

BRIEFING PAPER

The Donor Landscape for Access to Justice and Health

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Introduction

Evidence shows that access to justice programming has a positive impact on public health, and particularly the health of marginalized communities.^{1 2} Human rights activists, public health programmers, development practitioners, and donors have developed and implemented a host of strategies to address the structural barriers to the right to health, including know-your-rights campaigns, legal empowerment, and strategic litigation.

This report attempts to capture the complex web of entry points through which health and human rights donors address the intersection of access to justice and health. It identifies the barriers to stronger linkages as well as opportunities for strengthening the field, especially in relation to reaching marginalized communities. Finally, it suggests strategies for donors interested in advancing this dual agenda to leverage further support for this work among their colleagues.

The need to ensure that public health services meet the needs of those most marginalized in society became most evident in the global response to the HIV epidemic. This response was, and continues to be, driven by people living with and most affected by the disease. Actions taken by marginalized populations at risk of HIV—such as sex workers, people who use drugs, and men who have sex with men—demonstrate the power of civil society to challenge structures that inhibit the fulfillment of the right to health, such as neglectful governments, stigmatizing health systems, or intellectual property laws that unduly restrict access to essential medicines. To some degree, this movement has brought increased attention to the applicability of an “equity” or “justice” frame to global public health efforts. But the intersection of access to justice and health remains an under-funded field of work.

A growing number of health donors address the social and rights-based determinants of health by funding health programs that incorporate access to justice strategies. At the same time, human rights donors support access to justice strategies that address the right to health, although these donors rarely measure health outcomes. Despite significant activity around health and access to justice from both sides, there has yet to emerge a clear priority to link these areas so that donors can mobilize and collaborate for leveraged impact. To a large degree, donors in the health and human rights spheres remain stuck in silos.

A Note on the Focus on Marginalized Communities

This report complements Open Society’s recent publication “Bringing Justice to Health: The Impact of Legal Empowerment Projects on Public Health” (<http://www.opensocietyfoundations.org/reports/bringing-justice-health>). “Bringing Justice to Health” highlights 11 legal empowerment projects that have yielded compelling health and human rights outcomes among people living with HIV, palliative care patients, sex workers, people who use drugs, and Roma.

¹ Harvard School of Public Health (Program on International Health and Human Rights), “Evaluating the Integration of Legal Support and Health Care in Kenya: Findings from the Second Phase of the Evaluation” (2011).

² Laura Goodwin and Vivek Maru, “What do we know about legal empowerment? Mapping the Evidence” (2014), available at: <http://namati.wpengine.netdna-cdn.com/wp-content/uploads/2014/05/Namati-What-do-we-know-about-legal-empowerment-Working-Paper-March-20141.pdf>.

Donors interviewed for this report identified several other marginalized populations that they feel warrant special attention from their peers working at the intersection of health and human rights. These populations include people with disabilities, LGBT people, pastoral communities in East Africa, indigenous communities, and conflict-affected communities. While women and girls and youth were also highlighted, many donors feel it is inappropriate to categorize them as marginalized populations.

Background and Methodology

This donor mapping report was commissioned as part of the Open Society Foundations' (OSF) efforts to define and promote best practices in health and access to justice programming, with a focus on legal empowerment approaches.³ Specifically, it seeks to identify donor trends concerning the integration of health and access to justice efforts, especially as these concern marginalized populations.

The intention underlying this mapping exercise is to identify and engage a diverse set of donors working on health, human rights, access to justice, civil society, and development for three purposes:

1. To bring additional resources to access to justice projects, by focusing on their health and human rights outcomes and their potential to improve social accountability in the realm of health-related development goals.
2. To consider the strategic impact of collaboration or knowledge-sharing among donors with different entry points to work in access to justice and health.
3. To create a resource for NGOs and community-based organizations that are seeking support for innovative access to justice projects promoting the health and human rights of socially excluded and criminalized populations.

The donor mapping in this report involved a desk review of the following:

1. OSF grantee materials and evaluations documenting the impact of access to justice programming on the health of marginalized groups.
2. Current literature on the intersection of access to justice and development, with a focus on health. This included literature on rule of law, democracy and governance, legal empowerment, and broader human rights approaches that intersect with health.

