



Strengthening Ukraine's Response to HIV/AIDS Eliminating Gaps Between Legislation and Implementation

Executive summary

Ukraine has pledged to comply with international standards for addressing its HIV/AIDS epidemic and protecting the rights of HIV-positive people. Yet government efforts to date have been inadequate, even falling far short of guidelines set forth in Ukraine's own National HIV/AIDS Law. This brief examines the existing gaps between legislation on HIV/AIDS and its implementation. It also provides recommendations for strengthening Ukraine's response to the epidemic. For practices to be consistent with policy, the new government must make additional, and fulfill existing, financial and political commitments; streamline policy and budgeting processes; establish a comprehensive HIV/AIDS educational agenda; adopt measures aimed at reducing stigmatization and discrimination of high-risk groups; and strengthen cross-sectoral coordination. The brief emphasizes the need for the establishment and enforcement of specific protocols in all aspects of HIV/AIDS program development and implementation, and stresses the need for more efficient utilization of both international and domestic funding. Key policy priorities identified focus on both treatment (more widespread provision of ARV therapy) and prevention (expansion of harm reduction services, including substitution therapy and needle-exchange programs).

Legislative response to HIV/AIDS in Ukraine is broadly in line with international and national standards. The rapid spread of the epidemic seriously affects the collective health of the population and Ukraine's socio-economic development. There is, therefore, a need to compare Ukraine's legislation on HIV/AIDS against the track record of its implementation.

This TPAA Policy Brief is an attempt to review the situation and develop proposals for optimizing prevention strategy and its implementation at the executive level.



Head of the Ukrainian AIDS Center
Ministry of Health
Professor Alla Mihajlivna Sherbynska

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Text: D. Trifonov, J-M. Jackson, A. Bega.
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Eliminating Gaps Between Legislation and Implementation

Denis Trifonov, Jeanne-Marie Jackson, Andriy Bega

Introduction



Ukraine's surging HIV/AIDS epidemic poses a serious threat to the nation's security, continued economic growth and social development. The epidemic primarily affects Ukrainians in their most productive years, thus representing a severe impediment to the development of a democratic and prosperous society. The World Health Organization (WHO) and UNAIDS estimate that at the end of 2003, approximately 1.4 percent of the Ukrainian adult population (15–49 years of age) was living with HIV/AIDS.¹ This figure represents an alarming 13 percent increase over estimates from two years earlier. According to Ukraine's National AIDS Center, the epidemiological situation in Ukraine has sharply deteriorated: between 2000 and 2004, the rate of new HIV infections had doubled, while AIDS patients' mortality rate almost quadrupled.

The national response to HIV/AIDS has strengthened somewhat in recent years, but reversing current trends remains a formidable challenge. Progressive laws and well-meaning policy initiatives and funding pledges have not yet translated into direct action at the implementation level. Despite accelerating rates of economic growth, HIV/AIDS programs in Ukraine are severely under-financed: according to WHO, the estimated funding gap for treatment alone in 2005 is at least US\$214 million. And although the epidemic is emerging as a major security threat to Ukraine, most of the funding currently in place is provided by international donors, not the national government.

The health care system and service providers funded by international donors are struggling to widen access to treatment of both HIV itself as well as the opportunistic diseases that cause most of the HIV/AIDS-related deaths. Their efforts have been complicated by several factors, including shortages of qualified HIV/AIDS medical specialists and dedicated psychological care for those affected by the epidemic. Furthermore, people living with HIV/AIDS (PLWHA), particularly those who acquired HIV through injection drug use or commercial sex, are stigmatized and routinely discriminated against or prosecuted. Stigma and discrimination are barriers obstructing the ability of the majority of PLWHA in Ukraine from access to prevention and treatment services. This causes unnecessary suffering and death among PLWHA and significantly increases transmission risks among other members of vulnerable populations. Moreover, the HIV/AIDS epidemic is no longer confined to specific marginalized communities: it has of late spread increasingly among the heterosexual, non-drug-using population not involved in commercial sex work, particularly among teenage girls.

The overall message of this brief is that the national response to the epidemic must be strengthened at all levels—and decisive leadership from government officials, business executives and other social leaders, civil society representatives and PLWHA is needed to accelerate this process. The study begins by examining Ukraine's HIV/AIDS-related legislative framework and its compliance with best international practices, and then seeks to highlight the existing gaps between the legislation in place and its implementation. Policy recommendations are provided on issues calling for urgent government action.

