

Technical Guidance Note for Global Fund HIV Proposals



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Human rights and law

Rationale for including this activity in the proposal

Responses to HIV epidemics are strengthened by investing in an enabling legal environment and promoting and protecting human rights. This ensures that resources for HIV reach the right people; improves service quality and increases demand for services; and empowers individuals to be proactive in taking care of their health needs.

More specifically:

- ◆ HIV-related legal and 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 goals towards universal access to HIV prevention, treatment, care and support.
- ◆ Promoting and protecting human rights creates optimal conditions for the delivery and uptake of essential HIV prevention, treatment and care services, resulting in more efficient, effective and sustainable HIV responses. For example, evidence from the 2008 *Report on the global AIDS epidemic* suggests that countries that have non-discrimination laws that protect key populations at higher risk have achieved higher HIV prevention coverage.
- ◆ In the 2011 *Political Declaration on HIV/AIDS*, 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... [and] to promoting laws and policies that ensure the full realization of all human rights and fundamental freedoms for young people, particularly those living with HIV and those at higher risk of HIV infection, so as to eliminate the stigma and discrimination they face” (paragraphs 80 and 83).
- ◆ The United Nations Human Rights Council has noted that HIV programmes and policies based on human rights principles have been crucial to success against the epidemic (Human Rights Council Resolutions 2009 and 2011).
- ◆ The Global Fund encourages applicants to expand programmes to alleviate barriers to universal access to services faced by key populations. These barriers often take the form of stigma and discrimination, criminalization or law enforcement that impedes access to HIV services.
- ◆ The Global Fund also encourages programmes that strengthen community systems. Many programmes that address HIV-related human rights and legal issues also strengthen community systems, as well as government, governance and justice systems.

Situation analysis

A situation analysis should include the collection and review of information about the status of legal and human rights issues in that country and their effect on HIV vulnerability, the dignity and security of people living with HIV, and members of key populations. The analysis should also assess the participation of people living with HIV as key populations in the design, implementation and evaluation of HIV programmes. This analysis should be seen as an essential step in “knowing your epidemic, knowing your response”—the Global Fund’s Technical Review Panel (TRP) relies on this concept when reviewing Global Fund applications to assess whether the proposed programmes target the populations most affected by HIV, as well as the underlying realities that fuel HIV transmission.

The legal and social context is an important element of a “know your epidemic, know your response” analysis. For example, analyses should consider:

- ◆ the reasons why certain populations are not adequately reached by HIV services (e.g. legal and social status, sex, age, mobility, geography);

- ◆ whether stigma and discrimination prevent people 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 the law and its enforcement support or hinder the access of certain populations to HIV services (e.g. criminalization of sex work or same-sex activity; criminalization of drug use or harm reduction measures; harassment of sex workers, men who have sex with men, transgender people or people who use drugs by the police);
- ◆ 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 against stigma and discrimination and violence against women, legal aid, legal literacy programmes for key populations, training of service providers on non-discrimination, law reform, implementation of HIV education and life-skills in schools, programmes on social mobilization and education around HIV-related rights and law, and strengthening of national human rights institutions and bodies).

Focus populations

Rights-based approaches to HIV emphasize that populations that are the most marginalised, the most affected by HIV or at higher risk of HIV exposure should benefit from the national response in proportion to their need. The Global Fund calls for applications to describe how the proposal adheres to principles of equality and fairness in selecting target populations. Definitions of focus populations should mirror the needs and vulnerabilities identified in the situation analysis as much as possible. Proposals should provide data about access to HIV services by different populations, identify discrepancies or gaps in access, and articulate objectives and activities to address the underlying causes of these. Where disaggregated data for key populations does not exist, or where there is a lack of evidence about human rights issues affecting HIV responses, proposals should include programmes to collect such data.

Key activities to consider

Examples of specific programmes to support human rights and create a supportive social and legal environment in the context of HIV are provided below. These programmes must be implemented with sufficient scale and coverage to make a difference in challenging stigma, discrimination, and social and legal barriers. They must be appropriately funded, monitored and evaluated to assess their impact.

- ◆ **Programmes to reduce stigma and discrimination against people living with HIV or at higher risk of HIV exposure.** These programmes should also address the actionable causes of stigma and discrimination in the general population and empower people living with HIV, including key populations. They should operate at multiple levels (individual, community, institutional and legal) and engage multiple target audiences and potential change agents. See the Global Fund Stigma and Discrimination Technical Guidance Note for more information on programming to reduce stigma and discrimination.
- ◆ **Legal services for people living with HIV 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 action by the police; discrimination in employment; violence; access to treatment, care and support services, education, housing or social services; and denial of property and inheritance rights. HIV-related legal services can be delivered through:
 - ▶ legal information and referrals;
 - ▶ legal advice and representation;
 - ▶ alternative/community forms of dispute resolution;
 - ▶ 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).