In addition, a total of 24 interviews were carried out with private, public, and corporate foundations, bilateral and multilateral donors, and other experts.

³ Open Society Foundations, "Bringing Justice to Health: The impact of legal empowerment projects on public health" (2013), available at: http://www.opensocietyfoundations.org/sites/default/files/bringing-justice-health-20130923_o.pdf.

A Note About Donor Categorization

The donors interviewed for this mapping break down into the following categories:

Human rights donors: Program officers in human rights foundations (or in human rights programs within larger foundations); advisors, project directors, and program officers working on rule of law, human rights, democracy and governance, and social accountability portfolios within bilateral and multilateral institutions.

Health donors: Health and HIV program officers and project directors in health and HIV foundations (or in health or HIV programs within larger foundations); health advisors and project officers within bilateral and multilateral institutions.

The Context: The Timing is Right to Bring Justice to Health

There is a push to integrate justice into the post-2015 development agenda

In the report that served as the basis for UN negotiations on the post-2015 development agenda, a high-level panel asserted that “justice, human rights, and the rule of law are weapons as powerful as education, healthcare and housing in the war against poverty.” This shift in perspective has helped set the stage for integrating justice and good governance goals into the global development agenda. The same report recommended that the new development agenda be driven by five transformative shifts. The first shift, entitled “Leave No One Behind,” places special emphasis on reaching socially excluded groups to ensure that no person, “regardless of ethnicity, gender, geography, disability, race or other status[,]” is denied human rights.⁴

A growing global push on universal health care (UHC) in the context of the post-2015 agenda has also incorporated a strong focus on equity. This has included recommending reforms of laws, policies, and practices that impede access to health services, as well as efforts to ensure that marginalized populations are involved in UHC policymaking.⁵

The focus on integrating human rights into the development agenda reflects a trend among donor nations toward mainstreaming human rights across all sectors of development cooperation. Again, this suggests an opening for pursuing strategies that help bring justice to health.

⁴ United Nations, “A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development. The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda” (2013), available at: http://www.un.org/sg/management/pdf/HLP_P2015_Report.pdf.

⁵ Rockefeller Foundation, Save the Children, UNICEF and World Health Organization, “Universal Health Coverage: A Commitment to Close the Gap” (2013), available at: <http://www.rockefellerfoundation.org/uploads/files/57e8a407-b2fc-4a68-95db-b6da680d8b1f.pdf>.

Bilateral Funders Linking Development and Human Rights: Opportunities for Bringing Justice to Health

United States: “We are integrating democracy programming throughout our core development work, focusing on strengthening and promoting human rights, accountable and transparent governance, and an independent and politically active civil society across all our work.” -USAID Democracy, Human Rights and Governance Website

Denmark: “Denmark will place issues of distribution and human rights in social sectors higher on the agenda in multilateral forums and in the political dialogue with developing countries.” -The Right to a Better Life: Denmark’s Strategy for Development Cooperation, 2012

Finland: “The Government’s Development Policy Programme requires that a human rights-based approach be implemented in all development policy and development cooperation practiced by Finland. [The] aim is that everyone, including the poorest people, know their rights and are able to act to enforce them.” -Implementing the Human Rights-Based Approach in Finland’s Development Policy, 2012

Sweden: “Equal treatment, freedom from discrimination on the basis of gender, sexual preference, age, disability or ethnic background and the ability to affect your own life as well as the society in which you live are basic human and democratic rights that are hugely important in combating poverty.” -SIDA Website: “Our Fields of Work: Human Rights, Democracy, and Equality Used to Combat Poverty”

The centrality of human rights in the HIV fight can influence broader health agendas

The strategies of UNAIDS, UNDP, the WHO HIV program, and the Global Fund to Fight AIDS, Tuberculosis and Malaria have all recognized the central importance of human rights to the HIV response. At the same time, the donors to these institutions have prioritized scaling up HIV treatment and integrating HIV-related care into public health systems and sexual and reproductive health programs.

As HIV care and treatment take up new space in health systems and programs, there arises the potential to introduce access to justice strategies that the HIV movement has successfully employed. This movement is particularly promising in relation to women and girls in Africa, as well as marginalized populations—such as sex workers, men who have sex with men, transgender persons, migrants, people in closed settings, and people who use drugs—whose restricted rights are inextricably linked to their vulnerability to HIV.

