1. **Updated Terms of Reference:** At the sixth meeting (April 2006) and seventh meeting (February 2007) of the Reference Group, the Terms of Reference (TORs) for the Reference Group and for the Secretariat to the Reference Group were reviewed and discussed. In light of the agreement reached at the seventh meeting to allow the Reference Group, under certain conditions, to speak and act independently, the Reference Group TORs have been revised again. All suggested changes are highlighted in the attached draft revised Reference Group TORs (see Annex 1). At the same time, the Secretariat TORs have been revised to reflect the fact that an individual, and not only an organization, can fulfill the Secretariat functions (see Annex 2).

2. **Question for discussion:** Does the revised Reference Group TOR adequately describe and clarify the role of the Reference Group?

3. **Independent voice:** The decision taken at the seventh meeting to allow the Reference Group to speak and act independently has raised several challenges for the UNAIDS Secretariat, UNDP and the Co-sponsors, as well as for the Reference Group itself.

4. Issues and questions for the Reference Group include:
   - How should the Reference Group best communicate its statements and materials, e.g. UNAIDS web site, major HIV listservs, via UNDP to UNAIDS co-sponsors?
   - Should Reference Group statements be made available in languages other than English?
   - How does the Reference Group decide when it should make an independent, public statement, and what concretely does it mean that the group “should engage in dialogue first with the UNAIDS Secretariat” before issuing independent statements?
   - If the Reference Group is approached by other organizations asking that the Reference Group issue a statement on a particular issue, how should the Reference Group react?

5. Issues and questions that have arisen for the UNAIDS Secretariat, UNDP and other Co-sponsors include:
   - How to clearly communicate to the outside world that the Reference Group is a UNAIDS Reference Group but is speaking with a voice independent of UNAIDS, therefore does not necessarily reflect the views of UNAIDS Secretariat or any of the Cosponsors (there was some confusion over this with regard to the PITC statement)
   - Whether it is appropriate to put the Reference Group’s independent views on the UNAIDS website if they do not reflect the position of UNAIDS, e.g. how to deal with the independent views of the Reference Group where they might not be aligned with the positions of the Programme in terms of honouring the
Reference Groups independence and value, but also honouring the positions of the Programme and wanting to avoid creating confusion.

6. **Reference group papers:** At the last meeting, a decision was taken that the Reference Group background papers and other meeting materials should be more visibly posted on the UNAIDS web site. Subsequently, materials from meetings five to seven were added to the site, and an index with links to all papers was created. In reviewing all material, however, it becomes clear that the quality of papers is uneven, and not all of them are fully referenced. This becomes problematic in situations where Reference Group issue papers score higher on Google searches than technical and policy guidance of better quality, and in this sense “displace” or overshadow other guidance.

7. Many papers were written as Issues Papers wherein issues are presented for discussion purposes at the meetings, but are not meant to be taken as the views or positions of UNAIDS or the Reference Group. Putting these papers on the web site is confusing and may result in future in the papers not being “able” to frankly set out controversial issues.

8. **Question for discussion:** Should all or only some of the papers be posted on the web site? What criteria would determine whether a particular paper is posted or not? Should only substantive papers with adequate references be posted? Who decides?

9. **Secretariat:** After the last meeting, the UNAIDS Secretariat and UNDP approached Ralf Jürgens about his availability to serve as the Secretariat of the Reference Group until the end of the year and/or until a new Secretariat could be selected through a tendering process. The UNAIDS Secretariat and UNDP plan to send out a selective call for tenders with the intention that selection be finalised in the first quarter of 2008 and a new Secretariat be in place as of 1 April 2008. In an e-mail of 17 October, the UNAIDS Secretariat and UNDP asked Reference Group members for input on possible individuals or groups with relevant expertise, capacity and track record on HIV and human rights to include in the call. According to that e-mail, there is a preference for groups or individuals based in low- or middle-income countries, followed by groups or individuals in high income countries working closely with counterparts in low- or middle-income countries. The following draft selective tender list was attached: Accion Ciudadana Contra el SIDA (ACCSI) (Venezuela); AIDS Law Project (South Africa); AIDS and Rights Alliance for Southern Africa (ARASA) (Namibia); Asia and Pacific Council of AIDS Service Organizations (APCASO) (Malaysia); Canadian HIV/AIDS Legal Network (Canada); Ethical Globalization Initiative (USA); Georgetown Law, Center for Law and the Public’s Health (USA); Harvard School of Public Health (USA); International HIV/AIDS Alliance (United Kingdom); R Jürgens – independent consultant (Canada); Lawyers Collective (India); Physicians for Human Rights (USA).

