

Background

The United Nations (UN) Joint Work Plan on AIDS in China (2018–2019) was developed based on targets set in Fast-Track countries (with explicit focus on UN support for priority country targets) that were approved by the UNAIDS Programme Coordinating Board (PCB) in June 2017. It will ensure that UN agencies provide focused support to the national AIDS response in three areas: (1) HIV testing and treatment and the elimination of mother-to-child transmission (eMTCT); (2) HIV prevention among key populations; and (3) human rights, stigma and discrimination, and gender.

After careful review and discussion, the UN Joint Team on AIDS in China (Joint Team) identified the third area human rights, stigma and discrimination, and gender as a bottleneck where the UN can provide significant added value to the national response in China. The Unified Budget, Results and Accountability Framework (UBRAF) money for China—which is US\$ 300 000 each year for 2018 and 2019 through the country envelope will also be used for work in this area in order to fill the budget gap of relative UNAIDS Cosponsors.

The approved targets for programme implementation are as follows:

- 1. Travel restrictions on international people living with HIV.** Policies and implementation guidance on the entry, stay and residence of foreigners living with HIV are harmonized and aligned for the full implementation of two major laws regarding this issue that were revised in 2010.
- 2. Full employment of people living with HIV.** Policy review and analysis of the regulations concerning the full employment of people living with HIV in the public service are conducted and used for sustained advocacy.
- 3. Gender inequality and discrimination in health-care settings.** Policies and guidance are implemented to end gender inequalities, gender-based violence and health care stigma and discrimination facing women living with HIV.

The Joint Team developed key messages around the above targets that reflect why these issues are important. Those key messages are for internal use only by the Head of Agency and the UN Communication Theme Group.



Key messages

1. Travel restriction for international people living with HIV

- The elimination of HIV-related restrictions on entry, stay and residence for people living with HIV is one of the 2015 global AIDS targets outlined in the 2011 United Nations Political Declaration on HIV and AIDS. It is an issue that is closely related to basic human rights and dignity. As of 15 April 2016, 142 countries, territories and areas—including China—have no HIV-specific restrictions on entry, stay and residence at the policy level.
- China has made important progress in removing restrictions on entry, stay, study and work for foreigners living with HIV. In 2010, the State Council made a revision to the People's Republic of China Foreigner Entry and Exit Management Law Implementation Details (No. 637 Decree of the State Council of People's Republic of China) and People's Republic of China Border Health Quarantine Law Implementation Details (No. 574 Decree of the State Council of People's Republic of China) and cancelled the entrance restrictions on foreign people living with HIV by removing specific mention of HIV from the two core regulations.

- It also clear that there are several policies and regulations released before 2010 that are relevant to foreigners visiting China and may affect the entry, stay and residence in China of foreign people living with HIV. Issued by different ministries or departments—including the Ministry of Foreign Affairs, the Ministry of Public Security, the National Health Commission (NHC), the Ministry of Education, the Ministry of Labor, the General Administration of Quality Supervision, Inspection and Quarantine, and other national ministries—these policies are related to HIV testing for foreign people living with HIV and the issue of health certificates to them (which allow them to legally stay in China). With the support of the UNAIDS China Office, these policies were reviewed in 2017. As a result, two policies are officially in the process of abrogation, and one is being revised.
- At present, HIV-positive foreigners have been allowed to enter China for both short- and long-term stays since 2010. Health certificates are required for foreigners seeking to stay more than 1 year or to study in China, and health checks conducted in China continue to include testing for HIV and sexually transmitted infections (STIs). An HIV-positive result does not prevent the issuing of a health certificate, but the understanding and implementation of policy is different at the local level in China. In addition, China does not currently have a policy on free HIV treatment for foreigners, although some designated HIV hospitals provide treatment to them. Under the current law, the cost of service and medicine is supposedly out of pocket.
- Since the process of revising, clarifying and aligning these policies and regulations with the 2010 revisions of the core regulations is a complex process that may take several more years, foreign people living with HIV will continue to face challenges, including deportation or threats of deportation. There are several cases on record of foreign students who tested positive

for HIV at their universities and subsequently faced challenges such as extreme stigmatization and inhumane treatment. UNAIDS has formally reported these cases to the NHC and provided recommendations on international normative and best practices.

- This issue likely will grow as more foreigners come to study and work in China in line with the increased people-to-people exchanges envisioned in the Belt and Road Initiative. Thus, UNAIDS will continue working on this issue in 2018–2019, and it expects to work jointly with UNAIDS Cosponsor agencies in China. Key activities include following up with the NHC and relevant ministries on policy revision, strengthening advocacy on HIV knowledge based on the progress of science, strengthening policy implementation, and establishing mechanisms to provide health and related services to international people living with HIV (including antiretroviral therapy, care and support).