The Global Fund to Fight AIDS, Tuberculosis and Malaria: A Strategic Focus on Access to Justice

One of the four strategic goals of the Global Fund's 2012–2016 Strategic Plan is to promote and protect human rights by

1. Integrating human rights considerations throughout the grant cycle.
2. Increasing investments in programs that address human rights-related barriers to access.
3. Ensuring that the Global Fund does not support programs that infringe human rights.

In its guidance to applicants, the Global Fund highlights the importance of access to justice efforts for people living with HIV, such as legal information hotlines, community-based paralegals, training of traditional leaders in dispute resolution, and integrating HIV-related concerns into existing legal services.⁶

Donors are focusing on value for money, accountability, and transparency

It is no coincidence that in this era of constricting budgets, donors are increasingly focused on value for money, accountability, and transparency in budgeting for development, including health. These focus points enhance the imperative to fund evidence-based interventions, particularly when targeting marginalized populations that shoulder the highest burden of disease.⁷ The increasing emphasis on evidence in the name of efficiency is a challenge to governments that would otherwise neglect these communities. It also provides an opening to promote access to justice strategies that can help reach populations that are too often driven underground by stigma and discrimination.

Ministries of health require non-traditional partners to strengthen health systems

WHO stresses the role of partnerships between government, the private sector, and civil society in efforts to strengthen health systems, particularly in relation to reforming regulatory frameworks, developing health policies, and ensuring equitable access to services.⁸ Bilateral donors working directly with ministries of health note that governments increasingly realize they need to work with private providers and civil society groups that integrate access to justice activities with health services. This is especially important in fragile states where health systems are weak. Development

⁶ The Global Fund to Fight AIDS, Tuberculosis and Malaria, "Human Rights for HIV, TB, Malaria and HSS Grants: Information Note" (2013), available at: <http://www.theglobalfund.org/en/about/humanrights/>.

⁷ Center for Global Development, "More Health for the Money: Putting Incentives to Work for the Global Fund and its Partners" (2013), available at: <http://www.cgdev.org/sites/default/files/More-Health-for-the-Money.pdf>.

⁸ World Health Organization, "Everybody's Business: Strengthening Health Systems to Improve Health Outcomes. WHO's Framework for Action" (2007), available at: http://www.who.int/healthsystems/strategy/everybodys_business.pdf.

partners suggest that they have a role to play in facilitating and sustaining these kinds of partnerships through their access to, and involvement in, health policymaking with governments in developing countries.

Entry Points for Grantmaking on Access to Justice and Health

A recent report by the International Human Rights Funders Group (IHRFG) found that foundation funding for human rights totaled \$1.2B (USD) in 2010. Five percent of these funds were allocated to projects addressing access to justice and equality before the law. An additional ten percent supported “health and well-being” rights efforts, while nine percent supported sexual and reproductive rights.⁹ While the IHRFG report does not map where access to justice, health, and sexual and reproductive rights come together, it suggests that a significant amount of private human rights dollars are devoted to health and access to justice. Furthermore, the scan of funding priorities below reveals significant efforts from bilateral funders to support health and human rights work.

Access to Justice: Definitions and Strategies

Access to justice can be defined as the ability of people to seek and obtain remedies for their grievances through formal or informal institutions of justice, in compliance with human rights standards.¹⁰

The World Bank lists the following strategies as central to pursuing access to justice:¹¹

- Legal empowerment
- Legal information and awareness
- The right to court access
- Legal aid
- Pro bono work
- Public interest litigation
- Small claims tribunals
- Informal justice systems

⁹ International Human Rights Funders Group, “Advancing Human Rights: The State of Global Foundation Grantmaking” (2013), available at: <http://foundationcenter.org/gainknowledge/research/pdf/humanrights2013.pdf>.

¹⁰ United States Institute for Peace, “Necessary Condition: Access to Justice” (undated), available at: <http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/7-rule-law/access-justice>.

¹¹ The World Bank, “Law and Justice Institutions: Access to Justice for the Poor” (2012), available at: <http://go.worldbank.org/MHG1Y94BM0>.

