UNAIDS Reference Group on HIV and Human Rights*

Meeting Report
Tenth Meeting
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* 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. The Reference Group speaks with an independent voice; thus, its views are not necessarily the view or positions of the UNAIDS Secretariat or the UNAIDS Cosponsors. The Reference Group advises UNAIDS on how it can strengthen the capacity of governments, civil society and the private sector to protect and promote human rights in relation to HIV, and how to operationalize human rights, gender equality and the principles of GIPA (Greater Involvement of People Living with HIV) in UNAIDS policies and technical support. The Reference Group is comprised of people from many different perspectives with a common commitment to, and expertise in, the area of HIV and human rights.

This report contains the views and recommendations of the UNAIDS Reference Group on HIV and Human Rights, an independent international group of experts convened by the Joint United Nations Programme on HIV/AIDS, and does not necessarily represent the decisions or the stated policy of the UNAIDS Secretariat or any of the UNAIDS Cosponsors.

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Opening and introductions

1. Susan Timberlake (Senior Human Rights and Law Adviser, UNAIDS Secretariat) welcomed participants on behalf of UNAIDS and asked Luiz Loures, Director of the Executive Office of UNAIDS, to make opening remarks on behalf of Michel Sidibé. Loures sent Sidibé’s regards and mentioned that Sidibé was sorry not to be able to speak at the opening of the Reference Group’s meeting, but was in South Africa to meet with the new leadership there. Loures assured participants that Sidibé was committed to the Reference Group, now more than ever, and was looking forward to being briefed about the results of the meeting. Loures informed participants about UNAIDS’ priorities in light of a changing environment, with new priorities, new leadership in many countries and a financial crisis that would likely have long-lasting effects. He emphasized that, in this new environment, we could not talk about AIDS in isolation any more, but needed to link everything we do to attaining the Millennium Development Goals (MDGs). He added that we need to build new alliances and demonstrate to other movements that AIDS is part of their bigger agenda. In particular, the AIDS movement should work with the MDG movement, recognizing that action on HIV is a central component of not only MDG 6, but all health-related MDGs. In the new environment, UNAIDS needed to be even more effective, accountable and set clear priorities. This needed to translate into focusing efforts on a smaller number of key areas – “going for results” and “coming closer to the people”. Loures referred Reference Group members to the new UNAIDS Outcome Framework for 2009-2011, which summarizes UNAIDS’ new priorities, and specifically to the priority area on “removing punitive laws, policies, practices, sigma and discrimination that block effective responses to AIDS”. He said that UNAIDS has been working very closely with the Office of the UN Secretary General who has been very committed to HIV and spoken out loudly and clearly against stigma and discrimination. Loures stressed the many positive developments in the response to HIV since 2001 and, in particular, the increase in financial resources devoted to the response. But while this has led to a vastly increased number of people living with HIV accessing treatment, countries have been far less likely to change their laws, policies and practices to allow for comprehensive and evidence-informed HIV prevention measures, including needle and syringe programs and prevention for men who have sex with men, sex workers, and prisoners. More broadly, it has proven to be very difficult to get countries to take programmatic action on stigma, marginalization, and human rights. According to Loures, this is why the priority area on “removing punitive laws” is particularly important and why UNAIDS is very keen to get advice from the Reference Group on how best to move forward in this area. He concluded by affirming that “what drives us is access [to HIV prevention, treatment, care and support] by the poorest and most marginalized”. Decriminalization and human rights would be at the centre of the “new UNAIDS”, representing a major shift for the organization and a huge opportunity for the Reference Group “to push UNAIDS forward and bring human rights to the centre of everything we do”.

