The Global Fund and the Crisis of HIV Funding — A Severe Setback for HIV and Human Rights: Statement and Recommendations

Summary

1. The November 2011 announcement of the cancellation of the 11th round of funding of the Global Fund to Fight AIDS, Tuberculosis and Malaria because of the Fund’s financial difficulties presents the international community with both a health and a human rights crisis. Since its first round of funding in 2002, the Global Fund has played an indispensable role in advancing the health and human rights goals of the global HIV response.

2. The Global Fund’s financial difficulties are part of a broader global HIV funding crisis. This funding crisis is the most important human rights issue in the HIV response at this time. Paradoxically, funding is being flat-lined or reduced just as science, medicine and programmes are providing the tools for success against HIV.

3. In the view of the UNAIDS Reference Group on HIV and Human Rights, the reduction of, or failure to honour, pledged support to the Global Fund by donor governments must be understood for what it is — an abrogation of legally grounded human rights obligations. The Reference Group also believes that, while the Global Fund and other multi and bi-lateral efforts are necessary to ensure that sufficient resources are available to fulfill the right to health, governments of many low- and middle-income countries are not meeting human rights obligations to their people by failing to budget adequately for health. The Global Fund and other forms of international assistance are indispensable, but are not an excuse for developing countries to underfund health generally and HIV specifically.

4. In this context, the Reference Group makes a number of recommendations, including:

   • States should reaffirm their shared responsibility to realize the human rights to health by adequately funding the HIV response. The massive gains in access to HIV prevention, treatment and care services made possible through the Global Fund will be jeopardized if high-income governments fail to live up to their pledges, delay payment of the pledges, and/or fail to commit to increased funding for the Global Fund. Recipient governments must likewise increase their own domestic spending for HIV programmes and honour their commitments to increase general health spending.

   • The UNAIDS Executive Director and the staff of the Joint Programme, in the Secretariat and Co-sponsors, should be strong, vocal and consistent advocates for the restoration and increase of financial support to the global AIDS response, including to the Global Fund as one of its main financing mechanisms.
Introduction

Since its first round of funding in 2002, the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund) has been indispensable in advancing the health and human rights goals of the HIV response. The $22.6 billion in funding it has approved in response to country-driven proposals has, amongst many other achievements, supported life-saving HIV treatment for 3.3 million people, about half of the persons receiving treatment in low- and middle-income countries. The Global Fund has also been the single most important funder of HIV prevention services for vulnerable populations, including people who inject drugs, having granted hundreds of millions of dollars to essential harm reduction services that some donors and governments refuse to fund.

Country Coordinating Mechanisms (CCMs) convened to develop proposals for the Global Fund and oversee programmes have in many countries included persons living with HIV, people who use drugs, sex workers, men who have sex with men and others especially affected by HIV in policy and programme decision-making, though more needs to be done to represent affected persons in many countries. Thanks to the Global Fund, organizations representing people living with and vulnerable to HIV in many countries receive financial support enabling them to participate meaningfully for the first time in the planning, implementation and coordination of national HIV responses. With the assistance of the Global Fund, civil society has increasingly become an indispensable part of the governance of the AIDS response.

The Global Fund was created, at least in part, in response to human rights-based advocacy by civil society organizations that called for an institution to fund governments and civil society organizations at country level to work together to design and implement scientifically sound and rights-based programmes to address HIV and AIDS. In giving financial support to the Global Fund, donor countries are in fact acting on their human rights commitments to international cooperation for the progressive realization of the right to the highest attainable standard of health. The widely ratified International Covenant on Economic, Social and Cultural Rights commits state parties to “international assistance and cooperation” to ensure progressive realization of rights in countries where resources are highly constrained. Unfortunately, it now seems that the donations are seen by some donor countries as merely another form of “foreign aid”, subject to the same whims that have in the past affected other commitments to development.

The November 2011 announcement of the cancellation of the Global Fund’s 11th round of funding because of the Fund’s financial difficulties (caused by a reduced asset forecast to 2013, based on lower-than-anticipated contributions by donors compared to what they had pledged to contribute) presents the international community with both a health and a human rights crisis. It graphically highlights the long-term problem of how to secure and sustain the funding needed for the global realization of the right to health. In our view, the reduction of, or failure to honour, pledged support to the Global Fund by donor governments must be understood for what it is — an abrogation of legally grounded human rights obligations.

