

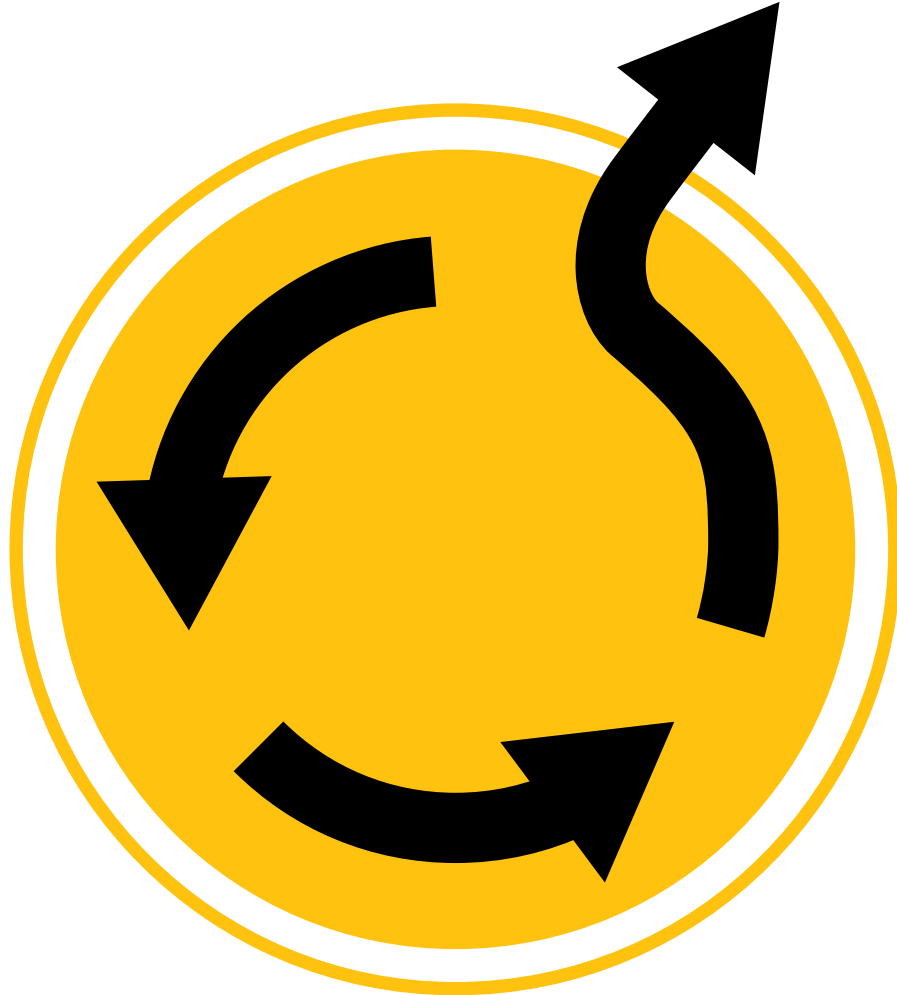


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LEGAL ENVIRONMENT ASSESSMENT FOR HIV IN UKRAINE

2017

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Acronyms

AIDS	Acquired immune deficiency syndrome
ART	Antiretroviral therapy
C&T	Counseling and testing
CD4	Differentiation cluster 4 (cell count)
CSW	Commercial sex workers
DOT	Directly observed therapy
ECHR	European Court of Human Rights
EFTA	European Free Trade Association
FSWs	Female sex workers
GF	Global Fund to Fight AIDS, Tuberculosis and Malaria
HIV	Human immunodeficiency virus
IAPAC	International Association of Providers of AIDS Care
IEC	Information-education-communication
ILO	International Labor Organization
KP	Key population
LGBT	Lesbian, gay, bisexual and transgender people
MAT	Medication-assisted treatment
MoH	Ministry of Health
MSM	Men who have sex with men
NGO	Non-governmental organization
NES	Needle exchange programs
OI	Opportunistic infection
PEP	Post-exposure prophylaxis
PLHIV	People living with HIV
PMTCT	Prevention of mother to child HIV transmission
PrEP	Pre-exposure prophylaxis
PWID	People who inject drugs
SCES	State Criminal Executive Service
SDCS	State Drug Control Service
SPS	State Penitentiary Service
STI	Sexually transmitted infections
TB	Tuberculosis
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UCDC	Ukrainian Center for Disease Control
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNO	United Nations Organization
UNODC	United Nations Office on Drugs and Crime
VCT	Voluntary counseling and testing
VL	Viral Load
WHO	World Health Organization

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EXECUTIVE SUMMARY

Ukraine reports one of the highest burdens of HIV infection in Europe and Central Asia. The HIV prevalence among 15-49 year olds is 0.9%, with the epidemic remaining concentrated among specific key risk populations such as: people who inject drugs, commercial sex workers, men who have sex with men and prisoners/detained persons. In recent years, nearly 15,000 new HIV infections have been reported annually in Ukraine, with nearly half of which are among person presenting with a full AIDS diagnosis.

The epidemic is further exacerbated due to the humanitarian crisis which exists within the country's borders, resulting in an increased number of internally displaced persons, many of which the from areas most affected by the HIV epidemic. Research has shown that the social upheaval caused to war and extreme political unrest can exacerbate the risk environment in which conditions such as HIV spread. Many social programs place an overemphasis on intervention strategies involving interpersonal change, ignoring the larger social context for which conditions such as HIV or substance use are taking place. A focus on socio-structural factors (such as the legal environment) perpetuating HIV transmission within Ukraine is necessary to better understand the full context of the epidemic and can help create contextualized policies which can better curb the spread of the epidemic.

The *Constitution of Ukraine* guarantees equal protection of rights and freedoms under the law for all residents. Several laws of Ukraine ensure that these protections extend to people living with HIV, as stated in the *Law of Ukraine*, "On prevention of diseases caused by Human Immunodeficiency Virus (HIV), and legal and social security of people living with HIV." This document outlines the main legislative framework guaranteeing non-discrimination, equal opportunity and access to services afforded to all HIV-infected persons.

The Government of Ukraine, in the partnership with the civil society and international partners, has made considerable advancements in creating a progressive policy environment for coordinating a robust HIV response. The law of Ukraine "On approving the National special social program to prevent HIV/AIDS in 2014-2018" is the main legislative instrument mandating implementation

of services for people living with HIV/AIDS, and key risk populations, by the government at the national and local levels. More recently, Ukraine's healthcare reform has focused on implementing modification of the public health system to improve access to HIV services. Additionally, Ukraine has expressed a commitment to achieving the UNAIDS 90-90-90 targets and implementing its Fast Track strategies. These efforts are aimed at affirming its readiness to remove regulatory barriers by strengthening its policy and legal environment in support of HIV treatment and prevention efforts.

The goal of this report is to evaluate the degree to which the legal and policy environment for HIV in Ukraine enables access to treatment and prevention services for key risk populations of interest, and provides equal opportunities and legal protections for people living with HIV. This assessment focused on policies, laws, and regulations that impact a wide range of topics in three major areas: (1) Access to Essential Services; (2) Key Populations; and (3) Equal Opportunities and Legal Protection, as well as their implementation. Policies affecting each of these areas were examined to identify specific gaps and/or weaknesses that should be addressed to achieve better outcomes in controlling the epidemic. The report analyzed specific barriers that have impact along the HIV treatment cascade, as well as issues pertaining to the access to services for key risk populations and people living with HIV, as well as human rights and equal opportunity issues.

This assessment was conducted using various methods, including: a review of relevant international and national laws and policies, gathering of epidemiologic data, evidence from various local and national sources, case studies, a stakeholder survey and two stakeholder roundtables. The assessment was prepared based on the United Nations Development Program Practical Manual "Legal Environment Assessment for HIV - Operational Guide to conducting national legal, regulatory and policy assessments for HIV". This document has assisted governments in identifying a number of policy and legislative gaps, as well as administrative, procedural and other barriers, to implementation of HIV programs that affected populations in need of services.

Although HIV prevention is supported by an extensive list of state guarantees, key challenges in meeting policy targets are due to a lack of inter-sectoral coordination and severe underfunding of prevention programs in both national and local budgets. Additionally, the absence of an effective regulatory mechanism for financing and supporting prevention services by non-medical and non-governmental providers creates additional barrier.

Expansion of counseling and testing services that better targeting key risk populations is needed to ensure that the UNAIDS goal of having 90% of HIV-infected persons know their status is realized. Regulatory changes and proper programming should address barriers affecting the implementation of expanded testing options, including: opt-out, community-based, mobile, workplace and self/home-testing. Additionally, efforts should be made to expand testing of partners in sero-discordant relationships and anonymous testing of adolescents aged 14-18.

While providing access to treatment services to all people living with HIV is one of the declared priorities of the Ukrainian Government, regulatory roadblocks continue to hamper treatment and prevention efforts. Standardization of treatment guidelines based on the most recent international recommendations that deliver patient-friendly stigma-free services are important challenges to be addressed. Regulatory requirements limiting diagnostic and treatment services to either AIDS Centers or Trust Cabinets creates substantial access barriers. Improving financial viability of treatment programs is dependent on the country's ability to use more affordable generic medicines, but these require legislative changes to patent laws. Other treatment barriers to address include reductions in complicated administrative procedures, as well as social stigma and discrimination against key risk populations and infected persons that are perpetuated by healthcare professionals. All these different types of barriers create service gaps that results in low coverage in treatment and prevention programs across the country.

This assessment analyzed policies and regulations related to the following key risk populations: people who inject drugs; commercial sex workers; lesbian, gay, bisexual and transgender persons; and prisoners. Additionally, vulnerable populations such as women, children and youth were also included. While Ukraine has made progress in prevent HIV among key risk populations, especially

persons who inject drugs, stigma and discrimination continues to be major barrier. These factors persist because they are not only dictated by societal norms, but permeate Ukraine's regulatory and legal environment, which often fails to provide concrete mechanisms for persons to exercise their rights and legal protections. For example, punitive narcotic legislation impacts access to services for persons who inject drugs. This results in low coverage of medical assistance therapy programs as strict registration requirements limit access for patients and creates a lack of confidentiality in the system of care.

Female sex workers continue to be vulnerable due to an unregulated sexual industry. Currently, there are no government funded programs to address discrimination in the deliver HIV prevention services to this population. Discriminatory laws also affect lesbian, gay, bisexual and transgender populations. While, according to Ukraine legislation, all forms of discrimination are prohibited (including discrimination on the basis of sexual practices and beliefs) no legal mechanisms exist that specifically address these constitutional rights as they pertain to this community. This lack of clarity contributes to harassment, discrimination and social stigma. Furthermore, laws identify only men who have sex with men as a key risk population, which restricting certain programming solely to this group and deprives access to services for other sexual and gender minorities. Additionally, some discriminatory regulations in the criminal code of Ukraine must change. Specifically laws related to criminal responsibilities of HIV-infected mothers, as well as regulations restricting implementation of prevention programs in prisons. Finally, gaps in HIV educational programming specific to raising awareness and knowledge about HIV among children and youth should also be addressed.

Ukraine does not restrict people living with HIV, or members of identified key risk populations, in their political, social and cultural life. However, as there is a high level of societal stigma against HIV-infected persons and members of key risk populations, including children and youth living with HIV, that significantly affects people's behavior, self-esteem, self-image, and often prevents them from fulfilling their potential.

This report provides a list of policy and regulatory recommendations for various branches of the Ukrainian government, including specific ministries and agencies. Increasing access to HIV services to achieve targets set by the country requires: a review of goals, and development

of new objectives, for the National special program for HIV/AIDS; developing regulatory procedures for partner testing; adaption of licensing regulations allowing provision of HIV services by medical facilities outside of the AIDS Center and Trust Cabinet networks; adapt licensing requirements for medical professionals allowing provision of HIV services by primary health care and other medical personnel; endorse the comprehensive national HIV guideline based on the most recent international standards and recommendations; and adapting patent laws that ensure the use of flexible provisions of international trade agreements.

Success in addressing the needs of key risk populations requires: allocation of financial resources at the national and local levels and creating targeted interventions; reducing regulatory and administrative barriers that limit access to services; developing effective regulatory

mechanism to provide community based services; and ensure effective implementation of anti-discriminatory policies.

Ultimately, more attention should be paid to the implementation and enforcement of regulations that support both key risk populations and HIV-infected persons, as well as elimination of barriers that marginalize these individuals and hamper treatment efforts. Effective implementation of existing regulations is crucial to improving the social protections for HIV-infected persons to support improves health outcomes. Further, full elimination of discriminatory regulations, improving legal and social protection should be addressed. Efforts that strengthen the national coordination at the central and local levels is essential for an integrated approach that will reduce further forward transmissions of HIV and curb the national epidemic.

KEY RECOMMENDATIONS

ACCESS TO ESSENTIAL SERVICES

HIV Prevention Programs

The Cabinet of Ministers of Ukraine

- Review and adapt national HIV prevention financing policies to ensure government funding for services to reduce the dependence on donor agencies.
- Review the National HIV Law in order to expand state guarantees concerning the delivery of prevention services to key risk populations.

The Ministry of Health of Ukraine

- Review and revise prevention program targets for national and regional programs.
- Update HIV prevention standards for different population groups and incorporate them into the revised HIV management guidelines.

- Develop effective mechanisms for financing prevention services in public health programs.
- Design targeted social marketing campaign to increase HIV-related knowledge and promote healthy behaviors among children and adolescents.

The Ministry of Social Policy of Ukraine

- Develop targeted prevention programs for adolescents engaged in HIV risk behaviors.
- Develop and approve a list of prevention services, through the national service delivery standard, and create a procedure for planning, funding and evaluation of these services through national and local budgets.

Testing, Counseling, and Referral

The Ministry of Health of Ukraine

- Regulate HIV testing procedures for stand-alone laboratories, private, and non-medical service providers.
- Develop partner testing procedures for the national HIV testing protocols to be incorporated into the revised HIV management guideline.

- Consider the introduction of HIV rapid testing on an opt-out basis as part of routine medical service delivery.
- Develop policies for regulating quality, sale, distribution and use of HIV self/home-test kits.
- Develop innovative testing strategies for alternative locations, such as mobile clinics and the workplace.

Treatment and Medical Care Services

The Verkhovna Rada of Ukraine

- Incorporate the TRIPS Agreement flexible provisions into the national legislation.

The Cabinet of Ministers of Ukraine

- Revise and update ART targets for the National AIDS Program 2014-2018, so they are in accordance with international guidelines, and earmark adequate funding to meet these targets.
- Develop and adopt regulations to ensure the decentralization of HIV care delivery.

The Ministry of Health of Ukraine

- Accelerate the development and adoption of the Adapted Clinical Guideline and the Unified Clinical Protocol to improve the health of HIV-infected persons.
- Ensure the implementation of effective procedures for uninterrupted supply of ARV medications.
- Ensure effective implementation of a National HIV resistance monitoring strategy.

- Make regulatory amendments that will allow integrating HIV care services (e.g., diagnosis, registration, treatment, prescription) into the general healthcare network.
- Organize trainings of doctors, nurses and healthcare managers to incorporate HIV care in a general healthcare settings.

KEY POPULATIONS

People Who Inject Drugs (PWID)

The Cabinet of Ministers of Ukraine

- Ensure the implementation of the national drug policy strategy 2020, specifically objectives related to PWID.
- Decriminalize and/or de-penalize drug use for non-medical purposes and drug possession for personal use.

The Ministry of Health of Ukraine

- Scale up Medication Assisted Treatment (MAT) programs based on the national HIV program targets.
- Improve access to integrated services for HIV-infected PWID by ensuring that they are co-located in facilities at near places frequented by PWID.

Adult Commercial Sex Workers (CSW)

The Verkhovna Rada of Ukraine

- Enact legislation to regulate the commercial sex industry and enable CSW to access preventions and social services.

aligning them with global 90-90-90 goals; make necessary changes to local HIV programs, as needed to support these changes.

- Operationalize an administrative mechanism for monitoring compliance with legislation on the rights of patients and mandatory reporting (registration) of cases of discrimination against CSW when they seek medical and prevention services; and develop an effective mechanism for responding to, and preventing, such incidents.

The Ministry of Health of Ukraine

- Review national targets for all key risk population coverage (including CSW) with the purpose of

LGBT Communities

The Verkhovna Rada of Ukraine

- Adopt a law on the legalization of registered civil partnership status of opposite sex and same sex couples, and recognition of all rights and obligations of these partnerships.

The Ministry of Health of Ukraine

- Make amendments to the Law of Ukraine № 104 (of 02.08.2013) to include other sexual minorities (e.g., bisexual individuals) as well as other gender

non-conforming populations (e.g., transgender persons) in the list of key risk groups.

- Make changes to MoH order № 60 to remove specific language preventing person from obtaining sex reassignment surgery based upon, "...being in

a marriage, having children under the age of 18, homosexual practices”.

- Make amendments to the list of contraindications limiting blood donation and transmission to remove references to risky sexual behaviors and homosexual practices.

Children and Youth

Ministry of Health of Ukraine

- Provide adolescents aged 14-18 the legal right to receive anonymous or confidential HIV testing without prior parental approval.
- Develop standardized protocols for prevention services targeted to at-risk children and adolescents.
- Introduce procedures for homeless children to be transported to health care facilities in cases of positive HIV testing result.
- Provide adequate medical, medication adherence and social support services for HIV-infected children and adolescents.

Ministry of Health of Ukraine and Ministry of Social Policy of Ukraine, as well as international and non-governmental organizations and mass media

- Ensure adequate prevention services that meet the needs of adolescents based on their: association with a particular risk group, age, gender or socio-economic characteristics.
- Review financial support allocations by the state for children living with HIV to ensure that this funding adequately covers their basic nutrition and social service needs.

EQUAL OPPORTUNITIES AND LEGAL PROTECTION

Absence of Criminal Liability for Non-intentional Risk or Transmission of HIV

Legislature of Ukraine

- Remove Articles № 130 and № 133 from the Penal Code of Ukraine criminalizing HIV transmission.
- Revise Article № 121 of the Penal Code of Ukraine, which criminalizes, "...intentional severe bodily harm", by removing specific references to HIV. Make similar changes to the Rules for Forensic Determination of the Severity of Bodily Injuries (approved by MoH order № 6 (of 01.17.1995)) so it no longer targets HIV-infected persons.
- Remove from all articles of the Penal Code the words/phrases, "human immunodeficiency virus", "HIV", "acquired Immune deficiency syndrome",

"AIDS" or other names of any diseases, which are used in the context of criminal liability (prosecution) of persons carrying pathogens of these diseases, as they are discriminatory.

The Ministry of Health

- Make amendments to the rules forensic determination of the severity of bodily injuries (approved by MoH order № 6 of 01.17.1995) to regulate the procedure for determining the severity of bodily injuries resulting from HIV infection, other sexually transmitted infectious disease.

Access to a Forum, Fair Trial, and Enforcement of Remedies

The Ministry of Health of Ukraine

- Review and amend voluntary counseling and testing protocols to include an explanation of the rights of people living with HIV, in addition to other topics covered by the qualified counseling professional during the session.
- Ensure access to legal consultations regarding the rights of PLHIV at HIV testing sites, or through appropriate referrals to legal aid services or human rights organizations.
- Conduct continuous social marketing campaigns for PLHIV that provide easy to understand information on their legal rights and protections. Dissemination efforts should target health facilities, mobile testing centers, NGO's and CBO's that providing services to PLHIV and KP, and the media

INTRODUCTION

Currently, Ukraine reports among the greatest number of HIV-infected persons among all European countries.¹ In 2015, an estimated 220,000 [190,000 - 250,000] HIV-infected persons were living in Ukraine.² HIV prevalence among 15-49 year olds is 0.9% [0.8% - 1.0%],³ making it one of the highest among countries of Europe and Central Asia.² Like many Central Asian and Eastern European countries, Ukraine's epidemic remains concentrated among specific risk populations, which include people who inject drugs (PWID), commercial sex workers (CSW), men who have sex with men (MSM) and incarcerated persons.

Many factors contribute to Ukraine's difficulties in managing its HIV/AIDS epidemic, most notably being the humanitarian crisis which exist within its borders. Hostilities in the east of the country has created an increase the number of internally displaced persons from the Donetsk and Luhansk Oblasts regions. Research has shown that such forms of social upheaval can exacerbate the risk environment in which conditions such as HIV spread.⁴ Many social program place an overemphasis on intervention strategies involving interpersonal change, ignoring the larger social context for which conditions such as HIV or substance use are taking place.⁵ A focus on socio-structural factors (such as the legal environment) perpetuating HIV transmission within Ukraine is necessary to better understand the full context of the epidemic and create contextualized programming to curb the spread of the epidemic.

Amid the complex political and social upheaval in Ukraine, the interaction between HIV/AIDS services facilities located in the eastern part of the country (especially areas not controlled by the government) and in other

more stable regions have been disrupted. Persons in the most displaced regions are also among the most affected by the HIV epidemic. This displacement has caused new threats to their health, as not all patients can access essential treatments or needed medications. Additionally, migrants suffering from substance abuse are more prone to relapsing due to social upheaval.⁶ Many persons who have moved from the eastern regions or Crimea needing medical care receive treatment and services at secondary and tertiary health care facilities, or maternity hospitals, regardless of residence registration. Unfortunately, treatment for these persons is often delayed if they do not have a certificate that confirms their internally displaced person status. While these disruptions have not affected the treatment of persons in other parts of the country, this displacement has placed new burdens on HIV treatment services across the system.

Freedom of movement across the country has put many other vulnerable groups at risk for HIV. Several non-governmental organizations (NGOs) have acknowledged that many single mothers, who are often unable to provide for themselves and their children, are forced to enter prostitution in order to survive, which results in human trafficking and sexual abuse. There have also been reports that young men and women have been forced off buses entering the territory uncontrolled by the government.⁷ Restrictions on freedom of movement to and from government uncontrolled territories, as well as Crimea, continues to threaten the health and safety of women and children.

Despite these challenges, the Government of Ukraine has recognized the importance of monitoring, controlling, treating and eliminating the HIV epidemic

1 HIV-infection in Ukraine. Newsletter – № 45, 2016. [Electronic resource] – Available at: <http://ucdc.gov.ua/uploads/documents/c21991/965cf18b2c7ecaa8c430e6965a0846cb.pdf>

2 [Electronic resource] – Available at: <http://www.unaids.org/en/regionscountries/countries/ukraine/>

3 [Electronic resource] – Available at: <http://www.unaids.org/en/regionscountries/countries/ukraine/>

4 Rhodes T, Singer M, Bourgois P, Friedman SR, Strathdee SA. (2005). The social structural production of HIV risk among injecting drug users. *Soc Sci Med.*, 61(5):1026-44

5 Rhodes T. (2009). Risk environments and drug harms: a social science for harm reduction approach. *Int J Drug Policy.* 20(3):193-201

6 GARPR Ukraine 2015. [Electronic resource] – Available at: <http://ucdc.gov.ua/uploads/documents/ab1ccb/3c54bc491a41b37b8bb8625d29037e1d.pdf>

7 Thematic newsletter of the Office of the UNHCR Regional Representative in Ukraine "Sexual and gender violence", March 2016. [Electronic resource] – Available at: http://unhcr.org.ua/attachments/article/244/UKR_SGBV%20-%20March%202016%20FINAL.pdf

among residents. The country has demonstrated a progressive approach toward creating and enabling a policy and legal environment consistent with UNAIDS goals. Ukraine has a National Program to combat HIV/AIDS, which has been legislatively mandated for implementation across all branches of power. Ukraine's Health Reform Strategy outlines the government's commitment to improve public health, specifically among key risk populations (KP) who are a priority in the government public health policy.

Progress has been made in improving the HIV/AIDS legal and policy environment, including the adoption of a new National AIDS Programs and a new HIV/AIDS law. The development of Ukraine's National Health Reform Strategy for 2015-2020 indicates the government's increased commitment to HIV prevention and strong

regulatory frameworks. Additionally, Ukraine's active participation in the UNAIDS 90-90-90 and Fast-Track Goals demonstrate its resolve to strengthen the legal environment in support of advancing HIV treatment and prevention efforts.

Despite these achievements, policy loopholes and a lack of specific legal protection for vulnerable populations persist, which causes confusion with respect to the adoption of best practices for HIV prevention and care efforts. A recent high level meeting on the global HIV crisis highlighted important programmatic and policy goals that must be achieved to halt and reverse the spread of HIV globally. The ability of Ukraine to respond to the rapidly changing global HIV landscape will ensure that citizens receive the most appropriate HIV prevention and treatment services available.

Objectives and Methodology

The purpose of this report is to evaluate the degree to which the legal and policy environment within Ukraine supports the treatment and prevention of HIV, assists KPs at the greatest risk of acquiring HIV, and safeguards equal opportunities and legal protections of those living with HIV. Reform in Action, a USAID-funded project, conducted this assessment in the midst of Ukraine's health system reform to identify legal and policy gaps. Recommendations and next steps based on findings serve to shape future HIV policy development in Ukraine and improve its dissemination and implementation at the local level.

HIV Reform in Action policy specialists conducted a review beginning in May 2016 using both international

guidelines and Ukrainian law. This analysis assessed the current state legal environment, including regulatory documents, from the leading ministries and departments throughout the Government of Ukraine to: a) define guiding principles, b) provide an inventory of existing laws and regulations, c) conduct a gap analysis of unmet policy need, and d) develop targeted recommendations (specific to particular organization or governmental branch) outlining steps intended to strengthen Ukraine's HIV legal framework and protections. The assessment was prepared based on the United Nations Development Program (UNDP) Practical Manual on Legal Environment Assessment for HIV.⁸ Results were presented and discussed at two meetings of national stakeholders and relevant recommendations are included in this report.

Key Guiding Policies

The purpose of this section is to identify specific international and local guidelines and policies which have been used to directly inform the legal and policy landscape in the country of Ukraine. These guidelines apply to both

general (impacting all citizens) and specific (CSW, MSM, PWID, prisoners) risk populations. This section offers an implementation mechanism for each guideline to support Ukrainian law/policy.

⁸ Practical Manual Legal Environment Assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, UNDP, 2014.

Global Policies Affecting All Citizen

The Universal Declaration of Human Rights

This international policy was adopted by the UN General Assembly on December 10, 1948 and is intended to promote respect for human rights and freedoms, and declares equality of all people in their rights and dignity, as well as personal security (inviolability).

The International Covenant on Civil and Political Rights

This international policy was adopted by the UN General Assembly on December 19, 1966 and was ratified by the government of Ukraine on November 19, 1973. It declares the right of everyone to enjoy civil, political, economic, social and cultural rights; and provides that everyone has duties to other individuals and to the community to which he belongs. Article 17 specifically states that, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The International Covenant on Economic, Social and Cultural Rights

This Covenant was adopted by the UN General Assembly on December 16, 1966 and was ratified by the country of Ukraine on October 19, 1973. This policy recognizes the inherent dignity, equal and inalienable rights of all people; including their fundamental freedoms, and promotes universal respect for (and observance of) human rights and freedoms for the sake of justice and peace in the world. It also recognizes that all peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. It provides that each State Party undertakes to take steps to the maximum of its available resources to give equal rights to all members of society in accessing and exercising their economic, social and cultural rights.

Convention for the Protection of Human Rights and Fundamental Freedoms

This intentional policy was adopted by the UN General Assembly on November 4, 1950 and ratified by the

government of Ukraine on July 17, 1997. This Convention provides that all persons have the right to life and legal protection free from discrimination (based on any grounds such as sex, race, color, language, religion or political opinion, national or social origin, birth, property or associations with any national minority class), torture, slavery and forced or compulsory labor. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

The International Convention on the Elimination of All Forms of Racial Discrimination

Under this Convention, each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and not to sponsor, defend or support racial discrimination by any persons or organizations. This international policy was adopted by the UN General Assembly on December 12, 1965 and adopted by the government of Ukraine on January 21, 1965.

Global Policies Specific to HIV infected Persons

90-90-90: An Ambitious Treatment Target to help End the AIDS Epidemic⁹

This report was produced in 2014 by the United Nations Program on HIV/AIDS (UNAIDS) and set new global targets for ending the global AIDS crisis. This report is part of the UNAIDS Fast-Track strategy,¹⁰ which is intended to greatly increase the HIV response in low- and middle-income countries, with the intended goal of ending the epidemic by 2030. Successful implementation of this initiative relies on several key approaches:

- advancing technological and service delivery innovations;
- community empowerment;
- mobilization of new resources; and
- elimination of social and structural barriers to service access.

9 [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/media_asset/90-90-90_en_0.pdf

10 [Electronic resource] – Available at: http://www.unaids.org/en/resources/documents/2014/JC2686_WAD2014report

Fast-Track Cities Initiative¹¹

This global initiative is sponsored by the International Association of Providers of AIDS Care (IAPAC) was launched in 2014 with the intention of supporting the UNAIDS Fast-Track strategy and 90-90-90 policy targets among the 50 cities most impacted by HIV globally. IAPAC intends to assist Fast-Track cities by providing technical support through local health departments, coordination with key stakeholders and provide capacity-building support for clinical and ancillary services.

2012 Global Commission on HIV and the Law: “HIV and the Law: Risks, Rights & Health”

This report describes the legal, social and public health landscapes with regards to formulating a global HIV response. It makes recommendations on how legal landscapes can be changed to support equitable access to care and treatments for HIV infected persons. It also highlight important treatment gaps globally. Its recommendations are intended to not only save lives but also reduce cost burdens globally.

The International Guidelines on HIV/AIDS and Human Rights, 2006 (Consolidated Version)

This document is produced jointly by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Program on HIV/AIDS (UNAIDS). Its overall purpose is to provide guidance to the global community, as well as specific governments and NGO's, on concrete steps that can be taken to protect human rights of HIV infected persons. The report focuses on three major themes, which include:

- i) guidelines for state actions (including legal reforms),
- ii) recommendations for ensuring human rights for persons with HIV, and
- iii) international human right obligations. This documents is intended to provide standards and frameworks for ensuring the legal and human rights protections of HIV infected persons globally.

Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection, 2016¹²

This document is produced by the World Health Organization (WHO). Its overall purpose is to provide guidance on the use of Antiretroviral (ART) medication for Treatment as Prevention (TAPS) strategies as they pertain to programs and policies for governmental and NGOs. This includes guidelines for biomedical prevention strategies (Pre-exposure Prophylaxis (PEP) and Post-exposure prophylaxis (PrEP)) among risk populations.

2016 High-Level Meeting on Ending AIDS¹³

This UN sponsored meeting was intended to bring global policy makers and stakeholders together to discuss progress toward the AIDS targets of Millennium Development Goal 6: halting and reversing the AIDS epidemic and to draft new global policy recommendations for ending the HIV epidemic by 2030.

The overall impact of these policies, most of which have been adopted by the government of Ukraine, indicates that Ukraine agrees with major international edicts that respect the fundamental rights of all persons, including persons with HIV, to the universally accepted human rights afforded to all global citizens. Additionally, language and guidelines identified by these documents have been incorporated into the language of important laws/policies within Ukraine, including the Constitution of Ukraine and the Law of Ukraine.

Key Ukrainian Laws and Policies

The Constitution of Ukraine

Provides equal protection for all citizens and declares that equal rights, freedoms and guarantees for citizens of Ukraine regardless of race, skin color, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

The Law of Ukraine

This document represents the legal framework that dictates civil, private and international protections for persons living

11 [Electronic resource] – Available at: <http://www.iapac.org/cities/>

12 [Electronic resource] – Available at: <http://www.who.int/hiv/pub/arv/arv-2016/en/>

13 [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/media_asset/2016HighLevelMeeting_en.pdf

in Ukraine. Laws are created and passed by the Ukrainian Parliament (Verkhovna Rada), but legislation can also be initiated by the President of Ukraine, people's deputies, and the Cabinet of Ministers. As with other democracies, enforcement of laws is the responsibility of the legal system through local authorities and courts. It should be noted that for persons living with HIV (PLHIV), several laws have been passed to ensure they are afforded equal protection

under the law in their civil and private lives.

Ministry of Health (MoH) orders

Under the Law of Ukraine, through the direction from the Cabinet of Ministries, the Ministry of Health (MoH) has the right to create specific orders to ensure set policy, dictate procedures, and ensure legal protections and equity for persons living in Ukraine, this includes PLHIV.

Assessment Framework

The assessment evaluated the compatibility of international documents and guidelines with Ukraine's legal and regulatory policies. This impacts a wide range of topics related to HIV in three primary areas: (1) Access to Essential Services, (2) KP, and (3) Equal Opportunity and Legal Protection. Each of these areas is examined to evaluate their impacts, as well as identify specific gaps that hinder progress towards providing Ukrainians full access to HIV prevention and treatment services.

In the **Access to Essential Services** section, the report follows the HIV treatment cascade by analyzing policies that impact access to HIV prevention, healthcare, medication, and their effects on viral load suppression.

In the **Key Risk Populations (KP)** section, laws,

regulations, and policies that affecting specific KP are assessed. KP's recognized by the Ukrainian government include: people who inject drugs (PWID); adult commercial sex workers (CSW); men who have sex with men (MSM) and incarcerated persons. Additionally, sections addressing issues related to women and children & youth are also addressed.

Finally, the **Equal Opportunities and Legal Protection** section evaluates the current state of equal opportunity and legal protections for KP and PLHIV. Topics include PLHIV political, social, and cultural life; employment and work environment; entry, stay, and residence issues; non-criminalization of HIV exposure and transmission; and access to legal support and fair trials.

