

We can remove punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV



Joint Action for Results
UNAIDS Outcome Framework:
Business Case 2009–2011



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Uniting the world against **AIDS**

UNAIDS Joint Action for Results

In *The Joint Action for Results: UNAIDS Outcome Framework, 2009–2011*, UNAIDS Executive Director, Michel Sidibé, called for a new and more focused commitment to the HIV response. The Outcome Framework committed the UNAIDS Secretariat and cosponsors to leverage their respective organizational mandates and resources to work collectively with national and global partners to deliver results for people at country level. It outlined 10, interconnected priority areas, each representing a pivotal component of the AIDS response, all of which are reflected in the UNAIDS 2010–2011 Unified Budget and Workplan. It opened each of the ten areas with an affirmative challenge (see inside back cover).

For each priority area, a business case was developed by a global UNAIDS interagency working group, building upon and complementing action on the ground. Each business case is different, due to differences in the scope, knowledge base and stage of development of the policies and programmes involved. However, each business case succinctly explains the rationale for the priority area and outlines why success in this area will dramatically decrease new HIV infections and improve the lives of people living with and affected by HIV. The business cases delineate what is currently working and what needs to change in order to make headway in the 10 areas. They are intended to guide future investment and to hold UNAIDS accountable for its role in achieving tangible results. Each priority area business case presents three results to be achieved globally by 2011, which mark important progress towards our shared 2015 goals. These business cases informed both the UNAIDS 2011–2015 Strategy and the development of the 2012–2015 Unified Budget, Results and Workplan.

In 2009, UNAIDS' Executive Director asked each country Joint United Nations Team on AIDS, in consultation with their national AIDS programme, to identify three to five of the priority areas for intensified, unified United Nations (UN) support in 2009–2011. The global priority area working groups also proposed strategies to maximize UNAIDS' impact – some focusing on countries with the largest disease burden, and others on phasing waves of research or technical support according to learning opportunities and demand from local stakeholders. The work at country, regional and global levels has strengthened the foundations and baselines for action toward the ten goals of UNAIDS' 2011–2015 Strategy, *Getting to Zero*.

Focused, concrete and synergistic actions in the ten areas have the potential to change the trajectory of the epidemic. They will help to achieve universal access to HIV prevention, treatment, care and support, and contribute to achieving the Millennium Development Goals. Optimizing partnerships between national governments, communities, the UN, development partners and other stakeholders, the business cases recommend ways forward that build on decades of research and experience, and focus our work, hearts and minds on a unified and strategic vision.



We can remove punitive laws, policies, practices, stigma and discrimination that block effective responses to AIDS

1. WHY IS THIS A PRIORITY AREA?

Despite remarkable recent successes in the global response to HIV, punitive laws, policies, practices, stigma and human rights violations (see Annex) are threatening progress towards universal access targets and the Millennium Development Goals.

Successful strategies for HIV prevention, treatment, care and support require supportive legal, regulatory and social environments that advance human rights, gender equality and social justice goals. Punishing and stigmatizing environments, in contrast, can increase people's vulnerability to HIV infection, reduce access to and use of HIV services and other health and social services, discourage individual behaviour change, and increase the impact of HIV on people already living with the virus and on their families and communities. Such environments also undermine the ability of people most affected by the epidemic to mobilize and claim their rights. People living with or vulnerable to HIV often acutely feel the negative impacts of punitive legal and social environments.

By contrast, enabling legal environments—frameworks consisting of law, law enforcement and access to justice—can promote access to HIV-related information and services and support risk reduction. So far, however, adoption and implementation of such supportive frameworks have been limited by a lack of political will and limited understanding of the critical relationships between human rights, gender equality, the law and effective responses to HIV.

Increasing numbers of countries report the existence of laws and regulations that protect people living with or vulnerable to HIV from discrimination. According to nongovernmental sources, between 2006 and 2010, the number of countries reporting the existence of laws, regulations or policies protecting people living with HIV from discrimination increased by 30% (from 56% to 73%, among the 85 countries that reported biannually through the United Nations General Assembly Special Session on HIV/AIDS [UNGASS] National Composite Policy Index).(1) However, almost one third of countries still do not have legislation that protects people living with HIV from discrimination, and almost 40% of countries lack non-discrimination laws that specify protection for key populations.(2) It is less clear whether existing laws are effectively enforced or whether people living with HIV and key population groups at higher risk have access to justice or can seek redress.