- ◆ **Monitoring and reforming laws, regulations and policies relating to HIV.** Laws, regulations and policies relating 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 access to HIV and health services, rather than block access. Law review and reform can be achieved through:
 - ▶ audits of laws and law enforcement practices to determine their effect on the HIV response (positive or negative);
 - ▶ assessment of access to justice for people living with or affected by HIV;
 - ▶ advocacy for law reform;
 - ▶ engagement with parliamentarians and ministers of justice, interior, corrections, finance, industry, labour, women's affairs, education, immigration, housing, defence, health and trade, among others;
 - ▶ promotion of the enactment and implementation of laws, regulations and guidelines that prohibit discrimination and support access to HIV prevention, treatment, care and support.
- ◆ **Legal literacy (“know your rights”).** Legal literacy programmes educate those living with or affected by HIV about 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 people can advocate or seek redress, such as patients' rights groups, ombudsmen offices and national human rights institutions. This knowledge enables individuals and groups to organize around their rights and to advocate for concrete needs within the HIV context. Legal literacy programmes can form part of other HIV services (e.g. health-care provision, prevention outreach, peer education, support groups, programmes in prisons) or can be stand-alone programmes involving activities such as awareness-raising campaigns that provide information about rights and laws related to HIV through media (e.g. television, radio, print, Internet), community mobilization and education, peer outreach and telephone hotlines.
- ◆ **Sensitization of law makers and law enforcement agents.** Police often engage in illegal and discriminatory policing behaviour against members of key populations (e.g. harassment, arbitrary arrest, extortion, rape), and lawyers and judges often lack critical relevant information and understanding about HIV. In addition to initiatives that promote the rule of law and access to justice, it is essential to implement training and sensitization programmes for law makers and law enforcement agents to ensure non-discriminatory and evidence-informed access to justice for women, children, men who have sex with men, people who use drugs, sex workers, prisoners, transgender people and migrants. 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, judges, lawyers) about the important role of the law in the response to HIV (e.g. to protect those affected by HIV against discrimination and violence, and to support access to HIV prevention, treatment, care and support). Such programmes may include:
 - ▶ sensitization of police to HIV and how it is and is not transmitted, the importance of reaching out to and accessing populations at higher risk, the importance of appropriately addressing domestic and sexual violence cases 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 of 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, and the health-care needs and human rights of detainees living with HIV or at higher risk of HIV exposure;
 - ▶ programmes about HIV in the workplace for law makers and law enforcers.

- ◆ **Training for health workers on human rights and medical ethics related to HIV.** The health-care setting is consistently cited as the source of the greatest stigma and discrimination faced by people living with HIV and other key populations (such as men who have sex with men, transgender people, sex workers and people who use drugs). Research indicates that human rights training and education about infection control significantly changes the attitudes and behaviour of health workers. Human rights and ethics training for health workers focuses on two objectives—to ensure that health workers know about their own human rights to health (HIV prevention and treatment, standard precautions, compensation for work-related infection) and to non-discrimination in the context of HIV; and to reduce stigmatizing attitudes in health-care settings and provide health workers 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 health-care 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.** Discriminatory gender norms and violence against women mean that women and girls can be affected by HIV. Through its Gender Equality Strategy, the Global Fund has committed to supporting equal and equitable access to HIV prevention, treatment, care and support, and seeks to encourage a positive bias in funding programmes that address gender inequalities and strengthen the response to HIV for women and girls. Programmes promoting the rights of women and girls in the context of HIV should address the intersections between gender inequality, gender-based violence and vulnerability to HIV infection and impact. This includes programmes that address women’s and girls’ inequality in sexuality and reproduction; unequal access to health services; discrimination in inheritance, property-holding, marriage, divorce and custody; sexual and other violence; lack of equal access to educational and economic opportunity; and lack of support to caregivers in HIV-affected households. Such programmes should be complemented by programmes targeting men and boys that address the gender issues that make men and boys vulnerable to HIV infection. Examples of such programmes can include:
 - ▶ age-appropriate life-skills programmes that also seek to reduce gender inequality and gender-based violence;
 - ▶ safe school initiatives to eliminate sexual violence and harassment at schools;
 - ▶ efforts to reform domestic relations, and domestic violence laws and law enforcement, where these fail to sufficiently protect against HIV, or create barriers to HIV prevention, treatment, care and support;
 - ▶ programmes to reduce harmful gender norms and traditional practices that put women, girls, men and boys at risk of HIV exposure;
 - ▶ efforts to reform property, inheritance and custody laws to ensure equal rights for women, children and caregivers affected by HIV;
 - ▶ programmes to increase access to education and economic empowerment opportunities for women living with or affected by HIV.