ACCESS TO ESSENTIAL SERVICES

I. ACCESS TO ESSENTIAL SERVICES

1.1. HIV Prevention Programs

Fundamental Principles

Every person has equitable and sustainable access to a wide range of effective, human-rights-based and evidence-informed measures aimed at preventing HIV transmission, including biomedical interventions such as pre-exposure and post-exposure prophylaxis (PrEP and PEP).

Existing Regulatory Documents

(I) International Documents and Guidelines

WHO Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations, July 2014 (2016 update).¹⁴ This document contains recommendations on implementing HIV prevention programs among key risk populations. This includes supporting access to: traditional barrier protection (condom and lubricants), harm reduction (specifically for people who inject drugs) and biomedical prevention (e.g., PEP and PrPE) programming.

WHO Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection, June 2016.¹⁵ This document provide comprehensive guidance on the diagnosis and treatment of PLHIV. Guidelines are structured to be consistent with the care continuum model, and include sections on: prevention, testing, diagnosis, treatment, and antiretroviral therapy (ART) adherence. Section 3 includes guidelines on the use of ART drugs for prevention including: oral pre-exposure prophylaxis for preventing the acquisition of HIV (PrEP); post-exposure prophylaxis (PEP); and combination HIV prevention.

UNAIDS Guidance HIV prevention among adolescent girls and young women, (July 2016).¹⁶

This document is intended to inform programs aimed at reducing HIV infections (primarily sexually transmitted) among adolescent girls and young women in countries and regions with high HIV incidence among these populations.

UNGASS Declaration of Commitment on HIV/AIDS, 2001, para. 52 and 2006 Political Declaration on HIV/AIDS, para.22. This document states,

“Ensure that a wide range of prevention programs is available in all countries, and takes into account local circumstances, ethics and cultural values. This wide range of programs should exist particularly for the most affected countries, including information, education and communication, in languages most understood by communities and respectful of cultures, aimed at reducing risk-taking behavior and encouraging responsible sexual behavior; para 47-54: Prevention must be the mainstay of our response with national time-bound targets.”¹⁷

14 Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations. 2014. [Electronic resource] – Available at: <http://www.who.int/hiv/pub/guidelines/keypopulations/en/>.

15 Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection. 2016. [Electronic resource] – Available at: <http://www.who.int/hiv/pub/arv/arv-2016/en/>.

16 UNAIDS Guidance on HIV prevention among adolescent girls and young women, July 2016. [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/media_asset/UNAIDS_HIV_prevention_among_adolescent_girls_and_young_women.pdf

17 UNGASS Declaration of Commitment on HIV/AIDS, 2001. [Electronic resource] – Available at: <http://www.unaids.org/en/aboutunaids/unitednationsdeclarationsandgoals/2001declarationofcommitmentonhivaids>

Political Declaration on HIV and AIDS: On the Fast-Track to Accelerate the Fight against HIV and to End the AIDS Epidemic by 2030. This declaration was adopted by UN General Assembly. Representatives of states and governments pledged to intensify efforts towards the goal of comprehensive prevention, treatment, care and support programs, specifically.

- Para. 62(a): states, “Recognize that the AIDS response can only be Fast-Trackled by protecting and promoting access to appropriate, high-quality, evidence-based HIV information, education, and services.”
- Para. 62(g): states, “Commit to ensure that financial resources for prevention are adequate and constitute no less than a quarter of AIDS spending globally on average, and are targeted to evidence-based prevention measures that reflect the specific nature of each country’s epidemic by focusing on geographic locations, social networks and populations that are at higher risk of HIV infection according to the extent to which they account for new infections in each setting. This approach helps ensure that resources for HIV prevention are spent as cost-effectively as possible and that particular attention is paid to those populations at highest risk, depending on local circumstances.”

International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version. Organized jointly by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Program on HIV/AIDS.¹⁸ Guideline 6 (entitled Access to Prevention, Treatment, Care, and Support) states that:

“States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure wide spread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.”

ILO Code of Practice on HIV/AIDS & the World of Work, 2001, Principle 9. This principal states that HIV prevention can be achieved through appropriately targeted strategies which are culturally sensitive and take into account national conditions. Prevention can be furthered through changes in behavior, knowledge, treatment and the creation of a non-discriminatory environment. In particular, testing facilities are in a unique position to promote prevention efforts, particularly as it pertains to changing attitudes and behaviors through patient information and education, and by addressing socio-economic factors.

ILO Recommendation concerning HIV/AIDS and the world of work, 2010.¹⁹ This set of recommendations defines general principles of combatting the HIV/AIDS epidemic in the workplace by promoting decent working conditions. HIV interventions should be made in the following areas: a) HIV/AIDS prevention; b) regulation and mitigation of HIV/AIDS impact in the workplace; c) ensuring care and assistance for employees who are HIV-infected or member of KP; d) fighting HIV/AIDS stigma and discrimination against both infected or at risk population.

ILO Recommendation concerning HIV/AIDS and the world of work, 2010, № 200.²⁰ This document identifies general principles to be considered as part of the national response to HIV/AIDS in the workplace, including: (i) prevention of all means of HIV transmission should be a fundamental priority; (ii) the workplace should play a role in facilitating access to HIV/AIDS prevention, treatment and care support for employees, workers, their families and dependents.

(II) National legislation, policies and procedures

The Law of Ukraine “On prevention of diseases caused by Human Immunodeficiency Virus (HIV), and legal and social security of people living with HIV” (approved by Law № 1972-XII of

18 International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version. Organized jointly by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Program on HIV/AIDS. [Electronic resource] – Available at: <http://www.ohchr.org/Documents/Issues/HIV/ConsolidatedGuidelinesHIV.pdf>

19 An ILO code of practice on HIV/AIDS and the world of work. [Electronic resource] – Available at: http://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/publication/wcms_114114.pdf

20 R200 - HIV and AIDS Recommendation, 2010 (No. 200) Recommendation concerning HIV and AIDS and the World of Work Adoption: Geneva, 99th ILC session (17 Jun 2010). [Electronic resource] – Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/normativeinstrument/wcms_150803.pdf

12.12.1991; hereinafter known as – The HIV Law).²¹ Article 4 provides, that the state guarantees

(1) the priority of awareness-raising for general public promoting a healthy and moral lifestyle, spiritual values and responsible sexual behavior in order to prevent HIV;

(2) the inclusion of issues related to HIV prevention; treatment, care and support for people living with HIV and their families. This includes the unacceptability of discrimination against such people and the need to promote tolerance toward these people, in appropriate educational programs of secondary, vocational and higher education institutions;

(3) access for the general population to means of prophylaxis, which help avert new infections and prevent sexual transmission of HIV;

(4) free access to post-exposure HIV prophylaxis for individuals, who have been exposed to HIV as a result of sexual abuse, professional duties performance, or other incidents, including appropriate counseling.

The law of Ukraine “On approving the National special social program to prevent HIV/AIDS in 2014-2018” (approved by Law № 1708-VII of 10.20.2014; hereinafter known as – The Program).²² With around 18% of The Programs budget being earmarked for prevention efforts, comprehensive prevention activities are a priority and includes:

- Development, production and dissemination of HIV-related public health awareness campaigns, which include: public service advertising, healthy lifestyle public awareness campaigns and educational programs.
- Promoting life skills training for students at all educational institutions through the HIV prevention and healthy lifestyle promotion program.
- Ensuring access to HIV prevention programming for members of KP and their sexual partners. This includes: prisoners, children from families in crisis, homeless persons and neglected children deprived of adequate parental care. These populations should

also receive, “...comprehensive prophylactic services recommended by the WHO, UNAIDS, using best international practices.”²³

- Expansion of access to medical and social services for HIV-infected persons. These services should be delivered at the local level through nationally sponsored AIDS Centers and Trust Cabinets to ensure patients have convenient access to care and treatment services.
- Ensuring access to HIV counseling and testing, as well as prevention of vertical (mother-to-child transmission-PMTCT) services for pregnant women.
- Making HIV prevention services available through workplace (specifically among health workers).
- Providing timely PEP services for persons exposed to HIV.
- Ensuring easy access to free HIV counseling and testing services for all who wish to receive it.
- Providing hepatitis B, C, and Sexually Transmitted Infection (STI) prevention and treatment services for both HIV-infected persons and members of KP.

The 2015-2018 HIV/AIDS prevention program for bodies and institutions governed by the State Penitentiary Service of Ukraine. This board passed resolution № 6PK²⁴ (of 07.16.2015), which intends to provide prevention services for incarcerated persons held in state penitentiary institutions, and includes: (1) ensuring the continuity of medication-assisted treatment (MAT) for incarcerated persons in 24 regions of Ukraine; (2) providing incarcerated persons comprehensive HIV prevention services recommended by international organizations; and (3) making condoms available to incarcerated persons to prevent HIV/AIDS, viral hepatitis and STIs among prison populations.

The 2012-2017 National strategy for trilateral cooperation to combat HIV/AIDS in the world of work.²⁵ This document was approved by the National Trilateral Socioeconomic Council under the President of Ukraine. Its objectives include: (1) designing and implementing a mechanism to support a continuous

21 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2861-17>

22 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/1708-18>.

23 Para 3, 7, 9, 10 of Program Objective 11. [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/1708-18/print1455868976982927>

24 [Electronic resource] – Available at: <http://kvs.gov.ua/zmi/DodatokDoRishennyaN6PKProgramVILSNIDPlanZahodiv11082015.pdf>.

25 [Electronic resource] – Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_191148.pdf.

social dialog between the government, employers and labor unions with the aim of developing joint HIV prevention policies and programs in the workplace; and (2) conducting social marketing campaigns aimed at informing the public of partnerships between government institutions, employers' organizations and labor unions to prevent HIV/AIDS in the workplace.

The Ministry for Family Youth and Sports, Ministry of Social Policy and MoH Joint order № 3123/275/770 “On approving standards of social service delivery for key populations” (of 10.08.2010).²⁶ This order establishes five standards of social service delivery in the area of HIV prevention, including a social service delivery standard to prevent sexual HIV transmission among KP.

Cabinet of Ministers directive № 1642 “On approving the Procedure for and conditions of mandatory health insurance of health workers and other persons against HIV infection {...} and a list of health worker categories and other persons subject to mandatory health insurance against HIV infection {...}” (of 10.16.1998).²⁷ This directive lists health worker categories covered by MoH order № 955 as it related to the prescription of PEP treatment (see MOH order № 995 for details).

MoH order № 955 “On approving regulatory documents to prevent HIV infection in the workplace” (of 11.05.2013). This order (mandated by directive № 1642) regulates the prescription of PEP by health workers. Specifically, this order approves:

- A list of standards for using personal protective equipment by workers who conduct diagnostic HIV testing; or provide medical care and social services to people living with HIV; or come into contact with blood or human biological materials, contaminated instruments, equipment or other items.
- Instructions on the use of personal protective equipment by workers who conduct diagnostic HIV testing; or provide medical care and social services to people living with HIV or come into contact with

blood or human biological materials, contaminated instruments, equipment or other items.

MoH order № 148 “On approving the Procedure of the confirmation the connection between HIV infection and performance of professional duties” (of 03.17.2015).²⁸ This order identifies the types of workplace accidents requiring PEP. It also establishes procedures for investigating such accidents and their causative connections between the accident and a new HIV infection in the workplace.

ART clinical protocol for adults and adolescents, approved by MoH order № 551 (of 07.12.2010). Paragraph 14.2 of this protocol states,

“The role of ART therapy as a prophylactic method implies that effective and continuous ART administration with maximum viral suppression combined with safe sexual behavior (condom use), diagnosis and treatment of OIs and co-infections, as well as safe injection practices and enhanced access to MAT programs contribute to the prevention of blood-borne, perinatal and sexual transmission of HIV.”²⁹

MoH order № 449 “On approving and introducing medical and technological documents standardizing medical care “Prevention of mother-to-child HIV transmission” (of 05.16.2016).³⁰ This order approved primary, secondary and tertiary care clinical protocols for preventing mother-to-child (vertical) HIV transmission.

MoH Order № 6 of the State Service of Ukraine for Socially Dangerous Diseases (as amended) “On approving the Strategy for providing key populations at risk of HIV with access to prevention services in 2014–2018” (of 1.22.2015).³¹ This order aims to ensure effective implementation of the national HIV prevention policy for KP by creating legal, regulatory, financial, economic and administrative conditions that ensure access to comprehensive prevention services. This order lists specific prevention services for KP, as well as designates bodies responsible for their delivery.

26 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z0903-10>.

27 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/1642-98-%D0%BF>.

28 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/z0377-15>.

29 [Electronic resource] – Available at: http://moz.gov.ua/ua/portal/dn_20100712_551.html.

30 [Electronic resource] – Available at: http://www.moz.gov.ua/ua/portal/dn_20160516_0449.html.

31 [Electronic resource] – Available at: <http://document.ua/pro-zatverdzhennja-strategiyi-zabezpechennja-dostupu-preds-ta-doc217418.html>

Gaps in National Legislation to be Addressed

Government and Non-Governmental Organizations (NGOs)

National level HIV prevention interventions are described in many of the program documents listed above. In addition, Ukraine receives donor funding to implement additional HIV programs from several international NGOs. The largest financial donor is the Global Fund to fight HIV/AIDS, Tuberculosis, and Malaria (hereafter known as – the Global Fund) with a total investments of \$503,063,078 USD (as of 9.1.2016). The Global Fund's three principal recipients include: Ukrainian Center for Disease Control (hereafter known as – UCDC), and two NGOs (International Public Health Alliance (hereinafter known as – the Alliance) and the All-Ukrainian Network of people living with HIV (hereinafter known as – the PLHIV Network).

As a government institution, the UCDC is responsible for disseminating HIV prevention programming intended to enhance the capacity of regional AIDS centers and local health facilities providing services to anyone in need, including members of KP. Improving prevention efforts nationally means scaling up services, enhancing their quality, and ensuring equal access.

NGOs play an important role in HIV program implementation. Using Global Fund grants, the Alliance is responsible for HIV prevention among certain KP, as well as supporting MAT clients and programs. Annually, the Alliance, jointly with its partners, covers more than 250,000 PLHIV from KP (including PWID, MSM, CSW, street children and incarcerated persons). Other projects implemented by the Alliance include the development and implementation of gender-sensitive harm reduction and MAT models, harm reduction programs for drug injecting adolescents and their sexual partners, as well as programs aimed at ensuring access to hepatitis C treatments.

HIV prevention programs are also implemented by other NGOs, many of which are sub-contracted by one of the Global Fund's three principal recipients. For example, the PLHIV Network implements prevention programs for HIV-infected incarcerated persons, as well as ensuring expanded access for hepatitis C treatment. Additionally, some of the information-education-communication (IEC)

activities of the National HIV program are not funded by the government or the Global Fund. Thus, some services (such as the National HIV hotline) are supported directly by the PLHIV Network, the Alliance and other donors such as the German Agency for International Corporation.³²

HIV Prevention Among the General Population

The National HIV program aims to:

- Implement an interdepartmental IEC strategy to prevent HIV among population.
- Develop prevention programs to motivate the population, especially children and young people, to engage in behavior that reduce the likelihood of acquiring HIV by using innovative technologies.
- Ensure the development, production and placement of social marketing campaigns about HIV/AIDS in the national and regional media using informational and communication technologies.
- Conduct large-scale HIV/AIDS informational campaigns, involving public and communal television and radio agencies.
- Ensure the operation of the national HIV/AIDS hotline.
- Provide teachers and students with educational materials (including video) to implement an interactive approach to improving knowledge of HIV prevention.
- Help plan and implement HIV/AIDS-related sexual education programs for young people that include a gender-based approaches.

Ministries and departments responsible for the implementation of the above activities include: the MoH, Ministry of Education and Science, the Ministry of Social Policy, the Ministry for Family, Youth and Sports, the State Committee for Television and Radio Broadcasting.

Despite the planned IEC and awareness-raising interventions, evaluation efforts have shown that awareness of HIV among young people remains persistently low.³³ Results of an evaluation conducted in 2012-2013 indicate that only 10% of adolescents and young people have received HIV

³² [Electronic resource] – Available at: <http://www.helpme.com.ua/>

³³ 2014 Program progress report [Electronic resource] – Available at: http://www.moz.gov.ua/ua/portal/pgrep_AIDS_2014_02.html

testing at least once in their life (15% of girls and 7% of boys). Young men and women aged 15-17, who correctly identified ways of preventing HIV sexual transmission and identified misconceptions about HIV transmission routes, accounted for only 27% of respondents.³⁴ These levels of awareness fall short of the 95% target Ukraine has set under the *UNGASS Declaration of Commitment on HIV/AIDS* by 2010.³⁵

HIV prevention among key risk populations (KP)

The Government and the Parliament of Ukraine have taken important and positive political measures to ensure the implementation of prevention programs among KP. Although Ukraine does not have any laws or regulations prohibiting prevention programming targeted towards these groups, implementing sustainable prevention programs for these populations remains a significant problem. Discriminatory attitudes toward members of KP often marginalize and stigmatize these groups, driving them underground and complicating testing and treatment efforts among those most at risk.

Under Ukraine's legislation, key HIV risk populations include:³⁶

- People who inject drugs (PWID)
- Commercial sex workers (CSW)
- Men who have sex with men (MSM)
- Sexual partners of PWID
- Clients of CSW
- Sexual partners of MSM

People experiencing difficult life circumstances, or in active crisis, may also be included as a key population groups if they engage in HIV risk behaviors. This includes: currently and recently incarcerated persons, homeless or unstably housed persons, immigrants, homeless and neglected children (including children from disadvantaged families) and children deprived of adequate parental care.

Comprehensive prevention programs are currently being implemented for PWID, including MAT programs specifically tailored for incarcerated persons and syringe disposal/needle exchange programs which ensure (through social contracting funding mechanisms) access to resocialization and rehabilitation clinics. Harm reduction continues to be a key component of the national HIV prevention strategy and remains dependent on donors' funds. Coverage with GFATM-supported prevention programme in 2016 was 64% of estimated PWID, 45% of CSW, and 21% of MSM (including transgender people). The percentage of opioid dependent persons covered by MAT services averages 18%, and varies from 38.9% to 5.4% depending on the region,³⁷ Although robust, this falls short of the recommended 35% nationally.

In 2015, NGOs provided prevention services to 37,908 persons (48%) of the estimated 80,000 CSW living in Ukraine.³⁸ This is a great improvement from the 21,000 services provided in 2007, and 11,000 in previous years, provided to CSW through NGOs.³⁹ According to a 2015 program progress report, prevention services are offered to CSW living in all regions in Ukraine, and includes: access to condoms and safe sex informational materials, HIV and STI counseling and testing, counseling on reproductive and sexual health, violence prevention, socio-psychological counseling and distribution of hygiene supplies.⁴⁰

Biomedical Prevention Efforts: PEP and PrEP Services

PrEP

Ukraine's existing legislation does not regulate PrEP prevention services for HIV. While ensuring access to ART to prevent HIV transmission among all sero-discordant couples is an important program goal, the latest progress report does not contain data related to this target because, "...under the existing clinical protocol, the partner's HIV negative status is not an indication for ART".⁴¹

34 GARPR Ukraine 2015 [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/country/documents/UKR_narrative_report_2015.pdf

35 UNGASS Declaration of Commitment on HIV/AIDS, 2001, para 53 http://zakon3.rada.gov.ua/laws/show/995_846/print1462523587285819

36 MoH order № 104 (of 02.08.2013) "On approving the List of and Criteria for determining population groups most at risk of HIV infection" <http://zakon3.rada.gov.ua/laws/show/z0323-13>

37 2014 Program progress report http://www.moz.gov.ua/ua/portal/pgrep_AIDS_2014_02.html

38 2015 AIDS Program progress report http://www.moz.gov.ua/ua/portal/pgrep_AIDS_2016_05.html

39 Comprehensive External Evaluation of the National AIDS Response in Ukraine: Consolidated report, January 2009, UNAIDS.

40 2015 AIDS Program progress report http://www.moz.gov.ua/ua/portal/pgrep_AIDS_2016_05.html

41 ART clinical protocol for adults and adolescents.

Currently, a new clinical ART protocol is being developed.⁴² According to interdepartmental working group members, these new clinical guidelines and protocol will feature sections on HIV prevention, including PEP and PrEP. While The HIV Law does guarantee access to PrEP services with relevant counseling, it does not contain a clear list of high infection risk cases and state-guaranteed types of assistance, including assistance to physical abuse or rape victims.⁴³

PEP

The Cabinet of Ministers' directive № 1642 (of 10.16.1998) establishes a procedure for insuring workers against HIV infection, however it is not comprehensive enough and needs to be modified. MoH order № 955 (of 05.11.2013) mandates that PEP be provided for specific categories of workers (including persons working directly in healthcare), approved by Cabinet directive № 1642 (of 10.16.1998). However, this list doesn't include employees in other government positions such as: law enforcement, emergency services, penitentiary institutions, and health workers in case of an accident or other emergencies that pose a risk of HIV infection.

HIV workplace prevention among health workers is regulated by six regulatory documents, one Cabinet directive and at least five MoH orders. However, these only regulate PEP among health workers. The legislation does not establish procedures applicable to any other government bodies, institutions, organizations, enterprises or other forms of ownership that provide or potentially can provide free assistance in emergencies. This excludes other health and social workers working for other governmental entities such as the national police, workers of institutions run by the Emergency Control Ministry, the Ministry of Defense, the State Penitentiary Service, the Ministry of Infrastructure, the National Aviation Service (in case of transportation emergencies, including emergencies on foreign vessels transiting Ukraine) from being provided PEP services.

Prevention of mother-to-child (vertical) transmission HIV of (PMTCT)

A new version of the Adapted Clinical Guidelines and the Unified Clinical Protocol on *Prevention of Mother-to-Child HIV Transmission* was approved by the MoH in May 2016.⁴⁴ Since 2003, levels of voluntary HIV counseling and testing among pregnant women have been above 97%. Additionally, prophylactic ART coverage rates among pregnant women diagnosed with HIV increased from 9% in 1999 to 95% in 2015. These efforts resulted in a substantial six-fold decrease in MTCT rates from 27.8% in 2001 to 3.9% in 2013.⁴⁵

According to program monitoring data the persistent gaps in PMTCT prevention include: 1) family planning counseling for women of reproductive age to prevent HIV and unwanted pregnancy, 2) effective communication and cooperation between the obstetric-gynecological service and AIDS centers, and 3) late HIV detection.⁴⁶

Identified Gaps in HIV Prevention Efforts

- HIV prevention standards for different population groups need to be updated and address new prevention tools, as well as methodological and technological advances.
- HIV prevention programs targeting KP are primarily implemented and supported by donor-funded NGOs. State support for comprehensive prevention and education services for homeless and neglected children, PWID, CSW, MSM, as well as syringe disposal and PWID rehabilitation programs is limited and in need of additional financial backing.
- Low levels of knowledge of HIV among adolescents and KP indicates a lack of national IEC efforts.
- Stigma and discrimination within the health care system, inadequate implementation of provider-initiated HIV testing at important points of access, and

42 Medical and technological documentation is being developed by the interdepartmental working group, set up by MoH order № 74-adm of 11.11.2015 http://www.dec.gov.ua/mtd/mrg/2015_74_VIL.pdf

43 Subparagraph 10 of paragraph 1 of Article 4: State guarantees free access to post-exposure prophylaxis services for people at higher risk of workplace exposure to HIV in case of sexual abuse and other cases, including the provision of appropriate counseling under the procedure approved by a specially authorized central executive healthcare body.

44 [Electronic resource] – Available at: http://www.dec.gov.ua/mtd/Prof_VIL.html

45 HIV infection in Ukraine. Newsletter. – № 45. – K. [Electronic resource] – Available at: <http://ucdc.gov.ua/uploads/documents/c21991/965cf18b2c7ecaa8c430e6965a0846cb.pdf>.

46 GARPR Ukraine 2015. [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/country/documents/UKR_narrative_report_2015.pdf

the lack of cooperation by regional health authority in implementing certain prevention services mean sub-optimal reach of key populations.

- There is limited access to biomedical prevention efforts for average citizens. PrEP is not regulated

by any MoH document. Also, the PEP procedure is defined in special MoH orders that applies only to a small number of health facility workers when they perform their professional duties.

Conclusions

HIV prevention is one of the national policy priorities legislatively addressed by an extensive list of state guarantees. However, key challenges in meeting the policy targets are closely related to a lack of inter-departmental coordination and the severe underfunding for HIV prevention efforts in national and local budgets. Combined, these limitations hamper the deployment of effective and large-scale prevention programs. The majority of HIV prevention programs in Ukraine are funded by donors or international organizations and implemented through NGOs.

The procedure for providing HIV prevention services, including PrEP and PEP for KP, needs to be regulated by clearly defined governmental standards, which are currently being developed and will be incorporated into the new clinical HIV protocol. At the national policy level, more attention should be paid to HIV prevention among KP, as well as raising general public awareness, combating discrimination and stigma among those infected and increased efforts to prevent vertical (mother-to-child) transmission.

Key Recommendations

The Cabinet of Ministers of Ukraine

- Review and adapt national HIV prevention funding policy and regulations to ensure government funding for HIV prevention services in order to reduce dependence on donor financing.
- Review The HIV Law in order to expand state guarantees concerning the delivery of prevention services to all KP.

The Ministry of Health of Ukraine

- Review prevention program coverage targets in national and regional programs.
- Introduce programs to reduce HIV-related stigma and discrimination within the health care system through educational programs in: medical schools, postgraduate programs and nursing programs.
- Use HIV prevention methods in cases involving exposure to HIV-positive blood or blood products.

- Develop regulations on care delivery for victims of violence where an increased risk of HIV exposure is detected.
- Update HIV prevention standards for different risk population and incorporate them into revised HIV management guidelines.
- Design targeted social marketing communication program to increase HIV-related knowledge and promote healthy behaviors among children and adolescents.
- Introduce new communication channels to increase HIV knowledge among general populations using IEC resources, social media and the Internet.

The Ministry of Social Policy of Ukraine

- Develop targeted prevention programs for adolescents engaged in HIV risk behaviors.

1.2. Testing, Counseling, and Referral

Fundamental Principles

All persons shall have free and unlimited access to voluntary, confidential or anonymous HIV testing and counseling services (C&T), and, if necessary, referrals to other services. Mandatory or compulsory HIV testing is prohibited.

Existing Regulatory Documents

(I) International Documents and Guidelines

UNGASS Declaration of Commitment on HIV/AIDS, 2001.⁴⁷ Para 52 states, “Expanded access to voluntary and confidential counseling and testing.”

UN Political Declaration on HIV/AIDS, 2006.⁴⁸ Para. 25, states that “...ensure access to HIV/AIDS education, information, voluntary counseling and testing and related services, with full protection of confidentiality and informed consent, and to promote a social and legal environment that is supportive of and safe for voluntary disclosure of HIV status.”

WHO Consolidated guidelines on HIV testing services, 2015.⁴⁹ These guidelines bring together existing recommendations relevant HIV testing service. They specifically address how to effectively delivery of C&T services within a variety of settings and contexts for diverse populations.

(II) National legislation, policies and procedures

The Law of Ukraine “On approving the National special social HIV prevention program for 2014-2018” (and relevant regional programs).⁵⁰ This policy

ensures unlimited public access to free HIV C&T services, and includes the following three priorities:

1. Ensure unlimited access to free HIV C&T services for all citizens, with specific focus on KP, using ELISA and rapid testing (objective 16, activity 1).
2. Provide mandatory testing of donor blood (objective 16, activity 2).
3. Provide pregnant women with access to C&T and PMTCT services (objective 13).

The Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social status of people living with HIV” (approved by Law № 1972-XII of 12.12.1991; aka–The HIV Law).⁵¹ The HIV Law guarantees C&T services for citizens, foreign nationals and stateless persons permanently residing or sojourning in Ukraine. This right is guaranteed for any individual over the age of 14 without parental or custodial guidance.

MoH order № 415 “The voluntary HIV counseling and testing procedure” (of 08.19.2005).⁵² This MoH details the countries HIV C&T procedure and principles. It clearly states that C&T can be voluntary, confidential or anonymous based on the patients’ request. It also outlines linkage and referral procedures if a patient tests positive and a confirmatory diagnosis is necessary.

47 UNGASS Declaration of Commitment on HIV/AIDS, 2001. [Electronic resource] – Available at: http://data.unaids.org/Publications/IRC-pub03/AIDSDeclaration_en.pdf.

48 UN Political Declaration on HIV/AIDS, 2006. [Electronic resource] – Available at: http://data.unaids.org/pub/Report/2006/20060615_HLM_PoliticalDeclaration_ARES60262_en.pdf.

49 WHO Consolidated guidelines on HIV testing services, 2015. [Electronic resource] – Available at: <http://www.who.int/hiv/pub/guidelines/hiv-testing-services/en/>

50 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/1708-18>

51 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/1972-12>

52 [Electronic resource]. – Available at: <http://zakon5.rada.gov.ua/laws/show/z1404-05>.

MoH order № 388 “On improving HIV diagnostics.” (of 05.11.2010).⁵³ This order outlines the lists of diagnostic criteria (specific syndromes and symptoms) that healthcare practitioners can use to refer a patient for C&T services if they suspect either HIV exposure or infection.

MoH order № 1141 “On approving the HIV testing procedure an ensuring its quality, forms of HIV testing source records and instruction for their completion.” (of 12.21.2010).⁵⁴ This order establishes specific diagnostic tools for HIV screening which should be used based on available testing protocols. It also includes the proper diagnostic confirmation procedure, as well as relevant reporting forms.

MoH order № 446 “Instructions for voluntary HIV counseling and testing (protocol) at TB, STI and drug rehabilitation facilities” (of 07.06.2006).⁵⁵ This order focuses on specific C&T procedures to be used at health facilities where members of KP and other marginalized groups most often visit. It also includes HIV prevention and early detection methods that these facilities should use.

MoH order № 114 “On the provision of counseling and testing services related to HIV, hepatitis B/C, and STIs by mobile services and outpatient clinics.” (of 02.14.2012).⁵⁶ This order regulates the operation of mobile services and outpatient clinics, and their cooperation with NGOs.

Order №’s 740/1030/4154/321/614a of the MoH, Ministry of Education, and Ministry for Youth, Family and Sport, Ministry of Social Policy, State Penitentiary Service “On measures to prevent mother-to-child HIV transmission, provide medical care and social support for HIV-positive children and their families.” (of 11.23.2007).⁵⁷ This order regulates HIV C&T protocols for pregnant women.

(III) Additionally relevant documents

The Methodological HIV counseling and testing guidelines for health workers. Kyiv, 2012, 20p. These guidelines provide an algorithm for a health worker to act if he suspects that a patient is HIV-positive.

Gaps in National legislation to be Addressed

Testing at health facilities

Health facilities remain the primary point of contact for HIV-positive patients who need prevention, treatment, care and support services. However, evidence shows that health facilities still do not provide adequate C&T services. It is imperative that C&T be implemented at all health facilities irrespective of ownership, especially those that provide care for patients engaging in specific risk behaviors (rehab clinics) or those with known co-morbidities (e.g., TB, viral hepatitis or STIs).

The HIV Law states which types of facilities should be providing C&T, which includes: health facilities irrespective of ownership and subordination; social support services and other HIV service organizations; and duly licensed and accredited medical laboratories. Additionally, there is a need for mandatory HIV testing of donor blood and its components, organs, tissues and other bodily fluids in order to prevent HIV transmission in medical practice and research. The current provisions need to be revised to include laboratories that are not part of health facilities, and to allow social services and other organizations that cannot obtain a medical practice license to offer appropriate C&T services.

53 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z0499-10>.

54 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/z0319-11>.

55 [Electronic resource] – Available at: http://moz.gov.ua/ua/portal/dn_20060706_446.html.

56 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/z1001-12>.

57 It is currently being revised to align it with MoH order № 449 (of 05.16.2016) “On approving and introducing medical and technological documents with health care standards “Mother-to-child HIV prevention”, which underlies the Unified clinical protocol of primary, secondary (specialized) and tertiary (highly specialized) medical care “Mother-to-child HIV prevention”.

Voluntary and anonymous C&T services

Anonymous and confidential C&T services provided by health workers and professionals should remain accessible to all persons seeking them. Additionally, pre-test counseling should not be mandatory, but may be replaced by pre-test information. Finally, there should be a precise algorithm for post-test counseling to support further prevention efforts such as continued testing, PEP/PrEP services or specific harm reduction messaging to minimize risky behavior.

Opt-out HIV testing as part of routine medical services delivery

In Ukraine, HIV testing is provided on an opt-in basis (i.e. patients must give written consent for testing). In such cases, the signing of an agreement can be considered an additional barrier because some people refuse to sign any documents. Research has shown that adopting opt-out HIV testing procedures increases its acceptability among a generalized patient population when compared to opt-in methods.⁵⁸

The issue of HIV testing as part of medical care delivery is still unresolved legislatively. Current legislation does not provide opt-out HIV testing. Additionally, the existing list of diseases, symptoms and syndromes, which prompt health care officials to recommend C&T services, regardless of the health facility's subordination and levels of care (as approved by Ministry of Health order № 388 (of 05.11.2010), is incomplete and should be amended. Specifically, it does not include a diagnosis of TB or STIs as part of the algorithm. This means that the principles of voluntary C&T is not followed as mandatory testing in such cases is not regulated legislatively.