We also believe that, while the Global Fund and other institutions are necessary to ensure that the maximum available resources are made available to fulfill the right to health, governments of many low- and middle-income countries are not meeting human rights obligations to their people by failing to budget adequately for health. The Global Fund and other international assistance are indispensable, but are not an excuse for developing countries to underfund health generally and HIV specifically. There is no conflict or tension between advocating for donor governments to honour their pledges and advocating for recipient governments to spend adequately on health from their domestic budgets, as donors and recipients alike are bound to respect, protect and fulfill the right to the highest attainable standard of health.

The Global Fund’s financial difficulties are part of a broader global HIV funding crisis. Paradoxically, funding is being flat-lined or reduced just as science, medicine and programmes are providing the tools for success against HIV. This threatens both the response to HIV and human rights imperatives in the response. First and most significantly, it threatens HIV treatment. Less than half of the people who need treatment are receiving it. Unless treatment programmes will continue to be scaled up, millions of people will be faced with death. Secondly, it threatens HIV prevention. Over the course of the epidemic, HIV prevention
has been seriously underfunded, raising the issue of the right to be protected from infectious disease found in the right to health. In addition to this underfunding, criminalized and stigmatized populations have also faced discrimination in funding so that prevention programmes which should benefit them are extremely underfunded. Finally, the funding crisis may result in countries choosing between biomedical programmes and programmes to create enabling legal and social environments that serve to protect the human rights of those living with or vulnerable to HIV, when both sorts of programmes are critical.

**Centrality of rights threatened in HIV responses**

13 Ironically, the cancellation of the Global Fund’s latest grant round comes at the same time as the Board of the Global Fund adopted a five-year strategy (2012–2016) that includes explicit human rights objectives. The strategy includes increasing investment in programmes that strive to remove human rights-related barriers to HIV services, including continuing to support the meaningful participation of organizations representing persons living with and at risk of HIV. It also includes adopting innovative safeguards to ensure that Global Fund monies are not used to directly or indirectly violate human rights. These objectives are a recognition of the fact that up to this point, funding for services to protect and promote human rights has been inadequate. They reflect a lesson learnt from over 30 years of fighting HIV: **without financial support for rights-based action at the national and community levels, there is no possibility that universal access and the other ambitious HIV goals will be attained.**

14 The global HIV funding crisis comes at a moment when rights-based approaches to HIV are threatened, perhaps more than ever before. The knowledge that attaining high coverage of antiretroviral treatment can also reduce HIV transmission in a given population — “treatment as prevention” — highlights the need for dramatic scale-up of HIV testing as a step toward treatment. But if human rights protections are not a central and well-funded part of testing strategies, rapid scale-up of HIV testing can lead to widespread infringements of privacy rights, autonomy and the right to information without adequate diagnosis or linkage to HIV care for those who test positive.

15 Similarly, experience in many places has shown that many people, particularly from vulnerable communities, will not be reached with treatment and will not be able to adhere to treatment regimens without programmes that explicitly protect their rights. Male circumcision campaigns in some parts of Africa have not adequately safeguarded the health and rights of men being circumcised or adequately included support for women whose circumcised sex partners may be more reluctant than ever to use condoms. Programmes to prevent mother-to-child transmission of HIV have been impeded by discrimination in health-care settings that prevents mothers from seeking care and adhering to treatment. The dramatic changes envisioned by treatment as prevention programmes and other new strategies to address HIV require well-informed, organized and autonomous communities, which require funding.

16 In spite of the development of many analyses of gender-based subordination as a risk factor for HIV and as a barrier to care, treatment and support, women’s rights are too often an unfunded or peripheral part of national HIV responses. While some countries have eliminated legal prohibitions of homosexuality, such laws remain a reality in many countries, and men who have sex with men in many settings face arrest, violence, abuse and social exclusion. People who use drugs, sex workers, prisoners, detainees and migrants are treated harshly in the law and in law enforcement practices and are denied access to basic services in many countries. In short, it remains an urgent priority to ensure that respect, protection and fulfillment of human rights are at the centre of HIV responses.

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Funding human rights is a critical enabler for ‘Getting to Zero’

17 The UNAIDS-endorsed “investment framework”² is designed to help countries decide how best to allocate resources to achieve the most effective HIV response possible. It recognizes the role of “critical enablers,” a term that includes community mobilization, law reform, legal services and other efforts whereby civil society, including people living with and at risk of HIV, can take the lead in engaging with HIV programmes in ways that protect both their rights and their health.