In addition, in some countries, laws that protect against HIV-related discrimination are undermined by the criminalization of HIV transmission and other adverse legal and policy practices. In 2010, nearly half of reporting governments and more than half of nongovernmental sources acknowledged that their country has laws, policies and regulations that obstruct effective HIV prevention, treatment, care and support for key populations at higher risk and other vulnerable groups. Data collected by civil society indicated that 79 countries criminalize same-sex sexual relations between consenting adults, with 6 countries applying the death penalty for these

activities.(3) More than 100 countries criminalize some aspect of sex work.(4) Forty-nine countries, territories and areas are reported to impose some form of restriction on the entry, stay and residence of people living with HIV based on their HIV status.(5)

UN Member States have committed to protecting the human rights of people living with HIV or vulnerable to HIV, including establishing enabling legal environments. It is imperative that governments be held accountable for these commitments.

The actions needed will support all UNAIDS's strategy goals and advance objectives involving human rights, health and development beyond HIV—as illustrated by the following examples:

- ▶ **To reduce sexual transmission of HIV, key populations must be able to access evidence-informed and rights-based services for prevention, treatment, care and support without fear of stigma, discrimination, coercion or violence.**
- ▶ **To end violence against women and girls, laws and policies that criminalize and stigmatize female sex workers, that do not protect women and girls from various forms of violence and that prevent the equal participation of women and girls in all aspects of society must be removed.**
- ▶ **To protect people who inject drugs from becoming infected with HIV, laws, policies and practices that prevent them from accessing HIV services must be reformed.**
- ▶ **To ensure access to treatment, HIV-related stigma and discrimination must be removed from health-care settings, workplaces, prisons, refugee camps, displacement settings and communities.**

Goal and bold results

The **goal** of this priority area is by 2015, the number of countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality is reduced by half, creating legal, regulatory and social environments that advance and safeguard dignity, health and justice in the context of HIV.

In order to deliver on the goal of this area, UNAIDS advocates the following bold results to be met by the end of 2011:

- ▶ **Eliminate HIV-related restrictions on entry, stay and residence in at least 50% of the countries that currently have such restrictions.**
- ▶ **Eliminate inappropriate criminalization of HIV transmission and of key populations in 20 countries.**
- ▶ **Achieve a 30% year-on-year increase in programmes to reduce stigma and discrimination and increase access to justice for people living with HIV and other key populations.***

* Access-to-justice programmes comprise programmes to reduce stigma and discrimination; HIV-related legal services; human rights training of health-care workers and the law/justice sector; law reform, legal literacy and “know your rights” programmes; and programmes to protect women’s rights.



2. WHAT NEEDS TO BE DONE?

Work to remove punitive laws, policies, practices, stigma and discrimination—and to promote supportive alternatives to them—will:

- ▶ create empowering environments in which the root causes of HIV risk and vulnerability are addressed;
- ▶ mitigate the impact of the HIV epidemic;
- ▶ enable individuals to claim their human rights.

Progress in this priority area will require political will to bring about reform. It will require a more robust body of credible evidence that documents the negative impacts of punitive laws, policies and practices on HIV and health outcomes, and the positive role that the law can play in AIDS responses. Where such evidence has been collected and used, it has had significant influence on lawmakers and policy-makers and has contributed to the enactment of rights-based law and policy reform.

In addition to political will, the capacity of state actors, civil society and UN staff to improve laws and policies, or to advocate for their improvement, needs to be strengthened. Civil society must invest and participate in these efforts to a much greater extent than it currently does; this includes ensuring that community members know, and are able to mobilize around, their rights and relevant laws.

Progress in this priority area will require health, justice and law enforcement sectors to organize around common goals relating to HIV, human rights and public health. This type of organization, joint planning and coalition building has been shown to significantly improve efforts to combat HIV and promote health and human rights.