Testing of donor blood products, tissues and organs

While current HIV test methods used in Ukraine do make it possible to test donor blood, other bodily fluids and organs remain untested. Testing of blood products, tissues and organs should be mandatory in order to ensure the quality of organ and tissue transplantation.

Potential donors are informed that their blood will be tested for HIV and are given the right to receive the results if they wish. Testing of donor blood, tissues and organs is clearly regulated legislatively. However, at the bylaw level, there is a discrepancy with the law as regards the use of rapid testing of donor blood in situations when the victim's life is in danger and EIA results are unavailable. An additional unresolved issue is testing of donor sperm.

Testing in the context of occupational accidents or risk behaviors

Events that pose a risk of HIV exposure may be broadly categorized as either occupational (workplace) or non-occupational (risk behaviors such as unprotected sex, violence, rape, or accidental damage to the skin or mucous membranes). Procedures for accessing services in case of such events should be clearly defined. Additionally, it is necessary to outline guidelines for care to be provided in case of either occupational (workplace accidents) and non-occupational (e.g., victims of violence), including any legal, psychological and medical assistance the patient may need.

Under subparagraph 10 of paragraph 1 of Article 4 of The HIV Law, the state guarantees access to PEP for individuals who may have been exposed to HIV in the workplace, or in cases of sexual violence. This includes receiving C&T services approved by authorized central executive health care bodies. MoH order № 955 (of 11.05.2013)⁵⁹ was developed to providing guidance for the administration of emergency PEP in such cases (hereinafter know as – PEP Procedure). However, this provision does not provide a comprehensive list of behaviors or situations which may warrant PEP use, or the types of assistance that the state should guarantee, necessary to protect the health of exposed persons.

Additionally, the PEP Procedure applies only to health facilities staff who are approved to provide, and be provided, these services. This applies to only specific categories of health workers, and other approved persons, subject to mandatory insurance which covers case of HIV infection in the workplace or in the case

58 Baisley K, Doyle AM, Changanlucha J, Maganja K, Watson-Jones D, Hayes R, Ross D. (2012). Uptake of voluntary counselling and testing among young people participating in an HIV prevention trial: comparison of opt-out and opt-in strategies. *PLoS One*. 7(7):e42108.

59 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z1980-13>.

of related disability or death. This list was approved by Cabinet of Ministers' directive № 1642 (of 10.16.1998).⁶⁰ This directive establishes the procedure for insuring employees against HIV infection, the list of categories of such employees, including:

- Health personnel of AIDS centers.
- Health personnel of sanitary-epidemiological service institutions.
- Health personnel of health facilities, schools, clinics, outpatient-policlinic clinics and departments, and facilities of all forms of ownership.
- Health personnel of blood transfusion service facilities, institutions forensic medicine institutions.
- Employees of enterprises producing medicines to diagnose AIDS and other biological drugs using human blood and placenta.
- Personnel of research institutes within the jurisdiction of the Ministry of Health of Ukraine and other central executive bodies, the Academy of Medical Sciences and the National Academy of Sciences that conduct research using materials, which may contain the human immunodeficiency virus or its antigens.

Therefore, the PEP Procedure defines accidents in the workplace for a specific list of professions and actions to be taken to prevent infection. However, this directive does not regulate the procedure for providing care in case of non-occupational contact and for the general population. In addition, the legislation does not establish an emergency response procedure for authorities, law enforcement agencies, workers to emergency services, penal institutions, health workers in the event of accidents, and other emergencies the occurrence of which could pose a risk of HIV infection.

Testing outside a health facility

Strong evidence exists to support the effectiveness of non-clinic based testing strategies.⁶¹ Such services have been shown effective at bringing C&T directly to KP who, for various reasons, do not (or cannot) seek such services at traditional medical facilities. Creating friendly

community clinics, mobile clinics, or after hours testing programs increases the acceptability and use of C&T. Project Accept (HPTN 043) demonstrated a four-fold increase in the detection of undiagnosed HIV infections among men who were asked to undergo testing outside a health facility.⁶²

Increasing non-invasive rapid testing methods are an important tool to curbing the epidemic. Community-based testing programs can cover a larger number of persons in KP and increase the number of first-time testers. The success of these programs significantly increases when programs receive wide-spread community support and care is provided to HIV-positive patients.⁶² Additionally, such interventions help ensure timely monitoring and registration of new incidence cases, aiding in accurate surveillance of the epidemic.

Mobile clinics

Mobile clinics are currently part of a package of services provided through particular clinics that are legislatively regulated as extensions of health facilities. In practice, the majority are funded and owned directly by NGOs and regulated by a particular health facility. This is problematic as cooperation between these health facilities and NGOs are often erratic due to inconsistent employment relationship between NGO and health facilities. Additionally, under the existing HIV diagnosis procedure, approved by MoH order № 585 (of 07.10.2013), an HIV diagnosis can only be made by an AIDS center or Trust Cabinet infectious disease doctor. Adding mobile clinic staff (e.g. gynecologist, STI doctor or feldsher) to the list of personnel approved to give an HIV diagnosis will assist in more timely care for patients.

Specialty Clinics

It is appropriate to create specialized clinics who cater to the needs of specific populations. Currently, Ukraine already has youth-friendly clinics, but separate facilities focused on the needs of persons belonging to other KP (e.g., MSM, CSW or PWID) are also necessary.

60 Cabinet of Ministers directive № 1642 (of 10.16.1998) "On approving the Procedure and requirements for mandatory insurance coverage of health workers and other persons against HIV infection in the workplace, and HIV-related disability or death; the list of categories of health workers and other persons subject to mandatory medical insurance coverage against HIV infection in the workplace as well as HIV-related disability or death."

61 WHO Service delivery approaches to HIV testing and counselling (HTC): a strategic HTC policy framework, 2012. [Electronic resource] – Available at: http://apps.who.int/iris/bitstream/10665/75206/1/9789241593877_eng.pdf

62 NIMH Project Accept (HPTN 043) Key Messages. <http://www.cbvct.med.ucla.edu/key.pdf>

Community-based testing (testing by social workers)

Under paragraph 4 of Article 6 of The HIV Law, free HIV testing, pre- and post-test counseling and the preparation and delivery of test results can be provided by health facilities (regardless of their ownership and subordination), social support services and other organizations working to prevent HIV. These facilities must be duly licensed to carry out such activities and have an accredited medical laboratory.

Under medical practice licensure requirements,⁶³ for an entity to gain a license it must meet certain requirements, which includes having appropriate qualified medical personnel (e.g., physicians, nurses and non-medical staff), office space and equipment to perform C&T services. These requirements also extend to NGOs offering similar community-based services. Such requirements often create barriers for NGOs who wish to offer or extend community-based testing programs. Also, there are no documented regulations specific for NGOs performing community-based C&T on how to refer patients for confirmatory testing and care if the result is positive. To simplify C&T services at the community level, trained lay workers (such as social workers) should be allowed to conduct HIV screenings. It is also necessary to review and update the procedure for approving who can receive C&T training.

Testing in the workplace, including for high risk occupations

While article 16 of The HIV Law protects a PLHIVs right to work by making it illegal to dismiss or refuse employment (or admission to educational, health care and other institutions) based on HIV status alone, it does not protect employees from mandatory testing. There are no requirements or laws addressing an employer's right to require HIV testing in the workplace or procedure for ensuring confidentiality of testing results conducted by employers.

The National HIV/AIDS program for 2014-2018 includes provisions for, "...raising awareness campaigns to prevent non-discrimination in the workplace on the ground of HIV and AIDS status." Specifically, Objective 1 "Improving mechanisms for interdepartmental and multi-sectoral coordination of HIV/AIDS activities," is the only program activity that relates to the HIV/AIDS response in the workplace. A review of this objective is scheduled once fiscal per year.

The 2010 recommendation of the International Labor Organization on HIV/AIDS and labor № 200 (also known as the ILO recommendations) stresses that the work environment should play a crucial role in combating HIV/AIDS. Specifically, it calls for: 1) the development and adoption of national trilateral policies and programs on HIV/AIDS in the workplace; 2) their integration into the overall national HIV policy and programs; and 3) the development of social protection policies for these programs. The ILO recommends that member states adopt and implement these policies by either amendment of current laws, or (when necessary) development of new legislation, to ensure protection of workers. The above trilateral strategy, approved by the National Trilateral Social and Economic Council, describes the basic principles upon which national HIV/AIDS interventions in the work environment should be based upon.⁶⁴ It also includes developing action plans for improving labor legislation.

Self/Home-testing

Ukraine's current legislation has no regulations addressing self or home-testing for HIV. It is necessary to design policies regulating self/home-testing kits⁶⁵ as they relate to acquiring confirmatory testing and providing referrals for care and support services.

63 Medical practice licensure requirements, approved by MoH order № 49 (of 02.02.2011) (as amended by MoH order № 981 of 11. 30. 2012), registered with the Ministry of Justice on 02.09.2011 under №'s 171/18909. [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/z0171-11>.

64 The National strategy for international cooperation to counter HIV/AIDS in the world of labor in 2012–2017. / The National trilateral socio-economic council. – K. 2012. – 30 c. [Electronic resource] – Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_191148.pdf.

65 UNAIDS, WHO. A short technical update on self-testing for HIV. 2013. [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/media_asset/JC2603_self-testing_en_0.pdf

Testing of partners of persons recently diagnosed with HIV

Studies confirm that providing testing and support services for partners of HIV-infected persons is an effective HIV prevention strategy.⁶⁶ Persons in serodiscordant relationships at risk of HIV exposure, either sexually or through other methods, should receive the full range of C&T services afforded to them. International recommendations support joint C&T services for couples/partners, which has shown to increase the acceptability and effectiveness of testing and reduce forward transmission of HIV.⁶⁷ Undoubtedly, it is also necessary to ensure confidentiality and prevent possible violence against HIV-positive patients.

Paragraph 2, of Section 2 of Article 7, of *The HIV Law* states that during post-test counseling person who tested positive are recommended to inform his/her partner(s) of their possible HIV exposure and recommend C&T or prophylactic treatments as necessary. Additionally, according to Section 2 of Article 11, if a doctor's repeat

Conclusions

Effective HIV C&T strategies are a key component for identifying and linking HIV-infected persons to available treatment. Typically, people decide to undergo testing for various reasons such as:

- Knowing one's HIV status may compel a person to seek timely medical attention necessary to avoid serious complications and life-threatening conditions, and receive ART.
- Knowing one's HIV status may help a person decide to abstain from or reduce risky behaviors. It could be most important for a person to know their status to ensure the safety of their partner(s).
- Timely HIV diagnosis helps prevent mother-to-child (vertical) HIV transmission.

explanation of the need for prevention (mentioned in Section 1 of this article) has not led to changes in the HIV-infected person's behavior to minimize transmission risk, and if a HIV-infected person has refused to agree to the doctor's warning his/her partner(s) of their exposure to HIV, the doctor has a right to inform his/her partner(s) of their exposure without consent and recommend C&T as appropriate.

While the above sections of *The HIV Law* clearly state a doctor right to disclose a persons status in the interest of public health, part 2 of Article 11 prohibits the disclosure of the status of an HIV-infected person whose partner(s) could become infected, and of any circumstances that may reveal that person's status. These two statements present a clear conflict as to a doctor rights in certain situations. Currently, legislation does not contain clear instructions for health workers, counselors, and other persons to notify partners of HIV-positive individuals, including specific measures, methods of notification, expressions, recommended and prohibited for use in the partner notification process.

- HIV testing allows some people to put an end to any mental and emotional suffering over the uncertainty of their status and plan their future life.

Current strategies for implementing and expanding HIV services should promote voluntary C&T in the community and workplace. However, the prime objective of C&T is to identify people with risky behavior and provide them with accurate prevention information. Additionally, effective C&T ensures proper linkage to health facilities for further treatment for newly infected persons. Expanding these types of services will only help reach these goals.

C&T services are one of the most developed HIV prevention components in Ukraine. However, its effectiveness and quality are inadequate when executing early detection programs. Such deficiencies affect Ukraine's ability to provide timely linkage and care

66 WHO Consolidated guidelines on HIV testing services 2015. [Electronic resource] – Available at: http://apps.who.int/iris/bitstream/10665/179870/1/9789241508926_eng.pdf

67 WHO Guidance on Couples HIV Testing and Counselling Including Antiretroviral Therapy for Treatment and Prevention in Serodiscordant Couples: Recommendations for a Public Health Approach. [Electronic resource] – Available at: http://apps.who.int/iris/bitstream/10665/44646/1/9789241501972_eng.pdf

services. It is estimated that over 40% of the 220,000 persons living with HIV in Ukraine (~ 92,500 PLHIV) are unaware of their status.⁶⁸ This is demonstrated by the fact that over 45% of all new cases occur among persons presenting with late stage (III-AIDS) disease.⁶⁹

In Ukraine, HIV counseling is mainly provided by public and municipal health providers. A limited number of medical counselors and under-resourced facilities of

different ownership and NGOs significantly complicate the fulfillment of this objective. Hard-to-reach populations (e.g., PWID, CSW) remain the most affected and underserved populations by C&T. Therefore, the levels of coverage of these populations by C&T and other prevention programs will determine the further development of the epidemic and progress in to combating it. Admittedly, today most NGOs have real access to KP and effectively implement their prevention programs among them.

Key Recommendations

The Ministry of Health of Ukraine

- Regulate HIV testing procedures for stand-alone laboratories, private and non-medical service providers.
 - Develop partner notification procedures for newly diagnosed persons as part of C&T services.
 - Consider the appropriateness of introduction of HIV rapid testing on an opt-out basis as part of routine medical service delivery.
 - Regulate HIV rapid testing procedure for emergency blood transfusion.
 - Develop an HIV testing procedure for other donor biological materials in addition to blood
- Introduce innovative evidence-based HIV testing methods.
 - Develop regulations for quality, distribution and use of test kits for HIV self/home-testing, as well as, ensure linkage to health care facility testing, based on UNAIDS recommendations.⁷⁰
 - Develop a procedure for expanded HIV testing by mobile services and in the workplace.
 - Enhance cooperation between primary health care providers and NGOs, or other non-medical providers, to regulate the HIV patient referral systems.

68 Ukraine Harmonized AIDS Response Progress Report (GARPR Ukraine). Reporting period: January 2015 – December 2015.

69 HIV/AIDS Information Bulletin № 45, 2016. [Electronic resource] – Available at: <http://ucdc.gov.ua/uploads/documents/c21991/965cf18b2c7ecaa8c430e6965a0846cb.pdf>

70 UNAIDS, WHO. A short technical update on self-testing for HIV. 2013. [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/media_asset/JC2603_self-testing_en_0.pdf

1.3. Treatment and Medical Care Services

Fundamental Principles

People living with HIV are entitled to receive comprehensive physical and mental health care, including access to life saving medications. The state takes concrete steps to ensure universal access to health care and antiretroviral therapy (ART).

Existing Regulatory Documents

(I) International Documents and Guidelines

2011 WHO/UNAIDS, The Treatment 2.0 Framework for Action.⁷¹ This document outlines the next phase of treatment, care and support services for HIV-infected persons globally through the promotion of innovation and efficiency gains in five priority areas: 1) optimize drug regimens; 2) provide point of care diagnosis; 3) reduce costs; 4) adapt delivery systems, and 5) mobilize communities.

2015 WHO Consolidated strategic information guidelines for HIV in the health sector.⁷² These guidelines identify key indicators for monitoring national and global HIV health interventions. They are intended to help countries collect and systematically analyze strategic information that informs HIV intervention programs.

2016 WHO Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection: recommendations for a public health approach – 2nd Ed.⁷³ This document recommends that all people living with HIV be provided with ART. It provides guidelines for the diagnosis of HIV infection, the use of ART for treating and preventing HIV infection and the care of people living with HIV.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁷⁴

The TRIPS Agreement was created by the WHO to introduce global minimum standards for the protection and enforcement of most forms of intellectual property rights, including patents. The TRIPS agreement specifies flexible provisions that member states can invoke, including those designed to improve access to pharmaceuticals. Such measures include compulsory licensing, “early working” exceptions of patented pharmaceuticals for manufacturers of generics (Bolar exception), parallel importation, and patent objection (rejection).

The Declaration on the TRIPS Agreement and Public Health, adopted in 2001 (the Doha Declaration).⁷⁵

This declaration affirms that World Trade Organization members' right to fully use flexible mechanisms to protect public health and, in particular, to promote access to medicines for all.

The Free Trade Agreement between EFTA States and Ukraine

(ratified by Law № 4091-VI of 12.07.2011).⁷⁶ This agreement establishes an additional patent term of up to five years as a compensatory period for the protection of pharmaceuticals.

71 The treatment 2.0 framework for action: catalysing the next phase of treatment, care and support. [Electronic resource] – Available at: <http://www.who.int/hiv/pub/arv/treatment/en/>

72 Consolidated strategic information guidelines for HIV in the health sector. [Electronic resource] – Available at: <http://www.who.int/hiv/pub/guidelines/strategic-information-guidelines/en/>

73 2016 WHO Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection: recommendations for a public health approach – 2nd ed. [Electronic resource] – Available at: <http://www.who.int/hiv/pub/arv/arv-2016/en/>

74 [Electronic resource] – Available at: http://zakon5.rada.gov.ua/laws/show/981_018

75 [Electronic resource] – Available at: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm

76 [Electronic resource] – Available at: http://zakon2.rada.gov.ua/laws/show/998_456

(II) National legislation, policies and procedures

Law of Ukraine “Fundamental Health Care Legislation of Ukraine” (approved by Law № 2801-XII of 11.19.1992). This law defines key concepts related to healthcare and its delivery, including: medical care, medical service, the right to health and its components, as well as the basics of health care management (organization).

Law of Ukraine “On medicines” (approved by Law № 123/96-BP of 04.04.1996).⁷⁷ This law establishes a period of data exclusiveness (during which the state can registration generic pharmaceutical products), which may last up to 6 years from the day of first registration of an original drug.⁷⁸ The data exclusivity mode is a protection mechanism for monopoly manufacturers of generics, which provides for an additional period of protection, even if there is no patent. It should be noted that the data exclusivity mode is not provided in the TRIPS Agreement and is recognized as a practice that restricts access to medicines and has a negative impact on public health.

Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (approved by Law № 3687-XII of 12.15.1993; hereinafter known as the – Patent Law). This law regulates legal relations for the protection of intellectual property rights related to pharmaceuticals.

The Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus, and legal and social protection of people living with HIV” (approved by Law № 1972-XII of 12.12.1991; aka - *The HIV Law*).⁷⁹ In addition to providing care and treatment guidelines for PLHIV, some sections of The HIV Law apply to laboratory diagnostic and reporting requirements as they pertain to HIV testing and surveillance activities. This law also authorizes the MoH of Ukraine to formulate and introduce a national policy through the development, approval and implementation of necessary regulatory documents.

The Law of Ukraine “On approving the National special social program to prevent HIV/AIDS in 2014-2018”.⁸⁰ (approved by Law № 1708-VII, of 10.20.2014; aka – *The Program*). One of the main objectives of *The Program* is to increase ART coverage among HIV-infected persons. This document states a goal of 84% ART therapy coverage by 2018, which translate to more than 118,000 HIV-infected persons receiving proper medical care and laboratory support.

Cabinet of Ministers’ directive № 877 “On approval by the Cabinet of Ministers of Ukraine permission to use patented inventions (utility models) concerning medicines” (of 12.04.13).⁸¹ This directive regulates the procedures for issuing patent licenses by the government in accordance with the law, specifically, “On Protection of Rights to Inventions and Utility Models.”

MOH of Ukraine Order № 388 “On improving HIV diagnostics” (of 05.11.2010).⁸² This order contains an approved list of symptoms and syndromes general practitioners can use to properly screen and refer patients suspected of having an HIV-infection to C&T services. If the test is confirmed positive, then patients are referred to facilities where they can receive appropriate care and treatment.

MOH of Ukraine Order № 1141 “On approving the Procedure for HIV testing and ensuring its quality, forms of source documents related to HIV testing, and instructions for their completion” (of 12.21.2010).⁸³ This order establishes HIV screening mechanisms for approved test kits and regimens. It also provides procedure for confirming a diagnosis, as well as appropriate reporting documentation. Finally, this law also requires regular evaluations of testing regimens and mandates modernization of approved testing methods as technologies improve.

77 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/123/96-%D0%B2%D1%80>.

78 In practice, this also means that over a certain period of time the government prevents the use of the registration dossier of the manufacturer of the original drug without the consent of the patent owner. Such measures do not allow using clinical data collected by the manufacturer of the original drug to prove its safety and efficacy, with a view to issuing a permit for the production of the generic that has already proven to be equivalent to the original drug.

79 [Electronic resource]. – Available at: <http://zakon0.rada.gov.ua/laws/show/2861-17>

80 [Electronic resource]. – Available at: <http://zakon2.rada.gov.ua/laws/show/1708-18/print1475936093149577>.

81 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/877-2013-%D0%BF>.

82 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/z0499-10>.

83 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/z0319-11>.

MOH of Ukraine Order № 585 “On approving regulatory documents to improve health care delivery to people living with HIV” (of 07.10.2013).⁸⁴ This order regulates procedures for confirming an HIV diagnosis. This includes guidelines regarding medical care (including frequency of medical visits and tests performed), laboratory support and treatment regimens. The type and frequency of medical care will depend on the stage of HIV disease, the rate of progression and the treating physician's discretion.

MOH of Ukraine Order № 182 “On approving forms of source records and reporting on monitoring treatment of HIV-positive individuals, and instructions for their completion” (of 03.21.2012).⁸⁵ This order regulates surveillance activities (e.g. records and reporting), as well

as the assessment of the efficacy of treatment of HIV-infected persons.

MOH of Ukraine Order № 551 “On approving the antiretroviral therapy clinical protocol for adults and adolescents” (of 07.12.2010, as amended on 12.22.2015).⁸⁶ In December 2015, the WHO recommendations on early initiation of ART were incorporated into the above-mentioned clinical protocol (amended by MoH order № 887).

MOH of Ukraine Order № 92 “The Unified Clinical Protocol of primary, secondary (specialized) and tertiary (highly specialized) medical care (UCPMC) for children “HIV-infection” (of 02.24.2015).⁸⁷ This order regulates medical care delivery to HIV-infected children.

Gaps in National Legislation to be Addressed

Linkage to Care: diagnosis verification and registration

Under Paragraph e, of Article 6 of the *Fundamentals of Health Care Legislation of Ukraine*, every citizen has the right to health. This includes the right to skilled medical care, including free choice of a physician and treatments as recommended by the physician and the health facility. At the same time, under Part 1 of Article 9 of *The HIV Law*, registration and follow-up care for HIV-infected persons, as well as results from medical examinations, are ensured by appropriate public and communal health facilities, which are designated by a specially authorized central executive public health body.

The above two provisions are in conflict with respect to certain HIV medical records. The provision of Article 6 have precedence over Article 1 of *The HIV Law*, which provides that, “Ukraine's health legislation is based on the Constitution of Ukraine and consists of these Fundamentals and other relevant acts regulating social relations in the health sector.” The Fundamentals of Health Care Legislation of Ukraine are considered the legal standards under the country's constitution (i.e. its adoption is constitutionally mandated).

Specifically, under Article 92 of the Constitution of Ukraine, the fundamentals of health are exclusively determined by the laws of Ukraine. Therefore, the provisions of *The HIV Law* must comply with that of the Fundamentals of Health Care Legislation of Ukraine. Due to this discrepancy, the first part of Article 9 of *The HIV Law* must be altered to align with Article 6 paragraph e to be consistent.

At the secondary legislative level, this issue is regulated by the HIV diagnosis procedures approved under MoH order № 585 (of 07.10.2013), which complies with *The HIV Law* while running counter to the Fundamentals of Health Care Legislation of Ukraine. Specifically, the above MoH order restricts the categories of doctors who have the authority to diagnose HIV infection, and reads,

“HIV infection can be established by AIDS Centers (divisions) or health facilities, which operate Trust Cabinets where people living with HIV reside, if HIV antibodies are detected based on results of laboratory tests, epidemiological history data and objective physical examination of the person who sought diagnosis”.⁸⁸

84 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/z1254-13>.

85 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/z0794-12>.

86 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/rada/show/v0551282-10/print1477485141305856>.

87 [Electronic resource] – Available at: http://www.moz.gov.ua/ua/portal/dn_20150224_0092.html.

88 Paragraph 1.3. HIV diagnosis procedure, approved by MoH order № 585 (of 07.10.2013).

This clearly states that only AIDS Centers (divisions) and health facilities, which operate Trust Cabinets, where people living with HIV reside, can register and keep a record of HIV-infected patients.⁸⁹

The order also defines the list of health facilities that can provide medical care to patients with HIV/AIDS, which includes:⁹⁰

- AIDS Centers (departments)
- Health facilities which operate Trust Cabinets or infectious diseases offices
- Infectious hospitals
- Multi-field hospitals
- The Hromashevskiy Institute of Epidemiology and Infectious Diseases clinic under the National Academy of Sciences of Ukraine
- TB clinics, TB hospitals, territorial (local) medical associations, which provide secondary care to patients with HIV/TB co-infection

Prescription of antiretroviral treatment

ART coverage targets for the national HIV program state that by 2018, 118,240 HIV-infected persons (54%) will be receiving treatment in Ukraine. These targets are insufficient to achieve the UNAIDS strategy goals of 81% (178,200 persons), given the 220,000 estimated cases in the country.⁹¹ Although existing statutory instruments meet international recommendations, they lack flexibility in terms of medical care management. Adapted Clinical Guidelines and adoption of a Unified Clinical Protocol are necessary for improving ART coverage. These adjustments are currently being developed by the interdepartmental working group created by the MoH.

Laboratory support for treatment⁹²

CD4 test results are not currently considered the main diagnostic indication for ART initiation, despite such results being recognized internationally as important health indicators among HIV-infected persons. Current WHO and UNAIDS policy guidelines state that CD4

levels can be used to justify medication intervention for HIV disease. These recommendations should be adopted in the national treatment standard.

A viral load (VL) test is also a key tool for monitoring disease progression and assessing the effectiveness of treatment after the start of ART. Inaccessibility of regular viral load testing should not be considered a contraindication to treatment.

Given Ukraine's under-resourced environment, the appropriateness of reducing the frequency of CD4 monitoring is often applied to patients who have received ART for at least two years with sustained virological suppression:

- CD4 count ranges from 300 to 500 cells/mm³: CD4 count monitoring – every 12 months;
- CD4 count > 500 cells/mm³: CD4 count monitoring is optional.

More frequent CD4 monitoring is recommended for patients:

- with viral load levels below recommended levels;
- who develop new HIV-associated clinical symptoms; or
- who develop a condition or who start therapy that can reduce their CD4 count.

National strategy for studying HIV resistance

In Ukraine, the following are risks that increase HIV medications resistance:

- prescription of antiretroviral therapy in the form of one or two drugs;
- interruptions in treatment;
- interruptions in the supply of drugs; and
- insufficient coverage with virological monitoring of ART effectiveness, lack of proper attention to building treatment adherence.

To reduce the risk of drug resistant HIV strains, Ukraine has developed the National strategy for monitoring

⁸⁹ List of public and municipal health facilities that register and keep records of people living with HIV and provide medical supervision (Annex 1 to the Procedure for registration of people living with HIV and medical supervision (paragraph 1), approved by MoH order № 585 (of 07.10.2013).

⁹⁰ Paragraph 1.4. Procedure for organizing medical care for HIV and AIDS patients, approved by MoH order № 585 (of 07.10.2013).

⁹¹ [Electronic resource] – Available at: <http://www.unaids.org/ru/regionscountries/countries/ukraine>.

⁹² [Electronic resource] – Available at: http://apps.who.int/iris/bitstream/10665/208825/1/9789241549684_eng.pdf?ua=1

HIV resistance, which is approved by the State Service of Ukraine on Combating HIV/AIDS and Other Socially Dangerous Diseases, which includes the following guidelines:

- the establishment and operation of the national working group on HIV resistance to antiretroviral drugs;
- monitoring of early warning indicators of HIV resistance to antiretroviral drugs;
- monitoring of the spread of primary resistance in recently infected patients;
- monitoring of resistant strains of HIV in patients who start ART;
- monitoring of acquired resistance to HIV in patients who have been in ART for over 12 months;
- monitoring of the incidence (frequency) of resistant HIV strains among HIV-infected infants aged under 18 months;
- establishment of national laboratory facilities to monitor HIV resistance; and
- creation of a national HIV genotyping database.

Currently, the National AIDS program recommends that research on HIV resistance covers 2% of patients on ART, which is extremely insufficient.

Adherence support services

The role of adherence support services

Supporting ART adherence has many positive contributing factors for PLHIV, including: viral load suppression, prevention of HIV resistance, decelerating the progression of HIV-disease and reducing mortality among HIV-infected patients.⁹³ There is compelling evidence that ART adherence reduces community VL, which helps prevent forward transmission.⁹⁴

The current clinical ART protocol provides guidance on how to use a multidisciplinary approach to successfully build and support proper adherence.⁹⁵ Recommended strategies for improving adherence include:

- individual counseling and building patients' treatment adherence skills;
- peer counseling, engagement of case managers; and
- training of patients' on adherence practices within the social environment.

There is substantial evidence that patients who receive treatment adherence counseling experience higher rates of viral suppression when compared to those who do not receiving this service.⁹⁶ Additionally, persons with cognitive disorders often need extra adherence support (clinical case management) from health workers who provide patient care. Examples of successful programs include informing patients the importance of adhering to their scheduled appointments (which also improves their retention in care) and providing handouts/educational materials on the importance of doctor/health facility visits.⁹⁷

Currently, The HIV Law has no provisions mandating adherence services and support for PLHIV and does not define or endorse the role of case management in this area. This issue needs to be legally regulated (i.e. definition, principles, legal mandates) at the legislative level to ensure that such programs are supported and funded.

Adherence Interventions: Directly Observed Therapy (DOT)

Successful medication adherence interventions for HIV-infected persons encompasses a holistic approach, involving both an assessment of patients abilities to adhere to treatment regimens and support from the patients'

93 Panel on Antiretroviral Guidelines for Adults and Adolescents. Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents. Department of Health and Human Services. [Electronic resource] – Available at: <https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv-guidelines/30/adherence-to-art>

94 Community viral load as an index of HIV transmission potential; The Lancet, March 10, 2016 p0ky. [Electronic resource] – Available at: [http://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018\(16\)00036-9/abstract](http://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018(16)00036-9/abstract) .

95 Clinical protocol for the provision of ART to adults and adolescents, approved by MoH order № 551 of 07.12.2010.

96 Billioux A, Nakigozi G, Newell K, Chang LW, Quinn TC, Gray RH, et al. (2015) Durable Suppression of HIV-1 after Virologic Monitoring-Based Antiretroviral Adherence Counseling in Rakai, Uganda. PLoS ONE 10(5): e0127235. doi:10.1371/journal.pone.0127235; <http://journals.plos.org/plosone/article?id=10.1371%2Fjournal.pone.0127235>.

97 Panel on Antiretroviral Guidelines for Adults and Adolescents. Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents. Department of Health and Human Services. Available at: <https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv-guidelines/30/adherence-to-art> .

medical team. An example of one such innovative intervention is direct observed treatment (DOT), where health workers administer medications in the field directly to patients who have difficulty with adherence. While DOT interventions have been shown effective at increasing ART adherence for specific populations such as active drug users,⁹⁸ it has been shown to be less effective among general clinic populations.⁹⁹ The procedure for providing DOT should be strictly regulated to patients who provide informed consent to prevent any violations of privacy rights.

In Ukraine, DOT can be applied to PWID enrolled in MAT programs, prisoners, or those with co-morbidities such as TB, substance abuse disorders or mental health conditions. Currently *The HIV Law* does not provide guidelines with respect to DOT. The application of DOT practices is mentioned in the existing clinical ART protocol – paragraph 12.2.1: “directly observed therapy can be the only effective method of ensuring treatment adherence by some adolescents.”

Given this language, it may be necessary to include relevant DOT provisions in both the Adapted Clinical Guidelines and the Unified Clinical HIV Treatment Protocol. Additionally, DOT principles should be included in *The HIV Law* (as it encompasses basic rights of patients). The DOT procedure, defined in the Unified Clinical HIV Treatment Protocol, must be in line with the principles set out in *The HIV Law*. Priority activities that support DOT include patient education, ongoing adherence monitoring and emotional support. Engaging PLHIV in ART delivery interventions such as DOT is essential to ensuring the effectiveness of their treatment and continuity of care.

Pharmaceutical Patent Laws

Flexible TRIPS Agreement provisions

An analysis of national patent laws revealed that Ukraine only partially uses the TRIPS Agreement optional provisions. The Patent Law allows patenting of a, “...

new use of a known product or process, diagnostic, therapeutic and surgical methods of treatment, as well as, off-label uses for medications.”¹⁰⁰ However, it does not expressly require the member states of the TRIPS Agreement to take similar measures.

