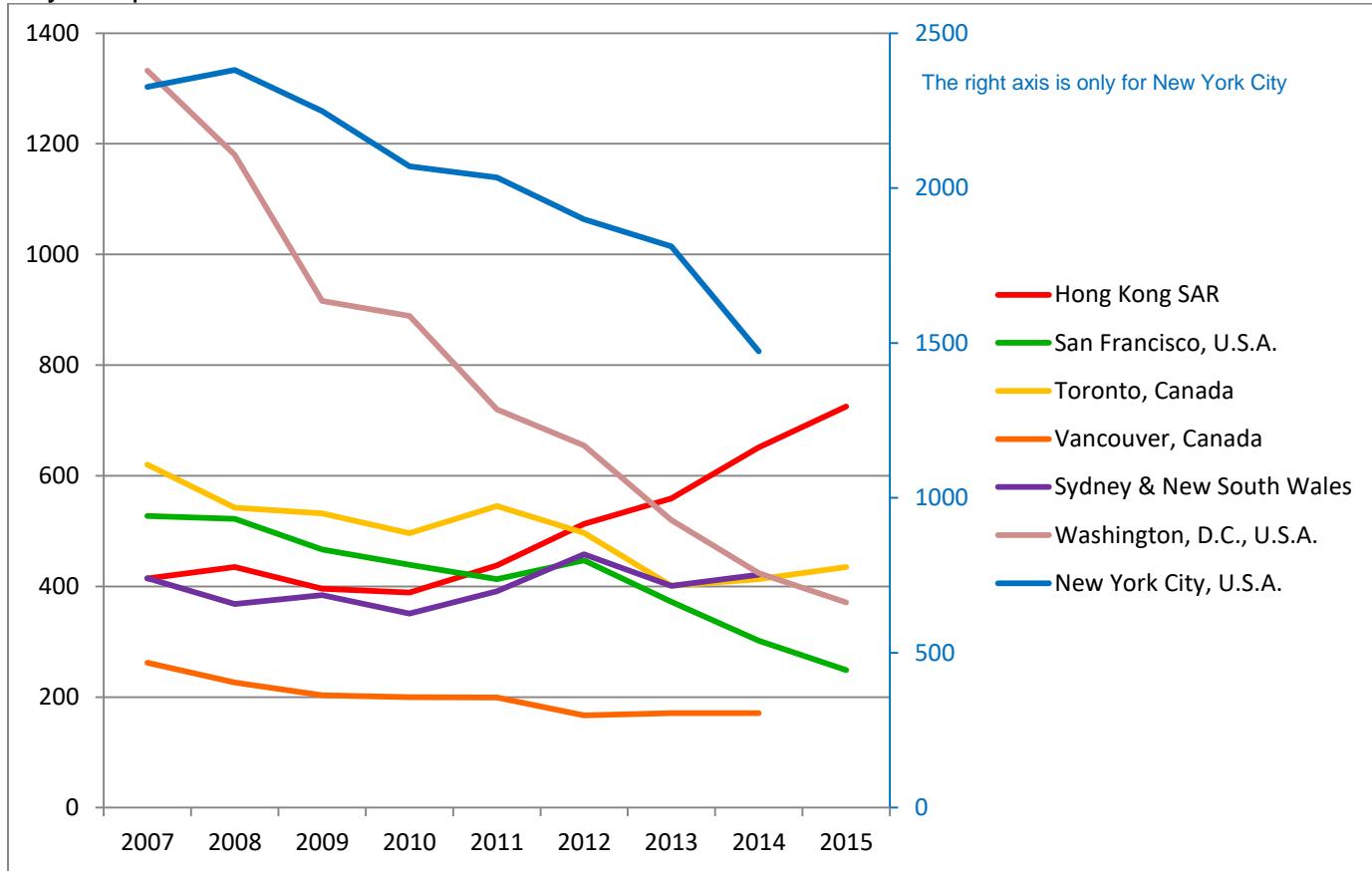


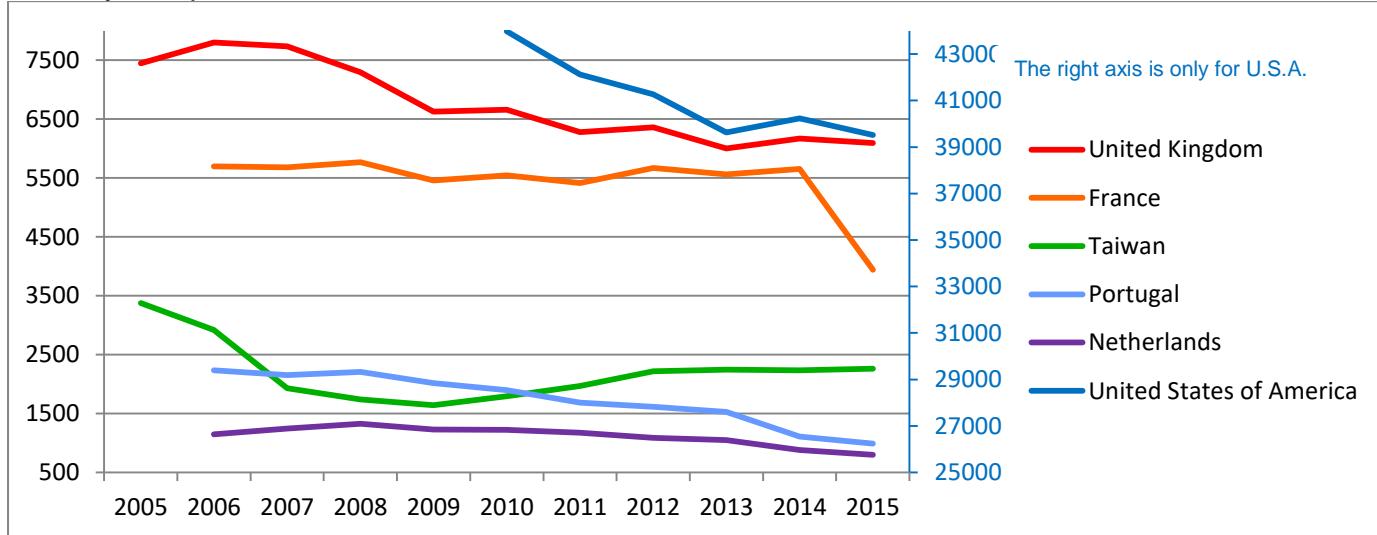
New HIV Diagnoses by Year 每年愛滋感染人數

Comparing Hong Kong with places that have legal protection against Sexual Orientation Discrimination
香港與有性傾向歧視法律保障的地方作比較

City comparisons:



Country comparisons:



	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Hong Kong	313	373	414	435	396	389	438	513	559	651	725
San Francisco			527	522	467	439	413	447	372	302	249
Toronto			620	542	532	496	545	497	401	413	435
Vancouver			262	226	203	200	199	167	171	171	
Sydney & New South Wales			415	368	384	351	391	458	401	421	
Washington, D.C.			1,332	1,180	916	889	720	655	520	424	371
New York City			2,327	2,381	2,248	2,070	2,034	1,899	1,812	1,473	
