

Human rights and the law

Resource kit for high-impact programming

This Guidance Note is part of the resource kit for high impact programming that provides simple, concise and practical guidance on key areas of the AIDS response. The resource kit is jointly developed by the the Joint United Nations Programme on HIV/AIDS. The resource kit can be accessed at <http://www.unaids.org/en/ourwork/programmebranch/countryimpactsustainabilitydepartment/globalfinancingpartnercoordinationdivision/>

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The development of this Guidance Note was led by the United Nations Development Programme (UNDP) and the UNAIDS Secretariat. This Guidance Note provides simple, concise and practical guidance to assist countries in considering aspects of human rights and the law in their HIV planning and programming processes. References and links to other relevant guidance are provided in the last section of the Guidance Note.

WHAT IS NEW?

- HIV and the law: Risks, rights and health. New York: Global Commission on HIV and the Law; 2012 (<http://www.hivlawcommission.org/>).
 - The human rights module in the *UNDP Capacity Development Toolkit* for the implementation of AIDS, TB and malaria programmes (<http://www.undp-globalfund-capacitydevelopment.org/home/cd-toolkit-for-hivaids,-tb-malaria-responses.aspx>).
 - Judging the epidemic: A judicial handbook on HIV, human rights and the law. Geneva: Jointed United Nations Programme on HIV/AIDS; 2013 (http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2013/201305_Judging-epidemic_en.pdf).
 - Key programmes to reduce stigma and increase access to justice in national HIV responses: Guidance note. Geneva: Jointed United Nations Programme on HIV/AIDS; 2012 (http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/Key_Human_Rights_Programmes_en_May2012.pdf).
 - Practical Manual. Legal Environment Assessment for HIV: an operational guide to conducting national legal, regulatory and policy assessments for HIV. New York: United Nations Development Programme; January 2014 (<http://www.hivlawcommission.org/index.php/elibrary?task=document.viewdoc&id=176>).
 - Understanding and acting on critical enablers and development of synergies for strategic investments. Geneva, UNAIDS and UNDP, 2012 (http://www.undp.org/content/dam/undp/library/hivaids/English/UNAIDS_UNDP_Enablers_and_Synergies_ENG.pdf).
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Introduction

Responses to the HIV epidemics are strengthened by investing in enabling legal and social environments and by promoting and protecting human rights related to HIV. This ensures that resources for HIV reach the people who need them the most, empowers individuals to be proactive in taking care of their HIV-related health and human rights needs, increases the demand for services and improves the quality of services.

HIV-related human rights issues—such as stigma and discrimination; punitive laws, policies and practices; and poor access to justice—have been identified by most countries as obstacles to achieving universal access to HIV prevention, treatment, care and support. Promoting and protecting human rights creates the optimal conditions for the delivery and uptake of essential HIV prevention, treatment and care services resulting in more efficient, effective and sustainable HIV responses.

In the 2011 United Nations Political Declaration on HIV and AIDS, Member States committed to “national HIV and AIDS strategies that promote and protect human rights, including programmes aimed at eliminating stigma and discrimination against people living with and affected by HIV, including their families, including through sensitizing police and judges, training health-care workers in non-discrimination, confidentiality and informed consent, supporting national human rights learning campaigns, legal literacy and legal services, as well as monitoring the impact of the legal environment on HIV prevention, treatment, care and support” (para. 80).

The Global Commission on HIV and the Law found evidence that protective legal environments improve the lives of people living with HIV and reduce vulnerability to HIV, and recommended that governments repeal punitive laws and enact protective laws that facilitate and enable effective HIV prevention, care and treatment services for all.

A rights-based approach to HIV also includes programmes that strengthen community systems. These programmes focus on enabling environments, including community engagement and advocacy, to improve policy, legal and governance environments and address the social determinants of ill health. Many programmes that address HIV-related human rights and legal issues also strengthen community systems, as well as government, governance and justice systems. UNAIDS has recognized the importance of focusing investments on high-impact basic programmes that are “critically enabled” by programmes that help to create protective and enabling legal and social environments. Under the investment framework, applicants are expected to include and scale up these “critical enablers” that promote human rights and overcome obstacles to universal access to basic programmes for people living with HIV and other key populations.

In line with international human rights obligations and HIV-related human rights commitments made by governments in the 2011 United Nations Political Declaration on HIV and AIDS, countries are strongly encouraged to incorporate planning and programming that:

- identify social and legal barriers to health services;
- design health services using an evidence-informed, human rights based approach;
- invest in programmes that support the removal of social and legal barriers to services;
- invest in community system strengthening, including through programmes that support HIV-related human rights.