10. **Questions for discussion:** Are there other individuals or organizations that should be added to this list? From the perspective of the Reference Group, what skill sets/competencies are necessary to best support the Group’s work and UNAIDS work?
11. **Rotation:** Three new members joined the Reference Group at its meeting in February 2007, and one new member has joined at the current meeting. According to the TORs, “approximately one-fifth of the Reference Group members (i.e. three of 17) will rotate off the Group annually”. Currently, the Reference Group has 19 members.

12. **Questions for discussion:** Since a considerable number of the members of the Reference Group has been on the Group from the beginning, and given that some do not actively engage between meetings or miss many of the Group’s meetings, should a larger rotation take place in 2008 to allow a greater number of new members to join? Or should membership not be fixed, but rather allow flexibility to engage people according to expertise needed to address specific issues on its meeting agenda (as is the case with the other UNAIDS Reference Groups)?

13. **Interaction with Cosponsors:** Since the formation of the Reference Group, various Cosponsors and Reference Group members have expressed the need for the Reference Group to have greater interaction with, and exposure to, more Cosponsors of the Programme. Concern has also been expressed, however, that to involve all Cosponsors would overwhelm the group and fundamentally change its character. Because of this concern, Cosponsors have been invited on the basis of their interest in an agenda item. Meanwhile, UNDP as the lead on human rights is considering the establishment of an Inter-agency Task Team (IATT) on Human Rights, and there may be ways for the Reference Group to interact with this IATT.

14. **Question for discussion:** How should there best be created interaction between the Reference Group and the broader UNAIDS programme?
Annex 1

Draft Revisions
Terms of Reference¹
UNAIDS Reference Group on HIV and Human Rights

Background
1. The UNAIDS Reference Group on HIV and Human Rights was established in 2002 to advise the Joint United Nations Programme on HIV/AIDS on all matters relating to HIV and human rights. It was initiated by the UNAIDS Secretariat, in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR), which serves as a permanent observer.
2. The membership of the Reference Group brings together people from the HIV and human rights community, including advocates, jurists, ethicists, people living with HIV, people working in the NGO and community sector, people working in the government sector, and academics.
3. The Reference Group is supported by a secretariat, contracted by UNAIDS, and led by a Chair.
4. In 2006, UNDP, as lead UNAIDS Co-sponsor on human rights, gender, law and governance under the UNAIDS technical support division of labour, joined the UNAIDS Secretariat in co-management of the Reference Group.
5. In February 2007, at the seventh meeting of the Reference Group, the UNAIDS Executive Director decided that, under certain circumstances described below, the Reference Group should be allowed to speak and act independently of UNAIDS.

Objectives and activities of the Reference Group
1. To advise UNAIDS on the strengthening of government, civil society and private sector capacity to protect human rights related to HIV prevention, treatment, care, support, impact mitigation, and research
2. To support UNAIDS to provide strong, coherent and strategic human rights advocacy for a rights-based response to HIV at the global, regional and national levels
3. To bring emerging HIV-related human rights issues to the attention of UNAIDS, at and between meetings, for appropriate action
4. To advise UNAIDS on how to operationalise human rights, gender and GIPA commitments set forth in the Declaration of Commitment (2001) and the Political Declaration of the 2006 High Level Meeting (2006) in policy and programmatic action at country and regional levels

¹ Status of the Terms of Reference of the Reference Group:
   a) The Terms of Reference of the Reference Group will be circulated at each meeting for information and orientation.
   b) The UNAIDS Secretariat and UNDP reserve the right to modify the Terms of Reference to ensure that the Reference Group can best respond to the needs of the organization. This will be done in consultation with the Reference Group.
   c) The Terms of Reference will be reviewed every two years. At this time, proposals for amendments to the Terms of Reference will be invited from members of the Group, and circulated to all members with Issue Papers and other background materials for discussion at the next meeting.
5. To participate in the development of and/or review of UNAIDS policy, strategy and advocacy documents, and support the application of human rights standards in the work of UNAIDS

6. To produce for UNAIDS ad hoc papers responding to policy, programme and research priorities and their relation to human rights, as requested by UNAIDS or initiated independently by the Reference Group

7. To promote the understanding of the relationships between neglect, violation, promotion or fulfilment of human rights and HIV-related risk, vulnerability and impact

8. To support the development of human rights tools and methods to support countries in the design, implementation, monitoring and evaluation of national AIDS strategies, and HIV-related legislation, regulation and policy

9. To support the development of training modules and/or materials for the integration of human rights issues into the response within and without the UN system, and to extend the human rights capacity and expertise of UNAIDS

10. To support, through UNAIDS, the integration of HIV-related issues in the work of UN human rights treaty bodies, charter-based bodies and other human rights mechanisms.

