private Member’s bill)?</p> <p>Is there a law reform commission in your country?</p> <p>Are key populations engaged with relevant committees in parliament (e.g. health), and is there a viable opportunity for law reform through parliament?</p> <p>Is there an opportunity to work with research institutions or other agencies on policy research to inform a bill to parliament?</p> <p>What strategies can be employed to counter potential misconceptions or misinformation about the proposed legislative changes?</p>	<p>What procedure does your national constitution provide for amendment?</p> <p>Is there a scheduled constitutional conference or amendment process planned?</p> <p>Have there been recent court decisions that support the proposed amendment?</p> <p>Are there influential politicians and interest groups that are committed to supporting the constitutional amendment?</p> <p>How much work has been done to educate the public to avoid a backlash from the constitutional amendment?</p>	<p>Do the laws provide for a referendum process?</p> <p>Can a provincial or subnational government hold a referendum, and is it a viable option in your context?</p> <p>Has sufficient public awareness been raised on the issue?</p> <p>What is the evidence that supports a positive outcome of the referendum?</p> <p>Have opinion polls of voters been conducted, and are the results weighing in favour of supporting the issue or legal amendment?</p>	<p>Does strategic litigation have the effect of setting a legal precedent in your country (it does in most common law systems)?</p> <p>Is the judiciary sufficiently sensitized and independent to make strategic litigation a viable pathway?</p> <p>Do you have a strategic litigation plan understood and endorsed by the relevant key population communities and other stakeholders?</p> <p>Do you have a contingency plan in case of a negative court decision?</p> <p>What measures can be implemented to ensure the privacy and well-being of the individuals directly involved in the legal proceedings?</p>	<p>What are the various avenues for policy development or reform within the executive?</p> <p>Which ministry is responsible for policy on your issue?</p> <p>Are key populations engaged with the relevant ministry, and is there a viable opportunity for policy reform through the ministry?</p> <p>Does the executive branch use orders frequently, on what issues and under what circumstances?</p> <p>Is there a prevailing situation on which advocacy for an executive order can be based (e.g. a pending litigation, law reform process or public health emergency)?</p> <p>Is the legislative branch critical of the use of executive orders?</p> <p>Has sufficient public education and sensitization been conducted to forestall a backlash?</p>	<p>Do human rights violations against key populations occur frequently enough to justify adopting this approach?</p> <p>Are there lawyers trained on key population issues who can represent them on various topics across several courts?</p> <p>Are they willing to contribute to the law reform agenda through their services?</p> <p>Are sufficient financial resources available to sustain this approach in the long term?</p> <p>Is there a legal aid service or a <i>pro bono</i> legal service that you can partner with to sustain this approach?</p>	<p>Does the law provide for these bodies and processes?</p> <p>What is the extent of the legal mandate of these bodies or processes?</p> <p>How do you approach these bodies and processes?</p> <p>How open are these bodies to issues affecting key populations?</p> <p>How effective are they in addressing the human rights violations of key populations and engaging in law and policy reform processes?</p>

Building blocks for effective law and policy reform

The seven building blocks are:

1. **Assess your legal, policy, political, and socio-cultural context**
2. **Understand your rights and know the latest epidemiological data on key populations**
3. **Identify the specific law or policy that needs reform**
4. **Develop a comprehensive reform plan**
5. **Analyse stakeholders and gather strategic information**
6. **Train and sensitize the law and justice sectors**
7. **Change hearts and minds at the grassroots level**

Building blocks are the foundations for implementing law and policy reform. They direct the action to be taken through a chosen pathway and supported by critical enablers. The building blocks consider the knowledge, information, stakeholders and messaging necessary to plan and implement law and policy reform. They are crucial to laying the groundwork for a particular pathway to be successfully pursued.

Many key population-led organizations in contexts of criminalization and high levels of stigma and discrimination find it easier to concentrate their law and policy reform efforts on the building blocks, as these are often ‘low-hanging fruits’ and do not always entail high visibility and risk.