Human rights donor engagement in justice and health: an overview

Human rights donors working at the intersection of health and rights fund activities across all the World Bank strategies listed in the table above. However, interviews with these donors show that the linkages to health they support are often demand-driven or opportunistic, rather than integral components of explicit or prioritized strategies. Four foundations note that the connections to health they support depend on the particular needs and demands of their grantees, and not on a strategy to promote health through access to justice or to measure health outcomes stemming from access to justice strategies. As one donor put it, “We are not a health funder or a justice funder. We are a funder that supports work that the movement wants supported at that time, in a way the movement wants us to support it.”

Health donor engagement in justice and health: an overview

In contrast to the approach of human rights donors, health donors tend to integrate rights and access to justice into their grantmaking as part of an explicit strategy. Donors interviewed for this report generally link access to justice and health through their work on HIV, particularly in the context of legislative advocacy, law reform, and community mobilization, with a view to increasing access to health services for women and key populations affected by HIV. These donors reference the importance of efforts such as the Commission on the Social Determinants of Health and the Global Commission on HIV and the Law to justify these linkages.

Human rights donors support efforts on the supply and demand sides of justice

Many of the human rights funders interviewed for this report, particularly bilateral donors, highlight interventions on the supply side of justice. In the case of bilateral donors, this is likely due to the fact that human rights tends to be integrated across their programming, while governance or justice sector reform programs tend to be stand-alone efforts. As examples, these donors described efforts to reform the judiciary or police or to strengthen Kenya’s new Environment and Land Commission.

However, bottom-up or demand-side justice efforts are gaining momentum, inspired by the findings of the Commission on the Legal Empowerment of the Poor (CLEP), a high-profile global initiative designed to “focus on the link between exclusion, poverty, and the law[.]”¹² UNDP, which hosted CLEP, has integrated the Commission’s findings into its poverty reduction and justice programs.

European donors are leaders in their support for legal empowerment, framed as “bottom-up justice services” designed to bring legal services and recourse to grassroots communities (see “Legal Empowerment” on page 10). For example, one of DFID’s top

¹² Commission on Legal Empowerment of the Poor and United Nations Development Programme, “Making the Law Work for Everyone: Report of the Commission on Legal Empowerment of the Poor (Volume I)” (2008), available at: http://www.unrol.org/files/Making_the_Law_Work_for_Everyone.pdf.

development priorities in Malawi is to increase access to justice for women, girls, and vulnerable populations.¹³ Further, the Open Society Foundations' Justice Initiative (OSJI) has established nationwide legal aid systems in Sierra Leone and Ukraine using community-based services, and has also carried out extensive research on the cost-effectiveness of paralegal services in South Africa. DFID, OSJI, and the Australian government have all supported Namati, an organization devoted to building a movement of grassroots legal advocates who work with communities to advance justice.¹⁴

Health donors focus on the demand side of justice and the supply side of health

For their part, health donors—particularly private ones—tend to highlight efforts on the demand side of justice, such as supporting NGOs to bring strategic litigation cases on health access issues or to monitor government health expenditures.

Bilateral health funders play a large role on the supply side of health services, with a focus on strengthening health systems for more effective service delivery. However, few focus on health systems reform to increase access to services among marginalized populations. Unlike human rights donors, health donors have yet to use their influence to reform health systems to ensure access to justice for the marginalized populations most burdened by disease.

A Scan of Funding Priorities

Legal Empowerment

The Open Society Public Health Program's definition of legal empowerment:

“The transfer of power from the usual gatekeepers of the law—lawyers, judges, police, and state officials—to ordinary people who make the law meaningful on a local level and enhance the agency of disadvantaged populations.”¹⁵

Seven private foundations with the flexibility and mandate to provide direct funding to civil society organizations cited legal empowerment approaches as central strategies for linking justice to health for marginalized populations.¹⁶ These donors highlighted two legal empowerment strategies in particular:

1. Empowering marginalized communities using paralegals.
2. Bringing legal aid and access to justice opportunities into health settings.

¹³ Department for International Development and UKAID, “Annual Report and Accounts 2012–2013” (2013), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208445/annual-report-accounts2013-13.pdf.