2. Timberlake distributed a letter by Sidibé to Reference Group members, dated 14 July 2009, in which Sidibé addressed some of the Reference Group’s recommendations as contained in its brief of January 20091 (see Appendix 1 for a copy of the letter). Timberlake then welcomed Mandeep Dha liwal, Cluster Leader on Gender, Human Rights & Sexual Diversities at UNDP, and asked her to say a few words on behalf of UNDP, the co-convenor of the meeting. Dha liwal brought greetings from Jeff O’Malley, Director, HIV/AIDS at UNDP and from Helen Clark, the newly appointed UNDP

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Administrator, saying that Clark was extremely committed to human rights and brought tremendous commitment to action on both gender and human rights.

3. Mark Heywood, Chair of the Reference Group, welcomed participants and said that this meeting would be different from other meetings – the first meeting since Sidibé has become UNAIDS’ Executive Director, with positive signs of renewed commitment by UNAIDS to human rights and an increasing recognition that AIDS is all about human rights and vice versa. He emphasized the need to recognize that the world is changing and to therefore change the way in which the Reference Group, and human rights activists more broadly, operate. He pointed out that the difference between rhetoric and practice on human rights in the context of HIV remained staggering – in particular, funding for human rights continued to be missing. He acknowledged that the agenda of the meeting was probably too packed again, as in previous meetings, and that the Group therefore needed to make sure it would make a few, clear recommendations to UNAIDS and UNDP.

4. During the question period that followed, members welcomed the prioritisation of human rights in the statements of the UNAIDS Executive Director; some of his direct interventions on human rights and UNAIDS’ new strategic approach. The Reference Group supported the approach adopted by UNAIDS to link the response to HIV to the achievements of the MDGs and to build alliances with organisations working on development. It emphasized the importance of developing mechanisms to collect data on human rights aspects of HIV, in the same way that information on HIV prevalence is routinely collected. As at previous meetings, members stressed the importance of policy coherence across different UN agencies and the need to prevent agencies adopting directly contradictory approaches to those taken by the UNAIDS Secretariat. The potential role of the Reference Group in helping address policy incoherence across agencies was discussed, and a meeting with heads of agencies was seen as a possible way to help UNAIDS deal with policy incoherence. Loures pointed out that one of the most important issues at the International AIDS Conference in Vienna, the seat of UNODC, would be to work towards greater policy coherence in the area of drug policy and HIV. He ensured members that UNAIDS wanted to use the opportunities created by the conference to overcome current inconsistencies and asked the Reference Group to assist, including possibly by participating in a meeting specifically on this issue. Once again, as at previous meetings, the importance of ensuring that human rights issues are on the agenda of the Executive Heads of UN organizations, and of building a strong alliance with the Office of the UN High Commissioner for Human Rights, was highlighted. The Reference Group welcomed the letter written to it by the Executive Director, but expressed the hope that a more detailed response would follow, addressing the many recommendations in the brief. It expressed thanks and a commitment to ongoing support to the Executive Director. Finally, members welcomed the reports of the interactions between the UN Secretary General and UNAIDS and resolved to either write a letter to the Secretary General, thanking him for his commitment to AIDS, his statements on vulnerable populations, and for meeting with UN Plus and championing the involvement of people living with HIV in every aspect of the response to HIV; or to ask the UNAIDS Executive Director to communicate this to the Secretary General. The Group requested that it be made aware of relevant developments in the area of HIV and human rights on an ongoing basis, and not just at the Group’s meetings.
Overview of significant developments since last meeting

5. Timberlake circulated a written update on some of the most important UNAIDS activities on human rights undertaken since December 2008. She noted that it had been one of the busiest periods ever and that her team has been encouraged by Sidibé to seize every opportunity to promote human rights. She highlighted a few of the ongoing activities, including support to the stigma index project, the work on making human rights practical and programmatic undertaken under the guidance of the sub-committee on programming, and the work on criminalization. She mentioned that a desk review of all existing data on discrimination was being undertaken, and that stigma and discrimination needed to “be repackaged” and get increased programmatic attention. She emphasized that the advice the Reference Group could provide on the issue of criminalization would be particularly important. Dhaliwal then provided an update on activities at UNDP, highlighting that one of the biggest challenges for UNDP is to respond to human rights violations at country level.