11. To speak and act independently of UNAIDS on particular issues related to HIV and human rights, as carefully selected by the Reference Group, after having engaged in dialogue with the Secretariat on these issues.

Interface with other UNAIDS Cosponsors
1. Through UNDP with UNDP functioning as liaison with the other Cosponsors on issues of human rights and gender
2. Through ad hoc invitation and attendance by Cosponsors at Reference Group meetings depending on the issue

Direct beneficiaries of the Reference Group
1. UNAIDS Secretariat and UNDP
2. Other UNAIDS Cosponsors

Indirect beneficiaries of the Reference Group
1. Governments
2. People affected by and/or living with HIV
3. Human rights organizations and institutions
4. Civil society groups engaged in the response to HIV

Membership in the Reference Group
1. Membership in the Reference Group is on the basis of invitation only by the UNAIDS Secretariat and UNDP. Membership in the Reference Group comprises experts on HIV and human rights from a broad range of fields, backgrounds and approaches. Decisions regarding membership will take into account expertise, gender balance, geographical representation, and nature and orientation of professional activities, e.g. advocacy, law, standard-setting, programming, and support. Current members of the Reference Group are welcome to suggest possible candidates with these criteria in mind.
2. Members of the Reference Group serve at the discretion of the UNAIDS Secretariat and UNDP. The UNAIDS Secretariat and UNDP reserve the right to terminate membership at any time.

3. Membership in the Reference Group is subject to rotation. It is foreseen that approximately one-fifth of the Reference Group members (i.e. three of 17) will rotate off the Group annually. Decisions regarding appointments and rotation will be made by the UNAIDS Secretariat and UNDP, in consultation with the Chair of the Reference Group. After being rotated off the Group, former members are eligible for reappointment after a separation of one year.

4. OHCHR is a permanent observer of the Reference Group.

Honorary Status

1. Members of the Reference Group serve on an honorary basis and are not compensated for their participation in the Reference Group while performing standard functions of such membership. Travel costs and per diem associated with meetings of the Reference Group will be provided.

2. On an exceptional basis, Members of the Reference Group may be compensated in the context of their participation in the Reference Group under the following criteria:
   - When requested to perform work, provide input, produce papers or presentations which extends beyond the standard activities described above and involves significant amounts of time. “Significant” does not include meeting time, and is defined as more than 5 hours a month.
   - When requested to travel so as to provide work or input on a selected issue involving time, effort and expense beyond the standard activities described above.
   - In such circumstances, all Members will be compensated at UNAIDS or UNDP remuneration rates according to output. Members will enter into a contractual arrangement with the UNAIDS Secretariat or UNDP which outlines the terms of reference, the expected outputs, the time-frame and the requirement that compensation be paid upon timely and satisfactory completion of the work. Such contracts may be subject to audit by external and internal auditors of UNAIDS.

Terms of participation

1. Members commit to active participation and engagement in carrying out the Terms of Reference of the Reference Group. This includes active and regular participation in meetings, provision of advice and insight to UNAIDS during meetings and between meetings, review of papers and products prepared in relation to the Reference Group, writing short papers/presentations for input into the meetings, and response to requests for input into UNAIDS policies and positions between meetings.

2. In their work both as Reference Group members and in their own independent professional capacity, members agree to promote and uphold human rights, gender equality, and the greater involvement of people living with HIV and other groups affected by HIV in the response. In this regard, it is expected that the knowledge and experience gained in the Reference Group will inform the professional activities of the members, which are and should remain independent of the Reference Group, just as the professional activities of the members will inform the advice and activities of the Reference Group.
3. Members participate in the group in their own personal capacity, and do not represent the organization or institution they are attached to professionally.

4. Members of the Reference Group agree to maintain confidentiality and discretion with regard to their input and activities as members of the Reference Group. Members should not engage in public communication as members of the Reference Group unless there has been prior agreement with the UNAIDS Secretariat and UNDP. Members of course are not in any way constrained in terms of their activities and statements when acting in their own professional capacity, independent of membership in the Reference Group.

Conflicts of interest
1. Members of the Reference Group agree to declare any conflict of interest that could constitute a real, potential or apparent conflict of interest with respect to their involvement in the work of the Reference Group. This includes conflicts that may arise in the context of relationships between members and (a) commercial entities, (b) sources of funding, e.g. governments, foundations and the UN; (c) governments; and (d) non-governmental or civil society organizations.