United States of America						43,978	42,120	41,265	39,632	40,234	39,513
United Kingdom	7,450	7,800	7,734	7,298	6,630	6,660	6,280	6,360	6,000	6,172	6,095
Taiwan	3,378	2,918	1,929	1,739	1,643	1,795	1,968	2,221	2,244	2,236	2,262
France			5700	5,680	5,770	5,460	5,546	5,417	5,673	5,561	5,653
Portugal			2232	2,154	2,205	2,015	1,899	1,684	1,614	1,530	1,109
Netherlands			1147	1,244	1,328	1,227	1,222	1,174	1,088	1,049	881

三個零政策裡漏實施了一個零（法律改革確保零歧視）影響清晰

The Outcome is Clear, when a Zero is Missing in the 3-Zeros HIV Policy – Legal Protection Against Sexual Orientation Discrimination

男同性性接觸社群新感染數字每年攀升

香港男同性性接觸者的愛滋病新感染數字每年攀升，根據衛生署最新《香港愛滋病情況(二零一六年)》^[1]的報告顯示：「自二零零四年男男性接觸者感染愛滋病病毒個案錄得持續上升，在二零一六年共錄得 424 宗。同性及雙性性接觸佔超過一半的總呈報個案(百分之六十三)，而佔男性感染個案達百分之七十三。自二零零五年，男男性接觸者個案持續地超越異性性接觸男性個案，並有擴大的趨勢。」^[1]