18 The Reference Group asserts that in the context of the funding crisis “critical enablers” should not suddenly become less “critical” than other elements of the investment framework, both in the proposed allocations of financial support they will receive and in their strategic centrality. The “faster, smarter, better” strategies described in the World AIDS Day 2011 documents of UNAIDS include little reference to human rights.³ It is also worrying that in the Global Fund’s guidelines for transitional funding through the period of the cancelled grant round, “critical enablers” will be considered for funding “only …where they are deemed by the Global Fund as essential for the continuation of delivery of…treatment, prevention and care services…”⁴ It is difficult to imagine a situation in which “critical enablers” as described by UNAIDS are not indeed critical to establishing and sustaining services.

Need for increasing resources overall

19 Beyond the immediate challenge of ensuring that adequate resources are provided to the Global Fund so that it can continue to meet countries' demand for scaled-up programmes, there is an urgent need to find innovative, sustainable mechanisms of funding people’s right to universal access to HIV services and their right to health. The Reference Group is encouraged that UNAIDS is part of a discussion on the financial transactions tax (FTT), one such innovative mechanism that is being discussed as the answer to many kinds of economic and social problems needing sustainable solutions. It is essential that UNAIDS and its partners, as well as other institutions focused on HIV and health, make a compelling case for ensuring that HIV programme needs be given high priority in the disbursement of funds from an FTT or other new mechanism. Again, new international mechanisms should be not seen as a substitute for rich and poor states’ responsibilities to fund adequately the health of their own populations and to meet international human rights obligations.

Recommendations

20 The Reference Group regards the global HIV funding crisis as the most important human rights issue in the HIV response at this time. It has profound implications for the role of UNAIDS (Secretariat and Co-sponsors), which we summarize in the following recommendations:

21 Recommendation 1:

It is urgent that the UNAIDS Executive Director and the staff of the Secretariat and Co-sponsors become strong, vocal and consistent advocates for an increase of financial support to the global AIDS response, including the restoration and enhancement of funding to the Global Fund. The continuation of the Global Fund’s work is absolutely essential to the realization of global and national goals in the

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HIV response. Donors look to the leadership of UNAIDS for compelling reasons to support the Global Fund, and those reasons should be clear to all. The Reference Group urges the Executive Director of UNAIDS to speak publicly in human rights terms about the failure to support the Global Fund as a step backwards in the struggle for progressive realization of the right to health. He should speak compellingly on the urgency of continued Global Fund support to rights-based HIV responses, even in the Transitional Funding Mechanism, including support to organizations of persons living with and at risk of HIV whose work is essential to the achievement of universal access to services.

22 Recommendation 2:
UNAIDS must do more to develop the notion of “critical enablers” in explicit human rights terms and to advocate strongly for more resources for programmes that are indeed critical to protect, promote and respect human rights of people tested and treated for HIV and those in prevention programs. Characterizing critical enablers as optional add-ons will trivialize the lessons learnt over three decades about the need for human rights protections to be central and integral to HIV responses. The UNAIDS Executive Director and other UNAIDS and co-sponsor leaders should state clearly that “faster, better and smarter” results in the global response are impossible without strong financial and political support to human rights measures already identified by UNAIDS (including removal of punitive laws and law enforcement that impede HIV responses, access to justice, anti-discrimination laws and their enforcement, stigma reduction, gender equality measures and others).

23 Recommendation 3:
With support from the Secretariat, UNAIDS staff in country and regional offices should have as a central part of their work the responsibility to ensure that human rights realities impeding HIV responses are monitored, publicly documented and addressed. Their performance should be evaluated based on achievements in these areas. Field staff should know that they will be supported when they take principled and public stands to highlight human rights violations and urge redress. Support in the form of strong statements on issues that are considered sensitive or controversial, but which are nonetheless essential to an effective response to HIV, from the UNAIDS Executive Director and other leaders would be most beneficial.

24 Recommendation 4:
UNAIDS should convene an expert group to guide its advocacy and action on the matter of innovative long-term funding mechanisms for the global HIV struggle. The priority should be to position HIV as a priority for funding that may be generated from the FTT or other innovative sources of funding.

Finally:

25 Recommendation 5:
States should reaffirm their shared responsibility to realize the human rights to health by adequately funding the HIV response. The current shortfall in funding for HIV is not the result of an economic crisis but a crisis of priorities. The massive gains in access to HIV prevention, treatment and care services made possible through the Global Fund will be jeopardized if high-income governments fail to live up to their pledges, delay payment of the pledges, and/or fail to commit to increased funding for the Global Fund. Recipient governments must likewise increase their own domestic spending for HIV programmes and honour their commitments to increase general health spending, a fundamental human rights obligation of all states.