2. Conflict of interest means that the individual has a financial, political or other interest that could unduly influence the member with respect to her/his ability to independently carry out work associated with the Reference Group and any subject-matter being considered by the Reference Group. An apparent conflict of interest exists when an interest would not necessarily influence the individual but could result in her/his credibility being questioned by others. A potential conflict of interest exists with an interest which any reasonable person could be uncertain whether or not should be reported.

3. Any resources, other than those provided by UNAIDS/UNDP under these Terms of Reference, received and used by members to carry out work that is, or appears to be, related to the work of the Reference Group, should be declared to UNAIDS/UNDP and the Reference Group and discussed in terms of possible conflicts of interest.

Chair
1. A Chair of the Reference Group will be selected by the UNAIDS Secretariat and UNDP, after nominations from members. The UNAIDS Secretariat and UNDP reserve the right to change the chair at any time. However, it is expected that the Chair will normally serve for two years.

2. The role of the Chair comprises facilitating the smooth functioning of the Reference Group during and between meetings through her/his leadership role, including serving as a liaison between Reference Group members and UNAIDS/UNDP and/or the Secretariat, as needed.

3. The Chair may engage in public communication as Chair of the Reference Group and speak independently on issues related to HIV and human rights, provided the Chair has engaged in dialogue first with the Secretariat and has sought the agreement of the members of the Reference Group to publicly speak on a particular issue.
Working methods and outputs

1. Reference Group members, UNAIDS Secretariat and UNDP are expected to work in a context of collegiality, informality, mutual respect and trust, and professionalism.

2. Reference Group members are encouraged to maintain regular contact with each other, with the secretariat, and with UNAIDS Secretariat and UNDP so as to share information, concerns and advice.

3. With regards to requests for input from UNDP and/or the UNAIDS Secretariat arising between meetings, Reference Group members should, as a general rule, have at least two weeks to respond. At the end of this period for comment, the Reference Group secretariat will produce a compilation of responses and send the compilation to the UNAIDS Secretariat and/or UNDP, with a copy to the Chair of the Reference Group, within three working days.

4. The Chair and/or the secretariat of the Reference Group, in consultation with UNAIDS, may wish to establish sub-groups to provide input or develop papers on particular issues. Sub-groups are expected to report to the Reference Group with oral and written reports on their work.

5. Reports, issue papers and other documents prepared by or for the Reference Group are confidential, unless cleared by the UNAIDS Secretariat and UNDP for public distribution.

6. Where possible and appropriate, the UNAIDS Secretariat and UNDP will clear Reference Group documents for public distribution and disseminate such products through appropriate channels, such as the UNAIDS/UNDP web sites.

7. Attribution to the authors and the Group will be given as appropriate.

8. Whenever the Reference Group decides to issue a public statement independently of UNAIDS, all Reference Group members shall have an opportunity to provide input into the statement, within at least a two-week period. If consensus on the wording of a statement cannot be reached, individuals can request that their disagreement with the statement, or with particular aspects of the statement, be expressly noted in the statement. All independent and public statements of the Reference Group should contain a prominent disclaimer on each page of the statement describing what the Reference Group is and stating that the statement is made independently of UNAIDS and does not necessarily reflect the views or positions of the UNAIDS Secretariat or any of the UNAIDS Cosponsors.

Meetings

1. It is anticipated that the Reference Group meets three times each biennium – approximately once every eight months, budget permitting.

2. Meeting dates should be fixed as far in advance as possible, and not later than three months before the meeting.

3. The Issue Papers for the meeting should be circulated at least one week in advance of the meeting.

4. The secretariat to the Reference Group, in consultation with UNAIDS, will identify the recommendations and action points coming out of the deliberations of the Reference Group and circulate them for comment from Reference Group members within two weeks of the Reference Group meeting.

5. The Reference Group secretariat will circulate a draft report of the Reference Group meeting within four weeks of the conclusion of the meeting.
Agenda
1. The agenda will be developed by the UNAIDS Secretariat and UNDP, with suggestions of Reference Group members solicited in advance by the Reference Group secretariat.
2. At the beginning of each meeting, the Reference Group secretariat will provide a report on the implementation of the recommendations from the previous meeting.
3. Each meeting will include an agenda item on emerging issues that allows Reference Group members to briefly inform the group on critical issues and trends they are witnessing and/or responding to in their work.