A multifaceted approach, consisting of advocacy and capacity building, coupled with civil society action and strategic litigation, has in many instances achieved significant gains against HIV-related discrimination. Such an approach has also improved regulatory environments that govern access to medicine and, in some cases, even helped to remove laws that criminalize same-sex practices. These approaches safeguard and advance dignity, health and justice, and much more needs to be done to scale them up.

Awareness of stigma and discrimination is now high; nearly all countries report recognition of these issues as important cross-cutting areas to address in national HIV strategies. Furthermore, a range of proven programmatic strategies to reduce HIV-related stigma is available.(6) However, a recent analysis of national planning and strategy documents shows that awareness and concern about stigma and discrimination are not being translated into costed programmes of sufficient quality, scale and coverage.(7)

National HIV responses must be significantly realigned to improve technical support capacity on human rights and legal issues; enhance the evidence base; expand investment in programmes to increase access to justice and to reduce stigma and discrimination; and support the removal of punitive laws, policies and practices that block the response. Actions that have already had a positive impact in this area include human rights and HIV training and education for health-care workers, and for judiciary and law enforcement officials. Such training for health-care workers, for example, has been shown to reduce stigma and discrimination in health-care settings. Education of law enforcement officials on human rights and HIV has improved policing practices and has increased space for outreach programmes on HIV prevention.

UNAIDS's regional and country structures also need greater investment in this priority area. Capacity strengthening requires improved technical support, coordination, broader partnerships, and focused and timely use of resources. Since the work of challenging punitive laws, policies and practices is often triggered by local and national events, UNAIDS must develop dynamic systems that allow for timely, flexible UN responses and harmonized policies on critical issues such as sex work, drug use, sexual minorities, detainees and people in humanitarian emergencies.

Finally, a large number of indicators in this priority area are inconsistently used and insufficiently harmonized. A limited number of indicators must be identified or developed to help with tracking progress in efforts to increase access to justice, reduce stigma and discrimination, and improve HIV-related legal environments.

3. MOVING FORWARD

Analysis of the challenges and successful responses achieved at country and regional levels indicates that efforts must be intensified:

- ▶ to generate evidence and establish and promote norms and principles for an enabling legal environment;
- ▶ to strengthen capacities and change the programmatic agenda related to access to justice and reducing HIV-related stigma;
- ▶ to convene, build and engage with coalitions and partnerships among key groups that can influence the legal and social environment.

In 2010–2011, **UNAIDS support in this priority area will focus** on the following strategies and actions at country, regional and global levels:

- ▶ Expand evidence on the impact of punitive laws, policies, practices, stigma and discrimination, in order to foster dialogue and political engagement around their removal.
- ▶ Strengthen policy coherence and commitment across the Joint Programme to address punitive laws, policies, practices, stigma and discrimination.



- ▶ Strengthen technical support and capacity of government and civil society to address punitive laws, policies, practices, stigma and discrimination, including programmes to increase access to justice and to reduce HIV-related stigma.
- ▶ Engage donors and governments to invest in programmes to increase access to justice and to reduce HIV-related stigma.
- ▶ Build and leverage broader partnerships and coalitions—for example, with defenders of human rights, women’s rights movements, lawmakers, law enforcement agencies, development agencies, humanitarian organizations and prison administrations.
- ▶ Agree upon and apply a limited number of relevant indicators to measure progress towards the removal of punitive laws, policies, practices, stigma and discrimination.
- ▶ Strengthen monitoring by UN treaty bodies of laws, policies and practices that affect effective responses to HIV.

Major UNAIDS activities in 2010–2011 that will be planned, implemented collaboratively and supported at the country, regional and/or global levels include:

- ▶ development and implementation of a UNAIDS early warning/rapid response system to address HIV-related human rights violations;
- ▶ convening of the Global Commission on HIV and the Law, which focuses on issues of criminalization of HIV transmission, drug use, sex work and same-sex relations;
- ▶ development of policy guidance on models of healthy policing and law enforcement;
- ▶ expansion of HIV-related legal services, “know your rights” campaigns and programmes to reduce stigma and discrimination in at least 10 countries.