	1. Assess your legal, policy, political and socio-cultural context	2. Understand your rights and know the latest epidemiological data on key populations	3. Identify the specific law or policy that needs reform	4. Develop a comprehensive law reform plan	5. Analyse stakeholders and gather strategic information	6. Train and sensitize the law and justice sectors, and other relevant sectors (e.g. youth, gender)	7. Change hearts and minds at the grassroots level
What does this entail?	Identifying the legal, political, cultural and religious influences on potential reforms	Improving legal awareness (knowing your rights) and staying informed of the latest epidemiological data on key populations	Identifying the specific law or policy for change and focusing on a clear, achievable goal	Ensuring a detailed and well-planned reform agenda with a clear path to the desired change	Identifying key stakeholders opposed to the proposed reform, and acquiring information for leverage	Building the capacity of sector actors to comprehend the legal context for key populations and their role in its improvement	Tapping into the power of public opinion to shift societal attitudes towards the policy change agenda
What questions should you consider?	<p>Has a comprehensive assessment of the laws and policies impacting key populations been conducted recently?</p> <p>What is the dominant message on key population issues in the current political environment?</p> <p>What is the position of influential politicians and various political parties on these issues?</p> <p>What is the election cycle in the country?</p> <p>Are key population issues routinely used in electioneering? If so, how, and what has the impact on these communities been?</p>	<p>Are key population communities aware of their rights, or do they have access to resources on their rights?</p> <p>What channels exist for accessing justice and redress in the case of a human rights infringement or violation?</p> <p>What is the nature of the HIV epidemic across key population communities?</p> <p>Have key population size estimate surveys been conducted nationally or subnationally, and what are the figures?</p> <p>What are the latest epidemiological data on HIV and key populations in the country?</p>	<p>Based on the context assessment, which law or policy presents the best opportunities for reform?</p> <p>Do the main key population groups, communities and their allies agree on the choice of this law or policy reform?</p> <p>Is more work required to ensure key population communities and their organizations understand the rationale for choosing the law or policy?</p> <p>What is needed to ensure broader community buy-in?</p>	<p>Do you have an advocacy strategy for your law and policy reform agenda?</p> <p>Does the strategy outline the various steps, timelines, tasks, roles and responsibilities, and communication channels?</p> <p>Has the plan identified all foreseeable risks?</p> <p>Does it include risk mitigation measures?</p> <p>How will progress be measured and course corrected, if necessary?</p>	<p>Has there been a stakeholder mapping for this law or policy reform agenda?</p> <p>Have you identified the information needed for this law or policy reform agenda?</p> <p>Who are the top influential individuals critical to the success of this reform?</p> <p>Has a dossier/profile been created for each of the relevant stakeholders, especially those most opposed to the agenda?</p> <p>Who are the people with direct influence on the key stakeholders, and how can they be accessed?</p>	<p>Do you have a programme for sensitizing law enforcement agencies, the judiciary, correctional services and Members of Parliament?</p> <p>Do the national human rights institution, Ombudsperson and Equality Commission understand key population issues?</p> <p>How knowledgeable are the specific ministries and portfolio committees within parliament, such as health, gender, youth and cultural affairs?</p> <p>Are you engaging these sectors at all levels: national, provincial and municipal?</p> <p>Have key population champions/influential allies been identified?</p>	<p>What are the most effective ways to reach mainstream society with public information, especially those at the grassroots level?</p> <p>Which local folklore, music, indigenous customs and practices emphasize diversity and inclusion?</p> <p>How can these be linked to key population inclusion?</p> <p>What national and cultural values emphasize diversity, respect and inclusion?</p> <p>How can advocacy messages be developed around these values?</p>

Critical enablers for successful legal and policy reform

The seven critical enablers are:

1. Coalitions and alliances
2. Evidence led and generated by communities
3. Pop culture, social media, and digital platforms
4. International and regional intergovernmental mechanisms
5. Corporate and private sectors
6. Inclusive religious and cultural perspectives
7. Direct public action.

Critical enablers support the building blocks and pathways, improving the chances of a successful law and policy reform outcome. The goal of law and policy

reform should not be merely the removal of a harmful or bad law/policy or the adoption of a positive law/policy, but also the effective implementation of positive laws and policies. A successful law and policy reform agenda should include as its goal the fostering of an enabling and empowering legal and policy framework that makes the reintroduction of harmful and bad laws/policies more difficult. Critical enablers help support this and are both the means and the ends to the law and policy reform agenda: ‘means’ because they contribute to the process of law reform, and ‘ends’ because they make the operationalization of the law and policy reform more successful. They also make societal acceptance of the law reform more likely.