International Standards and Current Legislation on HIV/AIDS in Ukraine



Ukraine's legislative response to the epidemic has by and large been in line with best international practices. When developing and updating its HIV/AIDS legislation, Ukraine has relied on two international framework agreements: the UN International Guiding Principles on HIV/AIDS and Human Rights, and the UN Declaration of Commitment on HIV/AIDS. Basic principles underpinning these documents are as follows: (1) national governments must have effective national frameworks for the response to HIV/AIDS; (2) national governments must enact anti-discrimination laws that protect high-risk groups; and (3) national governments must ensure access to quality prevention measures, social support services, and to medical care at affordable prices.

As regards protecting the rights of PLWHA, Ukraine is bound by three major legal instruments: the UN-sponsored International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights, and the Convention For the Protection of Human Rights and Fundamental Freedoms (the European Convention). The protection of human rights in general is a requirement that Ukraine would need to comply with in order to be a candidate for EU accession. The Partnership and Cooperation Agreement that Ukraine signed with the EU in 1998 requires that the Ukrainian human rights legislation be consistent with that of the European Union, and the European Convention is an integral element of the Community Law.

Analysis shows that Ukrainian laws and government acts on HIV/AIDS are consistent with UN guidelines and international human rights standards.² Ukraine's legislative response to the epidemic is centered around the National Law on HIV/AIDS, last amended in 2001. The Law commits the Government of Ukraine to the following epidemic control-related measures:

- continuous epidemiological monitoring of HIV infection in Ukraine;
- free access of PLWHA to all necessary health care, including antiretroviral (ARV) medicines and individual means of prevention;
- free access to voluntary and anonymous testing and pre- and post-test counselling on HIV/AIDS;
- confidentiality of HIV test results;
- public education on HIV/AIDS, including mass media awareness campaigns and the inclusion of HIV/AIDS in secondary, high school, college and university curricula;
- public programs on prevention of sexual transmission of HIV; and
- prevention of HIV transmission among injection drug users, including the establishment of needle- and syringe-exchange programs.

In addition to the Law, issues related to HIV/AIDS management inside the penal system are regulated by a joint decree of the Ukrainian Ministry of Health and the State Penal Department.³ This act reaffirms the right of inmates to free, voluntary and confidential HIV/AIDS testing and counselling, and free access to health care for HIV-infected inmates. Prison administrations are responsible for ensuring inmates' access to condoms and providing a sufficient supply of sanitary protection items (e.g. latex gloves) for prison health staff. The health staff, in turn, is responsible for designing and implementing health and HIV/AIDS education programs and for providing treatment to inmates with drug addictions.

PLWHA employment rights are protected by the Ukrainian Labor Code. Article 25 of the statute prohibits employers from requiring job applicants to submit documentation that is not expected under the legislation. This means, for instance, that they are banned from making job offers conditional upon HIV test results.



The Government of Ukraine's track record in managing the HIV/AIDS epidemic shows that many elements of HIV-related legislation are (a) inadequately implemented and poorly enforced; (b) frequently ignored by certain government agencies and public-funded institutions (e.g. law enforcement, medical facilities, etc.); (c) not enabled by officially approved ministerial guidelines and instructions; or (d) significantly under-funded. Most fundamental, however, is a lack of political will and commitment to HIV/AIDS control even when implementation of the legislation does not require financial investment.

That Ukraine is not doing enough to fight the epidemic and protect the rights of those affected is clear from the feedback that non-governmental organizations receive from PLWHA in the country. The results of a recent survey indicate that 69% of HIV-positive individuals have been improperly denied health care at some point, and that 70% believed their right to confidentiality had been violated. Such discrimination severely impairs the ability to seek proper and timely treatment. Only about 18% of those polled, for example, feel comfortable informing health care workers of their HIV-positive status, even if it seems vital to do so.⁴

TPAA and its partners have identified three strategic-level policy areas in which gaps between legislation and implementation seriously impede Ukraine's ability to contain the epidemic:

1. Inadequate Planning and Budgeting Processes

There is an urgent need for improved program planning and budgeting processes in all areas related to HIV/AIDS. At the heart of the current planning process is Ukraine's "National Program for Preventive Measures against HIV Infection, Support and Treatment of People Living with HIV/AIDS for 2004–2008".⁵ The Program spells out key HIV/AIDS-related targets for both national and regional governments. As far as the list of target areas is concerned, the document corresponds to the UNGASS Declaration of Commitment on HIV/AIDS⁶ and UNAIDS recommendations on HIV preventive policies. There are, however, two major problems with the Program:

- a) Firstly, the document was put together by a variety of implementing agencies (among them the Ministries of Health, Interior, and Social and Labor Policy). There was no coordinating authority in place for evaluating existing needs across the policy areas and developing a single list of deliverables backed by realistic funding projections. Since no detailed budget analysis preceded the document's development, it lacks a list of independently verifiable indicators to measure the effectiveness of the Program's implementation. Such an absence of goals or outcomes of previous efforts, expressed in concrete numbers, tends to perpetuate an uncontrolled and ineffective use of funds. In 2001–2002, for example, national spending commitments—already estimated as insufficient to satisfy program needs by 50%—were fulfilled by only 62%, and regional commitments by 70%.⁷
- b) Secondly, the National Program lists goals, but does not contain an implementation action plan spelling out concrete steps that need to be taken by the various government agencies to successfully implement the document. It is not clear from the document which agency is responsible for the overall monitoring and evaluation of the Program. Efforts of international and bilateral donors (such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Bank and USAID) are not factored in.

2. Funding Shortfalls

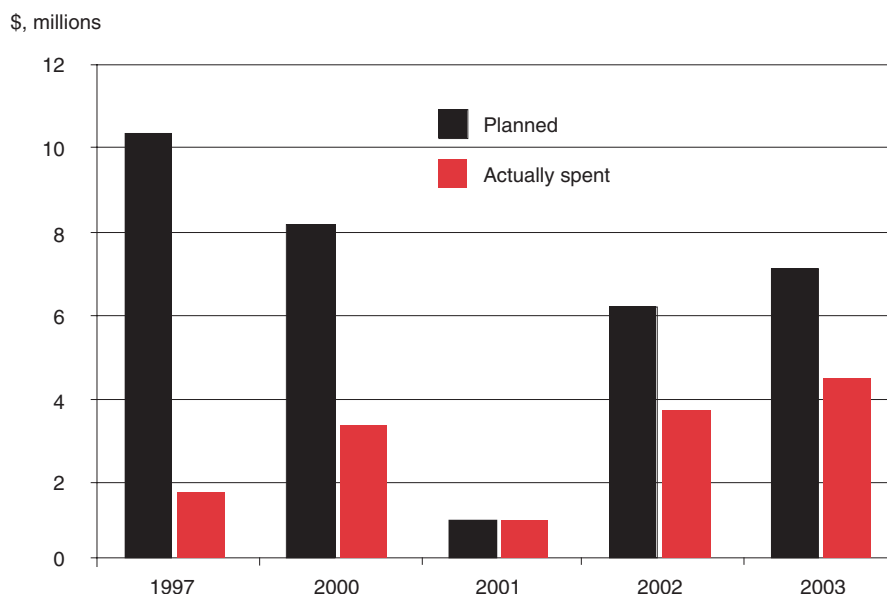
Tepid political commitment at the national level is reflected in the severe extent to which the National HIV/AIDS Program in Ukraine is underfinanced (See Fig. 1), and in the above-mentioned funding gap for treatment of HIV and opportunistic diseases.

Under-financing has a particularly negative impact on relatively costly interventions against HIV/AIDS, such as the provision of ARV drugs for PLWHA. Although ARV treatment does require significant expenditure, its ultimate effects are immeasurable in terms of the number of lives potentially saved, the possible reduction

in HIV transmission and the slowing down of the demographic decline.⁸ For instance, international experience dictates that wide access to ARV treatment augments the effectiveness of existing preventive measures against HIV infection; people who know that treatment is available are simply more likely to get tested, know their HIV status, and protect themselves and others from infection. Increasing access to ARV treatment for PLWHA in Ukraine is ever more crucial as the number of people in need of such treatment rapidly multiplies.

As of June 2004, an estimated 45,000 Ukrainians were in need of ARV therapy. Yet for 2005, the national treatment target is just 2,100, with the Ministry of Health expecting overseas donors to meet most of the scaling-up costs. One of the reasons the government itself is unable to significantly scale up ARV treatment is that its drug procurement process is flawed. There are indications that the Ministry of Health is paying far more for ARV drugs within the framework of the National Program implementation than it needs to. According to Medicins Sans Frontieres (MSF), a non-governmental organization with an ARV treatment program in Odessa, the weighted annual cost of ARV treatment for an HIV patient cared for in 2004 by the Ministry was US\$6,322, while the MSF figure for the same period was US\$522 per year.⁹

Figure 1. Financing of the National HIV/AIDS program in Ukraine, 1997–2003.