Focused support will be provided in 2010–2011 on the basis of demand from countries and the UNAIDS interagency expert group’s assessment of the need and potential for substantial advances by the end of 2011. Criteria used for prioritizing global UNAIDS support to countries that have requested assistance in this priority area include:

- ▶ epidemiological profile—countries with a high HIV burden or the fastest growing rates of infection, or with emerging epidemic hot spots;
- ▶ country readiness—including political will and prioritization of this priority area by the national programme and the Joint United Nations Team on AIDS;
- ▶ countries with legal environments comprising significant obstacles to the HIV response;
- ▶ countries considering the implementation or removal of punitive laws and policies;
- ▶ countries poised for action, developing new United Nations Development Assistance Frameworks and reviewing national AIDS plans;
- ▶ influential countries that are standard setters;
- ▶ geographic diversity, including countries in humanitarian crisis and post-crisis situations.

Achieving the goal of this priority area requires countries to invest in programmatic interventions large enough to reach their key populations (many of which are not easily accessible), as well as ongoing advocacy that will support governments and civil society in changing the laws, policies, practices and prejudices that are blocking effective responses to HIV. It entails a new, heightened level of critical dialogue and joint action among key stakeholders, including ministries of justice and the interior, parliaments, the judiciary, other UN bodies, civil society organizations, constituencies beyond HIV (such as human rights, law, health, drug control, humanitarian and development organizations) and donors. The engagement of Member State governments and civil society is especially important for achieving bold results, as they will be the ones to make the changes to laws, policies and practices in their societies.



The role of UNAIDS

UNAIDS's comparative advantage in this priority area is underpinned by its human rights mandate, its focus on vulnerable populations, its relationship with and responsibilities to both governments and civil society, and its influence and platforms at the global, regional and country levels. The Joint Programme, leveraging the mandates of the 10 cosponsors and the Secretariat, is well placed to support the implementation of norms and standards articulated in human rights agreements and other formal UN instruments. UNAIDS supports rights-based responses to HIV and development; that is, it supports governments to protect, respect and fulfil human rights and supports civil society to know and be able to claim its rights in the context of HIV. Senior UN officials (including the UN Secretary-General, United Nations Development Programme Administrator and UNAIDS Executive Director) have shown leadership in this area, which can and should be leveraged to advance the human rights agenda for HIV at all levels.

UNAIDS can also use its role as a non-partisan "honest broker" to bring together the diverse stakeholders needed to make change. Real impact in this priority area will require work with networks that extend beyond the health sector, and the engagement of key donors, whose commitment and investment in this area have so far been insufficient.

Because of its human rights mandate, UNAIDS is also well placed to advocate for change to legal, social and regulatory environments that block the response to the epidemic. For example, UNAIDS develops global standards, proposes effective and protective frameworks, and produces policy guidance for addressing HIV-related human rights and legal issues in specific contexts.

Furthermore, UNAIDS has a key role in providing technical and policy assistance on HIV-related legal, regulatory and social issues to a range of influential stakeholders and can support specific sectors in the reduction of HIV-related human rights violations through capacity building. UNAIDS has a role to play in increasing government and donor commitment and support for this priority area and in supporting civil society to mobilize around key human rights-related issues.



How to ensure accountability and measure progress

Action in this priority area is ongoing, with support from the Joint United Nations Team on AIDS in more than 60 countries around the world. UNAIDS global support is framed around achieving and reporting on the three bold results by the end of 2011. An operational plan was developed by the UNAIDS interagency expert working group convened by the United Nations Development Programme—the UNAIDS convening agency for this priority area—and discussed with UNAIDS offices in all regions. The plan identifies activities in this priority area for which UNAIDS can be held directly accountable.

Progress against agreed country and global objectives and bold results will be measured to the extent possible using existing indicators, which are drawn from sources such as the UNGASS National Composite Policy Index, and data collected by cosponsors and civil society partners at global and country levels.

Additionally, UNAIDS will convene a working group to generate a measurement strategy for areas where existing indicators are insufficient or non-existent (law and policy reform, law enforcement and access to justice).