¹⁴ See Namati's website at www.namati.org.

¹⁵ Open Society Foundations, “Bringing Justice to Health: The impact of legal empowerment projects on public health” (2013), available at: http://www.opensocietyfoundations.org/sites/default/files/bringing-justice-health-20130923_o.pdf.

¹⁶ These donors are the Open Society Foundations, American Jewish World Service, UHAI, Christian Aid, Hivos, the CS Mott Foundation, and the True Colours Trust.

The multilateral agencies interviewed for this report—such as UNDP, the International Development Law Organization (IDLO), and the Global Fund—are piloting strategies and developing guidance and best practice methodologies for linking HIV and legal services.

The bilateral donors interviewed for this report did not stress legal empowerment strategies in particular, but a comprehensive desk review suggests that a significant amount of legal empowerment work is being funded by bilaterals through basket funds in East Africa.

Health and Legal Empowerment: Project Profiles:

AJWS, Hivos, and UHAI support the Human Rights Awareness and Promotion Forum (HRAPF) to provide legal aid and legal empowerment capacity-building to sex workers and sexual minorities in Uganda.

The CS Mott Foundation supports community-led legal advice centers in rural and poor communities, which are typically the first stop for people seeking access to justice. An example of one such center is the Social Change Assistance Trust, which provides legal aid to people living with HIV in South Africa.

DANIDA Tanzania is the sole funder of a basket fund to enhance the provision of legal aid with an HIV focus in Tanzania/Zanzibar. Activities include paralegal training and innovative approaches to legal aid.

UNDP's Urban Health and Justice Initiative develops the capacity of sex workers, people who use drugs, and sexual minorities concentrated in select cities to promote and protect their health and human rights and increase their access to and uptake of legal and HIV-related services.

IDLO's HIV and Health Law Initiative, supported by the OPEC Fund for International Development (OFID), the Ford Foundation, the World Bank and AusAID, piloted pro bono HIV-related legal services in 17 countries, using different legal aid models to reach sexual minorities, people who use drugs, sex workers, and people living with HIV. These models include providing legal services through university legal aid clinics, the ombudsman, lawyers' associations, NGOs, and paralegal outreach.

Strategic Litigation

Private donors interviewed for this report support local organizations across Africa with both grants and technical assistance for strategic litigation on the right to health. Interestingly, several AIDS-focused funders such as amFAR and the MACAIDS Fund are supporting strategic litigation that is not directly health-focused. These include challenges to sodomy laws, in recognition that an enabling legal environment for men who have sex with men plays a critical role in the AIDS fight. This is a concrete illustration of how the focus on legal and human rights strategies to address HIV, as

pushed by organizations such as UNDP (through the Global Commission on HIV and the Law) and OSF, have influenced other donors.

Some donors interviewed felt that strategic litigation should be a primary strategy for making health services available to marginalized populations and that, without it, rights creation and legal empowerment efforts are not likely to have an impact. These same donors note that strategic litigation is time-consuming and expensive, and major donors in particular are unwilling to invest in activities that do not yield immediate and measurable results. However, several donors remarked that organizations led by and for marginalized populations have successfully built capacity or forged partnerships to carry out strategic litigation, though they have been failing when it comes to monitoring implementation and advocating for enforcement.

Strategic Litigation and Health: Project Profiles

The MacArthur Foundation and **OSF** are supporting litigation to hold the state accountable for maternal deaths in Nigeria and Uganda, respectively.

The Ford Foundation and **OSF** have supported litigation against the forced sterilization of HIV-positive women in Namibia, Kenya, and Lesotho, as well as litigation for the rights of people who use drugs in Lebanon and transgender people in Guatemala.

The MACAIDS Fund and **amFAR** are supporting challenges to the Jamaican and Belizian sodomy laws.

Democracy and Governance/Law Reform

Many bilateral donors interviewed for this report operate out of Democracy and Governance units within their organizations. They see their institutions as playing a role in improving the functioning, accessibility, and legitimacy of justice institutions (i.e., the supply side of justice). In Kenya especially, several private donors from both the health and human rights sides focus on supporting civil society groups to “seize the moment” of the recent constitutional reforms to advance health and rights in the courts (i.e., the demand side of justice).