Under Article 28 of the Patent Law, the patent owner/manufacturer has the ability to patent a new use of an existing pharmaceutical product, a practice known as “evergreening.” This restricts competition from manufacturers of generic equivalents to that drug. Evergreening a patenting technology refers to the practice where pharmaceutical companies patent new inventions that are in reality only slight modifications of existing drugs in order to extend their patents over products that are about to expire.¹⁰¹

The TRIPS Agreement also makes it possible to use an optional provision on the right to import patented original products introduced into economic circulation by the patentee, or its designated representative in any country where the product is sold at a lower price, with no need for obtaining the proprietor’s consent. However, the 3rd part of Article 31 of the Patent Law does not expressly provide for international or regional exhaustion of rights. Therefore, parallel importation of products manufactured by the patentees, or with its approval, which contain inventions patented in Ukraine can be considered a violation of patent rights.

Additionally, Ukraine’s legislation does not provide any guidance for “early working” exceptions (Bolar exceptions). These provisions permit the registration of a generic drugs before the expiration of the brand name patent, making it possible to challenge the validity of and patent. This limits Ukraine’s ability to control pharmaceutical prices internally.

TRIPS-plus provisions

Ukraine’s legislation provides for a number of the so-called TRIPS-plus provisions, which establish rules for the protection of rights to medicines more stringent than those represented by the TRIPS Agreement. These

98 Altice FL, Maru DS, Bruce RD, Springer SA, Friedland GH. Superiority of directly administered antiretroviral therapy over self-administered therapy among HIV-infected drug users: a prospective, randomized, controlled trial. *Clin Infect Dis*. 2007;45(6):770-778

99 Berg KM, Litwin AH, Li X, Heo M, Amsten JH. Lack of sustained improvement in adherence or viral load following a directly observed antiretroviral therapy intervention. *Clin Infect Dis*. 2011;53(9):936-943

100 Article 6 of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models”. [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/3687-12>.

101 Collier, Roger. Drug patents: the evergreening problem. *NCBI*, 2013 Jun 11; 185(9): E385–E386.

provisions include data exclusivity of the registration dossier, extension of patents, patent coordination, the customs register, criminal liability and additional conditions for the issuance of compulsory licenses for medications. Article 9 of the Law of Ukraine “On Medicines” identifies that patent coordination is the responsibility of the MoH. They are required to control patent violations by applicants who initiate the registration of generic medicinal products, as well as ensure the data exclusivity of the registration dossier of the original medicinal product. This exclusivity right lasts up to 6 years, and acts as a protection mechanism for manufacturer to maintain market monopolies of branded medicines.

Although the *Patent Law* regulates compulsory licensing in Ukraine, it also includes the TRIPS-plus requirements. Specifically, for a compulsory license to be issued it requires written confirmation of:

- the patent holder’s groundless refusal to grant a license; and
- the inability to meet the need for a particular medicinal product by the capacities and facilities that are normally used for the production of this medicine.¹⁰²

Such strict requirements make it impossible for generic drug manufacturers to use the compulsory licensing mechanism in practice.

The TRIPS-agreement does not require the extension of patents, however, the Patent Law provides for the possibility of extension patent protection for medicines up to 5 additional years (subparagraph 5 of paragraph 4 of Article 6). Taken together, difficulty obtaining a compulsory license and the possibility for pharmaceutical companies evergreening practices makes it difficult for Ukraine to seek out cheaper generics for ART medications.

Conclusions

Since the inception of ART in 1996, HIV-associated morbidity and mortality rates has been substantially reduced globally.¹⁰³ These medications have slowed the clinical progression of HIV disease to a point where, for some, it is now viewed as a chronic controllable condition. Today, ART is prescribed to achieve the following key goals:

- reduce HIV-associated morbidity and mortality, leading to both prolonged life expectancy and improved quality of life;
- restore and support immune system functions;
- maximize and sustain viral load suppression; and
- prevent HIV transmission.

In Ukraine, ART is provided under multiple MoH orders approved through a number of clinical protocols, including:

- MoH order № 551 (of 07.12.2010) - ART Clinical Protocol for Adults and Adolescents

- MoH order № 92 (of 02.24.2015) - Unified Clinical Protocol of Primary, Secondary (specialized) and Tertiary (highly specialized) Care for Children with HIV-Infection

As of 01.01.2016, ART is being provided to 60,753 PLHIV through 235 health facilities nationwide. It should be noted that the majority of ART treatment is funded by the national budget (42,458 patients), with the remaining 18,295 patients being funded through grants from the Global Fund.¹⁰⁴

The frequency and scope of medical examinations depend on a patients’ stage of HIV, and disease progression rate. Clinical management of HIV-infected patients has considerably changed with the advent of new, more powerful and less toxic medications. In 2015, Ukraine revised its indications for early ART prescription based on international guidelines. These changes are reflected in the updated ART clinical protocol, which continues to be refined.

¹⁰² Paragraph 2 of the Cabinet of Ministers of Ukraine granting permission to use the patented invention (utility model) concerning drug approved by the Cabinet of Ministers of Ukraine, Order № 877 of 04.12.2013.

¹⁰³ The Global HIV/AIDS Epidemic. Globally Health Policy, The Henry J Kaiser Family Foundation. July 21, 2016

¹⁰⁴ HIV infection in Ukraine. Newsletter № 45, [Electronic resource] – Available at: http://ucdc.gov.ua/uploads/documents/c21991/965cf18b2c7eca_a8c430e6965a0846cb.pdf

Ukraine has many regulatory documents in place to treat PLHIV that meet or exceed international standards and best practices. However, challenges exist related to early detection, efficacy and timeliness of medical care, insufficient coverage of ART for patients, lack of adequate resistance testing, and lack of innovative programming to increase accessibility of essential medications. Persistent barriers to ensuring high ART adherence include:

- lack of strategy at health facility level to build and support adherence;
- inefficiencies in providing patients with safe and convenient access to medical care and ART medications;
- lack of partnership between doctor and patient;
- underestimation of the patient's active role in decision making regarding treatment;
- discrimination and stigma of patients by health workers;
- lack of knowledge and skills among health and social workers regarding adherence building;
- lack of comprehensiveness of patient-oriented services; and
- lack of partnerships with other organizations that can contribute to the building and maintenance of high adherence levels.

Many current ART guidelines need to be updated and aligned with international recommendations. Ukraine currently follows outdated ART prescribing standards that recommend initiation only once a patient meets certain criteria, including: exhibits AIDS-indicative opportunistic infections and/or a CD4 count reduced to the level of 500 cells/ml or less. The country needs to update its national ART guidelines so that ART is initiated for all HIV-infected members of the following

populations regardless of CD4 count: pregnant women; patients with HIV-associated nephropathy; HBV/HIV co-infected persons; severe neurological or neuro-cognitive disorders; malignant HIV-associated and non HIV-associated tumors; those at high risk of HIV transmission; members all key populations (PWID, MSM, CSW and incarcerated persons). Unfortunately due to the countries economically under-resourced environment, ART treatment is currently provided to only about 30% of patients in need.

To improve this situation, Ukraine should focus future organizational efforts on establishing and maintaining guidelines that reflect the latest science, as well as develop policies that support procurement of more affordable ART medications. The absence of procurement competition and the lack of availability of generic pharmaceuticals create serious treatment gaps for patients in Ukraine. The introduction of a policy on generic medicines, generic substitutability, and proper procurement practices would help improve patient ART access. Accessible ART coverage can be increased through a series of interventions, including:

- support for competition through the introduction of policies on generics, **generic substitutability** and proper procurement practices;
- prohibition of “evergreen” patents on medicines; and
- price negotiation, competition based on price information and therapeutic substitution, TRIPS-compliant measures (compulsory licensing, “early working” exceptions of patented pharmaceuticals for manufacturers of generics and parallel importation).

As a large proportion of ART medication are funded by the Global Fund, any efforts to reduce cost will directly improve this organizations financial resources.

Key Recommendations

The Verkhovna Rada of Ukraine:

- Incorporate the flexible provisions of the TRIPS Agreement into national legislation, including:
 - Address the issue of the so-called “evergreen” patents, which exists for certain HIV medication.
 - Raise standards for patenting of medical inventions to stimulate further innovation and prevent non-innovative patents to be approved.
 - Restrict the extension of patents on socially important medicines for more than 20 years.
 - Introduce parallel import mechanism.
 - Incorporate The Bolar exception into legislation.¹⁰⁵
 - Incorporate the Doha Declaration provisions into Ukraine’s legislation.¹⁰⁶
 - Introduce mechanisms for non-commercial use of medical inventions in the public interest.
 - Relax data exclusivity for the drug registration dossier and other TRIPS-plus requirements.
 - Introduce a patent objection mechanism into national legislation.

The Cabinet of Ministers of Ukraine

- Revise and update ART coverage targets for the National AIDS Program 2014-2018 in accordance with international guidelines, and earmark adequate funding to meet these indicators (targets).
- To significantly increase the number of people in ART, more decentralized care delivery should be adopted.

The Ministry of Health of Ukraine

- Expedite the development and approval of the Adapted Clinical Guidelines and the Unified Clinical Protocol to improve ART.
- Revise national treatment protocols to incorporate new WHO ART guidelines.
- Ensure effective monitoring of National AIDS Program ART coverage targets achievement by health facilities.
- Use a multi-disciplinary approach to implement activities aimed at improving treatment adherence, including:
 - provision of individual treatment counseling,
 - conduction of patient adherence group for building and supporting retention, and
 - organization of peer counseling sessions.
- Ensure uninterrupted supply of ART medication.
- Ensure effective implementation of the national HIV resistance monitoring strategy.
- Draft amendments to the legislation that will allow integrating HIV/AIDS services into the general network of health facilities (diagnosis, registration, treatment prescription)
- Provide additional training of specialists (e.g., health care managers, doctors and nurses) to improve access to all treatments, as many health facilities have limited experience in providing comprehensive medical care to HIV-infected persons.

¹⁰⁵ To allow companies to apply for the registration of generic versions of a drug before the expiration of the patent on the original drug. After the expiration of the patent, the generics manufacturer may immediately begin manufacturing and marketing the generic. This mechanism reduces the time required to enter the generics market after the expiration of the patent. In addition, introducing this provision into Ukraine’s legislation will be in line with the efforts to harmonize it with EU legislation: Article 10 (6) of Directive 2004/27/EC provides that conducting the necessary studies and trials with a view to obtaining approval shall not be regarded as contrary to patent rights for medicinal products.

¹⁰⁶ Doha Declaration provisions pertains to obtaining medications for emergencies, which may be a public health crisis associated with HIV/AIDS and TB epidemics, as a basis for simplifying the procedure for the issuance of compulsory licenses by the Government.

1.4. Social Protection and Material Assistance

Fundamental Principles

People living with HIV are entitled to an adequate standard of living, including equal access to social protection (security), and other types of assistance. Specifically, this applies to protections against unemployment, disease or disability.

Existing Regulatory Documents

(I) International Documents and Guidelines

The Convention on the Rights of Persons with Disabilities (№ 1767-VI of 12.13.2006; ratified by Law № 1767-17 of 12.16.2009).¹⁰⁷ This convention promotes, protects and ensures full and equal human rights and fundamental freedoms for all persons with disabilities to support respect for their inherent dignity.

UNAIDS Strategy “On the fast track to end AIDS by 2030.”¹⁰⁸ This strategy aims to radically reduce new infections and ensure access to HIV prevention and treatment.

WHO report “Global Health Sector Strategy on HIV/AIDS 2011-2015.”¹⁰⁹ This report identifies strategies that can be adopted within a country/regional health sector to facilitate HIV/AIDS prevention, care and treatment management services.

(II) National legislation, policies and procedures

The Labor Code of Ukraine, (first enacted in 1971, but has been amended).¹¹⁰ This code established equal rights for citizens of Ukraine (Article 2) and prohibits discrimination in the labor force. Specifically, this law addresses violation of the principles of equal rights and opportunities and addresses direct or indirect restriction

of employees' rights on the basis of: race, color, political, religious or other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, health status, disability, suspected or existing HIV/AIDS disease, marital and property status, family obligations, place of residence, membership in a labor union or other associations of citizens, participation in a strike, appeal or intention to appeal to court or other bodies to defend one's own rights or to support other employee in asserting their rights, linguistic or other characteristics unrelated to the nature of work or working conditions.

The Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social protection of people living with HIV” (approved by Law № 972-XII of 12.1991; aka - *The HIV Law*)¹¹¹ This law defines Ukraine's basic guarantees regarding social service provision for PLHIV. This includes medical recommendations for treatment, prevention and healthcare, as well as social services for support and social protections. Under Article 43 the state also guarantees social protection to family members of people living with HIV, as well as rights for healthcare and social service workers involved in HIV prevention efforts.

The Law of Ukraine “On Social Services” (approved by Law № 966-IV of 06.19.2003).¹¹² This law defines organizational and legal principles of social service delivery to people in crisis needing immediate assistance. Provisions that extend to HIV-infected persons.

107 [Electronic resource] – Available at: http://zakon5.rada.gov.ua/laws/show/995_g71.

108 UNAIDS Fast-Track - Ending the AIDS epidemic by 2030. [Electronic resource] – Available at: http://www.unaids.org/en/resources/documents/2014/JC2686_WAD2014report.

109 Global health sector strategy on HIV/AIDS 2011-2015, WHO 2011. [Electronic resource] – Available at: http://apps.who.int/iris/bitstream/10665/44606/1/9789241501651_eng.pdf.

110 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/322-08>.

111 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/2861-17>.

112 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/966-15>.

The Law of Ukraine “On approving the National special social HIV/AIDS prevention program for 2014-2018” (approved by Law № 1708-VII of 10.20.2014; aka - The Program).¹¹³ The Program objectives related to social protection and material assistance are:

- Introduce a gender-based approach to service delivery to PLHIV and KP (objective 2, activity 7).
- Provide medical care and social services for PLHIV by health and social workers (objective 7, activity 5).
- Scale up an integrated approach for providing medical care and social services for PLHIV who inject drugs (including pregnant women) (objective 12).
- Adopt and implement a social standard of care and support for PLHIV (objective 23, activity 1).
- Organize and ensure access to palliative and hospice care for PLHIV (including children) (objective 23, activity 2).

The Law of Ukraine “On state social standards and state social guarantees” (approved by Law № 2017-III of 10.5.2000).¹¹⁴ This law defines the fundamental legal principles for the formation and use of social standards and regulations aimed at implementing the basic social guarantees enshrined in the Constitution and laws of Ukraine.

The Cabinet’s directive № 852 “On the size of a government monthly benefit for HIV-positive children and children suffering from diseases caused by HIV” (of 09.12.2012).¹¹⁵ This directive establishes a monthly government benefit amounting to ten tax-exempt minimum incomes for HIV-positive children and children suffering from diseases caused by HIV.

MoH order № 41 “On organization of palliative care provision in Ukraine” (of 01.12.2013).¹¹⁶ This order establishes a procedure for palliative care delivery for persons residing in Ukraine, which includes the extension of these benefit to HIV-infected patients.

Gaps in National Legislation to be Addressed

Ukraine has passed legislation that ensures the right to social protection and assistance for PLHIV and their families. This includes access to both health management and social support programs aimed at HIV prevention and treatment. Given the above provisions, one could assume that Ukraine’s regulatory and legal environment is in line with that of other developed countries like those in Europe and the United States. Despite these efforts, gaps in the implementation of current legislation (in terms of ensuring standards of living, social protection and welfare for HIV-infected persons) still persist and

include:

- lack of a single national information policy that would inform PLHIV of their rights and guarantees;
- lack of incentives for executive authorities to implement existing legislation, specifically, for social and health services to support prevention interventions that focus on early detect of HIV disease; and
- lack of support services for PLHIV that assist them in adhering with prevention activities and treatment regimens.

Conclusions

The State shall guarantee to PLHIV financial support in the form of full and free access to ART. This guarantee extends to all persons residing in Ukraine, especially those of vulnerable populations such as, but is not limited to: newborns, HIV-infected pregnant women and mothers, PWID, MSM, CSW and health workers who contracted HIV in the workplace. The government of Ukraine lays a legal foundation for the formation and use of social

standards and regulations aimed at implementing these basic social guarantees enshrined in its Constitution and laws. Despite these protections, major access barriers for these social protection persist. These include a lack of knowledge of available services, complicated administrative procedures that make service difficult to acquire, as well as stigma and discrimination by employers and healthcare workers.

113 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/1708-18>.

114 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/2017-14/print1443787425413805>.

115 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/852-2012-%D0%BF>.

116 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/z0229-13>.

Key Recommendations

The Cabinet of Ministers of Ukraine

- Create conditions to provide HIV-infected persons with equal and free access to social protection and governmental programs.
- Amend the “Law of Ukraine on Advertising,” to establish standards for social marketing of HIV-related topics and programs.
- Introduce into the national legislation key HIV-related quality improvement and performance indicators for healthcare facilities and/or physicians.

The Ministry of Health of Ukraine

- Develop and implement adherence support services for PLHIV. This may include incentives or material aid (e.g. food gift baskets, basic supplies or household items packages).

- Develop programs to increase awareness of the basic social, economic, and cultural rights available to PLHIV and members of KP.
- Introduce policies that ensure access to palliative and hospice care for PLHIV (including children) by amending the MoH order № 41 “On organization of palliative care in Ukraine” (of 01.21.2013). Specifically, eliminate the requirement that forbids HIV/AIDS and TB patients from receiving palliative care in specialized healthcare facilities.

Oblast State Administrations

- Revise Regional AIDS Programs to ensure that funding is allocated for social marketing.

1.5. Privacy and Confidentiality Protection

Fundamental Principles

People living with HIV should have effective protection from arbitrary or unlawful intrusion on their privacy. This includes ensuring the privacy and confidentiality of medical and personal data.

Existing Regulatory Documents

(I) International Documents and Guidelines

The Declaration of Lisbon on rights of the patient, adopted by the World Medical Association (Lisbon, Portugal, September/October 1981).¹¹⁷ This declaration establishes some of the fundamental privacy rights provided to patients. Recognizing that there may be practical, ethical or legal difficulties, a patient should always act according to their conscience and in their best interests with respect to privacy of medical records and services. Whenever legislation or the government denies these rights to patient, physicians should use appropriate means to guarantee or restore them. The patient has the right to expect that their physician will respect the confidentiality of their patients' medical and personal records.

UN Political Declaration on HIV/AIDS, 2006.¹¹⁸

This declaration states that volunteer C&T services should be confidential for all recipients as stated in para. 25,

“Pledge to promote, at the international, regional, national and local levels, access to HIV/AIDS education, information, voluntary counseling and testing and related services, with full protection of confidentiality and informed consent, and to promote a social and legal environment that is supportive of and safe for voluntary disclosure of HIV status;”

UNAIDS Interim Guidelines on Protecting the Confidentiality and Security of HIV Information, 2007.¹¹⁹ These guidelines were developed to address privacy, confidentiality, and security of HIV-related

information. These protections are intended to cover patient care, disease monitoring and deliver of HIV services. This also includes program evaluation activities and research efforts aimed at expanded existing services in middle- and lower-income countries.

(II) National legislation, policies and procedures

The Penal Code of Ukraine (approved by Law № 2341-III of 04.05.2001).¹²⁰ This law establishes liability for violations of privacy, including the: illegal collection, storage, use, modification, disposal or dissemination of confidential information about an HIV-infected person. It specifies criminal liability charges for health workers who disclose information about the results of HIV testing or any other incurable infectious disease.

- Article 132: prohibits the disclosure of private medical information related to a patient's incurable contagious disease (i.e., HIV/AIDS) by a member of the medical profession or their surrogates.
- Article 182 provides that, “...illegal collection, storage, use or dissemination of confidential information about a person...” is a punishable offense under the law.

Law of Ukraine “Fundamental Health Care Legislation of Ukraine” (approved by Law № 2801-XII of 11.19.1992).¹²¹ This law defines the legal, organizational, economic and social principles of health care in Ukraine. Article 39 (1) establishes the right to confidentiality with respect to health behavior and status, as well as records and diagnoses obtained during medical examinations. It is prohibited to request or provide information about the

117 [Electronic resource] – Available at: http://zakon0.rada.gov.ua/laws/show/990_016.

118 [Electronic resource] – Available at: http://data.unaids.org/pub/Report/2006/20060615_HLM_PoliticalDeclaration_ARES60262_en.pdf.

119 [Electronic resource] – Available at: http://data.unaids.org/pub/manual/2007/confidentiality_security_interim_guidelines_15may2007_en.pdf.

120 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/2341-14>.

121 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2801-12>.

diagnosis and methods of treatment at a patient's place of work or study. Additionally, Article 40 mandates that medical personnel cannot disclose information related to a patients' medical status (including disease status, medical tests performed and their results) about your personal or family life, which may become known to them in connection with the performance of their professional duties.

Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus, and legal and social protection of people living with HIV” (approved by Law № 1972-XII of 12.12.1991).¹²² This law guarantees the rights of PLHIV established by Ukraine's legislation and international agreements. It includes protections for confidentiality (specifically with respect to their HIV testing results, post-test counseling, during registration and for the records of any medical care they receive), as well as respect for rights and freedoms. Under this law, the state guarantees that it will implement a coherent policy aimed at promoting tolerance for KP and PLHIV alike.

Law of Ukraine “On protection of personal data” (approved by Law № 2297-VI of 05.01.2010).¹²³ This law regulates the protection and processing of personal data. Its goal is to protect the fundamental human and civil rights and freedoms, including the right to privacy, for residents.

Law of Ukraine “On Information” (approved by Law № 2657-XII of 10.02.1992).¹²⁴ This law regulates the creation, collection, receipt, possession, use, dissemination, and protection of information. Specifically, Article 11 prohibits the collection, storage, use and dissemination of confidential information about a person without his/her consent, except in cases specified by law, and only in the interests of national security, economic wellbeing and human rights protection. Confidential information about an individual includes data related to their nationality, education, marital status, and religious beliefs.

MoH order № 415 “On improving voluntary HIV counseling and testing” (of 08. 19.2005).¹²⁵ This order establishes that information obtained during voluntary HIV C&T (including test results) is confidential.

Gaps in National Legislation to be Addressed

Despite a fairly large number of regulatory documents on privacy and confidentiality, violations persist.¹²⁶ One of the first known cases defending an HIV-positive person's rights related to the unlawful disclosure of an individual's HIV status in 2012.¹²⁷ In 2013, the Central District Court of Simferopol returned a verdict of guilty against a health worker who disclosed a child's HIV status. The court ruled that the accused be denied the right to practice medicine and pay a fine.

In 2013 a project monitoring human rights violations of HIV-infected person's privacy in 24 oblasts of Ukraine and the republic of Crimea detected 852 incidents of confidentiality violations against HIV-infected persons.¹²⁸ Persons responsible for the majority of these violations were health providers, law enforcement officials and social service personnel. More cases were suspected, but many are not recorded as information related to such incidents is often concealed or suppressed. Reasons for these persistent violations include:

- The lack of a centralized electronic medical data storage system at the national level often leads to insufficient privacy and confidentiality of individual medical records.
- There is no mechanism for succession and full exchange of information among health facilities, which are supposed to ensure the confidentiality of medical information when HIV-infected patients are referred from another facility.
- Confidentiality of medical information is often breached at non-HIV specialized health care facilities. Information about medical tests are often disclosed.
- Health staff of non-HIV specialized healthcare facilities lack skills of how to work and communicate with HIV-infected patients, which may lead to discrimination, or a breach of confidentiality.

122 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/2861-17>.

123 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/2297-17>.

124 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/2657-12>.

125 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/z1404-05>.

126 Defense of HIV-positive persons' rights in court. Training and practical manual for judges, under the editorship of Prof. M.V.Buromenskiy (doctor of law). – K., 2009. – 110 p. [Electronic resource]. – Available at: http://www.undp.org.ua/files/en_19317HIV_and_Judges.pdf

127 [Electronic resource] – Available at: <http://www.unian.ua/society/753539-vpershe-medpratsivnika-pokarali-za-rozgoloshennya-vil-statusu-ditini.html>.

128 [Electronic resource] – Available at: <http://health.obozrevatel.com/medical/90361-v-ukraine-vpervyie-medrabotnika-nakazali-za-razglashenie-vich-statusa.htm>.

Conclusions

The right to privacy involves respecting a person's right to live their private lives. For PLHIV, this encompasses ensuring confidentiality of HIV test results, and all medical information related to the patients' health status. Article 32 provides that no one shall be subjected to intrusion of their individual privacy or that of their family, except for cases specified in the Constitution of Ukraine. It is prohibited to collect, store, use and disseminate confidential information about a person without their informed consent; except in cases specified by law and only in the interests of national security, economic wellbeing and human rights. Ensuring the confidentiality of information is especially important in the context of HIV/AIDS because of the associated social stigma and discrimination which can accompany a positive test result.

MoH order № 415 (of 08.19.2005) "On improving voluntary HIV counseling and testing," states the principle of confidentiality as they relate to C&T services, and ensures that they meet WHO and UNAIDS recommendations. This includes ensuring the confidentiality of information that has become known to the test counselor. It also states that HIV-related information from C&T can only be communicated to a select group of individuals/entities without the patients expressed consent, including: legal representatives of the minor or disabled patient, health

facilities for purposes of care and treatment, disease investigation and surveillance activities, and the court (or representatives) in cases stipulated by laws of Ukraine. Additionally, improper disclosure of pre- and post-test counseling activities and results entails criminal liability.

Registration and ongoing surveillance activities of PLHIV must meet the requirement for confidentiality, including information about health status, in keeping with the need for respecting individual human rights and freedoms prescribed by laws and international treaties of Ukraine and ratified by Verkhovna Rada.

Despite these protections, intentional and accidental disclosure of confidential information about a patients' HIV status persists. These acts negatively affect patients' lives, causing psychological trauma, and in some cases, suicide ideation. PLHIV who have had their confidentiality breached may face censure or prejudice from colleagues, friends or society, which is why a breach of confidentiality often compels PLHIV to relocate (especially if the victim lives in a small town or village). Disclosure of the protected health information of HIV-infected persons poses real societal concerns for victims, their families and the health system generally. Greater efforts should be put forward to control this problem.

Key Recommendations

The Ministry of Health of Ukraine

- Develop and implement a unified registry of HIV patients with adequate confidentiality and data protection procedures.
- Include notification about the legal and ethical considerations related to maintaining confidentiality of HIV patients' records into the job descriptions for health workers who handle such confidential records.
- Include a confidentiality protection requirement into health care providers' licenses in order to prevent breaches.
- Make necessary amendments to the health facility state accreditation standards related to confidentiality of information of HIV-infected patients (specifically, in the section on patients' rights, duties and safety).

The Ministry of Health of Ukraine and the Ministry of Education and Science of Ukraine

- Introduce topics on ethics in health care (specifically related to HIV) in educational curriculums at medical schools, postgraduate universities, nursing programs and other advanced training programs.

KEY RISK POPULATIONS

II. KEY RISK POPULATIONS

2.1. People Who Inject Drugs (PWID)

Fundamental Principles

As the international community has adopted more compassionate responses to PWID, Ukraine (being oriented to international guidelines) has adopted this overall approach in its national legislation. This includes, the state taking appropriate measures to reduce HIV risks and eliminate HIV-related discrimination among PWID, ensuring that this population is provided equitable and sustainable access to comprehensive HIV-related services.

Existing Regulatory Documents

(I) International Documents and Guidelines

International Guidelines on HIV/AIDS and Human Rights, 2006 (consolidated version).¹²⁹

These guidelines were prepared jointly by the Office of the United Nations High Commissioner for Human Rights and UNAIDS. As it relates to PWID, guideline 4(d) states

“Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider: the authorization or legalization and promotion of needle and syringe exchange programs; the repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes.”

UN Human Rights Council. Special Rapporteur on the Right to Health: Right to Health and International Drug Control (A/65/255), 2010.

This report recommends (in para. 76) that member states should:

- Ensure that all harm-reduction measures (as detailed by UNAIDS) and drug-dependence treatment

services (particularly opioid substitution therapy) are available to people who use drugs, including incarcerated populations.

- Decriminalize possession and use of drugs.
- Repeal, or substantially reform, laws and policies inhibiting the delivery of essential health services to drug users, and review law enforcement initiatives around drug control to ensure compliance with human rights obligations.

WHO, UNODC, and UNAIDS Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users, (2012 version).¹³⁰

This document contains comprehensive guidelines of HIV interventions for people who use drugs, including: needle exchange programs; opioid substitution therapy and other drug dependence treatment; HIV testing and counseling; ART availability; prevention and treatment of STIs; condom programs for people who use drugs and their sexual partners; targeted information, education and communication for people who use drugs and their sexual partners; vaccination, diagnosis and treatment of viral hepatitis; and prevention, diagnosis and treatment of TB.

129 International Guidelines on HIV/AIDS and Human Rights. 2006 consolidated version, UNAIDS. [Electronic resource] – Available at: <http://www.ohchr.org/Documents/Publications/HIV/AIDSGuidelinesru.pdf>

130 WHO, UNODC, UNAIDS technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users (updated in 2012). [Electronic resource] – Available at: http://apps.who.int/iris/bitstream/10665/77969/1/9789241504379_eng.pdf

Global Commission on Drug Policy, *The War on Drugs and HIV/AIDS: How the Criminalization of Drug Use Fuels the Global Pandemic*, (2012).¹³¹

This document contains several recommendations related to effects of the global criminalization of drug use, including:

- “Acknowledge and address the causal links between the war on drugs and the spread of HIV/AIDS, drug market violence and other health (e.g., hepatitis C) and social harms.”
- “Respond to the fact that HIV risk behavior resulting from repressive drug control policies and underfunding of evidence-based approaches is the main issue driving the HIV epidemic in many regions of the world.”
- “Push national governments to halt the practice of arresting and imprisoning people who use drugs but do no harm to others.”
- “Replace ineffective measures focused on the criminalization and punishment of people who use drugs with evidence-based and rights-affirming interventions proven to meaningfully reduce the negative individual and community consequences of drug use.”

(II) National legislation, policies and procedures

Law of Ukraine “On approving the National special social HIV/AIDS prevention program for 2014-2018”.¹³² The two main HIV/AIDS program strategic objectives concerning PWID are to: 1) provide key populations with access prevention programs; and 2) cover at least 35% of PWID with MAT and drug rehabilitation programs. These targets are expected to be reached through an array of harm reduction based programmatic interventions taking place at public health or SPS health facilities.

The Cabinet of Ministers’ directive № 735-p “On approving the National drug policy strategy for the period until 2020” (of 08.28.2013).¹³³ This

directive is based on provisions within the *Constitution of Ukraine* and is influenced by pertinent international legal guidelines of the UN Council of Europe, EU and the European Convention for the *Protection of Human Rights and Fundamental Freedoms*. It states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Additionally, the *Convention for the Protection of Human Rights and Dignity of the Human* addresses human subject protections regarding biological and medical research or evaluation and reads, “...an intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.”

MoH order № 476 “On approving the Standard in treating HIV-positive people who inject drugs” (of 08.19.2008).¹³⁴ This order details the procedure for providing ART for PWID.

MoH order № 200 “On approving the Procedure for providing medication-assisted treatment to opioid dependent patients” (of 03.27.2012 as amended).¹³⁵ This order establishes procedures for providing MAT to opioid dependent patients. It details the types of materials that MAT offices should provide to clients, including informational and educational materials, information on the program mission and how to obtain patient’s informed consent and other reporting documentation.

MoH order № 645 “On approving methodological guidelines “Medication-assisted treatment for opioid dependent patients” (of 11.10.2008).¹³⁶ This order describes medication protocols for MAT prescribed medications.

Joint order №’s 821/937/1549/5/156 of the MoH, Interior Ministry, Ministry of Justice, State Service of Ukraine for Narcotics Control “On approving the Procedure for interaction of health facilities, law enforcement agencies, pretrial detention and correctional centers to ensure medication-assisted treatment continuity” (of 10.22.2012).¹³⁷ This order specifically regulates the logistical aspects

131 [Electronic resource] – Available at: https://www.globalcommissionondrugs.org/wp-content/uploads/2012/03/GCDP_HIV-AIDS_2012_EN.pdf

132 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/1708-18>

133 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/735-2013-D180>

134 [Electronic resource] – Available at: http://www.moz.gov.ua/ua/portal/dn_20080819_476.html

135 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/z0889-12>

136 [Electronic resource] – Available at: <https://goo.gl/Owvzez>

137 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/z1868-12>

of administering MAT services to PWID who become incarcerated while they are program clients. It ensures that services (e.g. detoxification and medications) are still available to clients who are still in need of such services.

Gaps in National Legislation to be Addressed

In 2008 Ukraine saw a change in the dominant mode of HIV transmission, from parenteral through injection drug use to sexual (mostly heterosexual) transmission. Despite this shift, PWID are still a powerful driver of current epidemic trends in Ukraine. Studies conducted in 2012 estimated the number PWID in Ukraine at 310,000.¹³⁸ HIV prevalence rates among PWID have fluctuated in recent years. According to a 2015 survey, HIV prevalence among this population increased to 21.9% from the 2013 estimate of 19.7%; despite a downward trend from observed in previous years (2008-2009 – 22.9%, 2011 – 21.5%). The cities with highest rates include Dnipropetrovsk (39.7%), Cherkasy (36.3%), Donetsk (33.5%), Chernihiv (32.4%) Simferopol (32.3%), Bila Tserkva (29.9%), Poltava (29.7%), Mykolaiv (28.8%), and Odesa (27.5%).¹³⁹

According to international recommendations by the WHO, the United Nations Office on Drugs and Crime (UNODC), UNAIDS and other international agencies, comprehensive programs for pwid should include the following components:

- Syringe and needle distribution and exchange programs
- Opioid substitution therapy and other forms of drug dependence treatment
- HIV Counseling and Testing (HCT)
- ART
- STI prevention and treatment
- Condom distribution programs for PWID and their sexual partners
- Target information and awareness programs for the public aimed at PWID and their sexual partners. Prevention, vaccination, diagnosis and treatment of viral hepatitis
- Prevention, diagnosis and treatment of TB

HIV programs for PWID a national policy priority as

outlined by the following National HIV Programs strategic objectives:

1. Ensure access to prevention programs for key populations
2. On a continuous basis, cover at least 35% of opioid dependent PWID with ST programs.