Annex

The following is an **illustrative list of punitive laws, policies, practices, stigma and discrimination** that hamper an effective response to HIV:

- ▶ criminalizing sex work;
- ▶ criminalizing lesbian, gay, bisexual, transgender and intersex people;
- ▶ criminalizing people who possess and/or use small amounts of drugs for personal use (including those who inject drugs and/or are dependent on them);
- ▶ inappropriate criminalization of HIV transmission or exposure, of failure to disclose HIV status to a sexual partner or of failure to prevent mother-to-child transmission of HIV;
- ▶ forced rehabilitation or treatment of drug users or sex workers under substandard conditions;
- ▶ compulsory and/or substandard infection control measures for tuberculosis or HIV;
- ▶ law enforcement misconduct (harassment, extortion, rape, arbitrary arrest, intimidation, failure to protect people living with HIV, deportation of people living with HIV and key affected populations, arbitrary interference with the work of nongovernmental organizations);
- ▶ HIV testing without informed consent, confidentiality and/or counselling inside health-care settings and outside health facilities (e.g. community- and home-based testing and counselling; national testing and counselling campaigns in the context of employment, insurance, asylum, resettlement, and uniformed services recruitment, retention or deployment);
- ▶ restrictions on entry, stay and residence based on HIV status, including with regard to the granting of asylum, prohibition of refoulement and assignment of HIV-positive staff or those with HIV-positive family members to countries with restrictions;
- ▶ laws that require parental consent for accessing HIV-related services, including testing for adolescents who possess sufficient maturity and the mental capacity to provide informed consent themselves;
- ▶ in prison settings and after release from prisons, mandatory HIV testing, segregation, discrimination (e.g. denial of access to work or to sport activities) and inequity in access to health care (e.g. denial of preventive, curative and palliative HIV care) and exclusion from, or insufficient inclusion in, national HIV policies and proposals;
- ▶ legal and cultural barriers to sexual and reproductive health information and services;
- ▶ overly broad laws against counterfeit medicines;



- ▶ stigma and discrimination in the workplace (e.g. gossip, or failing to hire or retain on the basis of HIV status);
- ▶ stigma and discrimination in the community (e.g. social exclusion, gossip, denial of education, housing, inheritance, social security on the basis of HIV status);
- ▶ stigma and discrimination in humanitarian and emergency settings (e.g. exclusion from, or insufficient inclusion in, national HIV policies and proposals; denial of access to services; denial of asylum and/or refoulement of HIV-positive refugees);
- ▶ stigma and discrimination by the law enforcement sector (e.g. denial of protection);
- ▶ stigma and discrimination by health-care workers (e.g. demeaning treatment, or denial of health care and HIV prevention and treatment).

References



- 1 UNGASS reports, National Composite Policy Index, 2010.
- 2 Including women, young people, men who have sex with men, people who inject drugs, sex workers, prisoners and migrants.
- 3 Ottosson D. *State-sponsored homophobia— a world survey of laws prohibiting same sex activities between consenting adults*. Brussels, International Lesbian, Gay, Bisexual, Trans and Intersex Association, 2010.
- 4 2009 country reports on human rights practices [web site]. Washington, DC, United States Department of State, 2010 (<http://www.state.gov/g/drl/rls/hrrpt/2009/index.htm>, accessed 24 September 2010).
- 5 *Mapping of restrictions on the entry, stay and residence of people living with HIV*. Geneva, UNAIDS, 2009. Figure reflects latest information as of December 2010.
- 6 Reducing HIV stigma and discrimination: a critical part of national AIDS programmes. A resource for national stakeholders in the HIV response. Geneva, UNAIDS, 2007.
- 7 UNAIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria. Analysis of key human rights programmes in Global Fund-supported HIV programmes. New York, United Nations Development Programme, 2010.

Joint Action for Results

UNAIDS Outcome Framework:



We can reduce sexual transmission of HIV.



We can prevent mothers from dying and babies from becoming infected with HIV.



We can ensure that people living with HIV receive treatment.



We can prevent people living with HIV from dying of tuberculosis.



We can protect drug users from becoming infected with HIV.



We can meet the HIV needs of women and girls and can stop sexual and gender-based violence.



We can remove punitive laws, policies, practices, stigma and discrimination that block effective responses to AIDS.



We can support the ability of men who have sex with men, sex workers and transgender people to protect themselves from HIV infection, achieve full health, and realise their human rights.



We can empower young people to protect themselves from HIV.



We can enhance social protection for people affected by HIV.

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