3. HIV/AIDS and Drug Addiction Problem:

Poor implementation of services guaranteed by the legislation is particularly evident in the area where problems of HIV infections and injection drug use intersect. The majority of infections to date in Ukraine are attributable to injection drug use, and the continued rise in drug-use rates, particularly among the young, indicate that this transmission vector will continue to be the most common over the next few years.

Needle-exchange programs and substitution therapy are recommended by the United Nations as some of the most effective methods to reduce HIV transmission among injection drug users.¹⁰ Although the National HIV/AIDS Program requires the Ministry of Health and regional governments to introduce such programs, many incorrectly believe that substitution therapy is prohibited by Ukrainian legislation. On the contrary, it has already been endorsed by the National Ministry of Health for hospital and out-patient settings.¹¹ Moreover, the most common drugs used for this therapy (methadone and buprenorphine) have been registered in Ukraine as medicines, and buprenorphine was included in the so-called National List of Vital Medicines.¹²

Yet years after its official endorsement, substitution therapy remains highly underutilized, while needle-exchange programs receive no funding from the government and privately run programs are closely monitored by police and security forces. The process is further slowed down by a lack of Ministry of Health

guidelines for the administration of substitution therapy and monitoring of drugs used for this therapy. These guidelines are essential to ensure that the health personnel who would administer substitution therapy on a national scale are adequately trained to administer this treatment safely and effectively.

The government remains split over substitution therapy. The Ministry of the Interior and the Security Service of Ukraine (SBU), taking advantage of a lack of top-level HIV/AIDS coordination mechanism, have consistently blocked efforts to develop and implement a comprehensive national substitution therapy program. The SBU is opposed to the procurement of methadone for drug treatment purposes, even though it is widely used and has proved effective in many countries around the world. The security services are equally unenthusiastic about needle-exchange programs. There are anecdotal reports of police attempts to either prosecute providers and clients of needle-exchange services or terminate their work. There are also reports that access to needle-exchange services in the state penal system is fragmented. Such reports demonstrate a clear lack of understanding among police and prison staff of effective and government-endorsed approaches to HIV/AIDS prevention and control efforts among injection drug users.

Conclusions and Recommendations



Ukraine has developed a comprehensive and sophisticated legal foundation to address HIV/AIDS that is largely consistent with UN recommendations and international human rights guidelines. Much of this legislation, however, remains relegated to the books, and is rarely implemented. As a result, Ukraine harbors one of the world's fastest-growing HIV epidemics.

The gaps in implementation of HIV/AIDS policies and programs in Ukraine suggest that further revision and refinement of the legislation, although necessary, is not likely sufficient to dramatically improve the HIV/AIDS situation without:

- (1) raising political and financial commitments to HIV/AIDS at the national and regional levels, including the consistent fulfillment of approved budget allocations and urgent development of a longer-term HIV/AIDS funding strategy;
- (2) improving policy making and budgeting processes, including the establishment of a centralized body responsible for monitoring government program results and evaluating goals and outcomes in concrete, numerical terms;
- (3) educating policymakers, government officials and the rest of the population about HIV/AIDS, particularly regarding effective approaches (especially harm reduction and substitution therapy) to preventing HIV transmission among the most vulnerable groups;
- (4) reducing stigmatization and discrimination of vulnerable groups by increasing awareness and knowledge about HIV/AIDS among health care workers, police and prison staff, as well as the general population.
- (5) strengthening inter-sectoral coordination on HIV/AIDS between key government ministries, non-governmental organizations and all other stakeholders. This might include harmonizing statistics, coordinating and streamlining government response at national and local levels, and increasing communication between government and hospitals, prisons and drug rehabilitation centers.

In addition to these general measures, the following specific actions on the part of the government are recommended for the short-term:

- Work to reduce costs of ARV medicines by reforming the existing drug procurement process; allowing procurement of less-expensive legally produced generic (non-originating brand) ARV medicines through open tenders; streamlining licensing of ARV medicines; and exempting ARV medicines from all tariffs, taxes and duties.
- Develop and approve national guidelines for the administration of substitution therapy for prevention of HIV transmission among injection drug users. Either the President's Office or the Cabinet of Ministers must send a clear message to the law-enforcement and security agencies that substitution therapy has been endorsed and is supported by the government.
- Establish a participatory and inclusive mechanism for the continuous monitoring of the implementation of national legislation on HIV/AIDS as well as human rights violations concerning HIV/AIDS prevention and treatment. This mechanism must include representatives of governmental and non-governmental organizations, as well as people living with HIV/AIDS.
- Conduct an in-depth analysis of existing and potential future barriers to effective implementation of national legislation on HIV/AIDS. The results of this analysis should be presented and discussed at a meeting of the National Rada Special Commission on HIV/AIDS, Tuberculosis and Drug Abuse.