In order to address issues such as drug abuse & crime, public health and national security the Cabinet of Ministers of Ukraine issued directive № 735 (of 08.28.2013) “The national drug policy for the period until 2020.” This strategy identifies interventions for reducing supply and demand of illicit substances, and balancing the governmental response between punitive measures (e.g., enforcement of anti-drug trafficking laws) and compassionate policies for substance users. While forward thinking, implementation of this strategy is currently hampered by a lack of political will.

Prevention activities

Preventing HIV transmitted through injection drug use is key to reducing the spread of HIV in Ukraine. Needle exchange programs provide access to sterile equipment and safe disposal methods through stationary or mobile facilities, and/or through pharmacies, free of charge. In 2015, the total number of distributed syringes was 19,439,211, which is less than the number of syringes distributed in previous years (20,460,483 in 2014 and 23,880,308 in 2013). Given an estimated population size of 310,000 PWID, the number of syringes distributed 2015 was 62.7 syringes/person, which is less than in previous years (66.0 syringes/person in 2014 and 77.0 syringes/person in 2013). It has been estimated that to support harm reduction efforts and positively impact HIV-associated risk behaviors among PWID, 180 syringes/person annually should be made available, a benchmark that has not been reached in Ukraine. Therefore the effectiveness of the program remains limited.

Over the past three years evaluating effectiveness of prevention programming for PWID has focused on measuring the number of HIV prevention services packages provided by NGOs, which include information about needle exchange, condoms and counseling

¹³⁸ Analytical report based on the results of the study “Sizing of key populations at risk of HIV in Ukraine: (2012) / G.Berleva, K.Dumchev, M. Kasianchuk et al. – K. International HIV/AIDS Alliance in Ukraine, 2012. – 68 p.

¹³⁹ HIV infection in Ukraine. Newsletter № 34. – Ukrainian Center for Control of Social Dangerous Diseases under the MoH”, Institute of Epidemiology and Infectious Diseases of the Gromashevskyi National Academy of Medical Sciences – K. – 2016

referrals. In 2015, the number of packages provided to PWID increasing slightly to 68.7% of the population from previous years (63.6% in 2014 and 63.3% in 2013). While these rates are promising, the sustainability of these programs has yet to be address adequately by the government, who only provides limited funding and relies heavily on outside NGO's (e.g. The Global Fund) to support these programs.

Due to the above funding issue, there is no designated central executive authority responsible for the implementation of prevention programs and provision of social services specific to this population. This is due to pending administrative reforms that were not completed either in 2010 or in 2014, when several executive bodies were disbanded (the State Social Service for Family, Children and Youth, the State Service on HIV AIDS and Other Socially Dangerous Diseases), while their function were not properly delegated to other agencies.

Substitution maintenance therapy

Opioid based substitution, or substitution maintenance, therapy (also referred to as «medication-assisted treatment using agonists», «agonist replacement therapy», «therapy using agonists») is defined as the administration (under medical supervision) of a prescribed psychoactive substances to opioid dependent people, which are pharmacologically similar to those causing dependence, in order to promote treatment outcomes associated with recovery.¹⁴⁰

Substitution therapy blocks the psychoactive effects of illicit opiates (e.g. heroin). This prevents the effects of withdrawal symptoms, curbs cravings and helping drug dependent individuals recover from addiction. The benefits of this treatment are well known, and include a significantly reduction in secondary infections associated with injection behavior (HIV, TB, and HBC), stabilization of health, reduced mortality and a return to normal social activity.¹⁴¹ Substitution therapy also helps significantly reduce criminal activity among drug users, which creates favorable conditions for further positive changes.¹⁴²

No legislative barriers in Ukraine are preventing the

implementation of substitution therapy programs. Currently, there are a number of regulatory documents that directly indicate the need for its implementation. As of 01.01.2017, services were provided for 9,214 people, including 8,247 patients treated with methadone and 967 with buprenorphine, at 174 health facilities. Expanding these services for HIV-positive PWID could significantly improve their adherence to ART and reduce mortality.

Despite these promising figures, the number of eligible patients accessing these services falls short of targets set forth by the 2016 National HIV Program, which anticipated 14,621 person would be covered by these programs (a shortfall of 37%). Access to substitution treatment programs varies greatly by region. The proportion of opioid dependence individuals accessing these services averages only 21.5% of eligible persons, which falls short of the recommended 35%, and varies from 44.1% in the Vinnytsia oblast to 6.8% in the Odesa oblast.

Another barrier is that some regulations developed by local municipal health facilities are not consistent with national policy. In particular, while MoH order № 200 provides that opioid substitution therapy programs allow PWID to receive treatments sufficient for several days, which reduces the burden of daily clinic visits by the clients, not all regions have adopted this practice. Currently, substitution therapy is still an underutilized treatment alternative for PWID. Greater adoption of such programs will have positive effects on Ukrainian society by reducing burden of a variety of infection conditions (including HIV).

Decriminalization

Decriminalization of drug use for non-medical purposes, and possession for personal consumption, can managed primarily as a matter of law («de jure») or a matter of practice or policy («de facto»). De jure decriminalization is the removal of criminal sanctions with the optional use of civil or administrative sanctions, such as fines or education. De facto decriminalization (sometimes called depenalization) is the decision, in practice or as policy, to not apply criminal or administrative penalties for certain offenses. In de jure decriminalization models,

140 Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention: position paper / World Health Organization, United Nations Office on Drugs and Crime, UNAIDS. [Electronic resource] – Available at: http://apps.who.int/iris/bitstream/10665/42848/3/9241591153_rus.pdf

141 Bulletin of the World Health Organization – The Methadone Fix. [Electronic resource]. – <http://www.who.int/bulletin/volumes/86/3/08-010308/en/>

142 Substitution therapy. Analytical report. 2nd edition. International HIV/AIDS Alliance in Ukraine. Kyiv. 2005. [Electronic resource] – Available at: <http://aph.org.ua/wp-content/uploads/2016/08/substitutiontherapy.pdf>

personal possession and use remain unlawful but are not criminal. In de facto decriminalization models, personal possession and use remain criminal but may be addressed with alternative sanctions for offenders who are drug dependent or have committed minor crimes.

Recommendations for decriminalization and/or depenalization of drug possession for personal use include:

- **Raise the threshold of a minimum amount of drugs the possession of which entails criminal liability:** The legally determined minimum amount of drugs that does not entail criminal liability is too low, meaning that drug possession for personal use (i.e. not for sale) is still prohibited and is de facto punishable as a crime. Ukraine needs to change its laws to increase the amount of drugs that a person can possess for personal use without facing criminal liability in order to reflect actual drug use.
- **Cancel criminal and administrative liability for possession of small amounts of drugs not for sale:** Both decriminalizing and depenalizing the possession of small amounts of controlled substances “without intent to sell” is recommended. This means that such possession will not be deemed a criminal or administrative offense and will not be punishable.
- **Make sure that the law considers the pure amount of a prohibited substance without admixtures:** In many cases a prohibited substance may be transported or sold in a mixture of other substances (e.g. flour). However, when measuring the amount of drug in order to determine the need for, and severity of, criminal or administrative punishment it is important to take into account only the amount of a prohibited substance without admixtures (additives). This is especially important in Ukraine, where the amount of a drug a person possesses is measured including admixtures. It is necessary to amend the Government’s regulations to measure only the pure amount of a drug confiscated.

Criminal and administrative laws should not hamper the effective functioning of programs aimed at protecting the health of PWID and public health of the population

- **Lack of liability for storing (possessing) the drug residue in used drug injecting equipment or other items used for drug use:** In some cases, the law may be interpreted or applied to prosecute a person for storing residual amounts of drugs in used syringes or other injecting equipment. Such

interpretation and application of the law is counter-productive in terms of public health. It encourages unsafe disposal of a syringe or other equipment instead of encouraging safer disposal methods (e.g., needle exchange or pharmacies) where it can be exchanged for new sterile equipment. Currently, used syringes are either thrown out in public places or re-used. Furthermore, harm reduction program staff may also be subjected to potential liability for possession of used paraphernalia which is returned to a needle exchange facility or which they collect as part of outreach work. Ukraine must cancel legal liability for the storage of residual drug amounts. It is also necessary to clearly define (and ideally approve) legislation absolving harm reduction program workers and volunteers of legal responsibility for the distribution, or storage of drug use paraphernalia.

Alternative punishment for drug-related crimes for PWID

- **Alternative to imprisonment:** It is recommended that the country adopt and implement legislative provisions for alternative imprisonment for persons convicted of non-violent drug-related crimes (including offenses relating to personal drug use). This could include fines, temporary deprivation of the right to engage in certain activities (the deprivation period should be determined for each particular case and regularly reviewed by a court), a requirement to attend courses on drug use prevention and attend drug addiction treatment programs.

Reform of the system of registration of PWID

The current registration system is a serious access barrier for PWID attempting to use treatment services. Breach of the confidentiality of patients registered with public drug treatment facilities is a major restriction on their access to treatment (especially for poor people who include a disproportionately large number of PWID) who cannot afford anonymous treatment at a private health facility that can better protect their privacy. Recommendations include:

- Assess the system of registration of PWID: it is recommended to initiate an independent assessment of the effectiveness and economic efficiency of the registration system in order to reform, or abolition,

it if the assessment reveals a lack of effectiveness or even its negative impact on public health and human rights.

- Reform (or abolish) PWID registers: a priority should be abolition (or at least simplification) of the registration provisions contained in laws and regulatory documents that control the use of drugs and drug treatment services.
- Protect personal data of registered patients: If a form of registration remains, the country should provide more effective protections of protected health information, which should include the following legislative changes:
 - cancel legal obligation on the part of drug rehabilitation, and other health facilities, the requirement that staff inform law enforcement bodies of overdoses;

- abolish the right of law enforcement and prosecution agencies to demand such information; and
- prohibit drug rehabilitation and other health facilities from disclosing patients' personal information, except in limited circumstances.

Ensuing non-intervention by law enforcement agencies (police):

It is recommended that law enforcement agencies be instructed (i.e. bond in law) not to interfere in harm reduction (e.g., needle exchange) activities, including the work of outreach workers. Also, an agreement between law enforcement agencies and health authorities and/or NGOs implementing needle exchange to prevent safe operations of these programs.

Conclusions

Currently, the HIV epidemic in Ukraine is concentrated in vulnerable populations such as PWID. According to available data, there are an estimated 310,000 injection drug users in Ukraine, a large proportion of which are HIV-infected (prevalence, 21.9%).¹⁴³ This makes PWID the largest HIV-infected sub-population, which is why current prevention programs targeting PWID is an integral part of national HIV/AIDS policy.

Despite roadblocks, Ukraine has made considerable

progress preventing HIV among PWID. Official figures have shown a steady decrease both in the prevalence and incidence of cases among PWID. Also, MAT programs continue to develop using an integrated approach towards working with PWID. Due to these efforts, the regulatory framework has also been substantially improved. Despite these achievements more attention should be paid to policy enforcement and programmatic implementation efforts, and the elimination of interpersonal and structural barriers which marginalize PWID and hamper treatment efforts.

Key Recommendations

The Cabinet of Ministers of Ukraine

- Ensure implementation of the national drug policy strategy 2020 as they relate to PWID.
- Ensure adequate funding from the national and local budgets to implement HIV prevention programs for PWID, including procurements for MAT programs.
- Take steps to decriminalize and/or depenalize drug use for non-medical purposes and drug possession for personal use.

The Ministry of Health of Ukraine

- Scale up MAT programs based on the national HIV program goals.
- Ensure provisions for adequate psychosocial support services for MAT clients.
- Improve access to integrated services for HIV-infected PWID by ensuring they are located near places frequented by PWID and co-located within a single facility.
- Streamline interdepartmental interaction between the MoH, Interior Ministry, State Service of Ukraine for Narcotics Control with the goal of to enhancing prevention services and MAT effectiveness for PWID.

143 Behavior and HIV prevalence monitoring among people who inject drugs and their sexual partners. Y.H.Barska, Y.O.Sazonova. – K.: Public Health Alliance, 2016. – 130 p. [Electronic resource] – Available at: http://aph.org.ua/wp-content/uploads/2015/09/Monitoring-povedinky-SIN_PROEKT.pdf

- Improve information, education and communication among law enforcement agencies on MAT issues with the goal of increasing compassion toward MAT program clients.

The Ministry of Social Policy of Ukraine

- Initiate a social contracting mechanism for increasing the scope and effectiveness of HIV prevention programming among PWID.

Modifications to Drug Possession Laws

- Make modifications to MoH order 188 to change the legal definition of constitutes small, large and especially large sizes of illegal narcotics, psychotropic substances and precursors (approved by MoH order № 188 of 08.01.2000).

2.2. Adult Commercial Sex Workers (CSW)

Fundamental Principles

The state takes all necessary steps to reduce specific HIV vulnerabilities among adult commercial sex workers (CSW), including eliminating HIV-associated discrimination and providing equitable and sustainable access to comprehensive HIV services.

Existing Regulatory Documents

(I) International Documents and Guidelines

The International Guidelines on HIV/AIDS and Human Rights (Consolidated Version), 2006.

These guidelines were developed jointly by the Office of the UN High Commissioner for Human Rights and UNAIDS. Guideline 4 (b, c) specifically addressed CSW and urges states to repeal criminal law prohibiting sexual acts between consenting adults in private (including adultery, sodomy, fornication and commercial sexual encounters). Additionally, states should not be allowed to impede HIV prevention and care services for CSW.

With regard to adult sex work that involves no victimization, criminal law should be reviewed (with the aim of decriminalizing) and replaced with those focused on legally regulating occupational health and safety conditions to protect sex workers and their clients. Such efforts should also include provisions supporting safe sex among CSW and should not impede HIV prevention efforts.

Finally, criminal laws should ensure that CSW (especially

children) who have been trafficked or coerced into sex work are protected from prosecution. Law should assist trafficked persons in receiving medical and psychosocial support services, including those related to HIV.¹⁴⁴

UN General Assembly Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2014.

Recommendation 76 (b, d, e) calls on states to repeal laws criminalizing sex work practices, and to establish appropriate regulatory frameworks within which CSW can enjoy the safe working conditions to which they are entitled.

The report recommends that states implement programs and educational initiatives to allow sex workers access to appropriate, quality health services; to provide human rights education for health professionals, and to create an environment conducive to collective action and participation. The report also calls on states to introduce monitoring and accountability programs to ensure that CSW rights are safeguarded, and includes policies and practices to protect against violations.¹⁴⁵

144 International Guidelines on HIV/AIDS and Human Rights, UNAIDS, 2006. [Electronic resource] – Available at: <http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesru.pdf>

145 UN General Assembly Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2014. [Electronic resource] – Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/131/20/PDF/G1013120.pdf?OpenElement>

WHO Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations, 2014. These guidelines recommend that countries take measures to eliminate the police practice of arresting, without good reason, CSW. This includes using possession of condoms as evidence of sex work and grounds for arrest. Additionally, it addresses eliminating extortion, as it is an abuse of power, by police against CSW. It also recommends and increased focus on providing access to contraception.¹⁴⁶

UNAIDS: The fast-track strategy to end the aids epidemic by 2030. This strategy sets new global treatment targets for eliminating the HIV epidemic by 2030. It states that,

“By 2020, 90% of all people living with HIV will know their HIV status. By 2020, 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy. By 2020, 90% of all people receiving antiretroviral therapy will have viral suppression.”

The 90-90-90 goals support effective HIV prevention and treatment services, including the use of improved HIV detection methods, HIV treatments and patient retention techniques. This strategy can succeed only if the needs and interests of populations such as CSW are met.

It also recommends that countries develop their own approach to accelerate action and set their interim targets for 2020 based on global goals. Ukraine is among 30 countries that plan to implement this strategy, which includes increasing adapting its regulatory framework and improving prevention and treatment interventions for adult CSW.

(II) National legislation, policies and procedures

The Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social status of people living with HIV” (Article 14). This law provides for the equal protection and prohibition of discrimination against people member of KP and PLHIV, including CSW.¹⁴⁷

The Code of Ukraine on Administrative Offenses (Article 181-1). This document proclaims that prostitution can be brought to administrative responsibility (a type of legal liability), which includes a warning or fine of five to ten tax exempt minimum incomes for citizens. A repeat offense committed within a year after the imposition of an administrative penalty is punishable by a fine of eight to fifteen tax exempt minimum incomes.¹⁴⁸ During an HIV policy assessment conducted in 2011, it was recommended that the decriminalization of CSW (which was changed to an administrative offense) will reduce the number of contacts with police and the likelihood of violence or abuse by law enforcement officers.¹⁴⁹

National HIV Program.¹⁵⁰ This document sets targets for HIV prevention efforts among CSW.

MoH Order № 104 (of 02.08.2013). This order includes CSW on the list of KP at the greatest HIV risk in Ukraine. This population is included on this list as they meet the official HIV risk criterion of, “unprotected sexual acts with more than one partner, unprotected commercial sex”.¹⁵¹

146 Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations. WHO, 2014. [Electronic resource] – Available at: <http://who.int/hiv/pub/guidelines/keypopulations/en/>

147 Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social status of people living with HIV”, of 12.12.1991, № 1972-XII (approved by Law of Ukraine № 2861-VI of 12. 23.2010). [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/2861-17>.

148 149 The Code was supplemented with Article № 181-1 in accordance with By-law № 4134-11 (of 06.12.87), as amended in accordance with Law №’s 55/97-VR of 02.07.97. [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/80731-10/page11>

149 HIV policy assessment: Futures Group Ukraine, Health Policy Project, 2011. [Electronic resource] – Available at: http://www.healthpolicyproject.com/pubs/30_UkraineHIVPolicyAssessmenFull%20Annex%20AL%20UKR.pdf

150 Law of Ukraine № 1708 (of 10.20.2014) “On approving the National special social program to prevent HIV/AIDS in 2014-2018” [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/1708-18>

151 MOH order № 104 (of 02.08.2013) “On approving the List of and Criteria for identifying key populations at risk of HIV infection” [Electronic resource] – Available at: http://moz.gov.ua/ua/portal/dn_20130208_0104.html

Gaps in National Legislation to be Addressed

In Ukraine, the average CSW is 28.5 years old, with the majority (81%) reporting sex work as their main source of income. Many CSW seek services from NGOs, who state that 61% of their clients report some form of sex work.¹⁵² Female CSW face increased levels of discrimination, abuse and violence. A recent study among female CSW in Ukraine revealed that they routinely face violence from law enforcement officers, including sexual coercions.¹⁵³ These practices are not only discriminatory, but dangerous as they perpetuate the HIV epidemic. The same study also showed that police rank second, only to sex industry clients, as perpetrators of violence toward female CSW. Specifically, female CSW reported psychological (53%), sexual (17%), physical (38%), and economic (34%) abuse and or violence at least once during the past year.¹⁵⁴ The main factors affecting level of violence among CSW are working conditions, risky behaviors (e.g., alcohol, drugs), and the effects of criminalization. Taken together, the status of CSW as a marginalized population at increased risk for HIV exposure and infection is evident.

Decriminalization

From 2001- 2006, Ukraine had provisions that not only criminalized the commercial sex work industry, but also CSW themselves. In 2006, with support of international NOG's, the criminal liability provisions of Article 303 of the Penal Code of Ukraine were changed to decriminalize prostitution by law № 3316-IV (of 01.12.2006) "On amendments to the Penal Code of Ukraine concerning responsibility for human trafficking and involvement in prostitution". Despite this progressive action, legislative and policy gaps affecting CSW persist due to poor coordination between governmental branches at both the national and local levels. Such legal inconsistencies affect access to HIV prevention and support services,

as well as perpetuates discrimination and abuse for this vulnerable population.

Delivery of Services

Currently, there are no national- or local-level legal regulations regarding responsibility for establishing or providing HIV prevention services to CSW. This undermines the sustainability of future prevention efforts, as an anticipated Global Fund capital phase-out of current programs is in progress. While the National HIV program recommends that prevention efforts for this population continue, no legal or regulatory provisions as to how to do it are in place to support this. Finally, the approved standards of service delivery to KP do not work in practice.¹⁵⁵

Prevention services provided to CSW include a WHO/UNAIDS recommended comprehensive assistance package (containing informational materials, condoms, lubricants, counseling, referrals to health facilities, psychological and legal assistance) provided by NGOs and mobile clinics.

By the end of 2018, programs will be expected to reduce the number of new HIV infections by 50% among CSW. However, accurate data on the number of infections among CSW from 2014 (when the program was launched) is unavailable, making an accurate evaluation of this programs success difficult.

It is anticipated that 36,000 CSW will have received prevention services by the end of 2018. According to the National AIDS Program, 45% of CSW should receive services through outreach efforts. This target is calculated based on the estimated number of female CSW. The coverage for prevention services for male CSW is

152 Analytical report based on the results of the 2013 bio-behavioral study "Monitoring of behavior and spread of HIV among female commercial sex workers, as a component of second generation HIV epidemic surveillance", 2014, International HIV/AIDS Alliance in Ukraine

153 Life of people vulnerable to HIV: people who inject drugs, female sex workers, men who have sex with men, International Charitable Foundation "International HIV/AIDS Alliance in Ukraine, 2014 [Electronic resource] – Available at: <http://www.aph.org.ua/assets/ukr/Ethnographics.pdf>

154 Analytical report "Investigating Causes Influencing Manifestations of Violence against FSW as a Factor of Increased Risk of Exposure to HIV", International HIV/AIDS Alliance and Analytical Center "Socio-consulting", 2012. [Electronic resource] – Available at: http://www.aidsalliance.org.ua/ru/library/pdf/viol_full_ru.pdf

155 Joint order of the Ministry of Family, Youth and Sports, Ministry of Labor and Social Policy, MoH order №'s 3123/275/770 (of 09.13.2010) "On approving standards of social service delivery to key populations", [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z0903-10>

covered by a separate component of the National program. However, as these targets are linked to MSM behavior broadly, targets specific for male CSW cannot be separated out.

Program Funding Allocations

According to the National HIV Program, the Global Fund will continue to finance prevention efforts for CSW until 2017. Beyond that, assistance will be phase-out and local budgets will be responsible for these expenditures beginning in 2018. While this approach is expected to ensure a sustainable provision of HIV prevention services, local budgets currently lack funding for services targeting adult CSW, and there is a concern that this will continue, as they may not be seen as a priority for local authorities. Although, some regions have begun to earmark financial resources in their local programs for these services, they do not have a regulatory mechanism to procure these services through their local budget.

A separate component of the National HIV program states that local authorities should allocate funding for C&T services for a specific number of at-risk persons, including members of various KP groups. There is currently a gap between the planning of quantitative prevention coverage targets for C&T and financial support. This gap exists because there are no targets or reporting requirements for C&T services of CSW, despite a mandate that these services be offered to CSW by the Ministry of Health of Ukraine order № 415 (of 08.19.2005).¹⁵⁶

It should be noted that the distribution of testing coverage between different KP and the general population is not legislatively regulated. Therefore, the priority (in terms of the 90-90-90 strategy targets) to detect HIV among key populations is not necessarily a priority for local jurisdictions (even though this is an expectation of the National HIV program). Currently, there is no standard method for calculating the number of KP members in a particular jurisdiction. When jurisdictions have attempted

to estimate this they rely on financial allocations of the National HIV program, which is a flawed methodology as it not legislatively regulated and are developed for a very different function.

Estimating KP population sizes (including CSW) for a given region is recommended in a letter by the State Service of Ukraine for Social Diseases for the purpose of designing regional HIV programs for 2015-2018.¹⁵⁷ In reality, local authorities plan HIV testing coverage targets for their entire population, which negates their ability to prioritize C&T services for specific KPs. Taken together there is a severe disconnect between how HIV testing targets are determined based on different agency mandates, local jurisdiction interpretations of rules and regulations and administrative priorities.

Social Support Services

The National HIV program aims to provide both KP and PLHIV access to legal assistance by 2018. The goals of this program is to support awareness-raising interventions aimed at eliminating discrimination and to systematically monitor and evaluate stigma and discrimination levels. Additionally, one 2018 target is to build public tolerance for PLHIV and KP to reduce discrimination levels by 50%.

Despite these goals, no national funds are allocated to achieve these targets.¹⁵⁸ As Ukraine does not have any systematic approaches for implementing anti-discrimination activities, expenditures are covered by the Global Fund and other NGO's. This includes no established system for registering reported cases of discrimination against CSW when they seek medical and prevention services. Additionally, no mechanisms for supporting or creating prevention services exist either. Information about cases of discrimination are collected by NGOs, which use it to advocate for additional support. Unfortunately, true legal protections for CSW are lacking, which encourages abuse.

156 MOH order № 415 (of 08.19.2005) "On improving voluntary HIV counseling and testing". [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/z1404-05>

157 Letter № 222/1/3362 of the State Service of Ukraine for Social Diseases, dated 12.25.2014

158 HIV policy assessment: Futures Group Ukraine, Health Policy Project, 2011

http://www.healthpolicyproject.com/pubs/30_UkraineHIVPolicyAssessmenFull%20Annex%20AL%20UKR.pdf

Conclusions

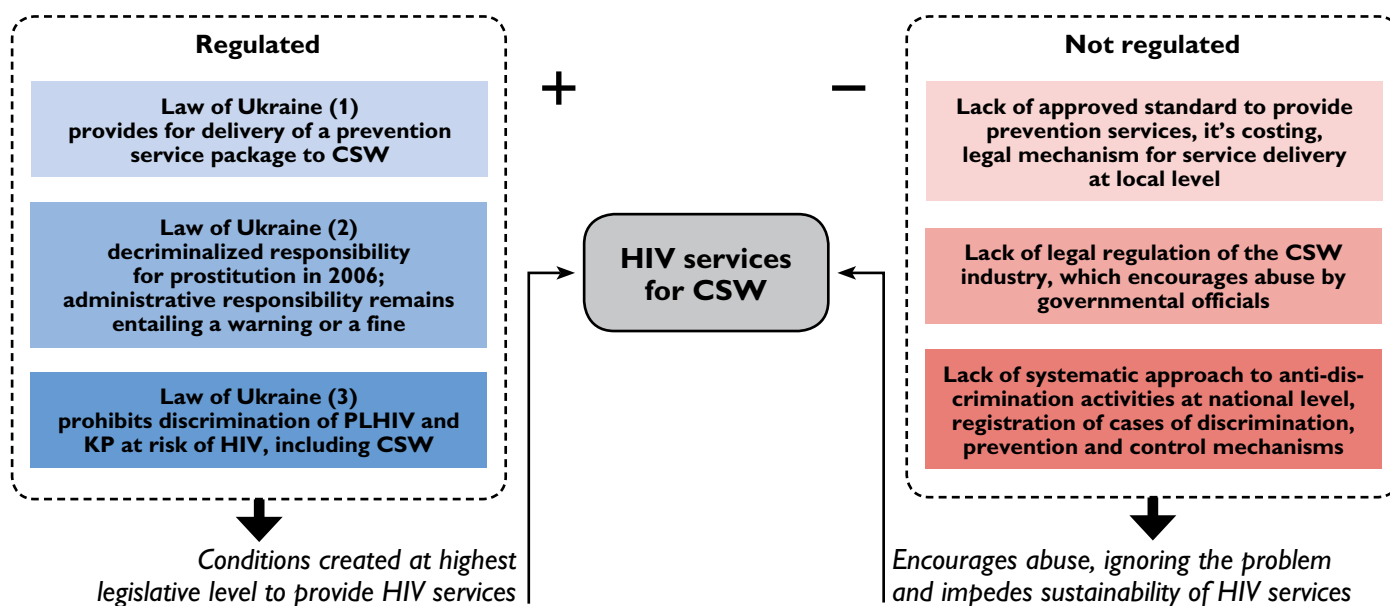
In Ukraine, female CSW are considered a KP vulnerable to HIV infection primarily because they often times engage in condomless sex with multiple partners of unknown status. Additionally, CSW face increased interpersonal and structural barriers to receiving prevention services (see Figure 1 below). In 2012, it was estimated that there were 80,000 female sex workers aged 15-59 in Ukraine (0.5% of the total female population). In 2015, it was estimated that 6,000 (7%) of the countries HIV-infected persons were female CSW. Although high, the proportion of HIV-infected CSW has been steadily decreasing over the last few years: 2009 – 12.9%, 2011 – 9.0%, 2013 – 7.3%.¹⁵⁹ This trend is attributed to the success of prevention interventions sponsored by NGOs.

It should be noted that Ukrainian society has not embraced comprehensive policies regarding the regulation of the sex industry, with legislatures continuing to debate the legalization of prostitution. On several

occasions, the Verkhovna Rada of Ukraine has introduced bills, the most recent being in 2015, intended to regulate prostitution within commercial sex venues by having CSWs register with the state (№ 3139 of 09.18.2015). This bill is intended to decriminalize illegal income obtained through commercial sex venues. Its secondary purpose is to alleviate the impacts of human trafficking and other forms of cohesion which tend to take place in unregulated commercial sex venues. The bill would have also provided social service guarantees for CSW.

It is feared that, given Ukraine's current difficult socio-economic and political environment, CSWs will continue to be marginalized and the growing commercial sex industry will continue to be pushed underground. This move will not only impact access to needed medical and social services CSWs need, but will affect their ability to engage in HIV-prevention activities, putting CSWs and their clients at increased risk for infection.

Figure 1: Overview of Legal regulations Effecting HIV Prevention Services for CSW



(1) Law of Ukraine № 1708 (of 10.20.2014) "On approving the National special social program to prevent HIV/AIDS in 2014-2018";

(2) Law of Ukraine "On amendments to the Penal Code of Ukraine concerning responsibility for human trafficking and involvement in prostitution";

(3) Law of Ukraine "On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social status of people living with HIV"

¹⁵⁹ Life of people vulnerable to HIV: people who inject drugs, female sex workers, men who have sex with men, International Charitable Foundation "International HIV/AIDS Alliance in Ukraine, 2014 <http://www.aph.org.ua/assets/ukr/Ethnographics.pdf>

Key Recommendations

The Verkhovna Rada of Ukraine:

- Enact legislation to regulate the commercial sex industry and enable CSW to access prophylactic and social security services.

The Ministry of Health of Ukraine

- Review national prevention targets for KP (specifically CSWs), ensuring that they aligning with the 90-90-90 global targets; make necessary changes to local HIV programs to support these goals.
- Conduct feasibility studies designed to test innovative strategies for working with CSWs, with the goal of increasing HIV prevention efforts (e.g., HIV testing and other prevention services) among this population.

- Develop and approve a list of CSW specific prevention services, this includes their delivery standards and planning and procurement strategies through local budgets.
- Operationalize an administrative mechanism for monitoring compliance with legislation on the rights of patients and mandatory reporting (registration) of reported cases of discrimination against CSW when they seek medical or prevention services. Develop an effective mechanism for reporting to and preventing future incidents.
- Use a systematic approach to planning anti-discrimination activities and consider them as part of the provision of all health services.

2.3. LGBT (Lesbian, Gay, Bisexual and Transgender) Communities: Men who have sex with men (MSM) and Transgender persons

Fundamental Principles

The State takes all appropriate measures to identify and reduce HIV risk factors affecting MSM and transgender individuals. Eliminate HIV-related discrimination affecting these populations and provide equitable and sustainable access to comprehensive HIV-related prevention and treatment services.

Existing Regulatory Documents

(I) International Documents and Guidelines

The International Guidelines on HIV/AIDS and Human Rights (Consolidated Version), 2006.¹⁶⁰

Guideline 4 (b) of this documents states, “Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed with the aim of repeal. In any event, they should not be allowed to impede provision of HIV prevention and care services.”

UN Human Rights Council, Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity, 2011.¹⁶¹

This document includes recommendations affecting LGBT legal rights globally, including one to: “Repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct.” This document also addresses the need to end discrimination and violence against transgendered person globally. It states that discriminatory laws adversely targeting LGBT persons need to be overturned in the seventy-six countries in which they still exists.¹⁶²

WHO Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations, 2014.¹⁶³

This document identifies HIV risk factors that affect both MSM and transgender persons, as well as provides a number of interventions and treatment recommendations, including: the use of a condom during sex; introduction, expansion and promotion of condom and lubricant distribution programs for incarcerated or detained persons; and PrEP guidelines for at risk individuals. These programs should ensure equal and unrestricted access with anonymity for any persons seeking these services.

(II) National legislation, policies and procedures

The Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social status of people living with HIV”

(approved by Law № 1972-XII of 12.12.1991; aka– The HIV Law). Article 14 of The HIV Law provides for the equal protection free from discrimination against member of KP and PLHIV, and specifically addresses that these extend to LGBT persons.¹⁶⁴

¹⁶⁰ International Guidelines on HIV/AIDS and Human Rights. 2006 consolidated version, UNAIDS [Electronic resource] – Available at: <http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesru.pdf>.