Annex 2
Draft Revisions
Terms of Reference
Secretariat to the UNAIDS Reference Group on HIV and Human Rights

Status of the secretariat
1. In order to provide support to UNAIDS and the UNAIDS Reference Group on HIV and Human Rights, the UNAIDS Secretariat has selected, and will select, in consultation with UNDP, organization(s) or individual(s) to function as the secretariat to the Reference Group.
2. The organization(s) or individual(s) that is chosen as the secretariat agrees to enter into a contractual relationship with the UNAIDS Secretariat, the terms of which will be mutually concluded between the UNAIDS Secretariat and the organization or individual, in consultation with UNDP. The contract will set forth its terms, including duration, remuneration and the workplan.
3. Representatives of the secretariat will also be members of the Reference Group.
4. In its advisory role, the Reference Group may identify and suggest possible organizations or individuals to function as secretariat.

Objectives and activities of the secretariat
In consultation with UNAIDS (UNAIDS Secretariat and UNDP):
1. To facilitate regular and productive communication between members of the Reference Group and UNAIDS (UNAIDS Secretariat and UNDP), and between members of the Reference Group
2. To solicit advice and input from Reference Group members on draft UNAIDS policies, strategies and advocacy documents under review
3. To assist the Reference Group to identify emerging HIV and human rights issues, and communicate these to UNAIDS
4. To assist with the organisation of Reference Group meetings, in close consultation with UNAIDS Secretariat, UNDP and the Chair of the Reference Group, and solicit input from Reference Group members during the development of the meeting agenda
5. To assist with the development of background, issue or briefing papers for consideration by the Reference Group at or between its meetings
6. **To assist with the development of Reference Group statements**
7. To support effective follow-up of the meetings of the Reference Group, including the preparation of a summary of decisions and recommendations, and a report of the meeting
8. To assist with the development of specific outputs, for consideration of the Reference Group, including tools and products that would assist
legislators, policy makers and programmers to implement rights-based responses

9. To provide support with regard to the dissemination of input, materials and resources developed by Reference Group, and to maintain a database of Reference Group materials

10. To compile and maintain a database of HIV-related human rights expertise by region and subject

11. To facilitate periodic review of the modalities for the work of the Reference Group and the secretariat to the Reference Group

12. To fulfil the terms of its contract with the UNAIDS Secretariat.

Standards of conduct

1. The organization or individual that is selected as secretariat to the Reference Group is expected to act with the highest professional and ethical standards, to maintain confidentiality, and to act with discretion and good judgement with regard to all Reference Group activities.

2. As any member, the individual or the representatives of the organization acting as Secretariat should maintain a clear line between acting in its separate and independent organizational capacity and acting as the secretariat to the Reference Group.

Conflicts of interest

1. The organization or individual that acts as the secretariat is asked to declare any interests that could constitute a real, potential or apparent conflict of interest with respect to their involvement in the work of the Reference Group or with UNAIDS. This includes conflicts that may arise in the context of relationships between the individual or their organization and (a) commercial entities, (b) sources of funding, e.g. governments, foundations and the UN; (c) governments; and (d) non-governmental or civil society organizations.

2. Conflict of interest means that the organization or individual has a financial, political or other interest that could unduly influence the organization’s or individual’s position with respect to the role as the secretariat, ability to carry out work associated with the Reference Group and any subject-matter being considered by the Reference Group and/or UNAIDS. An apparent conflict of interest exists when an interest would not necessarily influence the organization’s or individual’s actions but could result in its or their credibility being questioned by others. A potential conflict of interest exists with an interest which any reasonable person could be uncertain whether or not should be reported.

3. Any resources, other than those provided by UNAIDS/UNDP under these Terms of Reference, received and used by members to carry out work that is, or appears to be, related to the work of the Reference Group, should be declared to UNAIDS/UNDP and the Reference Group and discussed in terms of possible conflicts of interest.

Change of Secretariat

1. The UNAIDS Secretariat, in consultation with UNDP, reserve the right to terminate the relationship with the organization or individual selected as the secretariat, at any time, in line with the terms of the contract. However, it is envisioned that the secretariat to the Reference Group will change every three years, preferably through a process of competitive bidding.
2. In the event of a change in secretariat, the outgoing secretariat should provide all files (electronic and paper), as well as an exit report identifying what it perceives to be the strengths and weaknesses of the secretariat’s working methods, key HIV and human rights challenges and opportunities for the Reference Group to address them, and any other suggestions or critiques.

3. The incoming secretariat to the Reference Group will be invited to provide a report outlining current areas of HIV and human rights work and possible complimentarity with the objectives and activities of UNAIDS and the Reference Group.