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- 1 UNAIDS Epidemiological Fact Sheet on HIV/AIDS and Sexually Transmitted Diseases, September 2004. Available online at www.unaids.org.
 - 2 Results of the Ukrainian Harm Reduction Association's analysis of the Ukrainian legislation on HIV/AIDS. The study was led by Dr. Volodimir Rudyi (MD, JD), a former head of the Secretariat of the Ukrainian Rada Committee for Health, Maternity and Childhood.
 - 3 The order of provision of medical and sanitary care to inmates of pre-trial points and penal institutions of the State Penal Department of Ukraine. Approved by a joint decree # 3/6 of the State Penal Department and the Ministry of Health of Ukraine on January 18, 2000.
 - 4 International HIV/AIDS Alliance in Ukraine Access to Rights and Services of People Living with HIV in Ukraine: Social Research Results, March 15, 2004, Kiev.
 - 5 The Program was approved by the Resolution of the Cabinet of Ministers on March 4, 2004.
 - 6 Declaration of Commitment on HIV/AIDS. Adopted at the United Nations General Assembly Special Session on HIV/AIDS, June 25-27, 2001. Its purpose was to outline a broad, global response to the HIV/AIDS epidemic, and it endorsed the establishment of the Global Fund to Fight AIDS, Tuberculosis and Malaria.
 - 7 "A New Harm Reduction Policy", International Centre for Policy Studies. Available online at www.icps.com.ua.
 - 8 A. L. Vinokur, M.V.Semenchenko., "Improving access to ARV medicines for PLWHA in Russia", Transatlantic Partners Against AIDS, Policy Brief Series, #1.4., September 2004, Moscow, Russia.
 - 9 MSF Ukraine draft memo for TPAA, February 24, 2005.
 - 10 UN position paper, "Preventing the Transmission of HIV Among Drug Abusers".
 - 11 UNAIDS Epidemiological Fact Sheet on HIV/AIDS and Sexually Transmitted Diseases, September 2004. Available online at www.unaids.org.
 - 12 The National List of Vital Medicines, approved by decree #1482 of the Cabinet of Ministers of Ukraine on November 16, 2001.

Denis Trifonov – Acting Program Director at TPAA Ukraine. Prior to joining TPAA in 2004, D. Trifonov worked for Nato Parliamentary Assembly in Brussels. He has also worked as a Russia/CIS defence analyst for several British consultancy companies. D. Trifonov has degrees in international relations from Oxford and St. Petersburg universities.

Jeanne-Marie Jackson – Policy Research Assistant at TPAA Ukraine. She is reading for a degree in Russian Language and Literature with a minor in Eastern European History at Drew University (US), and is currently a Fullbright scholar at Taras Shevchenko National University.

Andriy Bega – Coordinator of the “Policy Campaign for Harm Reduction” project at the International Centre for Policy Studies. He has Masters in Public Administration from New York University and degree in management from National Technical University of Ukraine.

TRANSATLANTIC PARTNERS
AGAINST AIDS

Transatlantic Partners
Against AIDS (TPAA)
928 Broadway, Suite 800
New York, NY 10010
Tel: +1 (212) 228-8907
Fax: +1 (212) 228-9063
Website: www.tpaa.net

Transatlantic Partners
Against AIDS (TPAA)
13-A Pymonenka str.,
4th Floor 04050 Kyiv, Ukraine
Tel/fax: +38 (044) 246 8145
Tel: +38 (044) 246 9292
Website: www.tpaa.net

Transatlantic Partners
Against AIDS (TPAA)
Gazetny per. 5, 3-d Floor
123001 Moscow, Russia
Tel: +7 (095) 510-5370
Fax: +7 (095) 510-5371
Website: www.tpaa.ru

Transatlantic Partners Against AIDS (TPAA) is an independent, non-governmental organization that leverages the political, civic, scientific, and economic resources of North American, European, and Eurasian partners to combat the rapid and devastating spread of HIV/AIDS in Ukraine, Russia and neighboring countries.