¹⁶¹ UN Human Rights Council, Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity, 2011. [Electronic resource] – Available at: http://www.ohchr.org/documents/issues/discrimination/a_hrc.19.41_english.pdf.

¹⁶² State-sponsored homophobia: a world survey of laws criminalizing same-sex sexual acts between consenting adults, International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), Brussels, May 2011, p. 9.

¹⁶³ Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations. – WHO. – 2014. – p. 61.

¹⁶⁴ Law of Ukraine № 1261 (of 12.23.2010) “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social status of people living with HIV”, [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/2861-17>

Law of Ukraine “On measures to prevent and counter discrimination in Ukraine.” This law prohibits discrimination (including discrimination based on sexual orientation) and guarantees equal rights, protections and freedoms under the law for all persons. Although it addresses discrimination based on sexual orientation, it doesn't explicitly extend these protections to gender non-conforming populations (e.g., transgender persons).

National HIV Program.¹⁶⁵ This document sets guidelines and recommendations for HIV prevention efforts among MSM populations. Currently, similar guidelines for other sexual minorities or gender non-conforming populations (e.g., transgender persons) do not exist.

MoH Order № 104 (of 02.08.2013). This order contains a list of key HIV risk populations (KP), for which MSM is one. It also explicitly identifies “unprotected anal sexual acts,” are part of official risk criterion. It currently does not address the needs of transgendered persons.¹⁶⁶

Gaps in National Legislation to be Addressed

Gaps in national legislation affect members of the LGBT community differently. The HIV Law identifies specific KP for which tailored programmatic planning and intervention efforts at the national level are developed for. While MSM is listed as a KP, it does not adequately address other sexual minorities (e.g. bisexual individuals) or other gender non-conforming populations (e.g. transgender persons). Due to these limitations, HIV programming designed for the LGBT community is tailored exclusively towards MSM and their sexual partners. Current WHO guidelines recommend that the Ukrainian government expands their list of KP to include bisexual and transgender persons.

According to Ukrainian legislation all forms of discrimination are prohibited, including discrimination on the basis of sex and beliefs. Guarantees of equality of rights and freedoms are specifically listed as:

- Equality of persons and/or group of persons before the law
- Respect for dignity of every human being
- Equal opportunities for persons and/or group of persons

Despite this edict, no legal mechanisms exist that specifically address these constitutional rights as they pertain to members of the LGBT community. This lack of clarity contributes to wide spread harassment, discrimination and social stigma towards LGBT persons.

Gaps Affecting LGBT Persons

Despite multiple laws designed to eliminate social discrimination against persons residing in Ukraine, none specifically outline specific protections for LGBT persons. Such inconsistencies cause confusion and lead to discriminatory practices which primarily affect LGBT persons. For example, provisions restricting blood donation, which do not meet current international standards, still exist in Ukrainian law. According to Article 2 of the Law of Ukraine, donation of blood (and its components) is voluntary.¹⁶⁷ This allows any able-bodied adult in Ukraine (18 years and over) who has passed a physical examination, and who has no contraindications determined by the central executive body, to donate. This law is contradicted by MoH order № 385 (of 07.01.2005), which states that donation of blood (and its components) can be restricted, and that persons who engage in risk behavior, including homosexual behavior, may be excluded (an exceptions that specifically target MSM).

In late April 2015, at the request of a French Court of Law, the European Court of Human Rights decreed that it was unacceptable to prohibit homosexuals from donating blood as HIV detection methods can ensure the safety of the blood supply. According to the Law of Ukraine **“On the enforcement of decisions and application of European Court of Human Rights practices”** (of 02.23.2006), “... the Ukrainian government is mandated to apply this

165 Law of Ukraine № 1708 (of 10.20.2014) “On approving the National special social program to prevent HIV/AIDS in 2014-2018”. [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/1708-18>

166 MOH order № 104 (of 02.08.2013) “On approving the List of and Criteria for identifying key populations at risk of HIV infection”. [Electronic resource] – Available at: http://moz.gov.ua/ua/portal/dn_20130208_0104.html

167 Law of Ukraine “On donation of blood and its components”: [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/239/95-bp>.

decree to correct this inconsistency.”¹⁶⁸ Taken together, Ukrainian Law regarding blood and blood product donation practices are outdated and inconsistent with international guidelines and legal statutes.

Another legal issue affecting the health and social status of LGBT persons is marriage equality. Lack of marriage equality has been shown to affect the social status and health of LGBT person by perpetuating social stigmas, which indirectly contribute to discrimination on the basis of sexual orientation and gender identity.¹⁶⁹ Additionally, lack of marriage equality legislation deprives LGBT persons of all legal and governmental rights and privileges which married couples and/or partnerships are entitled to. This lack of formal legal status for couples may directly or indirectly affect LGBT persons and their partners to acquire HIV prevention and treatment services.

Gaps Affecting Transgender Persons

Discriminatory practices affecting transgender persons are those limiting access to sex reassignment surgery and bureaucratic roadblocks which make changing one's gender on official documents prohibitive. Issues such as cost, limited personal resources and bureaucracy within the mental health system make acquiring sex reassignment legal and medical services difficult to obtain for the majority of residents. With respect to sexual reassignment surgery, article 51 of the **“Fundamental health care legislation of Ukraine”** provides that a patient may request this procedure at a health facility if they can demonstrate a biomedical or socio-psychological need. If approved, a doctor issues a medical certificate. Previously, there are no clearly defined standards for what constitutes biomedical or socio-psychological need, making the certification process arbitrary. To amend

Conclusions

LGBT persons continue to suffer increased discrimination, violence and other human rights violations in Ukraine. Given the extensive social stigma experienced,

this, the MoH issued order № 60 (of 03.03.2011) **“On improving medical care provision for persons who need sex identity reassignment (correction)”** has been introduced/enacted.¹⁷⁰ Despite this legislation gaps still exist in the system, and most transgender person who either does not wish to, cannot afford to, or is unable to due to a medical condition is still face difficulty in obtaining legal recognition based on their gender identity.

With respect to obtaining legal recognition of changes to one's gender status on official documents (e.g., passports and identification cards), a person is required to change: 1) their last (patronymic) name, and 2) official identification card (which contains a hidden sexual identity marker). Prior to changing any legal documents a person must have already completed sexual reassignment surgery, as the law requires that they have “adequately” modifying primary sexual characteristics in order to be eligible. Such a standard discriminates against pre-op transgender persons who are either not able to, or choose not to, have full sex reassignment surgery but wish to have the legal and social recognition correspond to their gender identity.

Although these gaps are not directly related to HIV prevention or treatment, they highlight the multiple forms of persistent social stigma that transgender persons face related to their gender identity and expression. Due to this increased stigma, transgender persons often face increased risk from sexual violence and often engage in unsafe sexual behaviors to survive.¹⁷¹ Working to alleviate these legal and medical roadblocks will improve the health of transgender persons living in Ukraine, which will reduce HIV risk and reduce barriers for accessing to needed services.

discriminatory legislation complicates their access to HIV related prevention, medical care and other social services. Legal discriminatory practices against LGBT

168 Article 17 of The Law of Ukraine “On the enforcement and application of the European Court of Human Rights rulings” (of 02.23.2006, № 3477-IV). [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/3477-15>.

169 Halkitis, PN (2012). Obama, Marriage Equality, and the Health of Gay Men. *Am J Public Health*. 102(9): 1628–9.

170 MoH order № 60 “On improving medical care provision for persons who need sex identity reassignment (correction)”. [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z0239-11>

171 Reisner SL, Poteat T, Keatley J, Cabral M, Mothopeng T, Dunham E, Holland CE, Max R, Baral SD (2016). Global health burden and needs of transgender populations: a review. *Lancet*. 388(10042):412-36.

persons are not only dictated by societal norms, but are supported by the countries regulatory environment. Although all forms of discrimination are technically illegal, the law fails to provide concrete mechanisms to ensure adequate legal protections. These practices perpetuate the marginalization of LGBT persons, and impedes access to essential HIV prevention and treatment services. Taken together, many LGBT persons in Ukraine find it difficult to

live full and productive lives. Studies show that the most significant barrier faced in Eastern Europe is stigma on the basis of sexual orientation and gender identity by the both the general public and medical community,¹⁷² Laws and policies that focus on decreasing these burdens will alleviate many of the physical and mental health burden experienced by these marginalized groups.

Key Recommendations

The Verkhovna Rada of Ukraine

- Add the terms “sexual orientation” and “gender identity” to the list of anti-discriminatory groups contained in the Law of Ukraine.
- Enact marriage equality legislation, including a recognition of civil partnerships.

The Cabinet of Ministers of Ukraine

- Develop a regulatory procedure for changing all official documents (e.g., birth certificate, passport, employment records, diplomas, identification codes) so both pre- and post-op transgender persons can officially change their sexual identity to ensure respect for their dignity and privacy.

The Ministry of Health of Ukraine

- Make amendments to Law of Ukraine № 104 (of 02.08.2013) to include other sexual minorities (e.g., bisexual individuals) and gender non-conforming populations (e.g., transgender persons) in the list of key HIV risk populations (KP).

- Remove language from MoH order № 60 identifying barriers related to obtaining permission for sex re-assignment surgery, which includes the following, “...being in a marriage, having children under the age of 18, homosexual practices”.
- Make amendments to the list of contraindications limiting blood donation and transmission to remove references to risky behaviors and homosexual practices.
- Revise medical and nursing school educational curricula to include training modules on stigma, discrimination, and LGBT health.

Oblast State Administrations

- Strengthen the community involvement of LGBT persons at the local level, including HIV/AIDS coordination mechanisms (i.e. councils), to better address their specific health and service needs as they related to regional HIV/AIDS program and planning efforts.

172 Analysis of legislation related to LGBT rights and HIV in Eastern Europe and Central Asia. - Eurasian Coalition on Male Health. – Tallinn, Estonia. – 2016.

2.4. Women

Fundamental Principles

The State takes all necessary measures to improve the health of women. This includes working to reduce HIV vulnerabilities and disparities; eliminating HIV-related discrimination and stigma; and providing women equitable and sustainable access to comprehensive HIV services. In Ukraine, women comprise 44% of the epidemic, tend to contract the disease younger and are 2-4 times more likely to become infected through heterosexual contact than their male counterparts. These statistics are alarming, as it signifies that Ukraine may be transitioning from a concentrated to a more generalized HIV epidemic.

Existing Regulatory Documents

(I) International Documents and Guidelines

Convention on the Elimination of All Forms of Discrimination against Women (ratified by Ukraine on 03.12.1981).¹⁷³ Article 1 of this document states that,

“For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

This document has been described as an international bill of rights for women. And contains multiple parts related to women’s global rights and protections, including:

- **Part I** (Articles 1-6) focuses on non-discrimination, sex stereotypes, and sex trafficking.
- **Part II** (Articles 7-9) outlines women’s rights in the public sphere with an emphasis on political life, representation, and rights to nationality.
- **Part III** (Articles 10-14) describes the economic and social rights of women, particularly focusing on education, employment, and health. Part III also includes special protections for rural women and the problems they face.

- **Part IV** (Article 15 and 16) outlines women’s right to equality in marriage and family life along with the right to equality before the law.

Convention № 111 concerning Discrimination in respect of Employment and Occupation (ratified by Ukraine on 08.04.1961).¹⁷⁴ Article 1 of this document states,

“For the purposes of this Convention the term “discrimination” includes: (a) any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

Beijing Declaration and Platform for Action for the Empowerment of Women, 1995.¹⁷⁵ To promote a set of principles relating to gender equality, a Platform for Action was formulated to promote women’s empowerment. This was based on evidence that women and girls’ rights are an integral and indivisible component of universal human rights.

UN Sustainable Development Goals (2016 – 2030), 2015.¹⁷⁶ This document contains goals related to sustaining social and economic progress for all global citizens. Goal 5 specifically outlines gender equality issues.

Goal 5. Achieve gender equality and empower all women

173 [Electronic resource] – Available at: http://zakon5.rada.gov.ua/laws/show/995_207.

174 [Electronic resource] – Available at: http://zakon5.rada.gov.ua/laws/show/993_161.

175 [Electronic resource] – Available at: http://zakon2.rada.gov.ua/laws/show/995_507.

176 UN Sustainable Development Goals (2016 – 2030), 2015. [Electronic resource] – Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

and girls. This goal will intended to be achieved by:

- End all forms of discrimination against women and girls everywhere.
- Eliminate all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation.
- Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations.
- Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies, and the promotion of shared responsibility within the household and the family as nationally appropriate.
- Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.
- Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Program of Action of the ICPD and the Beijing Platform for Action and the outcome documents of their review conferences.

(II) National legislation, policies and procedures

Constitution of Ukraine.¹⁷⁷ Article 24 of this document provides for equal constitutional rights and freedoms of citizens; additionally it states that these rights are given without privileges or restrictions based on race, skin color, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics. With respect to women's rights it specifically states that,

“Equality of the rights of women and men shall be ensured by providing women with opportunities equal to those of men in public, political and cultural activities, in obtaining education and in professional training, in work and remuneration for it; by taking special measures for the protection of work and health of women; by establishing pension privileges; by creating conditions that make it possible for women to combine work and motherhood; by adopting legal protection, material and moral support of motherhood and childhood, including

the provision of paid leave and other privileges to pregnant women and mothers.”

Law of Ukraine “On the ratification of the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women” (approved by Law № 946-IV of 06.05.2003).¹⁷⁸ This document regulates the parity status of women by legally ensuring their equal rights and opportunities, eliminating discriminations based on sex, and provides special measures aimed at ensuring gender inequality granted by the Constitution and laws of Ukraine.

Law of Ukraine “On preventing family violence” (approved by Law № 2789-III of 11.15.2001).¹⁷⁹ This Law establishes legal and organizational foundation for the prevention of family violence and defines the entities and institutions responsible for family violence prevention.

The Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social protection of people living with HIV” (amended by Law № 2861-VI).¹⁸⁰ Article 10, Section 2 of this document entitles PLHIV to be granted the latest reproductive technologies will be available to prevent vertical (mother-to-child) transmission of HIV.

The Law of Ukraine “On approval the national social special HIV/AIDS prevention program for 2014-2018” (approved by Law № 1798-VIII, of 10.20.2014). This law provides for set of provisions aimed at preventing vertical HIV transmission designed to empower women to:

- Manage their reproductive life
- Receive information about HIV/AIDS and HIV prevention
- Seek HIV C&T services
- Know their HIV status
- Refuse HIV testing or refuse to know test results
- Make an informed decision with regards to breastfeeding

177 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/254%D0%BA%96-%D0%B2%D1%80>.

178 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/946-15>.

179 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2789-14>.

180 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2861-17>.

The section “**Determining optimal solutions to problems based on a comparative analysis of options,**” provides for the use of gender-oriented approaches to planning and implementing HIV/AIDS prevention activities. This includes creating a system of high quality and accessible HIV treatment services (especially among KP) that provides care and social support for PLHIV as part of health-care reform. Gender-oriented approaches should deliver medical and social services to all PLHIV, and support HIV prevention efforts that are accessible in all HIV prevention activities.

The Penal Code of Ukraine.¹⁸¹ Women’s rights are protected by the Penal Code of Ukraine is designed to protect the rights of women but also states:

- Illegal abortion by a person who does not give a special medical education resulting in a lasting health disorder, infertility or death (Article 134)

- Human trafficking, recruitment, transportation, harboring, transfer or receipt of a person for exploitation purposes (Article 149). Exploitation means all forms of sexual exploitation, including: pornography, forced labor or forced delivery of services, slavery or practices similar to slavery, servitude, and forced pregnancy, rape, sexual coercion, sexual intercourse with pre-pubescent minors, or child solicitation (Articles 152-156).

The Cabinet of Ministers directive № 717 “On approving the National program to ensure equal rights and opportunities of women and men by 2016”.¹⁸² This directive’s goals and objectives are to continue government efforts to achieve gender parity.

Gaps in National Legislation to be Addressed

Although the government of Ukraine has enacted important legislation to ensure the government fully meets all international guidelines with respect to women’s rights, but compliance with these legal provisions have not been fully implemented into provisions at the regional level, which causes confusion. For example, in 2016,

the MoH updated its regulatory documents for vertical transmission of HIV so as to meet current international guidelines and best practices as specified by the WHO. However, local governments have not fully implemented these guidelines, jeopardizing access to services for some HIV-infected pregnant women.

Conclusions

Globally, multiple risk factors put women at increased risk for HIV-infection, including intimate partner violence, CSW, and substance use. Intimate partner violence often times leads to dis-empowerment, as women must rely on male sexual partners for their contraceptive and reproductive health. This leaves women at increased risk of sexual violence, HIV and other STIs. Female CSW often lack power to choose barrier protection methods (e.g., condoms) with their client. HIV-infected female who inject drugs tend to be dependent on male providers (dealer or sexual partners) for protection and are forced to share injection equipment. Also, women who inject drugs have limited access to prevention, care and support services such as MAT programs. Taken together, this

evidence highlights the different interpersonal, social and structural barriers women experience and why targeted prevention and treatment programming is essential.

A study conducted by the Center of Social Expertise of the Institute of Sociology of the National Academy of Sciences of Ukraine as part of the project “Gender and HIV: from paternalism to active participation” (implemented by Network with the financial support of the UN Entity for Gender Equality and the Empowerment of Women - UNWomen) reported that women are less able to protect themselves from the impact of HIV and AIDS because of economic, social, legal, political and cultural barriers.¹⁸³

181 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2341-14>.

182 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/717-2013-%D0%BF>.

183 Gender-sensitive services on HIV / AIDS: Analytical Research Report. - K: Engineering, 2011. – 62, [Electronic resource] – Available at: <http://network.org.ua/upload/Yulia/11.pdf>

In 2016, the charity Positive Women conducted a survey, commissioned by UNWomen, which revealed the high levels of discrimination and violence HIV-infected women face. Results revealed the need to increase efforts in both the governmental and non-governmental sectors to address problem areas. Below are topics that the majority of respondents noted were in need of reform:

- Providing sexual education (93%) and integrated services in the areas of HIV, sexual, and reproductive health (98%).
- Obtaining evidence about the impact of HIV on reproductive and sexual life (97%).
- Addressing gender-based violence and human rights violations (98%).
- Providing medical care in penitentiary institutions (91%).
- Treating Hepatitis C and TB, providing assistance for people with disabilities (98%).
- Need for effecting changes to decriminalize issues related to sexual, reproductive health and HIV (91%).
- Ensuring human rights for women and girls through legislation (96.5%) and the provision of high quality services (95%).

Researchers emphasize that the greater gender discrimination in Ukrainian society is, the lower the social

status of women will be; putting them at increased risk of HIV infection. Therefore, programs to increase gender equality and female empowerment are vital to supporting effective HIV prevention and treatment efforts.

According to the study “Gender aspects of rendering of services to PLHIV,” conducted by the GFK UKRAINE for Network (December 2012), 8% of women confirm that they have HIV-positive status as the consequence of sexual violence, and 12% admitted to being vulnerable to sexual violence. Results from another study “Prevention of violence against women in complicated life circumstances: development status and activity maintenance,” conducted in 2012, revealed that 100% of the HIV-positive women respondents reported suffering from violence related to their HIV status.

Additionally, this survey revealed that among persons working in HIV service organizations, 26% reported incidents of sexual violence towards women caused a new HIV transmission.¹⁸⁴ Additionally, HIV service employees report more violence and abuse against women than men; this includes cases of psychological (70% women, 46% men) and physical (57% and 35%, respectively) violence, economic dependence (49% and 23% respectively), contraceptive sabotage (54% and 15% respectively) and drug use (15% and 13% respectively). Additionally, they reported that many women are coerced by men into abortions (46%) or childbirths (31%).

Key Recommendations

The Ministry of Health of Ukraine

- Align MoH regulatory documents with Ukraine’s government and local legislation to improve access to assisted reproductive technologies to prevent vertical transmission of HIV among HIV-infected women.
- Ensure the implementation of evidence based vertical transmission programs countrywide.

The Ministry of Health of Ukraine and the Ministry of Social Policy with the involvement of international and non-governmental organizations as well as the media

- Ensure development and implementation of the targeted programming aimed at raising awareness, building leadership skills, and boosting self-esteem of women living with HIV.
- Reform psychological rehabilitation, legal advice, and support services for women who are victims of violence. It is advisable that such services be provided directly by social services centers and NGOs.

¹⁸⁴ Report on the implementation in Ukraine of the UN Convention on the Elimination of all Forms of Discrimination against Women, 2014, UNDP and the Ministry of Social Policy, [Electronic resource] – Available at: <http://www.unfpa.org.ua/files/articles/5/59/CEDAW%20report%20ukr.pdf>.

2.5. Children and Youth

Fundamental Principles

The State takes all appropriate measures to reduce HIV vulnerabilities for children and youth. This includes eliminating HIV-related discrimination and disparities, as well as providing equitable and sustainable access to comprehensive HIV-related services.

Existing Regulatory Documents

(I) International Documents and Guidelines

UNICEF Convention on the Rights of the Child (of 11.20.1989; ratified by VR directive № 789-XIII on 02.02.1991).¹⁸⁵ This international document ensures that children are afforded the full range of basic human rights – including civil, cultural, economic, political and social – as other global citizens, so they can develop to their full potential. This convention also recognizes that persons under 18 often need special care and protections that adults do not.

The International Guidelines on HIV/AIDS and Human Rights (Consolidated Version), 2006.¹⁸⁶ Guideline 8 of this document states that communities should promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through dialogue, specially designed social and health services, and support from community groups.

2003 CRC General Comment No. 3 on Children and HIV/AIDS.¹⁸⁷ Para. 8 of this document states:

“Of particular concern is gender based discrimination combined with taboos or negative or judgmental attitudes to sexual activity of girls, often limiting their access to preventive measures and other services. Of concern also is discrimination based on sexual

orientation. In the design of HIV/AIDS-related strategies, and in keeping with their obligations under the Convention, States parties must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS. States should, in particular, recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.”

2004 UNICEF Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS (2004).¹⁸⁸ This framework outlines five key strategies affecting children, which include:

1. Strengthen the capacity of families to protect and care for orphans and other children made vulnerable by HIV and AIDS
2. Mobilize and strengthen community-based responses
3. Ensure access to essential services for orphaned and vulnerable children
4. Ensure that governments protect the most vulnerable children
5. Raise awareness to create a supportive environment for children affected by HIV and AIDS

185 [Electronic resource] – Available at: [//zakon0.rada.gov.ua/laws/show/995_021](http://zakon0.rada.gov.ua/laws/show/995_021).

186 International Guidelines on HIV/AIDS and Human Rights, (2006 Consolidated Version: organized jointly by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Program on HIV/AIDS (UNAIDS). [Electronic resource] – Available at: <http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesru.pdf>.

187 UN Committee on the Rights of the Child (CRC). General comment No. 3 (2003): HIV/AIDS and the Rights of the Child. [Electronic resource] – Available at: <http://www.refworld.org/docid/4538834e15.html>.

188 2004 UNICEF Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS. [Electronic resource] – Available at: https://www.unicef.org/ceecis/Framework_English.pdf.

UNAIDS, 2016–2021 Strategy on the Fast-Track to end AIDS.¹⁸⁹ This document states that young people, especially young women and adolescent girls, need access to combination prevention services to empower them to protect themselves from HIV.

(II) National legislation, policies and procedures

The Constitution of Ukraine (1996).¹⁹⁰ Article 52 states that children shall be equal in their rights regardless of origin and marital state of parents. It also states that any violence or exploitation of a child shall be prosecuted by law and parents caught abusing their children can be deprived of their parental rights. It also states that subsistence and upbringing of orphan children is the responsibility of the State.

Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social protection of people living with HIV” (amended by Law № 2861-VI of 12.23.2010).¹⁹¹ This law pays considerable attention to HIV testing of children and adolescents, including:

- Full C&T services for individuals aged 14 and older is provided on a voluntary basis, including well-informed consent
- Testing of individuals under 14 is provided upon request and well-informed consent of their parents or legal representatives.
- Children deprived of parental care are placed in the custody of special full-time public institutions for children or boarding schools. Testing of individuals under 14 who are mature enough to understand the consequences and advantages of C&T services is provided at the request of their legal representatives under well-informed consent.

This law regulates what information is provided to parents, or authorized representatives, of a child regarding HIV. It addresses infection, monitoring, treatment, and prevention procedures to be followed by health professionals and guardians. As part of this law it requires that parents, or authorized representatives, of an infected

child provide a written agreement that they will follow all medical recommendations. It also extends certain rights for parents who care for HIV-infected children, including extended work leave to care for a sick child, temporary disability benefit and an additional 10-day annual vacation days until the child reaches the age of 18. This law also guarantees a monthly government benefit payment, the amount of which is determined by the Cabinet of Ministers of Ukraine.

Law of Ukraine “On approving the national special purpose social HIV/AIDS prevention program for 2014 – 2018” (approve by Law № 1708-VII of 10.20.2014).¹⁹² This law includes a series of requirements related to HIV prevention, care and treatment among children and young persons, and includes provisions such as:

- The government will conduct sociological and epidemiological studies among the general population and KP, which includes children who are from broken homes, homeless or neglected
- Expand information and educational programs that support tolerance toward KP and PLHIV
- Provide teachers with age appropriate educational materials that support an interactive approach to improving HIV prevention knowledge among students
- Assist with the planning of gender-sensitive HIV/AIDS sex education programs for youth
- Assist children who are from broken homes, homeless or neglected in acquiring HIV-related treatment, education, social and prevention services
- Ensure early detection for children born to HIV-infected mothers using state-of-the-art diagnostic technologies.

Cabinet of Ministers directive № 48 “On approving Standard regulations on the Center for HIV-positive children and young people” (of 02.15.2006)¹⁹³; **Ministry of Family, Youth and Sports order № 4941 “Standard minimum package of social services for children living with HIV, and children born to HIV-positive mothers, members of their families”** (of 12.18.2008). These

189 [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf

190 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

191 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2861-17>.

192 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/1708-18>.

193 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/148-2006-%D0%BF>.

documents contains a list of social services for at-risk children and children living with HIV in Ukraine.

Cabinet of Ministers directive № 389 “On approving nutrition standards for HIV-positive children and children with AIDS” (of 07.27.2014).¹⁹⁴

This directive regulates nutrition standards children with HIV/AIDS, and includes calorie-based food substitution standards.

MoH order № 551 “On approving the ART clinical protocol for adults and adolescents” (of 07.12.2010)¹⁹⁵; and **MoH order № 92 “Unified Clinical Protocol of primary, secondary (specialized) and tertiary (highly specialized) care (UKCPMC) for children “HIV infection”** (of 02.24.2015). These orders regulate the medical care and treatment protocols for HIV-infected children and adolescents.

Gaps in National Legislation and Policy to be Addressed

Several important gaps related to HIV services for children need to be addressed in order to improve their health. Currently, the law does not specifically address health protections of newborns infected during childbirth through vertical (mother-to-child) transmission. Furthermore, targeted HIV education is needed for adolescents who lack basic HIV knowledge. Finally, there is an opportunity to improve policies that protect children living with HIV from stigma and discrimination.

Currently, if an HIV-infected mother refuses prophylactic treatment to prevent vertical (mother-to-child) transmission to a newborn there is no policy for engaging social services to resolve this issue. This is because privacy laws prohibit the disclosure of a mother's HIV status. Unfortunately, this puts the newborn at increased risk for infection.

Ukraine has made progress in countering HIV infection rates among adolescents. This includes ensuring that key prevention and treatment interventions are focused on the needs of adolescents, including: reproductive and sexual health education; C&T services; needle exchange; HIV harm reduction programs focused on MSM and FSWs; social services (e.g., psychological support) and treatment (e.g., ART) programs for HIV-infected person.

Adolescents tend to have reduced access to HIV C&T services and seeking care and treatment later than adults. This is partially due to inconsistencies in C&T policies which adversely affect their ability to get testing services. These include, violations of standards and adolescents' rights; a conflict between the legislative provision that

enables adolescents (starting at the age of 14) to receive testing without their parents' (guardians') consent and MoH order that regulates the C&T procedure; and instances where testing service charged a fee.

It is also important that more attention be paid to high risk adolescents, estimated to be 219,000 persons aged 10-19 years old (according to 2015 data) nationally. Unfortunately, no estimates within specific cities/regions exist for this group. Also, this problem is compounded by the fact that HIV service organizations do not provide adolescent targeted programming, donors do not consider adolescents an important HIV risk group, donors and HIV service organizations often try to avoid legal issues as there is no clear legislation concerning high risk adolescents, and NGOs and social services lack effective interventions for this group or just don't cooperate with law enforcement bodies when it comes to these adolescents.

A 2015 research study showed that HIV prevalence among adolescents (aged 15–19) who inject drugs is 2.7%, and 3.1% among adolescent MSM (aged 14–19).¹⁹⁶ Estimated HIV prevalence among all high risk adolescents is 1.9%. Despite higher levels of ART coverage among adults, in most regions HIV-infected children and adolescents have limited access to quality social and psychological support. In 2015-2016, the “Situational assessment to strengthen the component on working with adolescents as part of the national HIV/AIDS program” was conducted (O.Yaremenko Ukrainian Institute of Social Studies with technical support from UNICEF). This in-depth analysis identified important gaps

194 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/389-2014-%D0%BF>.

195 [Electronic resource] – Available at: http://moz.gov.ua/ua/portal/dn_20100712_551.html.

196 [1] Calculations based on studies conducted among PWID and MSM as part of the Project “Engaging local organizations to develop monitoring and evaluation of the HIV/AIDS response” (METIDA project), implemented by the international charitable foundation “Public Health Alliance” and funded by US CDC as part of the *U.S. President's Emergency Plan for AIDS Relief (PEPFAR)*.

in key interventions among children and adolescents affecting service delivery. However, this assessment had some limitations, specifically it lacked local level data.

Another issues among adolescents is the stigmatization of youth living with HIV. HIV-infected youth are sometimes the target of criticism by their peers, adults and even

Conclusions

Given the considerations contained in the UN Committee on Children's Rights under General Procedure 20 (approved on 12.06.2016), which addresses adolescents' rights, it is necessary to evaluate whether Ukrainian national legislation and policies comports to this documents recommendations. It may also be necessary to incorporate these provisions into the Concept of the National Program, "National action plan to implement the UN Convention on the Rights of the Child in 2017–2021" to ensure these protections are realized for residents of Ukraine.

Continuous advocacy will be required to ensure that adolescent are afforded access to all services highlighted by the 2014-2018 National HIV/AIDS program. This includes at risk populations, including children and adolescents from broken homes, who are homeless or neglected. To improve adolescents' access to C&T services it is necessary to align MoH regulatory documents with the law, which will enable adolescents aged 14-18 to receive anonymous HIV testing without parental consent.

It is Also necessary to improve the treatment protocols and support services for HIV-infected adolescents. One priority is to develop policies for delivering services to at

mentors (e.g, teachers). This problem is often exacerbated in small towns and villages where confidentiality is easily breached. Finally, government funding for HIV-infected youth is too low (10 tax-free minimum incomes, which is 170 hryvna per month) and does not meet their basic nutritional and care needs.

risk adolescents to increase the coverage of 14-17-year-olds receiving services. Furthermore, it is necessary to tighten control and enforce the standards ensuring adolescents have access to necessary services. This includes improving the training of health professional who work with adolescents, programs to engaged adolescents in prevention programs either online, through mobile devices or social networks.

To enhance the effectiveness of the adolescent component of the National HIV/AIDS Program it is important to develop multi-sectoral cooperation that use evidence-based best practices in working with adolescents. This includes allocating adequate resources for HIV interventions among adolescents both by international donors and through national and local budgets.

Finally, improving the quality of educational materials and school curricula around HIV prevention need to be addressed. This includes conducting regular evaluations of students' knowledge, introducing interactive teaching methods for improving knowledge, mandating HIV and STI education in senior school grades, vocational schools and higher education institutions, and informing parents and school administrations to these issues.

Key Recommendations

The Ministry of Health of Ukraine

- Take all necessary measures to implement the Law of Ukraine "On prevention of the acquired immunodeficiency syndrome (AIDS) and social protection of population" with a special focus on the rights of children and youth who are affected by HIV/AIDS or are at risk of HIV infection (including children from broken homes or those who are drug dependent) by providing them with access to youth-friendly confidential services.
- Approve regulations to enable adolescents aged 14-18 to receive HIV testing anomalously without parental consent.
- Support and introduce an effective referral system for adolescents to receive adequate health and social services

- Develop standardized protocols on prevention services for at risk children and adolescents
- Regulate the referral procedure for adolescents newly diagnosed with HIV
- Ensure adequate socio-medical support for children and adolescents to improve ART adherence

The Ministry of Health and the Ministry of Social Policy of Ukraine (with involvement of international and non-governmental organizations as well as the media) should

- Engage children and adolescents in innovative programming in order to evaluate their opinions and needs concerning these important issues, and to create a convenient and accessible information environment for most at risk populations.
- Implement a peer-to-peer program for promoting healthy lifestyles and harm reduction among children and adolescents.
- Pass legislation to provide HIV prevention services for at risk adolescents.
- Develop strategies to help adolescents and children overcome stigma, discrimination and criminalization

and ensure that services are provided without stigma or discrimination to those in need.