正如文件標題所言：「男男性接觸者的感染個案持續高企令人關注」^[1]。彩虹行動與香港政府同樣關注香港愛滋病的擴散情況，為了更有效遏止男男性接觸者感染愛滋病的上升趨勢，除了繼續現行的愛滋病防治工作以外，制訂《性傾向歧視條例》是一個應為而未為的重要方法。

訂立《性傾向歧視條例》和愛滋病防治的關係

「關懷愛滋」憑著豐富的前線經驗，撰文解說兩者關係：「香港的愛滋病病毒治療十分先進，可是恐懼及標籤令性小眾人士不敢向醫護人員或其他人就健康問題求助。性小眾人士害怕得不到保密的對待，令他們的性傾向被暴露及從而衍生其他問題。故此消除性傾向歧視是愛滋病病毒預防工作的首要行動。」^[2] 關懷愛滋表示：「爭取法律權益絕對是減低標籤及讓性小眾能更容易享受健康生活的重要一環。」^[2]

現時香港政府投入大量資源推動愛滋病防治的工作，只是在帶有性傾向歧視的環境之下，推動愛滋病防治工作變得事倍功半。而訂立《性傾向歧視條例》有助在香港創造有善的環境，在少歧視的環境下推動愛滋病防治的工作將有助節省相關的資源，事半功倍。

法律框架是愛滋病防治工作最有力的支持

引用《聯合國愛滋病規劃署行動框架 (UNAIDS Action Framework) 男男性接觸者和跨性別》^[3]文件第一句是：

「『依舊行事』的愛滋病風險預防方式在男男性接觸者和跨性別社群裡已經不再可行。這些人群的愛滋病感染數據顯示出我們的集體預防方式遇到失敗的頻密程度遠遠多於成功或接近標準。」^[3]

這文件提出的第一項目標 (Objective 1) 是：

「改善男男性接觸者和跨性別社群的人權狀況，是有效應對愛滋病的基石」^[3]

此文件亦提出具體建議，包括：^[3]

第一：倡議和保障男男性接觸者和跨性別人士的人權，其中包括保護不受歧視...

第四：為男男性接觸者和跨性別人士充權，讓他們可平等地參與社會和政治生活；

第六：公共宣傳運動提及恐同症(homophobia)以及對跨性別人士的歧視。

聯合國秘書長潘基文為此愛滋病政策文件題詞：

「在沒有法律保護性工作者、吸毒者和男男性接觸者的國家，只有小部分人口獲得預防。相反，在有法律保護對這些人和有人權保障的國家，更多人能獲得服務。因此有更少感染、較少抗逆轉錄病毒治療的需求和減少死亡。不保護這些群體不僅是不道德的，從健康角度不合情理。並傷害我們所有人。」^[3]

此外，世界衛生組織（WHO）《男男性接觸者和跨性別人士的愛滋病病毒預防和治療建議》文件的首項建議（Recommendation 1）是：

「立法者和其他政府部門應建立達到國際人權標準的反歧視和保護法。以消除男男性接觸者和跨性別人士面對的歧視和暴力，從而減少他們較容易感染愛滋病病毒的情況。」^[4]

由此可見，「聯合國愛滋病規劃署」和「世界衛生組織」皆清楚建議：若要有效降低愛滋病感染情況，消除社會對性小眾的歧視是重要的基石。香港愛滋病新感染個案數字攀升愈見嚴峻，是一個急需應對的社會問題，制訂《性傾向歧視條例》是刻不容緩的。

國家領導人承諾實踐「向零進發」

中國衛生部副部長尹力博士在 2011 年 6 月的「聯合國大會—愛滋病問題高級別會議」發表演說：「聯合國愛滋病規劃署確定的『無新愛滋病毒感染、無歧視、無愛滋病導致死亡』的『三個零』目標給我們描繪了一個宏偉的藍圖。多年的防治實踐表明，要實現這一目標，每個國家、每個組織和個人都要積極行動起來。」^[5]

2011 年 7 月 11 日，「聯合國愛滋病規劃署」執行主任米歇爾西迪貝訪問中國時，會見他的中國國務院副總理李克強公開表示：「『三個零』的目標可以達到，我們正在策動這場運動，我承諾，國家也承諾將此實現。」^[6]

除了國家領導人之外，食物及衛生局局長高永文醫生於 2014 年 11 月 29 日「『零零無歧』全球同抗愛滋病運動 2014 啟動禮」中，公開呼籲政府部門、非政府機構與愛滋病服務組織攜手合作，加強愛滋預防教育，向「零新增愛滋病病毒感染」、「零愛滋病相關死亡」及「零歧視」的目標邁進。^[7]