Donors working on HIV have focused on civil society engagement in law reform in order to create an enabling environment for HIV prevention, care, and treatment. This approach incorporates not only strategic litigation as described above, but also the development of model HIV laws, modules, and toolkits to make the HIV legal framework accessible and understandable to those most affected by the disease.

Democracy and Governance/Law Reform and Health: Project Profiles

USAID and the **American Bar Association's Rule of Law Association** created the HIV/AIDS Legal Assessment Tool, a guide for lawyers and civil society activists to assess their country's compliance with international standards on the protection of human rights of people living with HIV and key populations.¹⁷

IDLO, **UNAIDS** and **UNDP**, with support from **OFID**, developed the Toolkit: Scaling Up HIV-Related Legal Services, a practical resource for lawyers, civil society, and advocates to help establish or strengthen the quality, impact, and availability of HIV-related legal services.

UNDP and **UNAIDS** supported **KELIN**, a Kenyan NGO, in convening a series of county forums designed to provide a platform for policymakers, legislators, and law enforcement to engage with people living with HIV, people who use drugs, and sex workers to discuss an effective HIV county response, with a focus on legislative and policy development. This initiative follows up on the Global Commission on HIV and the Law, supported by **UNDP**, **SIDA**, and **NORAD**.

DFID and **Help the Hospices** supported the African Palliative Care Association in developing an advocacy toolkit to support work that pushes governments to reform regulatory frameworks so that palliative care is integrated into efforts to strengthen health systems.

Community Legal Structures

In contexts where customary, informal, or religious legal systems operate in parallel with the formal justice systems, donors are supporting efforts to build bridges between them and increase their potential for positive human rights impacts, particularly on women's rights and health. Donors identified the property and inheritance rights of women in the context of HIV, and the rights of women who have undergone genital mutilation and sexual violence, as key issues to be pursued through community legal structures.

The report of the **Global Commission on HIV and the Law** includes several recommendations for addressing the gender dimensions of HIV, including the prohibition of harmful practices (such as widow disinheritance and female genital mutilation), the elimination of discriminatory property and inheritance laws, and efforts by government to reconcile conflicts between discriminatory customary laws and traditional practices and international human rights standards.

¹⁷ American Bar Association Rule of Law Initiative and USAID, "HIV/AIDS Legal Assessment Tool: Assessment Methodology Manual" (2012), available at: http://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_hiv_aids_legal_assessment_tool_11_12.authcheckdam.pdf.

None of the donors interviewed identified community legal structures as appropriate forums for advancing the rights of marginalized populations such as LGBT people, sex workers, people who use drugs, or palliative care patients. This suggests that the intensity of social discrimination against these groups makes influencing community structures an uphill battle with potentially diminishing returns.

Community Legal Structures and Health: Project Profiles

The MacArthur Foundation is supporting the Women's Rights Advancement and Protection Alternative (WRAPA) to engage Muslim leaders in dialogues to advance women's rights in the context of the Sharia system.

OSF works with KELIN, a Kenyan NGO, to conduct community conversations and human rights awareness programs with the aim of transforming traditional dispute resolution mechanisms into institutions that respect human rights and uphold women's property rights.

UN Women, supported by **CIDA**, is carrying out a three-year \$3M (USD) project on women's property and inheritance rights in the context of HIV/AIDS. This project has involved training 9,000 community members to understand customary law, land titling, succession planning, and will writing with the aim of providing better legal aid and services to women living with or affected by HIV/AIDS.

Social Accountability and the Right to Essential Services

"We fund many groups monitoring health expenditures for marginalized groups. At first I didn't think of this as human rights work, but of course it is."

-Private human rights donor

Interviews and desk research indicate a growing interest in social accountability for health among both health and human rights donors. Social accountability refers to strategies developed in the last two decades to mobilize demand for equity and effectiveness in the provision of public services. These donors are supporting civil society to ensure that governments make good on their commitments to health, using strategies such as scorecards, social audits, and budget monitoring. Efforts include monitoring progress toward reaching Abuja targets to ensure that health services reach LGBT communities.