1. Key elements

HIV programmes are effective and produce maximum impact when they are implemented in the context of an enabling legal and social environment. Key components of such programmes include the following.

Legal environment assessment and law reform

Assessment of the legal environment and law reform encompasses the following:

- *Review and reform laws.* This includes the implementation of protective laws, regulations and policies such as those that prohibit discrimination and gender inequality, and the reform of laws that increase stigma and discrimination, criminalize HIV transmission and key populations and make it difficult for women and girls to realize their sexual and reproductive health and rights, as well as their rights to equality in marriage, property, inheritance and the custody of children.
- *Improve law enforcement practices.* This includes programmes to assess and address abusive and illegal law enforcement practices, and documenting where, why, by whom and in what circumstances rights violations and discrimination occur. Such practices are usually directed towards key populations and include harassment, extortion, arbitrary arrest, the use of condoms as evidence of sex work charges, violence and rape.

Legal services and rights and legal literacy

Here, the focus is on programmes that improve access to justice for people living with HIV, women and children affected by HIV and other key populations. This includes increasing their awareness of human rights and relevant laws, empowering them to claim their rights and mobilize around local laws and ensuring access to HIV-related legal services. This also includes sensitizing those who enforce the law (i.e. police, prosecutors and judges), as well as developing functioning mechanisms for legal redress.

Training on rights related to HIV for officials and health workers

In response to the results of the scan of law enforcement practices, programmes to address illegal or abusive practices and promote human rights based approaches for all models of health service delivery should be developed and implemented. Key rights include non-discrimination, confidentiality, informed consent, the protection of one's dignity, access to services and the security of one's person.

Advocacy, monitoring and redress

Here, the focus is on monitoring human rights violations related to HIV, advocacy for law and policy reform and developing and implementing effective systems to address complaints. This includes:

- *Supporting civil society and community-led programmes.* This can be done by promoting and supporting dialogues between civil society and all three branches of government (executive, parliamentary and judiciary), and by strengthening the capacity of civil society and affected populations (people living with HIV, women and other key populations) to monitor the provision of health care and justice issues relating to HIV and to participate in national processes relating to health and law reform.
- *Supporting local, national and regional institutions.* There are often groups and institutions that are working on human rights, women's rights, access to justice, rule of law and other issues relevant to HIV. These might include regional human rights mechanisms, national human rights institutions, law reform commissions and local human rights groups. Programmes can ensure that HIV-related concerns are taken up by such groups.

2. Focus populations

Rights-based approaches to HIV call for a particular emphasis on ensuring that the most marginalized populations, those most affected by HIV, those most at risk of HIV exposure or those who shoulder the greatest burden of the impact of HIV should benefit from national responses in proportion to their need. National HIV responses should adhere to the principles of equality and fairness in selecting target populations. As much as possible, definitions of key populations should mirror the needs and vulnerabilities identified in the national situation analysis. National responses should provide data about access to HIV services among different populations, identify barriers or gaps in access and articulate objectives and programmes to address the underlying causes of any gaps and barriers to services. Where disaggregated data for key populations does not exist or where there is a lack of evidence about human rights issues affecting HIV-related activities, national responses should include programmes to collect such data.

Box 1

UNAIDS in its 2011–2015 Strategy, *Getting to Zero*, defines key populations as follows:

“Key populations, or key populations at higher risk, are groups of people who are more likely to be exposed to HIV or to transmit it and whose engagement is critical to a successful HIV response. In all countries, key populations include people living with HIV. In most settings, men who have sex with men, transgender people, people who inject drugs and sex workers and their clients are at higher risk of exposure to HIV than other groups. However, each country should define the specific populations that are key to their epidemic and response based on the epidemiological and social context.”

3. Data requirements

A situation analysis will help in the collection and review of information about the status of legal and human rights issues in a specific country and their effect on HIV vulnerability. This will also highlight issues related to the dignity and security of people living with HIV, including women and children and members of other key populations. The analysis should also assess the participation of people living with HIV and other key populations in the design, implementation and evaluation of HIV programmes. This analysis, including the legal and social context, should be seen as an essential step and important element of the “know your epidemic, know your response” approach. For example, country analyses should consider the following:

- whether people living with HIV and other key populations have access to and receive HIV-related services;
- why specific populations are not adequately reached by HIV services (e.g. due to sex, age, legal and social status, mobility and geography);
- whether stigma, discrimination, gender inequality or the threat of violence prevent individuals from accessing and accepting HIV testing, disclosing their HIV status, adopting safer sexual behaviours and practices or taking up prevention of mother-to-child transmission services;
- whether certain policies and/or laws and their (lack of) enforcement support or hinder access to HIV services among certain populations (e.g. gender inequality; the failure to protect women from violence; the criminalization of sex work, gender identity or sexual orientation; the criminalization of drug use or harm reduction measures; harassment from police directed at sex workers, men who have sex with men, transgender people, people who inject drugs, prisoners or migrants);
- whether steps have been taken to overcome human rights and law-related barriers to the expansion of HIV prevention, treatment, care and support services (e.g. programmes to address stigma and discrimination and gender inequality, including sexual violence against women and girls; legal aid; rights and legal literacy programmes for key populations; training of service providers on non-discrimination; law reform; implementation of HIV education and life skills training in schools; programmes on social mobilization; information and education around HIV-related rights and law; and strengthening of national human rights institutions and bodies).

Box 2. Legal and policy assessment

An assessment of the legal and policy environments is an important step in understanding how these support or hinder access to HIV prevention and treatment and impact mitigation efforts. An assessment of the legal environment aims to examine how laws, law enforcement and access to justice protect or hinder the rights of those living with and vulnerable to HIV. It also looks at whether HIV policies ensure non-discrimination, informed consent and confidentiality.

For more information, please refer to *Practical Manual. Legal Environment Assessment for HIV: an operational guide to conducting national legal, regulatory and policy assessments for HIV*. New York, United Nations Development Programme; January 2014 (<http://www.hivlawcommission.org/index.php/elibrary?task=document.viewdoc&id=176>).

4. Implementation challenges

Some of the primary challenges to programme implementation in the area of HIV-related human rights and law include the following.

Rigour. While many countries refer to the promotion and protection of human rights in their HIV strategies, actual programmes supporting human rights are rarely taken through the full planning process from strategy to costing, budgeting, implementation, monitoring and evaluation. Efforts are needed to consciously include human rights considerations at all stages of the planning cycle and to ensure that programmes related to human rights and law are costed, budgeted, implemented and evaluated.

Resources. Inadequate resources have been made available for programmes to address stigma, discrimination and human rights. Integrating stigma mitigation and human rights promotion activities within existing programmes is one way to scale up and mainstream human rights-based approaches and secure a broader funding base. For example, as pointed out by the Global Fund to Fight AIDS, Tuberculosis and Malaria's (Global Fund) Technical Review Panel (TRP) in its 2012 report, "The TRP notes that human rights-related actions (e.g. ensuring equitable access to quality services, removing human rights-related barriers and creating supportive environments) continue to be insufficiently addressed and articulated in Global Fund proposals". As noted in the 2013 UNAIDS *Global Report*, such activities received an increase in funds from the Global Fund in rounds 8 and 10, but were "frequently not integrated into grant work plans, budgets or performance frameworks".

Short- and long-term measures. The reform of existing laws and entrenching human rights within legislative processes and practices can take a long time. However, there are many short-term and intermediate measures that can be taken. These include such programmes as the training of police and judges, legal and rights literacy for those affected by HIV and establishing community monitoring and feedback on barriers to access and the quality of services.

5. Main activities

Examples of specific programmes that support human rights and create supportive social and legal environments in the context of HIV are provided below. These programmes should be implemented with sufficient scale and coverage to make a difference in challenging stigma, discrimination, gender inequality and social and legal barriers to access and the uptake of HIV services. They can be implemented for people living with HIV, women affected by HIV and other key populations. In addition, such programmes should be appropriately funded, monitored and evaluated to assess their impact.

Programmes to reduce stigma and discrimination against people living with HIV or at a higher risk of HIV. These programmes should address the actionable causes of stigma and discrimination in the general population and empower people living with HIV, women and girls and other key populations to address and reduce stigma. They should operate at multiple levels (individual, community, institutional and legal) and engage multiple target audiences and potential change agents. (See the *guidance note on stigma and discrimination* for more information on programming to reduce stigma and discrimination.)

Legal services and rights/legal literacy for people living with HIV, women and other key populations. HIV-related legal services can facilitate access to justice and redress in cases of HIV-related discrimination or other legal matters, including estate planning; breaches of privacy and confidentiality; illegal actions by the police; discrimination in employment; violence; the denial of access to treatment, care and support services, education, housing or social services; and the denial of property and inheritance rights. HIV-related legal services can be delivered through:

- legal information and referrals;
- legal advice including by community paralegals and representation;
- alternative/community forms of dispute resolution;
- functioning mechanisms for redress (e.g. tribunals and ombudsman offices);
- engaging faith-based or traditional legal leaders or systems with a view to resolving disputes or changing traditional norms or processes (e.g. village courts).