上文提及的「零新增愛滋病病毒感染、零愛滋病相關死亡及零歧視」，其實是 2011 年由「聯合國愛滋病規劃署」（UNAIDS）向全球頒佈的新世代愛滋病政策，名為「GETTING TO ZERO」^[8]，廣被全世界採用，香港衛生署將之翻譯為「向零進發」。香港愛滋病顧問局出版的《香港二零一二年至二零一六年愛滋病建議策略》的「願境」中亦直接寫明：「聯合國愛滋病規劃署最新的 2011-2015 年戰略計劃『實現三個零』，是通過廣泛磋商、最佳證據、與及實現普遍獲得愛滋病相關服務和千年發展目標的道義責任而發展出來。該計劃的三支柱願景：零愛滋病新發感染，零歧視和零愛滋病相關死亡，指導了本地應對愛滋病的總體方向。」^[9]

「聯合國愛滋病規劃署」對「零歧視」清楚講解：「對同性戀的懲罰性法律（例如香港《刑事罪行條例》第 118 條）妨礙愛滋病工作的效率」。政府需要「為愛滋病工作增強人權狀況」，包括制訂「法律環境保護免受偏見和歧視」^[10]，這包括「愛滋病感染者和愛滋病高風險社群」。這份文件解釋所指的「重點社群」包括「男男性接觸者」和「性工作」社群^[11]；整份文件也經常提及性傾向歧視對愛滋防治的負面影響，以及法律改革對愛滋防治的重要性。另外，學術期刊《AIDS and Behavior》也發表研究報告，總結：「性傾向歧視與男男性接觸者進行愛滋傳染高風險的性行為有明顯的關聯。」^[12]

「全球愛滋病與法律委員會」於 2012 年 7 月出版研究報告，在其《執行綱要》的「總結建議」寫道：「明確修訂反歧視法律，以消除基於性取向（及性別認同）的歧視行為。」^[13]

上一屆香港愛滋病建議策略公眾諮詢期間，香港愛滋病顧問局於 2011 年 1 月舉辦了相類似的社群諮詢會，報告裡清楚描寫，為了要讓來年的愛滋防治工作推動得更順暢和更有效率，他們指出：

在男男性接觸者和跨性別界別最優先級別的建議是：

1. 反偏見與歧視：法律改革以保護男男性接觸者和跨性別人士的人權。
2. 《性傾向歧視條例》的立法。^[14]

在男性工作者界別最優先級別的建議是：

1. 法律改革和實施：安全套不用作檢控證據；廢除「唆使不道德行為」的法律；性工作非刑事化。^[14]

對於《2012-2016 年香港愛滋病建議策略》的草稿遺漏了反歧視立法的部份，聯合國愛滋病規劃署(UNAIDS)曾於 2011 年 12 月 28 日直接發信給香港愛滋病顧問局(ACA)；聯合國開發計劃署(UNDP)亦派專員於 2012 年 2 月 24 日訪港直接向 ACA 主席和委員講述「性傾向歧視立法對愛滋防治的重要性」；香港愛滋病服務機構聯盟(HKCASO)也發信要求 ACA 為愛滋防治提倡「性傾向歧視立法」和「性工作非刑事化」。

很可惜，這兩屆 ACA 最終出版的《香港愛滋病建議策略》（2012-2016 和 2017-2021）將香港 MSM 和性工作社群、UNAIDS、UNDP、WHO 的「最重要建議」，和「向零進發」的其中一個「零」完全忽略，將諮詢所收集得的 MSM 和性工作社群最重要建議掉進垃圾桶中。「過去五年愛滋病政策」與「香港近年愛滋病病毒感染率愈見嚴峻」的情況吻合，應驗了 UNAIDS 對「依舊行事就會失敗」的警告。^[3]

總結

為了降低香港愛滋病新感染個案數字，香港政府可謂盡心盡力，開展了大量防治工作，亦投放了很多資源，足見香港政府對愛滋病議題的重視。

實踐中國國務院副總理李克強先生的承諾，響應食物及衛生局局長高永文醫生的呼籲，也為了實現香港愛滋病顧問局的願境，朝「向零進發」邁進；保護市民免受愛滋病毒感染，「為愛滋防治工作改革法律」是關鍵且刻不容緩的工作。