Two human rights donors described a path from skepticism to confidence that these social accountability measures indeed constitute human rights interventions. Christian Aid and Comic Relief described an effort to pursue social accountability outcomes across all HIV and broader health programming. One of Christian Aid's five new areas of strategic focus is "The Right to Essential Services," under which many funded programs advance the right to health services for people living with HIV.

An analysis of social accountability and legal empowerment suggests that “a strategic blend of the two approaches would increase the effectiveness and reach of grassroots efforts to advance social justice, including efforts to realize the right to health.”¹⁸ As noted above, donors tend to see social accountability efforts as belonging in the sphere of human rights. None of the donors interviewed articulated a strategy for combining social accountability and legal empowerment, but many expressed an interest in models of this approach and evidence of its impact.

Social Accountability and Health: Project Profiles

The Ford Foundation supported AIDS Accountability in developing scorecards to rate countries on their response to the needs of women in the context of the AIDS crisis, looking at issues such as the collection of HIV data specific to women and progress in ensuring that women have equal access to HIV services. The scorecard is meant to serve as a tool for civil society organizations to push for greater accountability from governments in health matters.

Christian Aid supported a coalition of community-based organizations and religious leaders in Malawi to successfully advocate for increased access to HIV treatment. This led the District Health Office to open two additional ART distribution points in the Karonga district.

The Fund for Global Human Rights supports the Action Group for Health, Human Rights and HIV/AIDS (AGHA) in Uganda on right-to-health campaigning, including a health financing campaign designed to push Uganda to meet its commitment under the Abuja Declaration to allocate 15% of its national budget to health.

Strategic Convenings

Donors are in a position to bring together unlikely partners in efforts to link access to justice and health. They are also well placed to fund the space and time needed by overworked and under-resourced health rights activists to think expansively about multi-sectoral approaches and partnerships that will advance their goals. Donors identified several convenings that they considered central to the development of their funding strategies on health and access to justice:

- The Ford Foundation’s East Africa office regularly hosts grantee meetings to strategize about promoting health and rights in the context of electoral debates and constitutional reforms.
- Christian Aid brings together leading legal service providers with HIV and health service community-based organizations that do not have regular access to justice systems.

¹⁸ Vivek Maru, “Allies Unknown: Social Accountability and Legal Empowerment” (2010) in *Health and Human Rights* 12:1 at pp. 83-93, available at: www.timapforjustice.org/file_download/21.

- American Jewish World Service aims to change the attitudes of mainstream legal organizations toward marginalized groups by connecting them with specific grantees that are led by sex workers and LGBT people.
- OSF, together with the International Gay and Lesbian Human Rights Commission and the International Commission of Jurists of Kenya, convened individuals and organizations from over 15 African countries to coordinate national and international responses to laws, policies, and practices that discriminate against sexual and gender minorities.
- The World Bank, UNDP, UNAIDS, IDLO, and SAARCLAW, with support from OFID, co-hosted the 2011 South Asian Roundtable Dialogue titled “Legal and Policy Barriers to the HIV Response.” The Roundtable brought together 70 delegates from government, the justice sector, and civil society to develop targeted recommendations to overcome legal and policy barriers to the HIV response.

Barriers to Linking Health and Justice

“Historically, democracy and governance activities have been viewed with some suspicion by the traditional development sectors. People want neutrality and detached generosity. That false notion gave people security [...] no one would think you were meddling in their affairs.”

-Bilateral donor

Donors identified myriad barriers, both institutional and political, to building portfolios of work at the intersection of health and access to justice. Private foundation staff noted that the distinctions between human rights and health are drawn much more sharply at headquarters levels. By contrast, grantmaking directed by regional and local offices tends to be more integrated because program officers are “closer to the ground,” where it is easy to see that local organizations can organically and effectively link health and rights. Bilateral donors noted that it would be difficult to interest their institutions in marginalized populations in particular, because they are committed to measuring the health impacts of access to justice efforts in broad terms.

Barriers to Linking Access to Justice and Health for Marginalized Populations

Institutional

Donors, particularly those based in headquarters, are entrenched in their own issues and lack the support and creativity needed to link with other sectors.

“Cross-cutting” or “rights-mainstreaming” approaches leads to the dilution of human rights efforts.