Suggested key indicators

Output indicators may include:

- ◆ the number and coverage of programmes to train health workers in non-discrimination, confidentiality and informed consent;
- ◆ the number and coverage of programmes to train law enforcement officers on the human rights of sex workers, men who have sex with men, and people who use drugs in the context of HIV;
- ◆ the number and coverage of national and community-level campaigns to reduce HIV stigma and discrimination, or educate people about their rights in the context of HIV;
- ◆ the number and coverage of legal support services for people living with and affected by HIV.

Outcome indicators may include:

- ◆ 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 HIV or 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 part of UNGASS reporting);
- ◆ 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 People Living with HIV Stigma Index, MEASURE DHS and the National Composite Policy Index (NCPI) completed as part of the UNGASS monitoring process. See the Global Fund Technical Guidance Note on Stigma and Discrimination for more information.

Linkage with other activities

Attention to human rights is essential for the success of all HIV programmes. HIV services can be strengthened by including components that promote human rights and address legal and social barriers to HIV responses in the programme design.

For example, if the objective is to improve the access of sex workers to HIV services, the proposal could include the following human rights-related activities: law review or reform with a view to improving the legal status of sex workers; training of law enforcement agents on the rights of sex workers to non-discrimination and non-violence; training and sensitization of health workers; "know your rights" campaigns among sex workers; and integration of legal services into other HIV services to sex workers.

In the context of HIV services in health-care settings, programmes can be strengthened by providing training for health workers on non-discrimination, informed consent and confidentiality, and linking health services to community programmes against stigma and discrimination and legal services that provide redress for those who have experienced discrimination. Treatment programmes can also be strengthened by integration of treatment literacy and peer support activities into the programme design.

Approach to costing

While many countries reference the promotion and protection of human rights in their HIV strategies, in practice, programmes supporting human rights are rarely taken through the full planning process from strategy to activities, budgeting, monitoring and evaluation. Costing and budgeting for human rights programmes is essential to the effective implementation of these programmes. UNAIDS is finalizing a costing tool that facilitates 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 will be available by the end of 2011. Interested stakeholders are encouraged to regularly visit the UNAIDS web site (<http://www.unaids.org>) for updates on the availability of this tool.

Links to key reference materials

Fact sheet: human rights and the three diseases. United Nations Development Programme, Open Society Foundations and Ford Foundation, 2011 (<http://www.stoptb.org/assets/documents/global/hrtf/Partnership%20Forum%20Fact%20Sheet%20-%20Human%20Rights%20June%202011%20FINAL%20COPY%20logos.pdf>, accessed 2 August 2011).

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Toolkit: scaling up HIV-related legal services. UNAIDS, IDLO, UNDP, 2009 (http://data.unaids.org/pub/Manual/2010/20100308revisedhivrelatedlegalservicetoolkitwebversion_en.pdf, accessed 2 August 2011).

Reducing HIV stigma and discrimination: a critical part of national AIDS programmes, a resource for national stakeholders in the HIV response. Geneva, UNAIDS, 2007 (http://data.unaids.org/pub/Report/2008/jc1521_stigmatisation_en.pdf, accessed 2 August 2011).

Taking action against HIV: handbook for parliamentarians. UNAIDS, IPU, UNDP, 2007 (http://data.unaids.org/pub/Manual/2007/20071128_ipu_handbook_en.pdf, access 2 August 2011).

Legal aspects of HIV/AIDS: a guide for policy and law reform. Geneva, World Bank, 2007 (<http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1103037153392/LegalAspectsOfHIVAIDS.pdf>, accessed 2 August 2011).

Handbook on HIV and human rights for national human rights institutions. UNAIDS, OHCHR, 2007 (http://data.unaids.org/pub/Report/2007/jc1367-handbookhiv_en.pdf, accessed 2 August 2011).

Important reminder

Multisectoral national responses that include human rights-based approaches to HIV are the most sustainable and effective. It is therefore essential to ensure that fundamental human rights principles such as non-discrimination, participation, transparency and accountability, as well as comprehensive human rights programmes, are incorporated into national HIV plans. It is particularly important to ensure the meaningful participation of people living with, affected by and vulnerable to HIV in the planning and implementation processes of national HIV responses.

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