- Ensure prevention services are tailored to the needs of adolescents from different age, gender and socio-economic groups.
- Increase the the capacity of organizations working with children and adolescents so that they can provide the full range of comprehensive services with minimal need for referrals.
- Improve the skills of professionals who provide services to at risk adolescents, This includes engage peer volunteers to develop regional support networks.
- Review the government allocates for children living with HIV to ensure that it provides them with minimum adequate dietary and social support needs.
- Improve the surveillance of at risk youth to accurately assess the population size.

Oblast State Administrations

- Develop and implement strategic HIV prevention plans for at-risk children and adolescents at the regional and local level.
- Include interventions on prevention, treatment, and care for at risk children and adolescents in regional HIV programs.

2.6. Prisoners

Fundamental Principles

The State takes all necessary measures to reduce HIV vulnerabilities among prisoners, to eliminate HIV-related discrimination, and to provide equitable and sustainable access to comprehensive HIV services.

Existing Regulatory Documents

(I) International Documents and Guidelines

The European Prison Rules (European Council) Recommendations Report (of 02.12.1987, adopted by the Committee of Ministers on 01.11.2006).¹⁹⁷ This report defines the human rights, decent living conditions, legal aid, work activities and health protection that are to be provided in prisons.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (of 12.10.1984; ratified by decree № 3484-XI on 01. 26.1987).¹⁹⁸ This convention provides that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

The un Standard Minimum Rules for the Treatment of Prisoners (of 08.30.1955).¹⁹⁹ This document reflects general principles and practices for the treatment of prisoners. These are the minimum conditions considered the United Nations views as acceptable, and are designed to provide prisoners with protection from ill-treatment (especially in regard to disciplinary action and measures to restore order during unrest). Paragraph 2 of Rule 24 provides that health-care

services should be organized in close relationship to that of the general public health administration and in a way that ensures continuity of treatment and care (including HIV, tuberculosis and other infectious diseases), as well as for drug dependence.

(II) National legislation, policies and procedures

Penal Code of Ukraine (approved by Law № 1129-IV of 07.11.2003).²⁰⁰ This law regulates the procedure for, and conditions of, the execution of criminal sentences. Specifically, Article 116 provides that prisoners should be provided with medical services at appropriate health facilities offering therapeutic, preventive and sanitary services.

Law of Ukraine “On Pre-Trial Detention” (approved by Law № 3352-XII of 06.30.1993).²⁰¹ Paragraph 4 of Article 11 of this law provides that medical services, as well as therapeutic, preventive and anti-epidemic activities provided at in pre-trial detention facilities should be organized and carried out in accordance with health care legislation. The Cabinet of Ministers establishes procedures for providing such medical care facilities for prisoners and detainees in pre-trial detention, public and municipal health facilities.

Law of Ukraine “On the State Penitentiary Service of Ukraine” (approved by Law № 2713-IV of 06.23.2005).²⁰² This law mandates that staff respect

197 The European Prison Rules (European Council); Recommendations, Report of 02.12.1987 (adopted by the Committee of Ministers on January 11, 2006 at the 952nd meeting of the Ministers' Deputies). [Electronic resource] – Available at: http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules_978-92-871-5982-3.pdf.

198 [Electronic resource] – Available at: http://zakon2.rada.gov.ua/laws/show/995_085.

199 [Electronic resource] – Available at: http://zakon2.rada.gov.ua/laws/show/995_212.

200 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/1129-15>.

201 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/3352-12>.

202 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/2713-15>.

the human and civil rights of prisoners and detainees, and comply with legislation regarding the execution and serving of criminal sentences.

MoH order №'s 1348/5/572 “On approving The Procedure for organization of medical services for prisoners” (of 08.15.2014).²⁰³ This order designates the basic principles of medical care delivery to prisoners provided at State Penitentiary Service (SPS) health facilities (or other health facilities providing medical care to prisoners). It also regulates medical procedures and protections specific to HIV-positive prisoners.

Ministry of Justice of Ukraine order №'s 2186/5 “House rules of penal institutions” (of 12.29.2014).²⁰⁴ This order outlines principles of operational and medical services for prisoners at SPS facilities. Overall, these institutions must ensure supervised clinical examination of prisoners, providing them with appropriate medical care and determining their overall functionality; and provide outpatient, inpatient and specialized treatment as necessary.

Ministry of Justice of Ukraine order № 460\5 “House rules of SPS detention centers” (of 03.18.2013).²⁰⁵ This order regulate the operation of medical units at SPS detention centers.

Ministry of Justice of Ukraine order №'s 239/5/104 “On approving the interaction between health facilities of the State Penitentiary Service of Ukraine and other health institutions in

providing medical assistance to detainees” (of 02.10.2012).²⁰⁶ This order regulates the interaction between health facilities of the SPS and other health institutions in providing medical assistance to detainees.

Joint order of the Ministry of Justice, the Ministry of Health, the Interior Ministry and the State Service of Ukraine for Narcotics Control №'s 821/937/1549/5/156 “On approving the interaction between health facilities of the law enforcement bodies, detention and correctional centers to ensure continuity of medication-assisted (substitution) therapy” (of 10.22.2012).²⁰⁷ This order details SPS policies regarding the administration of medication-assisted therapy (including ART) for prisoners. These policies extend to SPS detention centers, pretrial detention facilities and correctional centers.

Joint order of the Ministry of Justice, the Ministry of Health and the Interior Ministry of Ukraine №'s 692/775/1311/5 “On approving the interaction between health facilities, territorial law enforcement bodies, penal institutions and pretrial detention centers to ensure the continuity of HIV-positive persons’ follow-up, clinical and laboratory monitoring and antiretroviral therapy delivery” (of 09.05.2012).²⁰⁸ This order was developed to ensure the HIV-infected prisoners receive appropriate follow-up care, including clinical and laboratory monitoring and ART.

Gaps in National Legislation to be Addressed

Current regulatory documents do not provide a proper basis for delivering comprehensive HIV prevention and treatment services in SPS facilities or pretrial detention centers. The major gaps in national policy and regulatory environment include:

- There is a low level of HIV C&T coverage among prisoners. Many prisoners do not receive this benefit because most SPS penitentiaries refused to allow prisoners/detainees to undergo testing. The

overall effect is that C&T is either not conducted, or conducted improperly.

- There is limited access to universal protections (condoms, lubricants, disinfectants) by detainees and prisoners.
- Slow confirmatory testing protocols for infected prisoners/detainees by SPS laboratories hinders timely prescription of ART.

203 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/z0990-14>

204 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z1656-14>

205 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z0445-13>

206 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z0212-12>

207 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z1868-12>

208 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/z1615-12>

- Gaps in MAT program continuity at SPS institutions, which makes recovery difficult for substance using individuals making relapse common.
- There is a lack in coordination between SPS health facilities and non-SPS facilities providing HIV C&T and treatment services.
- Regulatory, administrative and financial barriers to quality care delivery to persons with co-occurring conditions, such as: TB, substance abuse, viral hepatitis, and mental health.
- Inadequate governmental funding of HIV interventions for prisoners, currently these services are funded by outside donor.

Conclusions

International strategies and standards supporting HIV prevention and treatment efforts for infected prisoners/detainees are addressed in many international documents such as the: *Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Prison Rules, and the un Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules).²⁰⁹

Although these documents address important policies and guidelines pertinent to this population, a more unified approach (in the form of a comprehensive plan or report) that can easily be adopted by governments such as of Ukraine may be a more effective. It's important to note that the above-mentioned documents contain only few requirements concerning the legal status of HIV-infected prisoners. For example, the *European Prison Rules* require that the medical practitioner ensure that HIV-infected prisoners are not isolated for that reason alone (Rule 42). Unfortunately, due to the lack of a clear comprehensive plan, SPS medical service personnel who report to the administration of a particular correctional facility often do not follow this guideline as it has no clear enforcement authority.

In 2015, improving the quality of care for prisoners and detainees was identified as a priority of the SPS.²¹⁰ As prisoners are one of most-at-risk KPs, they are eligible for services from comprehensive prevention programs. In 2014, 33 HIV service NGOs worked at pretrial detention and other SPS run facilities to provide HIV services, including prevention kits to 52,291 prisoners (52.3% of the

target).²¹¹ Kits include free condoms, lubricants, disposal hygiene kits and information materials on subjects such as *HIV prophylaxis, Living with HIV* and *HIV Testing*.

In 2014, Global Fund financing helped conduct 49,716 HIV rapid tests among prisoners, covering 67.7% of all prisoners and detainees (in 2013 – 53.8%). Among those tested, 1,409 cases were confirmed positive. Despite this success, future funding is in jeopardy as Global Funds for such programs will end by 2018. Currently, governmental support for these prevention programs unfunded, and with no plans for either harm reduction or MAT programs in these institutional settings; despite that such interventions are safe, evidence-based and could have a decisive impact on HIV prevention among these population groups.

The low level of legal awareness among HIV-positive prisoners/detainees in Ukraine is a persistent problem effecting care and treatment. Another persistent issue is that HIV-infected prisons have limited access to quality medical care (including ART medications). At the beginning of 2016, 1,995 persons had received ART at SPS health facilities. While this is promising, the actual need is twice this. Upon released many lose ART coverage because of the lack of coordination between the SPS facilities and other health facilities or NGOs. There are also discrepancies in official data. According to the SPS, 4,198 HIV-infected persons were excluded from medical surveillance (follow-up) at their health facilities. Subsequently, according to the AIDS service health facilities, this figure is only 1,905. Taken together, HIV services for prisoners and detained individual is sub-optimal as it is underfunded and there is poor coordination of patient care by the SPS and other institutions.

209 Results of the survey of prisoners from key populations on the status of their rights and freedoms: methodological manual / K. A. Avtukhov, A.P. Mulshymenko, T.S. Yablonska., I.S. Yakovets. – K. PALYVODA A. B., 2015. – 98 p

210 Priorities in the activity of the State Penitentiary Service of Ukraine. [Electronic resource] – Available at: http://kvs.gov.ua/Dost_publik/Propozicii_2015.pdf

211 2014-2018 National HIV program progress report (2014). [Electronic resource] – Available at: http://www.moz.gov.ua/ua/portal/pgrep_AIDS_2014_01.html

Key Recommendations

The Ministry of Health of Ukraine and the State Penitentiary Service of Ukraine

- Make amendments to the joint order of the Ministry of Justice and MoH “On approving the procedure for providing medical care to prisoners,” to include:
 - 1) providing a document to all prisoners/detainees informing them of their rights that must be signed;
 - 2) the right to choose a physician and to additional (alternative) counseling about C&T test results or prescribed treatment.
- Mandate each SPS health facilities to hire a general practitioner – a family physician who has knowledge of the specific medical and psychological needs of HIV-infected persons.
- Incorporate HIV-specific learning modules into postgraduate and training curricula for general practitioners/family physicians and persons working at SPS health facilities that address medical and psychological care, as well as ethical and confidentiality, related to HIV treatment and prevention.
- Include a requirement in penal system workers job descriptions ensuring they are skilled at communicating with HIV-positive people and AIDS patients. Also, they must be able to perform their normal duties to these individuals without discrimination.
- Develop state accreditation standards for SPS health facilities to assess their compliance with regulatory documents in the area of HIV/AIDS in accordance with the Cabinet of Ministers’ directive № 765 “On state accreditation of health facilities”.
- Amend regulatory documents that would allow NGOs to take part in non-governmental oversight of the performance of penitentiary system health personnel in providing medical care for HIV-infected prisoner.
- Develop guidelines specific to the rights of HIV-infected patients in the penitentiary system.
- Streamline cooperation between SPS health facilities and AIDS service centers in order to improve coordination of patient records between these institutions.
- Review national program targets for prisoners to increase prevention program coverage to at least to 80%.
- Review the definition of the minimum prevention service package for prisoners to eliminating existing gaps and inefficiencies.

**EQUAL OPPORTUNITIES
AND
LEGAL PROTECTION**

III. EQUAL OPPORTUNITIES AND LEGAL PROTECTION

3.1. Political, Social and Cultural Life

Fundamental Principles

People living with HIV have equal rights under the law, which includes the right to participate in political, social and cultural life without discrimination. The state also guarantees the right to freedom of peaceful assembly and association for all persons, including member of KP, PLHIV, as well as their advocates, family members and service workers.

Existing Regulatory Documents

(I) International Documents and Guidelines

European Convention on Human Rights (1950).²¹² Several articles of this document address fundamental humans rights afforded to all persons, including PLHIV. This includes, Art. 9: “Freedom of Thought, Conscience and Religion”; Art. 10: “Freedom of Expression”; Art. 11: “Freedom of Assembly and Association,” and Art. 14: “Prohibition of Discrimination.”

UNGASS Declaration of Commitment on HIV/AIDS, 2001. Para 58 of this document states,

“Human rights and fundamental freedoms for all are essential to reduce vulnerability to HIV/AIDS and increase respect for the rights of people living with HIV and AIDS. By 2003, enact, strengthen and enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination, and to ensure the full enjoyment of all human rights and fundamental freedoms of people living with HIV and AIDS and members of vulnerable groups. In particular, ensure their access to: education, inheritance, employment, health care, social and health services, prevention, support, treatment, information and legal protection, while respecting their privacy and confidentiality, and develop strategies to combat stigma and social exclusion connected with the epidemic.”

UN Political Declaration on HIV/AIDS, 2006.²¹³ Para. 21 of this document states,

“Emphasizes that people living with, at risk of, and affected by HIV should equally enjoy all human rights and equal participation in civil, political, social, economic and cultural life, without prejudice, stigma, or discrimination of any kind.”

(II) National legislation, policies and procedures

The Constitution of Ukraine (1996).²¹⁴ Articles 21-68 of Title 2 addresses citizens’ rights, freedoms and duties. Under the Constitution, these include civil (personal), political, socio-economic, cultural and spiritual rights and freedoms.

Political rights are determined by Ukrainian citizenship and can be exercised only by citizens who are 18 or older. The exercise of these rights enables them to participate in political life and the administration of state affairs (Articles 36, 38-40). Citizens may influence the national government at all levels through their deputies and public opinion on all domestic and foreign policy issues. Political rights also include protection of public health or protection of rights and freedoms of other persons.

212 Ratified by Law № 475/97-BP of 07.17.97. [Electronic resource] – Available at: http://zakon2.rada.gov.ua/laws/show/995_004.

213 UNGASS Declaration of Commitment on HIV/AIDS (2001). [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/sub_landing/files/aidsdeclaration_en_0.pdf.

214 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

Social and economic rights and freedoms are the foundation of all human rights, and covers important areas of life such as: property, labor relations, health, recreation, and contribute to material, spiritual, physical and other socially important needs and interests. Articles 13, 14, 41 and 42 of the *Constitution of Ukraine* defines economic rights and freedoms, while Articles 43-49 define social rights and freedoms.

The cultural rights and freedoms include the right to education, the freedom of literary, artistic, scientific, and technical creative activities; the right to the product of one's intellectual and creative activity (Articles 53, 54 of the *Constitution of Ukraine*).

The Law of Ukraine “On prevention of diseases caused by Human Immunodeficiency Virus (HIV), and legal and social security of people living with HIV” (amended by Law № 2861-VI of 12.23.2010).²¹⁵ Para. 2, Article 14 of this law provides

that, “People living with HIV and populations at high risk of HIV {...} enjoy all rights and freedoms, envisaged by the Constitution and laws of Ukraine, and other regulatory and legal instruments of Ukraine.”

The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” (approved by Law № 5207-VI, of 09.06.2012).²¹⁶ Article 6 states that,

“...under the *Constitution of Ukraine*, generally recognized international law principles and agreements of Ukraine, all persons, irrespective of their particular characteristics, shall have equal rights, freedoms and opportunities to exercise them. Any form of discrimination by state authorities, authorities of the Autonomous Republic of Crimea, local governments and their officials, legal and natural entities, defined in Article 5 hereof, are prohibited.”

Gaps in National Legislation to be Addressed

Discrimination against persons of KP persists in Ukraine. In 2013 Ukraine conducted its second national opinion survey on *Stigma, Discrimination and Violations of Human Rights of People Living with HIV*.²¹⁷ Results indicated that 40% of respondents reported high levels of social stigma attributed to their HIV status. Interestingly, the level of discrimination experienced differed according to how respondent self-identified, with those disclosing being

either MSM, CSW or a PWID reporting higher levels of social stigma (42%) compared to those who did not self-identify (35%). This same trend could be found among those seeking medical services. While 11% of all respondents reported that they were refused medical services in the past year due to their HIV status, the proportion was higher among those who self-disclosed (14%), compared to those who did not (8%).

Conclusions

Although Ukraine's regulatory environment does not restrict the social or economic freedoms of either member of KP or PLHIV, high level of stigma and discrimination against these marginalized groups persist.

This significantly affects their behavior, self-esteem, and often prevents them from fulfilling their potential. More can be done to address stigma and discrimination against people living with HIV within Ukraine.

Key Recommendations

The Legislature of Ukraine

- Establish a legal process where members of KP or PLHIV can report grievances, or seek litigation, against

individual or institutions who discriminate against them based on health status, sexual orientation or profession.

215 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2861-17>.

216 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/5207-17>.

217 Analytical report based on the results of the PLHIV stigma index study – Stigma Index, Kyiv, 2014 http://www.stigmaindex.org/sites/default/files/reports/Ukraine%20Stigma%20Index_Report_UKR%202014-Ukr.pdf

The Ministry of Health of Ukraine

- Conduct a national information, education, and communication (IEC) social marketing campaign on

issues of equality and non-discrimination. It should specifically focus on HIV and be designed to foster tolerant attitudes toward PLHIV and member of KP groups.

3.2. Employment, Work

Fundamental Principles

PLHIV are entitled to employment which is equitable, safe and, if necessary, takes reasonable measures to accommodate them.

Existing Regulatory Documents

(I) International legislation

International Labor Organization Convention № 111 concerning Discrimination in Respect of Employment and Occupation (of 06.25.1958).²¹⁸

This document states that all member states pursue national policies promoting co-operation of employer and worker organizations, and other appropriate bodies, to prevent discrimination in the workplace.

International Labor Organization Convention № 102 concerning Minimum Standards of Social Security (of 04.27.1955; ratified by the Law № 1024-VIII of 03.16.2016).²¹⁹

This law establishes minimum standards of social security and health care assistance due to illness or unemployment as a result of occupational disease or industrial injury.

International Labor Organization Convention № 98 concerning the Right to Organize and to Bargain Collectively (1949).²²⁰

This document contains a number of provisions concerning the rights to collective bargaining.

(II) National legislation, policies and procedures

The Labor Code of Ukraine (approve by Law № 322-VIII of 12.10.1971).²²¹ This law regulates labor relations contributing to enhanced work performance,

quality, and productivity.

Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social protection of people living with HIV” (approve by Law № 1972-12 of 12.12.1991; amended by Law № 2861-VI of 12.23.2010).²²² Article 16 of this law prohibits the firing, limitation of rights, or denial of employment on the grounds of their disease status, for PLHIV or their families.

The Law of Ukraine “On approving the National special social HIV/AIDS prevention program for 2014-2018.”²²³ This law defined the rights of PLHIV, which includes provisions to prohibit discrimination, promote tolerance, and mandate safe working conditions for PLHIV.

The Law of Ukraine “On labor protection” (approve by Law № 2694-XII of 10.14.1992).²²⁴ This law formulates the basic principles behind employees’ constitutional right to life and health in the workplace. It also regulates occupational safety, health and environmental rules, and establishes a uniform procedure for ensuring workplace safety.

The Law of Ukraine “On personal data security” (approve by Law № 2297-VI of 06.01.2010).²²⁵ This law establishes security requirements for personal health data processing and prohibits unlawful disclosure.

218 [Electronic resource] – Available at: http://zakon5.rada.gov.ua/laws/show/993_161.

219 [Electronic resource] – Available at: http://zakon0.rada.gov.ua/laws/show/993_011.

220 [Electronic resource] – Available at: http://zakon5.rada.gov.ua/laws/show/993_004.

221 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/322-08>.

222 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2861-17>.

223 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/1708-18>.

224 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/2694-12>.

225 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/2297-17>.

The Law of Ukraine “On Social Dialogue in Ukraine” (approved by Law № 2862-VI of 12.23.2010).²²⁶ This law defines a legal basis for social dialogue in Ukraine. This includes developing and implementing a government social and economic policy to regulate labor, social and economic relations. The goal being to improving the quality of life, living standards, and social stability of citizens. The law is meant to introduce a continuous social dialogue for labor relations between executive authorities, employers and labor unions which addresses the needs of PLHIV (e.g., prevention of discrimination, building tolerance toward PLHIV, respect for their rights, workplace safety).

Law of Ukraine, “Fundamental health care legislation” (approved by Law № 2801-XII of

11.19.1992).²²⁷ Article 28 of this law provides for favorable work environment, education, welfare and recreation.

Cabinet of Ministers directive № 1642 “On approving the Procedure for and conditions of mandatory insurance of health workers and other persons infected by HIV in the workplace and in case of related disability or death, and the list of categories of health workers and other persons subject to mandatory insurance in case of HIV infection in the workplace, and related disability or death (of 10.16.1998).²²⁸ This procedure establishes the rights and guarantees of health workers and directs employers to insure employees in cases of HIV infection in the workplace.

Gaps in Policy and Regulatory Environment

Although Ukraine's current legislation prohibiting workplace discrimination and dismissal is intended to extend to HIV-infected persons, they are not HIV-specific and violation still occur. The effect is that equal and free access to employment

for PLHIV is only partially guaranteed, especially in the private sector. Currently, the government has no universal workplace HIV policies, and existing legislation lacks incentives for employers to develop and approve such programs.

Conclusions

Protection of rights of HIV-infected workers is a serious issue. Discrimination in the workplace creates social and economic barriers for PLHIV to exercise their rights and poses a threat to their economic and social stability. As the burden of treatment and social services for PLHIV who are unemployed, or underemployed, increases government spending and reduces the labor and consumer market, improving protections for HIV-infected workers has real economic benefit. In accordance with the national strategy for trilateral cooperation on HIV/AIDS in the workplace in 2012 - 2017 years,²²⁹ the negative effects of HIV/AIDS on workplaces globally include:

- Negative impacts on economic growth due to lost productive and reduced taxes
- Reduction in family income and household productivity
- Increased poverty

A survey conducted in 2014 reported that the majority of HIV-infected workers conceal their status from colleagues and employers for fear of stigma, discrimination and dismissal. Currently, Ukraine's legislation regulating legal relationships in the workplace does not specify any grounds or conditions for the establishment or termination of employment relationships, establishing regimes of work and rest, labor remuneration and other workplace conditions for HIV-infected persons. Therefore, although PLHIV should enjoy the same rights and freedoms as other employees, workplace discrimination based on HIV status persists.

- Loss of the reproductive health of the population
- Reduction of manpower
- Loss of experienced and skilled employees
- Loss of working hours and early retirement
- Increased employers costs through medical insurance and training

226 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/2862-17>.

227 [Electronic resource] – Available at: <http://zakon5.rada.gov.ua/laws/show/2801-12>.

228 [Electronic resource] – Available at: <http://zakon0.rada.gov.ua/laws/show/1642-98-%D0%BE>.

229 [Electronic resource] – Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_191149.pdf

Key Recommendations

Ministries, central and local executive authorities

- Introduce HIV prevention measures in the workplace as part of a national policy which should include provisions relating to labor, education, social security and health care.
- Introduce HIV/AIDS-related topics in as part of new workplace training modules to be implemented by representatives of employers and HR specialists.
- Develop and disseminate an employer's "Code of Conduct," which would ban discrimination and stigma against HIV-infected employees and ensure confidentiality and personal privacy.
- Issue public service announcements to support tolerant attitudes toward HIV-positive workers.

3.3. Entry, Stay and Residence

Fundamental Principles

The State should not impose restrictions on the entry, stay or residency status of people based on HIV status. This includes not deporting PLHIV to countries where they face persecution, torture or other forms of cruel, inhuman or degrading treatment. Finally, migrant and transient populations in Ukraine should have equitable and sustainable access to any needed comprehensive HIV-related services.

Existing Regulatory Documents

(I) International Documents and Guidelines

UNHCR Convention and Protocol Relating to the Status of Refugees (1951).²³⁰ Article 33 “Prohibition of Expulsion or Return” (or “Refoulement”) states, that,

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

The International Guidelines on HIV/AIDS and Human Rights (Consolidated Version), 2006.²³¹

Para. 7 “Right To Freedom of Movement,” states that,

“...there is no public health rationale for restricting liberty of movement or choice of residence on the grounds of HIV status. According to current international health regulations, the only disease which requires a certificate for international travel is yellow fever. Therefore, any restrictions on these rights based on HIV status alone, including HIV screening of international travelers, are discriminatory and cannot be justified by public health concerns. Where States prohibit people living

with HIV from long-term residency due to concerns about economic costs, States should not single out HIV/AIDS, as opposed to comparable conditions, for such treatment and should establish that such costs would indeed be incurred in the case of the individual alien seeking residency”

ILO Recommendation № 200 on HIV/AIDS and the World of Work (2010).²³²

Para 25 of this documents states that, “HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants.”

UNESCO/UNAIDS, Migrant Populations and HIV/AIDS (2000).²³³

Chapter 2 of this document states, “Programs, projects, and interventions: A guide to development – provides best practices on development of programs targeting migrants.”

UNAIDS Report of the International Task Team on HIV-Related Travel Restrictions (2008).²³⁴

This report, “Strongly encourages all countries to eliminate HIV-specific restrictions on entry, stay and residence and ensure that people living with HIV are no longer excluded, detained or deported on the basis of HIV status.”

UN Political Declaration on HIV/AIDS, 2006.²³⁵

This document contains several references to the

230 [Electronic resource] – Available at: http://zakon0.rada.gov.ua/laws/show/995_011.

231 [Electronic resource] – Available at: <http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesru.pdf>.

232 [Electronic resource] – Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/normativeinstrument/wcms_150803.pdf.

233 UNESCO/UNAIDS, Migrant Populations and HIV/AIDS (2000). [Electronic resource] – Available at: http://data.unaids.org/Publications/IRC-pub01/jc397-migrantpop_en.pdf.

234 UNAIDS Report of the International Task Team on HIV-Related Travel Restrictions (2008). [Electronic resource] – Available at: http://data.unaids.org/pub/Report/2009/jc1715_report_inter_task_team_hiv_en.pdf

235 [Electronic resource] – Available at: http://www.unaids.org/sites/default/files/sub_landing/files/20060615_hlm_politicaldeclaration_ares60262_en_0.pdf.

promoting health among migrant populations, including:

- Para. 62 (f): “promote the development of and access to tailored HIV comprehensive prevention services for all women and adolescent girls, migrants, and key populations.”
- Para. 63 (g): “...encourage Member States to address the vulnerabilities to HIV and the specific healthcare needs experienced by migrant and mobile populations, as well as refugees and crisis-affected populations, and to take steps to reduce stigma, discrimination and violence, with the view to {...} support their access to HIV prevention, treatment, care and support.”

(II) National legislation, policies and procedures

The Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social status of people living with HIV” (amended by Law № 2861-VI of 12.23.2010).²³⁶ Part 1 of Article 14 provides that citizens of Ukraine, foreign nationals and stateless persons, who permanently reside in Ukraine, as well as persons who have sought and have been granted refugee status in Ukraine, asylum seekers, foreign nationals and stateless persons, who legally sojourn in Ukraine, must have all rights and freedoms, guaranteed by Ukraine’s Constitution and other legislation. Additionally, Part 1 of Article 6 states that all the above categories of persons are entitled to receive HIV testing and qualified pre- and post-test counseling, which are provided under the relevant protocol, approved by a specially authorized central executive health-care body.

Law of Ukraine “On population of protection against infectious diseases” (approved by Law № 1645-III of 04.06.2000).²³⁷ Article 24 provides that,

“diplomatic missions and consulates of Ukraine issue entry visas to foreign nationals and stateless persons upon presentation of a document confirming that they do not have active tuberculosis or HIV, unless otherwise is provided by international treaties of Ukraine.”

Law of Ukraine “On refugees and persons in need of additional or temporary protection” (approved by Law № 3671-VI of 07.08.2011).²³⁸ This law contains several sections which affect the legal status of HIV-infected refugees, and includes:

- Article 3: “A refugee or person, who is in need of additional protection or who has been granted temporary protection, cannot be expelled or forcibly returned to a country where his or her life or freedom would be threatened on the grounds of race, religion, nationality, citizenship, affiliation with a particular social group or political position; where they can suffer torture and other cruel, inhuman or degrading treatment or punishment; and for other reasons recognized by international agreements or international organizations to which Ukraine is a party, as such that cannot be returned to their countries of origin.
- Article 15: “A person, who is recognized as a refugee or a person who is in need of additional protection, has the same rights to health protection, medical care and health insurance as other citizens of Ukraine”.
- Part 5 of Article 29 directs regional departments of health (at the request of the State Migration Service) to conduct a mandatory medical examination, and if necessary, ...”provide treatment for persons, concerning whom a decision was made to issue documents confirming their status of a refugee or a person who needs additional protection, and who have been recognized as refugees or persons who are in need of additional protection.”

Law of Ukraine “On the rights and freedoms of internally displaced persons” (approved by Law № 1706-VII of 10.20.2014).²³⁹ Article 9 guarantees the right of internally displaced persons to receive necessary medical care at public and municipal health facilities. Additionally, article 14 states that,

“Non-discrimination: Internally displaced persons enjoy the same rights and freedoms under the Constitution of Ukraine, laws and international treaties, as other citizens of Ukraine, permanently residing in Ukraine. It is prohibited to discriminate against them in their exercise of any rights and freedoms on the grounds of their internally displaced status.”

236 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2861-17>.

237 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/1645-14>.

238 [Electronic resource] – Available at: <http://zakon4.rada.gov.ua/laws/show/3671-17>.

239 [Electronic resource] – Available at: <http://zakon4.rada.gov.ua/laws/show/1706-18>.

MOH order № 82 “On approving the Procedure for mandatory medical examination of persons concerning whom a decision has been made to process documents granting them refugee status” (of 03.04.2002; registered with the Ministry of Justice of Ukraine under order № 379/6667 on 04.22.2002). This procedure states that, in addition to mandatory medical examination, certified refugee will also be provided printed information (in five international languages) explaining their right to obtain anonymous HIV testing if desired.

MOH order № 104 “On approving the List of and Criteria for identifying groups at high risk of HIV infection” (of 02.08.2013). According to this order, immigrants can be included in the groups at increased risk of HIV if they exhibit risky behavior.

MoH order № 329 “On amending the List of infectious diseases that may give grounds for the denial of permission to immigrate to Ukraine” (of 06.11.2015, registered with the Ministry of Justice under order № 746/27191 on 06.23.2015). This order lifted the prohibition for people living with HIV to enter and reside in Ukraine.

Gaps in National Legislation to be Addressed

Despite several laws and policies that intended to prevent the discrimination of refugees and non-citizen residents based on HIV status, there are still several legal loopholes that must be addressed. While the Law of Ukraine does not prohibit PLHIV from entering and staying in Ukraine on the basis of their status, provisions in the same law states that diplomatic missions and consular offices of Ukraine shall issue entry visas to foreign nationals and stateless persons upon presentation of a document confirming that they do not have active tuberculosis or HIV, unless otherwise is provided by international treaties of Ukraine. This represents a serious discrepancy that should be addressed.

It should be noted that visas rules approved by Cabinet of Ministers of Ukraine (directive № 567 of 06.01.2011), do not require foreigners to provide documentations confirming their HIV status to obtain an entry visa. Therefore, the

existence of this discriminatory clause in the Law of Ukraine creates a legal conflict that needs to be resolved.

As of late 2014, about 253,000 foreign nationals from more than 150 countries were resided in Ukraine, constituting 0.54% of the total population.²⁴⁰ 2014 saw an increase of 33% (from 6,859 to 9,125 persons) in migrants attempting to enter the country illegally. Additionally, the number of detained illegal aliens also increased by 13% (from 842 to 953 persons) in the same time period.²⁴¹

Despite this increased immigration, the needs of HIV-positive migrants are not considered in the National HIV/AIDS program for 2014-2018, and no data exists on HIV/AIDS prevalence among migrants. Information on prevailing HIV transmission routes and HIV risky behaviors also does not exist for this group.

Conclusions

While the legislation of Ukraine does not prohibit people living with HIV from entering and staying in Ukraine, legislative conflicts persist. The Law of Ukraine contains conflicting regulations, stating both that HIV status does not prohibit persons entering and staying, but also requires persons wishing to enter present documents confirming that they do not have HIV.

Ukraine is centrally located along major routes of

migration for refugees traveling to Eastern and Central Europe. While these persons are a relatively small group considered to be at low-risk for HIV, evidence suggests that during periods of detention and prior to deportation, some members may engage in risky behavior, including IDU and CSW. Although, governmental oversight could provide comprehensive prevention programs for this group, Ukraine does not have in place any targeted HIV programs for this population.²⁴²

²⁴⁰ According to the State migration service of Ukraine, 2013-201 data from the Migration profile of Ukraine. [Electronic resource] – Available at: http://dmsu.gov.ua/images/files/pr2014_1.pdf

²⁴¹ Ibid.

²⁴² According to the 2009 Comprehensive External Evaluation of the National AIDS Response in Ukraine: Consolidated report, January 2009, UNAIDS.