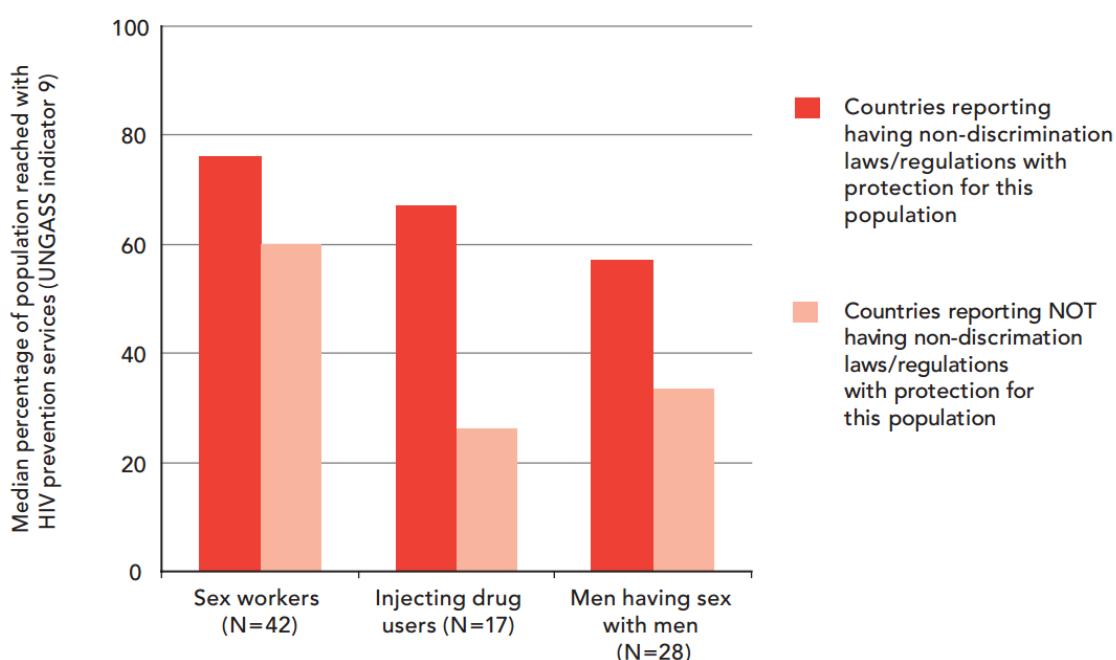
看見香港市民愛滋病病毒的新感染個案數字攀升情況愈趨嚴峻，我們感到十分痛心和焦急。請接納 UNAIDS、WHO 以及香港愛滋病社群的最高意見，為了能夠讓資源和愛滋工作事半功倍，為更有效地實施愛滋病防治工作建議香港政府立即制訂《性傾向歧視條例》。

彩虹行動

RainbowActionHK@gmail.com

FIGURE 3.7

Median percentage of population reached with HIV prevention services within the specified legal environment



Source: UNGASS Country Progress Reports 2008.

