Reviewer's report

Title: Key populations and human rights in the context of HIV services rendition in Ghana

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Reviewer: Laura Ferguson

Reviewer's report:

The topic of this paper is interesting and certainly relevant to the context of Ghana. That said, I see some major issues that would need to be addressed to ensure that the manuscript could be publishable.

General comments

1. 'Key populations' appears to be used to refer primarily to MSM and female sex workers. The generally accepted definition of 'key populations' is much broader, including male sex workers, injecting drug users, transgender people, and often prisoners, migrants and others. If this paper is only concerned with MSM and female sex workers, this should be explicitly stated and the language of 'key populations' removed; otherwise the whole range of key populations should be included.

2. The manuscript seems to suggest that relatively little work has been done on HIV, law and human rights and that most of this comes out of the global north. This is simply not true. The important body of work on the Global Commission on HIV and the Law should be discussed, as well as the follow-on work that this has spawned in many regions of the world including sub-Saharan Africa. There is excellent work being done in this area across many countries in the region, much of it 'southern'-led. ARASA, KELIN and ENDA Sante are a few examples of local organizations doing this work in the region. They, and others, have published extensively on their work. This work could all be used to better contextualize the discussions about Ghana in the manuscript.

3. I find the presentation of multiple different approaches for overcoming the barriers posed by legal barriers to access to HIV services a little confusing, particularly as they appear to be framed as an 'either/or' choice: either you can choose harm reduction or a 'human
rights approach’ as those these are distinct/conflicting approaches. The paper veers between human rights, ethics and harm reduction without explaining why these different approaches are addressed. Furthermore, harm reduction is usually used in the context of drug use and this is also true of the article cited to illustrate the links between harm reduction and human rights. Extrapolating these links to public health more broadly requires deeper analysis. I would suggest focusing the paper on only one of these approaches i.e. either ethics or human rights.

4. Various pieces of legislation are cited in the paper but direct language is not provided. Are the authors sure that they are accurately portraying the content of these laws? For example, the authors mention criminalization of 'these groups' as well as 'same sex relationships and sex work'; I have never seen a law that criminalizes sex workers - legal barriers for sex workers are usually provisions linked to: living off the proceeds of sex work, loitering etc. For MSM, it is usually the original provision from British colonial law that criminalizes 'carnal knowledge against the order of nature'. The specificity of the is critical in any analysis of how it impacts on key populations' access to HIV services.

5. The manuscript discusses 'rights to health' but does not clarify the international legal sources of these rights. I would assume this including the right to the highest attainable standard of health as articulated in the International Covenant on Economic, Social and Cultural Rights but what other rights are included? It would be useful to have this spelled out.

6. I would suggest restructuring the paper to start with an overview of why law and human rights matter in relation to access to HIV services for key populations, then have an analysis of the international legal framework as it relates to access to HIV services for key populations, followed by analysis of the national legal framework in Ghana and where it converges and diverges from international law, and finally, as the discussion, proposed strategies for improving access to HIV services for key populations in Ghana.
Specific comments

1. The manuscript title seems clear: this is about 'key populations' and rights but the scope of the manuscript does not match this. Furthermore, the title does not indicate that the paper is really about Ghana; instead the reader slowly discovers this over the course of the manuscript (as nothing is said about this in the 'roadmap' of the paper provided at the end of the background section either).

2. The background section of the abstract illustrates the movement between human rights and ethics without explanation, leaving the reader unsure what the focus of the paper will be.

3. Lines 45-6: This seems like an over-statement. While there are emotive discussions around human rights, there is also still a lot of very rigorous work being done that is legally grounded and analytical.

4. Lines 49-51: Suggest revising the definition of 'key populations'; also suggest using 'key populations' to start the sentence and having the older language of 'most at risk populations' in parentheses.

5. Lines 59-60: There is a wealth of literature on the link between rights, health policies and public health outcomes that the authors can draw on e.g. the Global Commission on HIV and the Law, the National Commitments and Policies Index (and resulting publications), the Human Rights Council, WHO and much NGO-led work that has been written up in the peer-reviewed and grey literatures.

6. 'Key populations' rights violations: Global picture': This section is under-referenced. There is extensive literature to draw on here as well as more up-to-date data than is used. E.g. Beyrer 2010 and 2011; Risher et al 2013; Golub and Garamel 2013; ILGA 2016.

7. Line 83: Can you clarify the mechanism through which this report was submitted?
8. Lines 85-6: I do not understand the last sentence of this paragraph - could you rephrase to make this clearer?