The collapse of the rule of law in Ukraine's conflict areas, as well as economic hardships, has increased vulnerability to sexual and gender-based violence, including domestic violence and human trafficking. There are reports that women and girls engage in survival sex to provide for themselves and families. Additionally, there are reports of increasing levels of domestic violence, sexual harassment and rape of women living in areas with a large concentration

of armed combatants. In such situations, given the limited access to prevention services for victims of violence and CSW, it is impossible to control the scale and spread of HIV and STIs in the occupied territories. The complicated political situation in Eastern Ukraine leads to disruptions in the interaction between AIDS services in the areas not controlled by the Government of Ukraine, which significantly distorts HIV monitoring data.

Key Recommendations

Legislature of Ukraine

- Exclude from the Law of Ukraine provisions requiring that foreign nationals or stateless persons present a certificate confirming their HIV negative status to obtain an entry visa to enter Ukraine.

The Ministry of Health of Ukraine

- Include migrants and transient populations as a target group in the National HIV/AIDS program. Specifically, plan targeted HIV prevention programs that take into account cultural and linguistic characteristics of this group, especially for members of KP.
- Develop and implement a system to monitor migrants and refugees' access to HIV prevention, treatment, care and support services.

3.4. Absence of Criminal Liability for Non-intentional Risk or Transmission of HIV

Fundamental Principles

Intentional or non-intentional exposure or transmission of HIV does not entail additional criminal liability, as these acts fall under the general criminal code.

Existing Regulatory Documents

(I) International Documents and Guidelines

The International Guidelines on HIV/AIDS and Human Rights (Consolidated Version) 2006.²⁴³ This document emphasizes that criminal and/or public health legislation should not include laws penalizing the deliberate and intentional transmission of HIV, but rather should apply general criminal offences to these exceptional cases.

The Oslo Declaration on HIV Criminalization (of 02.13.2012).²⁴⁴ This declaration states that,

“A growing body of evidence suggests that the criminalization of HIV non-disclosure, potential exposure and non-intentional transmission is doing more harm than good in terms of its impact on public health and human rights.”

Criminalization of HIV Transmission: UNAIDS and UNDP policy brief (2008).²⁴⁵ This brief identifies the negative impact of criminalization of non-intentional transmission of HIV on access to prevention and treatment, and concludes that, “...available data show no difference in behavior between places where laws criminalizing HIV transmission exist and where they do not.”

The Global Commission on HIV and the Law report “Risks, rights and health.”²⁴⁶ This document states that “the fear of prosecution isolates HIV-infected

persons and discourages them from getting tested, participating in prevention or treatment programs or disclosing their status to partners.”

(II) National legislation, policies and procedures

The Penal Code of Ukraine (of 05.05.2001).²⁴⁷ Article 130 of this code provides for criminal liability for: (i) “intentionally putting another person at risk of infection with human immunodeficiency virus or other life-threatening incurable infectious disease”; ii) intentional HIV transmission by “a person who was aware of his/her HIV status”. Additionally, Article 133 provides for criminal liability for “the infection of another person with a sexual transmitted (venereal) disease by a person who is aware of his/her infection.”

The Law of Ukraine “On preventing the spread of diseases caused by the human immunodeficiency virus (HIV), and legal and social status of people living with HIV”(of 12.23.2010). This law requires that a person diagnosed with HIV is criminally liable for intentionally putting another person at risk of HIV and/or transmitting HIV.

MoH order № 6 “Rules for forensic determination of the severity of bodily injuries” (of 01.17.1995). This order establish a procedure for forensic evaluation of the severity of bodily injuries resulting from an infectious disease pathogen.

243 [Electronic resource] – Available at: <http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesru.pdf>.

244 The Oslo Declaration on HIV Criminalization, February 13, 2012. [Electronic resource] – Available at: http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Oslo_declaration.pdf.

245 Criminalization of HIV Transmission: UNAIDS and UNDP policy brief, August 2008. [Electronic resource] – Available at: http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf.

246 The Global Commission on HIV and the Law report “Risks, rights and health”. [Electronic resource] – Available at: <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>.

247 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/2341-14>.

Gaps in National Legislation to be Addressed

Criminal punishment for non-intentional transmission of HIV creates serious structural and interpersonal barriers for persons accessing HIV treatment and prevention. Fear of prosecution leads to fear of testing, or disclosure of one's status to their sexual partner(s). It also increases stigma and discrimination against PLHIV (including internalized-stigma) which hinders treatment and care services. International and national experience shows that criminal liability for involuntary transmission of HIV does not prevent risk-taking behavior among PLHIV.

International experts have noted that criminalization of HIV has been used to prosecute HIV-infected women for vertical disease transmission to children. Such prosecution increases, rather than reduces, the number of such instances, since these women avoid HIV prevention services related to intrauterine fetal infection or transmission during the breastfeeding period.

Currently, the *Penal Code of Ukraine* contradicts the national HIV prevention policy. Specifically, Article 4 provides that the State guarantees the implementation of a consistent policy to promote tolerance for KP and PLHIV. It also states that the State provide information, education and communication activities to build tolerance for these populations. Currently, Ukrainian legislation on criminalization of HIV is not only inconsistent with other countries' practice of legal regulation, but is internally contradictory. It is specifically discriminatory to persons in discordant couples as it makes the infected partner criminally liable if transmission occurs. Such legally ambiguous situations only increases the risk of HIV transmission, as couples may not seek out prevention services for fear of prosecution.

In 2006, the *International Guidelines on HIV/AIDS and Human Rights* emphasized that criminal and/or public

health legislation should not include specific offences against the deliberate and intentional transmission of HIV, but rather should apply general criminal offences to these exceptional cases. The *Penal Code of Ukraine* already contains a general provision that sanctions criminal liability for deliberately infecting another person with a pathogen of a dangerous disease, including HIV.

Under Article 121 ("Intentional severe bodily injury"), a person can be held criminally liable for inflicting intentional severe bodily injury (harm) at the time of such infliction, or which has caused the loss of a bodily organ or its functions, mental illness or other health disorder associated with permanent disability of at least one-third, or abortion or irreparable facial disfigurement (deformity). Additionally, paragraph 2.1.2. of the *Rules for Forensic Determination of the severity of bodily injuries*, approved by MoH order № 6 (of 01.17.1995), registered with the Ministry of Justice of Ukraine on July 26, 1995, under Law №'s 255/791, provides that life-threatening injury is an injury, which at the moment of its infliction or in its clinical intermittent course, causes life-threatening phenomena and which, unless medically treated, may result or results in death.

The intention of the state to decriminalize unintentional HIV infection is evidenced by the inclusion in the HIV Action Plan to implement a National Human Rights Strategy by 2020. The *HIV Action Plan* would include a statement regarding the development and submission of a bill to the Government intended to amend the *Penal Code of Ukraine*, to decriminalize HIV and other infectious diseases currently criminalized under Articles 130 and 133, and the need to exclude these diseases from the list of other types of health damage contained in the Penal Code provisions.²⁴⁸ However, the legislative body responsible for changing this law, the Ministry of Interior, does not indicate a willingness to make these changes.

Conclusions

Ukraine's current national policy of criminal liability for unintentional HIV infection is punitive in nature, which adversely affects PLHIV's access to HIV prevention and treatment programs. Additionally, Ukraine's criminal legislation is HIV-specific in that it makes: (i) PLHIV criminally liable under a separate article; (ii) an HIV-positive person a perpetrator of a crime.

Despite the efforts of NGOs, the law enforcement falls under the jurisdiction of the Department of Internal Affairs, and are unwilling to change legislation to decriminalize unintentional HIV transmission.

²⁴⁸ See subparagraph 3 of paragraph 105 of the Action Plan to implement the National human rights strategy by 2020.

Key Recommendations

Legislature of Ukraine

- Remove Articles 130 and 133 of the Penal Code criminalizing HIV transmission.
- Maintain Article 121 of the Penal Code, which criminalizes “intentional severe bodily harm”, but remove specific references to HIV.
- Make necessary changes and/or additions to the Rules for Forensic Determination of the severity of bodily injuries, approved by MoH order № 6 (of 01.17.1995)
- Remove from all articles of the Penal Code the words “human immunodeficiency virus”, “HIV”, “acquired Immune deficiency syndrome”, “AIDS”

and other names of any diseases, which are used in the context of criminal liability (prosecution) towards infected persons.

The Ministry of Health

- Amend the Rules for Forensic Determination of the severity of bodily injuries (approved by MoH order № 6 of 01.17.1995) to regulate the procedure for determining the severity of bodily injuries resulting from HIV infection, other especially dangerous infectious disease and pathogens transmitted mainly sexually.

3.5. Equal Access to Civil and Political Protections under the Law

Fundamental Principles

PLHIV, their advocates and social service workers are guaranteed equal access to a forum administering justice, the right to a fair trial, and effective enforcement.

Existing Regulatory Documents

(I) International Documents and Guidelines

International Covenant on Civil and Political Rights (1966), (ratified by Law № 2148-VIII of 10.19.1973).²⁴⁹ Article 2(3) of this document states that,

“every State undertakes: “(a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted.”

Convention for the Protection of Human Rights and Fundamental Freedoms (1950), (ratified by Law №'s 475/97 of 07.17.1997 - hereinafter referred to as *The Convention*).²⁵⁰ This document contains several articles related to the rights of global citizens to receive legal protections, this includes:

- Article 6 defines the right to a fair trial: “1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the

following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defense; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

- Article 13: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”
- Article 14 prohibits any type of discrimination: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”
- Article 34: “The Court may receive applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

249 [Electronic resource] – Available at: http://zakon3.rada.gov.ua/laws/show/995_043.

250 [Electronic resource] – Available at: http://zakon3.rada.gov.ua/laws/show/995_004.

The International Guidelines on HIV/AIDS and Human Rights (Consolidated Version) 2006.²⁵¹

Guideline 7 guarantees that,

“States should implement and support legal support services that will educate people affected by HIV about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.”

(II) National legislation, policies and procedures

The Constitution of Ukraine (06.28.1996).²⁵² This document contains several articles ensuring the legal rights of persons in living in Ukraine, including:

- Article 55: “Everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers. Everyone shall have the right to appeal for the protection of his rights to the Authorized Human Rights Representative (Ombudsman) to the Verkhovna Rada of Ukraine. After exhausting all domestic legal instruments, everyone shall have the right to appeal for the protection of his rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant. Everyone shall have the right to protect his rights and freedoms from violations and illegal encroachments by any means other than prohibited by law.”
- Article 59: “Everyone shall have the right to legal assistance. Such assistance shall be rendered free of charge in cases stipulated by law. Everyone shall be free to choose the defender of his rights.”
- Article 63: “A suspect, an accused, or a defendant shall have the right to a defense. A convicted person shall enjoy all human and civil rights, with the exception of restrictions determined by law and established by a court verdict.”

The Law of Ukraine “On the judicial system and the status of judges” (approved by Law № 1402-VIII of 06.02.2016). Contains several articles related to residents’ legal rights, including:

- Article 7: “Every person shall be guaranteed protection of their rights, freedoms and interests within reasonable time frames by an independent, impartial and fair trial, established in compliance with the law. The judicial system shall provide access to justice for every person under the Constitution and in the manner envisaged by the laws of Ukraine.”
- Article 9: “Justice in Ukraine shall be exercised on the principles of equality of all parties in a trial before the law and the court, regardless of race, color, political, religious and other beliefs, gender, ethnic or social origin, property status, residence, language and other characteristics.”

The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” (approved by Law № 5207-VI of 03.06.2012, amended on 05.30.2014).²⁵³ Article 6 of the Law provides that,

“under the Constitution of Ukraine, generally recognized international law principles and agreements of Ukraine, all persons, irrespective of their particular characteristics, shall have equal rights, freedoms and opportunities to exercise them. Any form of discrimination by state authorities, authorities of the Autonomous Republic of Crimea, local governments and their officials, legal and natural entities, defined in Article 5 hereof, are prohibited.”

The Law of Ukraine “On prevention of diseases caused by Human Immunodeficiency Virus (HIV), and legal and social security of people living with HIV” (amended by Law № 2861-VI of 12.23.2010).²⁵⁴ This law contains language related to the legal protections of HIV-infected citizens, and includes:

- Paragraph 2, Article 14: “the state guarantees to all persons living with HIV and populations at high risk of HIV equal opportunities to enjoy their rights, including the possibility of administrative and judicial protection of these rights.”
- Paragraph 3, Article 14: “Discrimination on the grounds of actual presence of HIV with an

251 [Electronic resource] – Available at: <http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesru.pdf>.

252 [Electronic resource] – Available at: <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

253 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/5207-17>.

254 [Electronic resource] – Available at: <http://zakon3.rada.gov.ua/laws/show/2861-17>.

individual and on the grounds of actual affiliation of an individual to a population at high risk of HIV is prohibited. Discrimination is an action or inaction, which directly or indirectly establishes limitations, deprives of relevant benefits or humiliates human dignity of any individual on the grounds of one or multiple indications, related to actual or suspected presence of HIV with an individual, or gives grounds to affiliate an individual to a population at high risk of HIV.”

Law of Ukraine “On free legal aid” (approved by Law № 3460-VI of 06.02.2011).²⁵⁵ This law determines the right to free legal aid in Ukraine. It also outlines the procedure for exercising this right, as well as the grounds

and procedures for which legal aid is granted and the state guarantees accompanying it.

The Law of Ukraine “On enforcement” (approved by Law № 1404-VIII of 06.02.2016). Paragraph 1 of Article 18 of this law provides that the state enforcement officer shall, “...exercise the rights granted to him by law and avoid violations of rights and legitimate interests of individuals and legal entities.”

Law of Ukraine “On guarantees of the state concerning execution of judgments” (approved by Law № 4901-VI of 06.05.2012). This law outlines state guarantees concerning execution of court judgments and writs, defined by the Law of Ukraine “On enforcement”, and the execution procedure.

Gaps in National Legislation to be Addressed

Ukrainian legislation, which includes several embedded ratified international agreements, provides that PLHIV are equal under the law with respect to their rights to judicial protection. Also, PLHIV are provided additional protection prohibiting discrimination based on HIV status. However, there have been several examples that demonstrate problems related to the proper enforcement of equal protections for this population, including:

1) PLHIV low awareness of their legal rights

- 2) Lack of confidence in administrative and judicial bodies and hence unwillingness to defend their rights
- 3) Law enforcement agencies abusing their power to coerce HIV-infected persons into confessing to crimes they have never committed
- 4) Violations of the rights of PLHIV to access court, a fair trial, or an attorney (lawyer)
- 5) Systematic non-compliance with court decisions in cases where the State is a debtor

Regulatory basis for PLHIV to exercise their right to access a court

Ukraine’s legislation is intended to protect the equal rights of all persons under the law and prohibits discrimination against PLHIV based on disease status or affiliation to a KP. In regard to the right to judicial protection, the State guarantees that all persons are entitled to exercise these right. The *HIV Law* provides that the State guarantees PLHIV “*equal with other citizens opportunities to exercise their rights, including administrative and judicial protection of their rights.*”

The above legal protections means that the State guarantees PLHIV an equal *opportunity to go to court* or other competent authority. This right is a major component of the individual’s right to trial within the meaning of the European Court of Human Rights

(ECHR), yet it does not reflect it. However, as the ECHR *Delcourt v. Belgium* case states,

“in a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 para. 1 (art. 6-1) would not correspond to the aim and the purpose of that provision.”²⁵⁶

According to the ECHR, the main component of a person’s right to trial is *access to courts*, in the sense that a person enjoys the right to go to court to resolve a particular issue, and that the state must not bar the person legally or practically from exercising this right. Furthermore, the concept of the right to fair trial includes a number of

255 [Electronic resource] – Available at: <http://zakon2.rada.gov.ua/laws/show/3460-17>.

256 *Delcourt v. Belgium*, 17 January 1970, para. 25. [Electronic resource] – Available at: [http://hudoc.echr.coe.int/eng/?i=001-57467#{"itemid":\["001-57467"\]}](http://hudoc.echr.coe.int/eng/?i=001-57467#{)

different categories relating to organizational, procedural and other aspects of justice. An important component of the right to fair trial is the enforcement of court decisions and, as the ECHR states in Article 6 Para. 1, shall apply at all stages of a trial to "...determine civil rights and obligations", taking into account additional procedures in the case. Execution of the judgment of any court must be regarded as an important part of "proceedings" under Article 6 (Hornsby v. Greece, § 40; Romańczyk v. France, § 53) on the execution of the decision to recover a child support debt.²⁵⁷

Therefore, based on the above interpretation of the ECHR, the right of PLHIV to judicial defense referred to in Article 14 of the *HIV Law* includes the right to:

- Access courts (including international), and the right to appeal rulings
- A fair trial
- Free legal aid with the assistance of an interpreter if necessary²⁵⁸
- Effective enforcement of court decisions, which involves practical implementation of judgments rendered in favor of PLHIV, with government officials meeting the principles of enforcement

To simplify the presentation and perception of the information contained in this section, the right to access court (justice), the right to a fair trial and the right to effective enforcement of court judgments will be termed (under *The HIV Law*) as the right to *judicial protection*.

Exercising the right to judicial protection

Right to access court

As many HIV infected persons are not aware of all their rights under *The HIV Law*, most don't seek judicial protections when their rights are violated. Results of the second national opinion survey on Stigma, Discrimination and Violations of Human Rights of People Living with

HIV,²⁵⁹ indicated that the reasons that respondents do not seek legal aid include:

- Belief that the outcome will not be positive (43%)
- Lack of financial resources for legal action (18%)
- Perceived overwhelming amount of bureaucracy related to judicial proceedings (15%)
- Feeling too intimidated or depressed to take action (10%)

Among those reporting violations only 33% of those reported seeking legal aid. Additionally, 88% of those reporting violations tried to defend their rights themselves. The survey revealed that persons who do not seek legal aid are poor outcomes, as 40% of these respondents failed to achieve a positive result.

Right to a fair trial

According to human rights organizations, many times the rights of PLHIV are violated by the police or officials of the penitentiary system. In particular, investigation officers use HIV status, which is often associated with drug addiction, to manipulate and force detainees into confessing to crimes they have never committed (see Case Study 1).

Case Study 1

This case occurred in the city of Lviv in 2011.²⁶⁰ Police illegally kept an HIV-infected (who was also co-infected with HCV) man at the Raion police station, forcing him to confess to a crime – theft – that he did not commit. He was systematically beaten and deprived of medication. When the man was finally released, he walked only a few meters down the street and fainted. After three days of abuse, and being deprived of necessary medication and proper nutrition, was rushed to the hospital, where he stayed for a week. Despite the police officers denying their guilt, on May 28, 2014, the Lviv city Shevchenko district court sentenced the police to punishment. All

257 ECHR. Article 6 – Right to access a fair trial (civil part), 2013. [Electronic resource] – Available at: http://www.echr.coe.int/Documents/Guide_Art_6_UKR.pdf

258 The ECHR position in the "Leonid Lazarenko v. Ukraine" case reads: "The provisions of Paragraph 3 of Article 6 should be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1 of Article 6, and, therefore, these provisions should be considered together. Overall, the Court should consider whether the proceedings were fair as a whole)." ECHR ruling on application №'s 22313/04 of 10.28.2010, para. 48. The text of the ruling is available at http://zakon3.rada.gov.ua/laws/show/974_688/print1464794948858045

259 Analytical report based on the results of the PLHIV stigma index study – Stigma Index, Kyiv, 2014. [Electronic resource] – Available at: http://www.stigmaindex.org/sites/default/files/reports/Ukraine%20Stigma%20Index_Report_UKR%202014-Ukr.pdf

260 [Electronic resource] – Available at: <http://www.ulaf.net.ua/index.php?id=1401703785>

four were deprived of special ranks, titles, the right to work in law enforcement, and they were sentenced to imprisonment. The deputy chief of the police station, who masterminded the actions of his subordinates, was sentenced to 5 years in prison.²⁶¹ This sentence was later overturned by the appellate court on August 15, 2014, and the case was remanded for further investigation.²⁶²

There are many recorded abuse violations against HIV-infected PWID.²⁶³ Many of these cases involve law enforcement planting evidence (usually drugs) and falsifying records. According to the experts of the Ukrainian network of legal assistance, the local prosecutors generally turns a blind eye to such instances.²⁶⁴ Therefore, without professional legal aid, HIV-infected PWID, especially MAT patients, will find themselves within a judicial system incapable of protecting their rights.

In an analysis of judgments rendered by the ECHR in cases of PLHIV found that Ukraine has violated rights defined in Article 6 (the right to judicial protection), and Article 34 (obstruction by the state of lodging individual applications). This includes a number of cases where persons were forced to testify against themselves, which infringes on their right to judicial protection (see Case Study 2).

Case Study 2

In *Luniov v. Ukraine*,²⁶⁵ the applicant complained that his health condition was incompatible with detention. Despite the fact that he was HIV-infected, he was not provided with medical care for a year. The applicant was also suffering from other co-occurring conditions caused by impaired immunity. He was given treatment only when his condition became critical. To prevent him from applying to the ECHR the petitioner was beaten by police and coerced into confessing to other crimes, which was not investigated properly by the State.

The ECHR identified similar violations of Article 6 in *Leonid Lazarenko v. Ukraine*,²⁶⁶ where a defendant was forcing into making self-incriminating statements. According to the ECHR, “the principles of the right to defend and not incriminate oneself meet international human rights standards, which are the main components of the concept of a fair trial.”²⁶⁷

Case Study 3

In *Sergey Antonov v. Ukraine*²⁶⁸ the ECHR ruled that Ukraine had not fulfilled its obligations under Article 34 not to prevent a person from exercising his right to apply to the ECHR. Thus, the ECHR judgment reads: “In this case, the applicant alleged that he had been intimidated and forced to declare that the medical care he had received was adequate, and that he himself was responsible for such possible drawbacks as the lack of ART. The government indeed provided a copy of a handwritten explanation, signed by the applicant, which stated that the applicant had no claims against the detention center health personnel (see para. 34), which contradicts his complaints to the Court dated before and after the date the explanation was lodged. The government did not specify the circumstances under which the application was obtained. However, the Court is concerned at the fact that the application was received ten days after the Court (under rule 39) requested the Government to provide the applicant with adequate medical care. Given consistent arguments by the applicant and lack of other plausible explanation for the origin of the above application, the Court finds that the authorities tried to influence the applicant in order to force him to make statements that would negatively affect his application to the Court.”²⁶⁹

It stands to reason that these violations of the right to judicial protection, which were established by the ECHR, are not limited to HIV-infected persons only, but highlight systematic abuse committed by penitentiary system which must be addressed.

261 Verdict of the Lviv city Shevchenko district court, [Electronic resource] – Available at: <http://www.reyestr.court.gov.ua/Review/38947576>

262 Lviv oblast appellate court ruling, [Electronic resource] – Available at: <http://www.reyestr.court.gov.ua/Review/40194531>

263 [Electronic resource] – Available at: <http://www.ulaf.net.ua/index.php?id=1427903278>

264 [Electronic resource] – Available at: <http://www.ulaf.net.ua/index.php?id=1427903278>

265 *Luniov v. Ukraine* (Application № 4725/13). [Electronic resource] – Available at: http://zakon4.rada.gov.ua/laws/show/974_b09

266 *Leonid Lazarenko v. Ukraine* (Application № 22313/04). [Electronic resource] – Available at: http://zakon5.rada.gov.ua/laws/show/974_688

267 Ibid.

268 ECHR judgment in the *Sergey Antonov v. Ukraine* case Application № 40512/13 of 10.22.2015). [Electronic resource] – Available at: http://zakon5.rada.gov.ua/laws/show/974_b08/page2

269 Ibid.

Right to defense (judicial protection)

Restriction or violation of the right to attorney (counsel) is often the subject to of appeals to the ECHR. For instance, during the review of Leonid Lazarenko v. Ukraine the ECHR found that the applicant's right to defense was restricted once he confessed to the crime and that no attorney present. Although the applicant later retracted his initial confession, which was not the sole basis for conviction, it undoubtedly became the grounds upon the courts relied on for punishment.²⁷⁰ Depriving the applicant of legal aid, and using an illegally obtained retracted false confession made under duress, is a violation of the right to fair trial.²⁷¹

Case Study 4

The ECHR arrived at similar conclusions in Yaremenko v. Ukraine, noting in para. 86 that "the decision to pronounce the applicant guilty of the 1998 crime was largely based on his confession which the investigators extracted in the absence of an attorney and which the applicant retracted the next day and afterwards."²⁷²

Courts infringement of the right to defense are systematic, and not limited to PLHIV. This is evidenced by a summary report issues by the High Specialized Court of Ukraine for Civil and Criminal Cases.²⁷³ In a newsletter addressed to the heads of the appellate courts of Ukraine, this organization pointed to several violations in criminal cases by court officials. In many cases the requirement that an attorney be present for all court proceedings is systemically ignored, depriving persons of their civil rights.

Right to effective enforcement of court decisions

With respect to Article 6 of the Convention, which requires that national courts implement their decisions

within a reasonable period of time, the ECHR has also reported several violations in the enforcement of court decisions (see Case Study 5 as an example).

Case Study 5

The ECHR pilot judgment in Yuriy Mykolaiovych Ivanov v. Ukraine found that the applicant's right to a fair trial and defense had been infringed; it reads: "the above violations originated in a practice incompatible with the Convention which consists in the respondent State's recurrent failure to comply in due time with domestic decisions for the enforcement of which it is responsible and in respect of which aggrieved parties have no effective domestic remedy."²⁷⁴ Also, the Judgment emphasizes Ukraine's systemic non-compliance with court rulings (which is particularly evidenced by approximately 1,400 applications against Ukraine, which at the time of the above case, were lodged with the ECHR, and which were fully or partly related to such problems, and the number of such applications is growing).²⁷⁵

The Law of Ukraine "On state guarantees regarding enforcement of court decisions", which came into force in January 2013, was passed to meet the ECHR requirements concerning Ukraine's introduction of effective judicial remedies that would ensure adequate and sufficient redress for failure or delay in the enforcement of national courts' decisions in accordance with the principles established by the Court.²⁷⁶ However, due to the inconsistency of the above law's provisions with other regulatory documents, including procedural ones, it hardly affected the practice of implementing court decisions in Ukraine. Furthermore, the main reason for the state's non-compliance with court decisions is a lack of funds to address such problems.²⁷⁷

Reorganizing the court decision enforcement system, and enhancing the efficiency of enforcement proceedings,

270 Leonid Lazarenko v. Ukraine, para. 57. [Electronic resource] – Available at: http://zakon0.rada.gov.ua/laws/show/974_688/print1452694404489912

271 Ibid, para. 58.

272 Yaremenko v. Ukraine, [Electronic resource] – Available at: http://zakon0.rada.gov.ua/laws/show/974_405/print1452694404489912

273 [Electronic resource] – Available at: http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.html

274 Yuriy Mykolaiovych Ivanov v. Ukraine (Application № 40450/04), ruling as of 01.15.2010. [Electronic resource] – Available at: http://zakon0.rada.gov.ua/laws/show/974_479/print1466678221209880

275 Ibid, para. 86.

276 Ibid, operative part of the Judgment, para. 5.

277 The 2016 National Budget earmarks 144,757,000 hryvna for measures (budget program classification № 3504040) to implement court decisions. As of April 2016, the State Treasury Service of Ukraine has over 131,000 writs of execution worth over 2.9 billion hryvna to be enforced under this budget program. In April – May 2016, it was planned to transfer funds for court decisions submitted to territorial Treasury bodies of Ukraine (including the period of April 10 – 17, 2013).

are some of the reform identified by The 2015-2020 Strategy for Reforming the Judiciary, Judicial Proceedings and Related Legal Institutions (approved by Presidential Decree №s 276/2015 of 05.20.2015). This reform strategy includes:

- Creating a single mechanism for the enforcement of legal decisions
- Developing a watchdog unit who have the powers to oversee governmental and private entities

Conclusions

Ukraine's legislation states that PLHIV have equal protection with respect to their right to judicial protection, which include provisions prohibiting discrimination based on a person's HIV status. According to the law, no barriers or gaps limiting the right of PLHIV to legal protection exist, but in reality many legal examples of discriminatory behavior have been documented. In the majority of these instances the police, courts or the penitentiary system are at fault. This results in HIV-infected people often finding themselves without legal counsel or protection from persecution and unfair imprisonment.

In addition, multiple structural barriers have been

- Reducing the bureaucracy for enforcement of court decisions
- Strengthening information systems management to improve electronic court records

These improvements will assist with reforms to the Ukrainian court enforcement system, which is supposed to positively affect the right to judicial protection and proper justice for all residents.

identified limiting access to fair trial for PLHIV, include: low levels of awareness of their rights; distrust in the judicial system; discriminatory attitudes of law enforcement officers and other judiciary officials; and a general lack of professionalism among court officials and a systematic failure to comply with the anti-discrimination legislation afforded to PLHIV. Analysis of these judicial practice, including court rulings by the ECHR, shows a systemic problem in Ukraine relating to violations of human rights with respect to judicial protection, which needs to be addressed at the level of judiciary reform and related legal institutions, as well as through awareness-raising activities among PLHIV.

Key Recommendations

The Ministry of Health of Ukraine

- Review and amend the C&T procedures to include an explanation of the legal rights of PLHIV.
- Ensure access to legal consultations regarding the rights of PLHIV at HIV testing sites, or through appropriate referrals to legal aid services or human rights organizations.
- Conduct continuous public services information campaigns for PLHIV provide easy to understand information on their legal rights and protections. Dissemination efforts should target health facilities, mobile testing centers, NGO's and CBO's that providing services to PLHIV and KP, and the media.

The Ministry of Health of Ukraine and the Ministry of Education and Science of Ukraine

- Develop and implement training courses for court officials (e.g., law enforcement officers, judges, prosecutors, penitentiary system officers) on legal and ethical issues of PLHIV.²⁷⁸

278 These laws may become part of anti-discrimination courses and training, planned under paragraph 107 of the Action plan to implement the National human rights strategy by 2020 (approved by the Cabinet of Ministers' directive № 1393-p of November 23, 2015).

CONCLUSION

CONCLUSION

The Government of Ukraine recognizes the importance of controlling and documenting the HIV epidemic, and the country has demonstrated a progressive approach toward creating and enabling an environment where services are equally accessible to all who need them. Additionally, Ukraine's Health Reform Strategy expresses a commitment to improving the public health of all citizens through comprehensive HIV prevention and treatment services. This includes the implementation of several recent laws, policies, and regulations that aim to strengthen the country's HIV legal environment. However, gaps persist creating opportunities for improvement.

HIV prevention is one of the national policy priorities, and is legislatively presented by an extensive list of state guarantees. However, key challenges in meeting the policy targets are closely related to a lack of interdepartmental coordination and further hampered by severe underfunding in national and local budget for HIV prevention efforts. A major achievement in this area is demonstrated by prevention among specific key risk populations, especially PWID. Official figures have shown a steady decrease in both in the prevalence and incidence of cases among this population, which is partially due to MAT programs taking an integrated approach to PWID services. Despite this success, at the national policy level more attention should be paid to HIV prevention among other key risk populations (e.g., MSM, CSW), as well as increasing awareness among the general public. These efforts will help reduce the number of new infections nationally and reduce the social stigma these groups face.

Treatment services are one of the most developed HIV prevention components in Ukraine, although improved quality and standardization needs to be achieved. Despite protections afforded by Ukraine's laws, major barriers to accessing these social protection persist. This includes a lack of knowledge of available services, complicated administrative procedures, as well as social stigma and discrimination experience both in the workplace and by patients as they attempt to access needed services. Due to these facts, ensuring the confidentiality of protected health information is especially important in the context of HIV/AIDS, due to potential stigma and discrimination.

In terms of equal opportunities and legal protection, Ukraine's regulatory environment does not in any way restrict key risk populations or PLHIV in their political, social and cultural life. However, as there is a high level of societal stigma and discrimination against these groups, this significantly affects people's behavior, self-esteem, self-image, and often prevents them from fulfilling their potential. Further, laws that discriminate against HIV positive migrants, and the policy that creates criminal liability for HIV, infection adversely affects PLWH's access to HIV prevention and treatment programs and should be revoked.

It is clear that a major roadblock to achieving equitable treatment and prevention nationally is stigma and discrimination, which are dictated not only by societal norms but perpetuated by Ukraine's regulatory environment. Ukrainian law *de jure* prohibits discrimination and homophobia, but fails to provide concrete mechanisms for legal protection and exercise of people's rights. Furthermore, regulations that address more equal relationships between the genders and empowerment of women are vital for effective HIV prevention and enabling women to combat HIV and AIDS. Ultimately, more attention should be paid to the implementation and enforcement of all regulatory documents and approaches to support key risk populations, as well as elimination of the barriers and inconsistencies that marginalize individuals and hamper treatment efforts.

Policies, laws, and regulations that affect the three primary categories examined in this assessment: *Access to Essential Services, Key Risk Populations, and Equal Opportunities and Legal Protection*. Effective implementation of existing regulations which protect individual rights is crucial to improve social protection for HIV effected and affected populations and improve health outcomes nationally. Additionally, existing regulations highlighted in this report should be reexamined and strengthened according to the recommendations described within this assessment to be in line with national and international guidelines. Further strengthening national coordination at the central level and local levels is essential for an integrated approach to the HIV epidemic. Ukraine has made significant progress developing a supportive HIV legal environment, but more work is needed to improve the health of generations to come.



LEGAL ENVIRONMENT ASSESSMENT FOR HIV IN UKRAINE

2017