上圖來自：

2008 Report on the Global AIDS Epidemic, page 84:

http://data.unaids.org/pub/GlobalReport/2008/jc1510_2008globalreport_en.pdf

註腳：

- [1] 《香港愛滋病情況(二零一六年)》 http://www.info.gov.hk/aids/english/surveillance/sur_report/hiv_fc2016c.pdf
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[http://static1.squarespace.com/static/54e2df1ce4b0406fb3e1b325/t/555a0318e4b0e70f7b39e44a/1431962392626/LGBT Rights ACPositionPaper_chin_0612.pdf](http://static1.squarespace.com/static/54e2df1ce4b0406fb3e1b325/t/555a0318e4b0e70f7b39e44a/1431962392626/LGBT%20Rights%20ACPositionPaper_chin_0612.pdf)
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<http://www.un.org/zh/ga/aidsmeeting2011/china.shtml>
- [6] UNAIDS press release, "China commits to UNAIDS vision of zero new HIV infections, zero discrimination and zero AIDS-related deaths."
<http://www.unaids.org/en/resources/presscentre/featurestories/2011/july/20110711afschinavp/>
- [7] 香港《衛生署新聞發佈》 <http://www.info.gov.hk/aids/chinese/press/2014/141129.htm>
- [8] 《Getting to Zero: UNAIDS 2011-2015 Strategy》
<http://www.unaids.org/en/resources/presscentre/featurestories/2010/december/20101230unaidsin2011/>
- [9] 《香港二零一二年至二零一六年愛滋病建議策略》第 22 頁
<http://www.aca.gov.hk/cindex.html> 或 <http://www.aca.gov.hk/publication/g254.pdf>
- [10] 《Getting to Zero》文件第 7 頁：
"Zero New Infections, Zero AIDS-related Deaths, Zero Discrimination"
"Vision: To get to Zero Discrimination"
"Countries with punitive laws and practices around HIV transmission, sex work, drug use or **homosexuality** that block effective responses reduced by half"... "Zero tolerance for gender-based violence"
"Advance human rights and gender equality for the HIV response"
"Social and **legal environments** that fail to **protect against stigma and discrimination** or to facilitate access to HIV programmes continue to block universal access. Countries must make greater efforts: to realize and protect HIV-related human rights, including the rights of women and girls; to **implement protective legal environments for people living with HIV and populations at higher risk of HIV infection.**"
"Core Themes"
"Inclusive responses reach the most vulnerable communities mobilized, human rights protected."
<http://www.unaids.org/en/resources/presscentre/featurestories/2010/december/20101230unaidsin2011/>
- [11] 《Getting to Zero》文件第 62 頁，第 41 點：
"Key population, or key populations at higher risk, are groups of people who are more likely to be exposed to HIV or to transmit it and whose engagement is critical to a successful HIV response" - "men who have sex with men, transgender people."(MSM)
<http://www.unaids.org/en/resources/presscentre/featurestories/2010/december/20101230unaidsin2011/>
- [12] Sexual Orientation - and Race -Based Discrimination and Sexual HIV Risk Behavior Among Urban MSM, The Journal of AIDS and Behavior, Vol.19(2), pp.257- 269. Frye, Victoria (2015)
- [13] "HIV and the Law: Risks, Rights & Health" by Global Commission on HIV and the Law, July 2012
<http://hivlawcommission.org/index.php/report>
"Executive Summary", page 10 (3.3.4)
<http://hivlawcommission.org/resources/report/Executive-Summary-GCHL-EN.pdf>
「全球愛滋病與法律委員會」《執行綱要》第 10 頁 (3.3.4)，中文版：
<http://hivlawcommission.org/resources/report/Executive-Summary-GCHL-CN.pdf>
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Secretariat
Hong Kong Advisory Council on AIDS
3/F Wang Tau Hom, Jockey Club Clinic
200 Junction Road East, Kowloon
Hong Kong

28 December 2011

Dear Sir/Madam,

As the Country Coordinator of the United Nations Joint Programme on HIV/AIDS (UNAIDS) China office, which also covers the Special Administrative Regions of Hong Kong and Macau, I have recently become aware that the Hong Kong Advisory Council on AIDS (ACA) is currently drafting the *Recommended HIV/AIDS Strategies for Hong Kong, 2012 – 2016*. Hong Kong is well-regarded in the region for its response to the HIV epidemic to date. I commend the ACA on its efforts to ensure that the new strategy is evidence-based and responds to the key drivers of the epidemic in Hong Kong. I also commend the ACA on the consultations around the new strategy that have been held with key community stakeholders. Communities are invaluable partners in every aspect of national and international responses to HIV.

In support of the drafting process, I would like to draw the ACA's attention to a number of recent documents that outline important commitments and strategies for national HIV responses. These documents may be of assistance to you in finalising Hong Kong's HIV strategies for the next 5 years.

In December 2010, the UNAIDS Programme Coordinating Board approved the UNAIDS Strategic Plan 2011-2015 "Getting to Zero" (<http://www.unaids.org/en/aboutunaids/unaidssstrategygoalsby2015/>). This outlines a strategy for all partners, including governments, for an effective HIV response. *Getting to Zero* was developed through wide consultation, informed by the best evidence and driven by a moral imperative to achieve universal access to HIV prevention, treatment, care and support and the Millennium Development Goals. The Strategy outlines a three-pillared vision and 10 concrete goals for 2015 towards attainment of the vision. The vision is: zero new HIV infections, and zero discrimination, and zero AIDS-related deaths.