Because many critical enablers are public-facing and require collaborations with other groups and stakeholders, key population communities and organizations must think carefully about their safety and security to ensure adequate response mechanisms are in place in case of reprisals.

	1. Coalitions and alliances	2. Evidence led and generated by communities	3. Pop culture, social media and digital platforms	4. Corporate and private sectors	5. Inclusive religious and cultural perspectives	6. Direct public action	7. International and regional intergovernmental mechanisms
What does this entail?	Forming alliances with other social movements which are interested in or already advocating for law and policy reform on broader, related issues	Developing evidence led or generated by communities on the existence of key population groups, on the impact of harmful laws, policies and practices, and on human rights violations	Challenging prejudice and stereotypes through popular culture (e.g. music, dance, folklore, theatre and art exhibitions) and digital platforms (e.g. social media, apps, chatrooms)	Pressuring the business community to speak up against discrimination against key populations using evidence on the economic cost of discrimination, exclusion and criminalization	Engaging religious and cultural scholars and historians on inclusive interpretations of sacred texts and cultural practices, building on the core values of those faiths and cultures	Harnessing the power of direct public action to pressure decision makers and influence public opinion towards law and policy reform	Leveraging international solidarity and pressure via diplomatic channels, human rights systems, monitoring mechanisms and international courts
What questions should you consider?	Which influential social movements are working on rights, social inclusion, non-discrimination, and law reform in the country? What core issues are they working on? On what issues can you build allyship and solidarity with these influential social movements? What injustices and human rights violations do different social movements have in common? Are any of those common ground for solidarity and joint advocacy?	Is evidence of the presence and realities of key populations disputed or downplayed by the government? Which institutions' reports does the government take seriously? Which institutions (e.g. credible academic/ research institutions) can be approached to co-publish a report with key population organizations? Are there any risks to publishing with a certain organization, and how can they be mitigated? Is the key population community leading on human rights monitoring, and how much influence will a report by a key population organization have on decision makers and the reform agenda?	What are the most popular media for cultural exchange in the country? How can these media be used to promote values of respect for diversity, human dignity, equality, non-discrimination, etc.? Which media practitioners must be sensitized to ensure a more positive portrayal of key populations in popular culture? How can digital technologies create more targeted messaging for specific audiences? Considering the risks, how can new digital media be deployed to create safe spaces for key populations to organize for law and policy reform?	Are there key population-friendly businesses and companies in the country? Are there global corporations operating in the country with key population-friendly policies? How can they be engaged and supported to advocate on the issues? Has a costing of the economic and development impact of harmful laws/policies or key population exclusion been developed? What credible institutions can key population communities work with on an economic impact study?	What is the attitude of religious and cultural/traditional institutions towards key population issues? What narratives from religious texts and indigenous/cultural practices and rites promote inclusion and non-discrimination? How can religious and traditional leaders be engaged as advocates of these inclusive perspectives? Are there safe spaces where key populations can share their experiences within their religious or cultural communities? How can a narrative be promoted that highlights the compatibility of lesbian, gay, bisexual and trans (LGBT) identities with local religions and cultures?	How can direct public action be used strategically to pressure decision makers to ensure effective law and policy reform? What are the regulatory requirements for public protests, marches and sit-ins? What other legal acts of public defiance and civil disobedience can be used to raise awareness of the need for law and policy reform? What measures can be taken to safeguard the well-being and security of key population activists engaged in public actions, considering potential risks and challenges? Is there an emergency response plan (e.g. for legal representation, temporary shelter, security, etc.)?	Which regional and international good governance and human rights mechanisms/treaties is the country party to? Do they have a review or accountability process that allows civil society engagement? How can your organization be involved in shadow reporting to the United Nations, regional human rights systems and Sustainable Development Goal (SDG) voluntary national reviews? Which diplomatic missions and development agencies that are supportive of key population rights have an influential relationship with the government? Can they engage in public or private diplomacy (depending on the context) with the government on the law reform issue?

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