Rights and legal literacy programmes serve to educate those living with or affected by HIV about their human rights and the national and local laws relevant to HIV. These programmes may also provide information on different legal or human rights forums where individuals can advocate for or seek redress, such as through patients' rights groups, ombudsmen offices and national human rights institutions. This knowledge enables individuals and groups to organize around their rights and laws, and to advocate for concrete needs within the HIV context. Rights and legal literacy programmes can also form a part of other HIV services (e.g., the provision of health-care services, prevention outreach, peer education, support groups and programmes in prisons) or can be implemented as stand-alone programmes focusing on activities such as awareness-raising campaigns that provide information about rights and laws related to HIV through the media (e.g., television, radio, print and the internet), community mobilization and education, peer outreach and telephone hotlines.

Legal environment assessment and reform of laws, regulations and policies relating to HIV.

Laws, regulations and policies related to HIV can negatively or positively impact a national HIV epidemic as well as the lives and human rights of people affected by HIV. It is essential to monitor and reform laws, regulations and policies so that they support rather than block access to HIV-related and general health services. Law reviews and reforms can be achieved through:

- the assessment of laws and law enforcement practices to determine their effect on the HIV response (e.g. positive or negative impacts);
- the assessment of access to justice for people living with or affected by HIV and other key populations;
- advocacy for law reform;
- engagement with parliamentarians, the judiciary and ministers of justice, interior, corrections, finance, industry, labour, women's affairs, education, immigration, housing, defence, health and trade among others;
- the promotion of the enactment and implementation of laws, regulations and guidelines that prohibit discrimination, gender inequality and violence against women and that support access to HIV prevention, treatment, care and support;
- the documentation of rights violations and discrimination in a systematic way (e.g. *Human Rights Count!* and *The People Living with HIV Stigma Index*).

Training for police, judges, members of parliament, lawmakers, law enforcement agents and others who must implement rights-based laws and policies. As stated above, police often engage in illegal and discriminatory policing behaviour against members of key populations. Lawyers and judges often lack critical relevant information and understandings about HIV. Thus, it is essential to implement training and sensitization programmes for lawmakers and law enforcement agents to ensure non-discriminatory and evidence-informed access to justice for people living with HIV, women, children and other key populations. These programmes seek to inform and sensitize those who make the laws (parliamentarians) and those who enforce them (ministers of interior and justice, police, prosecutors, prison officials, judges and lawyers) about the important role of the law in the response to HIV. Such programmes may include the following:

- sensitization of police to HIV and routes of HIV transmission, the importance of reaching out to and accessing populations at higher risk, the importance of appropriately addressing cases of domestic and sexual violence in the context of HIV and the negative consequences of discriminatory and illegal police activity on justice and on HIV responses;
- facilitated discussions and negotiations among HIV service providers, those who access services and police to address law enforcement practices that impede HIV prevention, treatment, care and support efforts;
- information and sensitization sessions for parliamentarians, personnel from the ministries of justice and interior, judges, prosecutors and lawyers on the legal, health and human rights aspects of HIV, relevant national laws and the implications for enforcement, investigations and court proceedings;
- training for prison personnel about HIV prevention, the health-care needs and human rights of detainees living with or at higher risk of HIV;
- programmes about HIV in the workplace for lawmakers and law enforcement officers.

Training for health workers on human rights and medical ethics related to HIV. The health-care setting is consistently cited as a serious source of stigma and discrimination faced by people living with HIV, women, adolescents and other key populations (such as men who have sex with men, transgender people, sex workers and people who inject drugs). Research indicates that human rights training and education about infection control significantly change the attitudes and behaviour of health workers. Human rights and ethics training for health workers focuses on the following objectives:

- ensuring that health-care staff know about their own health-related human rights (HIV prevention and treatment, standard precautions and compensation for work-related infection) and about non-discrimination in the context of HIV;
- reducing stigmatizing attitudes in health-care settings;
- providing health-care providers with the skills and tools necessary to ensure patients' rights to informed consent, confidentiality, treatment and non-discrimination.

Human rights and ethics training should be conducted with individual health-care workers as well as administrators, regulators and policy-makers.

Reducing harmful gender norms and violence against women and increasing women's legal, social and economic empowerment in the context of HIV (see section 8 below).

National dialogues or multistakeholder consultations on HIV, human rights and the law.

A national dialogue provides an opportunity to create a policy space where those who influence, write and enforce laws as well as those who experience their impact come together to engage in a constructive, frank and pragmatic discussion. It is an event where a range of stakeholders from different sectors, including people living with HIV and other key populations, discuss and share their insight and experiences on HIV, law and human rights in order to advance the national HIV-related legal and human rights agenda.