As the new UNAIDS strategy is more closely aligned with the new Hong Kong strategy in terms of time frame, and has been formally approved by the Programme Coordinating Board, I would recommend that this document, rather than the *UNAIDS Outcome Framework: Joint Action for Results (2009-2011)*, be referenced as the relevant UNAIDS strategy in the Annex to the Hong Kong Strategy. I would also invite you to consider adopting the vision and goals of the UNAIDS Strategy as goals for the Hong Kong Strategy, as has been done already by China and South Africa. On 11 July 2011 China's Vice Premier Li Keqiang stressed in a meeting with UNAIDS Executive Director Michel Sidibé that *Getting to Zero* — the UNAIDS strategy calling for zero new HIV infections, zero discrimination and zero AIDS-related deaths

Uniting the world against AIDS

-8-1, Tayuan Diplomatic Office
building
4, Liangmahe Nalu
Dongwai Dajie
Beijing, China 100600

tel: +8610 8532 2226
fax: +8610 8532 2228
www.unaids.org
www.unaids.org.cn

worldwide — constitutes a guiding vision for China's national HIV strategy. Given the strong external influences on the Hong Kong epidemic, the opportunity for alignment of priorities and actions between Hong Kong and mainland China presented by the new UNAIDS Strategy should be further considered by the ACA and its partners.

I would also like to highlight the importance of the *Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS* (http://www.un.org/ga/search/view_doc.asp?symbol=A/65/L.77), adopted by the General Assembly in June 2011 following the High Level Meeting of UN Member States in New York. This Declaration contains concrete, time-bound goals for all national responses which are based on the most recent evidence regarding effective strategies for addressing HIV and AIDS. One of the key lessons learned through the history of the AIDS response globally is that stigma and discrimination against people living with and affected by HIV, and against key affected populations such as sex workers, men who have sex with men, transgender people and people who use drugs, create barriers to access to HIV prevention, treatment, care and support programmes for those most in need. Accordingly, Member States committed to, *inter alia*:

- intensify national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV and ... to promote and protect all human rights and fundamental freedoms with particular attention to all people vulnerable to and affected by HIV; and
- national HIV and AIDS strategies that promote and protect human rights, including programmes aimed at eliminating stigma and discrimination against people living with and affected by HIV, including their families, including through sensitizing the police and judges, training health-care workers in non-discrimination, confidentiality and informed consent, supporting national human rights learning campaigns, legal literacy and legal services, as well as monitoring the impact of the legal environment on HIV prevention, treatment, care and support.

Addressing HIV-related human rights issues through comprehensive programmes to reduce stigma and discrimination and increase access to justice for key affected populations will be critical to Hong Kong's ability to achieve the goals articulated in the draft strategy for 2012 – 2016. To the extent that priorities relating to the creation of enabling legal and social environments for people living with HIV and key affected populations (including men who have sex with men, transgender people, sex workers and their clients, people who use drugs, ethnic migrants and youth at risk) were identified in the report of the Community Stakeholders Consultation Meeting, I encourage the ACA to incorporate strategies and actions to address these issues in the next Hong Kong strategy. I can confirm that evidence from the region and globally consistently identifies punitive and discriminatory legal environments as one of the main barriers to effective HIV responses. For example, evidence from the 2008 Report on the Global AIDS Epidemic suggests that countries that have non-discrimination laws that protect most at risk populations have achieved higher HIV prevention coverage.

I encourage the ACA to consider strengthening the actions articulated in the draft strategy for creating an environment that is free of discrimination and conducive towards universal access for all, especially the populations most vulnerable to HIV transmission. Such actions include, but are not limited to: legal audits and law reform (including removing punitive laws and putting in place laws to prohibit discrimination

against key affected populations); programmes to reduce stigma and discrimination against people living with HIV and other key affected populations; legal services for people living with HIV and other key affected populations; legal literacy programmes such as 'know your rights' campaigns; training of health care workers on non-discrimination, informed consent, confidentiality and the duty to treat; programmes to improve law enforcement practices by police, lawyers and judges; and programmes to reduce harmful gender norms and violence against women and to empower women and girls in the context of HIV. Tools and guidance are available from UNAIDS to assist in the costing, monitoring and evaluation of these types of programmes (www.unaids.org).

I wish you the best in your continued collaboration with government and community partners to finalise the Recommended HIVC/AIDS Strategies for Hong Kong 2012-2016, and to implement the actions planned to achieve your goals.

Please let me know if I can be of any further assistance in this process.

Yours sincerely,


for
Mark Stirling
UNAIDS Country Coordinator
UNAIDS China