2. Full employment of people living with HIV

- The International Labour Organization (ILO) adopted the Recommendation concerning HIV and AIDS and the World of Work 2010 (No. 200). It serves as an authoritative global guidance influencing policies and programmes in every workplace. Recommendation No. 200 recalls that workers should not be subjected to HIV-related stigma and discrimination in any aspect of the employment relationship, including selection, recruitment, or terms and conditions of employment.
- Chinese laws, such as the Law of Employment Promotion (issued in 2007 and amended in 2015), the Law of Prevention and Treatment of Infectious Diseases (issued in 1989 and amended in 2013) and the Regulation on the Prevention and Treatment of HIV/AIDS (issued in 2006) all protect the rights of people who have an infectious disease. This includes people living with HIV. There also are legal protections against stigma

and discrimination. The newly issued Action Plan for the Thirteenth Five-Year Plan for Combating and Prevention of AIDS (2016–2020) by the State Council of China also explicitly states that “protecting the legitimate rights and interests of people with HIV in seeking jobs is critical.”¹

- The policies issued by relative ministries should be in line with these laws. The General Standard of Physical Examination on Civil Servants Recruitment (Trial)—issued in 2005 and amended in 2016 by the Ministry of Human Resources and Social Security, NHFPC and State Administration of Civil Service—and the Operation Procedure of Physical Examination on Civil Servants Recruitment (Trial) (issued in 2007 and amended in 2013) are used for the civil service recruitment and referenced as employee recruitment in the workplace. However, they are not in line with the above national laws and regulations in terms of HIV; rather, they clearly indicate that people with HIV or other STIs are unqualified to be civil servants. This is a violation of basic human rights and is in contradiction of the obligations accepted by China in 2006 when it ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- Employment discrimination is still widespread in both the public and private sectors. According to current policies, people need to take a medical check-up before being employed, and people living with HIV are recognized as “unqualified” and denied opportunities to work in public institutions such as government bodies, hospitals, schools (including kindergartens, primary schools and middle schools), universities, research organizations, laboratories and more. In some provinces, people living with HIV cannot work in the service sector, including at coffee bars, tea shops, restaurants and so forth.
- Based on the findings from a report released by UNDP², seven HIV employment discrimination cases have been filed in court and widely reported by the media since 2010. None of them, however, have produced the outcome envisaged under international law, namely that qualified workers living with HIV are able to gain or retain employment. Furthermore, another ILO study conducted in China in 2011 found that 65% of business owners felt that people living with HIV should not enjoy equal employment opportunities. Given that there were 654 000 reported cases of people living with HIV in the country by the end of 2016, the scale of the discrimination becomes apparent.
- Access to legal services for HIV-related labour issues is essential to protecting and promoting the rights of workers living with HIV. Currently, however, nongovernmental organizations (NGOs) working with human rights and lawyers on public interests have had difficulty addressing any HIV-related discrimination and labour rights violations because they are not supported by government. Legal aid support for people living with HIV is inadequate and very few legal aid hotlines are available.
- Due to an increase in calls from groups of people living with HIV for equal employment rights and decent work, UN agencies will continue working to address the policies that are bottlenecking the employment rights of people living with HIV. The funding of the country envelope for China will be used to support programmes implemented by ILO and the United Nations Development Programme (UNDP), with the support of other agencies to achieve this target.

1. Please see the Thirteenth Five-Year Plan for Combating and Prevention of AIDS (2016–2020) (Chinese version), Chapter 3, Section 5, Point 3 (pg. 4). 2. The policy and legal environments related to HIV service in China: Review and Consultation, UNDP, 2015

2. Please see *The policy and legal environments related to HIV service in China: review and consultation*, UNDP; 2015.

3. Gender inequality and discrimination in health-care settings

- Comprehensive sexuality education with a focus on gender equality and human rights is largely missing in China. Traditional social norms and gender stereotypes put young people, especially young women and adolescent girls, in a disadvantaged position, with poor knowledge about sexual and reproductive health and limited access to combination prevention services that they can use to protect themselves from HIV. Gender-based violence in schools exacerbates the problem by exposing young people—especially girls and lesbian, gay, bisexual, transgender and intersex (LGBTI) students—to greater risks.
- Social and institutional discrimination against sexual and gender minorities pushes gay men and other men who have sex with men underground, fueling the epidemic and creating barriers to the uptake of HIV prevention services. Censorship laws preventing public discussion of sexual minorities in the media continue to marginalize the LGBTI community. Data from China's national HIV sentinel surveillance system indicates a steady rise in HIV prevalence among gay men and other men who have sex with men, from 1.3% in 2004 to 7.7% in 2016.
- Gender-based violence is a problem of pandemic proportions. Rates of violence facing women living with HIV were as high as 47% in 2016, as identified by civil society groups of women living with HIV. Due to social norms, domestic violence—especially sexual violence—is seriously under-reported among women living with HIV and the wives and female sexual partners of gay men and other men who have sex with men.
- Stigma and discrimination in health-care settings towards people living with HIV, including women living with HIV and members of LGBTI populations, is still a problem that hinders their access to services. According to a 2013 survey supported by UNAIDS, nearly 30% of respondents who were living with HIV had been refused service or experienced discrimination from doctors while seeking hospitalization or surgery in general hospitals.
- The government has laws and regulations to address discrimination in health-care settings, but there are no implementation guidelines or monitoring and reporting mechanisms. There also is a lack of data on the situation, and there is no system to record or monitor the problem. Groups of people living with HIV have called for solutions to address these gaps.
- In China, HIV treatment is provided by a designated hospital, which may be different from a general hospital. A designated hospital is specially established for infectious diseases, including hepatitis and STIs. However, designated hospitals lack resources and knowledge about general surgery and maternity issues, which can lead to an institutional barrier to proper medical treatment for people living with HIV. Furthermore, the general hospital system denies admission to people living with HIV, especially for medical procedures that are not related to HIV, such as surgeries or neonatal and gynaecology services for pregnant women. This, in turn, results in barriers to effective health services for people living with HIV.
- UN agencies in China recognize the situation of gender inequality and discrimination towards people living with HIV that exists in health-care settings, and they will support China to address it in the next two years through the UBRAF country envelope.

“We will not achieve our vision for health or realize any of the Sustainable Development Goals if we do not confront discrimination.”

Michel Sidibé
UNAIDS Executive Director