Political / Environmental

Donors still see health as a service delivery issue, and their grantmaking does not consider the social determinants of health and human rights-related barriers to access.

Health is considered safe. Once you speak of justice you are considered to be taking a political stand.

HIV programs within organizations tend to take a human rights approach in relation to marginalized populations, while broader health programs do not.

Budget frameworks are rigid within bilateral organizations, which disincentivizes integration.

Staff are evaluated based on progress made in their field, and not on collaborative outcomes.

At the government level, ministries are vertical. Ministries of justice and ministries of health tend not to work together.

Marginalized populations are stigmatized by mainstream legal organizations and lawyers.

Organizations run by marginalized populations are fragile due to neglect, inadequate and unsustainable funding, stigma, and discrimination.

What to Measure: Health and Human Rights Impacts

“We are looking at long-term social change outcomes, not health outcomes. If grantees identify barriers to health rights, then we support groups to challenge the barriers. Sexual health and rights is a strategic priority, but we will not look at things like whether access to justice improves adherence to ART. Justice is the goal.”

-Public foundation donor

Health donors who integrate access to justice strategies into their grantmaking are ultimately looking for outcomes on health. However, these donors recognize that positive health outcomes will depend on significant shifts in the human rights environment. For this reason, they include access to justice indicators in their monitoring and evaluation frameworks.

Human rights organizations are interested in building social movements and advancing a rights agenda. Although the human rights donor community funds a significant amount of health rights work as described above, they are measuring justice and law reform outcomes, not health outcomes. It is notable, however, that staff of public foundations (i.e., those relying on external support for their work) all agree that evidence of the health outcomes of their access to justice work among marginalized populations would definitely be a selling point for donors.

Concluding Observations

Given the multiplicity of entry points to work on access to justice and health, and the documented political and institutional barriers to stronger linkages, this report will not offer a blanket recommendation for increased donor collaboration in this field. It is only natural, given limited dollars and concerted ambition to make progress in their respective fields, that health funders will attempt to get rights funders interested in their grantees and vice versa. Ultimately,

however, all of the donors interviewed were working toward a world in which

- Health services are provided without regard to legal status or criminalization, and with due regard to rights.
- Access to justice efforts have a positive impact on public health and reinforce health interventions.
- Marginalized communities are given the tools and opportunities to work toward the realization of their health and rights.

This research suggests that there exist several strategic opportunities for donors to collaborate in strengthening and attracting more resources to make these changes happen. These opportunities can be seized in the contexts of country- and regional-level donor convenings such as Kenya's democracy and governance donor working group, through donor networks such as the International Human Rights Funders Group and Funders Concerned about AIDS, through initiatives such as the Global Legal Empowerment Initiative, and through informal networking and sharing of good practices.

Seize the moment to bring justice to health

The movement toward the post-2015 era represents a strategic moment for donors supporting programs that link access to justice and health to highlight successful outcomes and push for replication and expansion of programming. The focus on equity and "leaving no one behind" opens a door to push for an increased resource base for access to justice for marginalized communities, who are all too often excluded from mainstream development processes.

Consider the development of joint health and human rights outcomes

One obstacle to more effective collaboration between health and human rights donors is the fact that they pursue different outcomes through their funding. The development of nuanced monitoring and evaluation frameworks and indicators to measure connected health and human rights outcomes would represent an advancement in this field as well as a methodology that would encourage effective collaborative work.

Private and public donors should collaborate

Often, private foundations have the capacity and mandate to fund grassroots or local-level work where access to justice and health programming is organically integrated in response to a clear set of community needs. Bilateral and multilateral organizations could seek out opportunities to learn from cutting-edge program models funded by private foundations, and bring their significant technical expertise to bear on opportunities for scale-up and replication.

Consider social accountability as a health and human rights intervention

This donor mapping has revealed a significant amount of funding and interest in social accountability strategies (e.g., social audits, budget monitoring, scorecards) as human

rights interventions. This suggests that organizations with an interest in supporting work that combines social accountability and legal empowerment, such as OSF and Namati, have potential allies in building the evidence base and piloting innovative projects.

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The Open Society Public Health Program aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices are evidence-based and reflect these values. The Program advances the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice.