9. Line 88-89: What do you mean that 'consensual same-sex sexual activity is illegal in 76 to about 86 countries'? See the ILGA website for up-to-date, accurate data on this.

10. Lines 93-4: Suggest that 'a spreading cancer' be put in inverted commas.

11. Lines 113-4: Suggest deleting the second sentence of the paragraph.

12. Line 119: Can you define 'roamers' and 'seaters'?

13. Line 121: I would suggest that the absence of data on these populations is more than an ethics issue - it is also an issue of deep public health concern and a human rights issue.

14. Lines 124-5: Has this happened? What does the Police Act say that would justify this action?

15. Lines 127: What do you mean by the first sentence - that many of the laws are in line with international human rights law?

16. Line 135: Suggest replacing 'level of compulsion' with 'legal force'.

17. Line 141: What are 'rights to public health services'? Where is the legal grounding for this?

18. Lines 146-8: This overlooks incredibly important work emanating from the global south, particularly Brazil (and other parts of Latin America), Senegal, Kenya, Malawi…
19. Line 168: Could you define "rights based approach"? How does this differ to calling for the respect of 'key populations' rights to public health services' articulated above? In the summary you put a lot of emphasis on human rights approaches but it is not clear to me from the text around here what you mean by this or how you are proposing this approach be implemented to improve key populations' access to HIV services.

20. Line 175: Suggest rephrasing to "The right to health doctrine outlined above protects the rights of everyone, including key populations."

21. Lines 193-5: Are these documents the appropriate place to attempt to lay out a strategy towards decriminalization or amend the codes? It seems to me they are not but that is not to say that cannot be useful in promoting access to services for key populations.

22. Lines 212-3: Again, where is 'universal access to HIV prevention services' codified as a right?

23. Line 228: How can Ghana be 'particularly' a signatory to one document? Surely it is either a signatory or it is not.

24. Lines 228-31: Please add citation.

25. Lines 235-7: Suggest rephrasing so that this is clearly about the content of General Comment 14 on the right to health in the ICESCR. It might be useful to add a footnote to explain what a General Comment is as well as a citation.

26. Line 248: If you are going to keep the 'harm reduction' argument (which I think will require further justification as this is not a paper about drug use), why not also address 'pragmatism'?

27. Harm reduction section: much of what you put forward as core to harm reduction is also simply good public health practice. Admittedly this is not always what happens in the real world but, even in the absence of an explicit harm reduction approach, it should.
28. Line 259: Is it not true that all countries are seeking to overcome HIV? If so, suggest rephrasing slightly.

29. Line 260: Authors surname is 'Jurgens'.

30. Lines 266-71: This epidemiological argument for why it is important to include key populations in national responses to HIV is indeed very different from the human rights argument: the former highlights disease risk while the latter focuses on equality and discrimination. Even as the proposed response might be similar it is interesting and useful to note the different drivers operating here.

31. Line 274: Human rights impose this as a legally binding obligation.

32. Line 279: Are you suggesting that the objectives underlying criminalization laws are legitimate? If not, I suggest rephrasing.

33. Lines 281-2: This will also be a violation of human rights.

34. Is the recommendations section limited to Ghana? If so, it would be helpful for that to be explicit.

35. Line 290: are you suggesting that these 'abolitionist' and 'instrumentalist' approaches are mutually exclusive? Surely there would be synergies to be yielded in adopting both simultaneously.

36. Lines 296-7: Is the motivation to 'impact positively on the health of the general population' or to reach key populations to benefit their own health? An instrumentalist approach surely allows for both of these interpretations.
37. Lines 297-301: I suggest restructuring this slightly so that it is explained to the reader straight away what the Drop In Centers are before any judgement is made on what this means in relation to Ghana's approach to the national HIV response.

38. Lines 305-7: These are a direct repetition of the preceding sentences.

39. Line 318: This implies that human rights are equated with confrontational challenges, which is not always the case even in countries where human rights are a sensitive topic.

40. There are various issues with language and grammar that I have not commented on as I trust this will be revised and copy edited.

Are the methods appropriate and well described?
If not, please specify what is required in your comments to the authors.

No

Does the work include the necessary controls?
If not, please specify which controls are required in your comments to the authors.

Yes

Are the conclusions drawn adequately supported by the data shown?
If not, please explain in your comments to the authors.

No

Are you able to assess any statistics in the manuscript or would you recommend an additional statistical review?
If an additional statistical review is recommended, please specify what aspects require further assessment in your comments to the editors.

Not relevant to this manuscript

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Please indicate the quality of language in the manuscript:

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