6. Key indicators

Output indicators related to human rights and the law may include the following:

- the number and coverage of programmes to train and sensitize health-care providers on non-discrimination, confidentiality and informed consent;
- the number and coverage of programmes to train and sensitize law enforcement officers on the human rights of people living with HIV, women affected by HIV, sex workers, men who have sex with men, transgender people and people who inject drugs in the context of HIV;
- the number and coverage of national and community-level campaigns to reduce HIV stigma and discrimination or to inform and educate individuals about their rights within the context of HIV;
- the number and coverage of legal support services for people living with and affected by HIV, women and other key populations.

Outcome indicators related to human rights and the law may include the following:

- the percentage of service users or providers who are aware of patients' rights to confidentiality, informed consent and non-discrimination;
- the existence of non-discrimination laws that specify protections for people living with and affected by HIV and other key populations;
- indicators on accepting attitudes towards people living with HIV (e.g. those included in the demographic and health surveys (DHS) completed as a part of Global AIDS Response Progress Reporting (GARPR));
- indicators on attitudes towards girls' education and violence against women (e.g. DHS indicators on women's status and empowerment and domestic violence).

Other key indicators that measure stigma and discrimination (among other things) include the following: the People Living with HIV Stigma Index, an improved indicator to measure discriminatory attitudes in the general population and the National Composite and Policy Index (NCPI) completed as part of the GARPR monitoring process. See the *Guidance note on stigma and discrimination* for further information.

7. Approaches to costing

Costing and budgeting for human rights programmes are essential to the effective implementation of these programmes. The UNAIDS *Human Rights Costing Tool* facilitates the costing and budgeting processes for human rights programmes, supports their inclusion in national strategic plans and helps translate them into precise activities and indicators. This tool and the user guide can be accessed at http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/The_HRCT_User_Guide_FINAL_2012-07-09.pdf.

8. Addressing gender and equity issues within a human rights framework

Discriminatory gender norms and violence against women and girls make them more vulnerable to HIV and exacerbate the impact of HIV. Programmes that promote the rights of women and girls in the context of HIV should address the intersection between gender inequality, gender-based violence and vulnerability to HIV. This includes designing programmes that address women's and girls' inequality in sexuality and reproductive health and rights; unequal access to health services; discrimination (in principle, in laws and/or in practice) in relation to inheritance, owning property, marriage, divorce and custody; gender-based violence including sexual and other types of violence; a lack of equal access to educational and economic opportunities; and the lack of support to caregivers in HIV-affected households. Such programmes should be complemented by activities targeted to men and boys that address gender issues that make them vulnerable to HIV. Examples of such programmes include:

- age-appropriate life skills programmes that also seek to reduce gender inequality and gender-based violence;
- safe school initiatives to eliminate sexual violence, sexual abuse and gender-related harassment in schools (encompassing the harassment of girls as well as homo- and transphobic bullying);
- efforts to reform domestic relations as well as domestic violence laws and law enforcement where these fail to sufficiently protect against HIV or where such laws and their enforcement create barriers to HIV prevention, treatment, care and support;
- joint law enforcement and community sensitization programmes to reinforce a zero tolerance position by the police towards individuals who commit violent acts against women and vulnerable groups affected by HIV;
- those which reduce harmful gender norms and traditional practices that put women, girls, men, boys and transgender people at risk of HIV;
- efforts to reform property, inheritance and custody laws to ensure equal rights for women, children and caregivers affected by HIV;
- those which increase access to education and economic empowerment opportunities for women living with or affected by HIV.

9. Additional information

As outlined above, attention to human rights, protective laws and law enforcement and access to justice are essential to the success of national HIV responses. This attention should take the form of concrete programmes (critical enablers) that are costed, budgeted, implemented and evaluated. They should be targeted strategically to cover the populations most affected by HIV and most marginalized by discriminatory social and legal environments. In many cases, the programmes outlined above will be HIV-specific programmes. Where possible, however, HIV-related substance and elements can and should be integrated into existing programmes. For instance, where legal service provision for the poor exists, the most efficient way to address the need for legal services among people living with HIV would be to integrate such concerns and skills into the existing programme for legal services.

Links to key reference materials

Analysis of key human rights programmes in Global Fund-supported HIV programmes. New York, UNDP, UNAIDS, Global Fund, 2011 (<http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/analysis-of-key-human-rights-programmes-in-global-fund-supported-hiv-programmes.html>, accessed 16 December 2013).

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