6. The Reference Group requested that future activity updates should seek to cover not only outputs, but also outcomes (while noting the difficulty of measuring impact). In further discussion on the reports received, it restated the need for increased financial and human resources within the UNAIDS Programme for work on human rights, noting this was absolutely critical in light of the commitment expressed by the Executive Director and the amount of activities planned. Loures responded that the Secretariat was undertaking an assessment of its capacity and that this included an assessment of the human rights capacity. He noted that this would impact on a number of things, including on where human rights would be placed within the organization and how staff capacity could be increased, not only at the Secretariat but also in the regions and countries. Loures said he would welcome Reference Group advice on such operational issues, as well as advice during the preparation of the management response to the evaluation of UNAIDS. Members noted the importance of ensuring that a strong team at the Secretariat, with increased capacity and resources, can support increased action by UNAIDS Country Coordinators and their staff at regional and country levels. They also highlighted that more needed to be done to make sure that policies and frameworks adopted in Geneva translate to action at country level that is consistent with those policies. The Group resolved to:
   a. comment on operational issues facing UNAIDS where it considers this necessary and, in particular, to repeat its recommendation, made at previous meetings and contained in the recommendations brief to Sidibé, to increase human and financial resources for human rights, within the UNAIDS Programme
   b. provide ongoing advice to UNAIDS on how to better situate human rights within UNAIDS, helping to “bring it in from the margins”
   c. assist the Secretariat when requested with advocacy on key issues;
   d. assist with the Management Response to the external evaluation of UNAIDS.

Discussion of the UNAIDS Outcome Framework 2009-2011

7. Dhaliwal and Timberlake presented the Outcome Framework in general and the priority area on “removing punitive laws” in more detail. They noted that each of the nine priority areas has important human rights implications and that UNAIDS and UNDP would identify human rights issues and priorities in all areas. They also clarified that, while the Outcome Framework is meant to refocus and re-energize UNAIDS’ work and allow it to more clearly demonstrate results and impact in a smaller number of areas, universal
access remains UNAIDS’ top priority. With regard to “removing punitive laws”, Timberlake presented a first draft of a strategy and goals to move this area forward. Proposed strategies include: (1) promoting programmes to reduce stigma and discrimination and increase access to justice, (2) promoting rights-based approaches and a protective legal environment, (3) strengthening the evidence base on human rights, law and HIV; and the establishment of a “High Level Independent Commission on Criminal Law and HIV” under the leadership of UNDP. She noted that the indicator of success could not be changes in law, and that there was a need to look in much more detail at changes in the legal and policy environment, including law enforcement and access to justice. She pointed out that many countries with good laws on the books have bad practices, while countries with bad laws or no laws can have much better practice. Timberlake concluded by saying that – while some point to extensive documentation from scholarly research and NGO reports that criminal laws against sex work, drug use, and same-sex acts impede access to HIV services and undermine the capacity of sex workers, people who use drugs, and men who have sex with men and transgender people to act as agents of HIV prevention and care – some others continue to question whether removal of punitive laws, policies and practices and decriminalization has an impact on HIV prevention and treatment, care and support.

8. The Reference Group noted the new Outcome Framework and expressed satisfaction that all nine priority areas involve human rights issues. It underlined the importance of clearly delineating the human rights issues in relation to each priority area. The Group noted that it would like to provide ongoing advice to UNAIDS on all priority areas, and requested to be kept informed and involved. It strongly supported inclusion in the Outcome Framework of the priority area on “removing punitive laws, policies, practices, stigma and discrimination that block effective response to AIDS”, recognizing that this represents a breakthrough for the recognition of human rights in the response to HIV and noting that, by taking on “removal of punitive laws” as a priority action area, UNAIDS has recognized that UNAIDS Secretariat and Cosponsors have a mandate to do everything possible to create the conditions for achieving universal access to HIV prevention, treatment, care and support. This also underscores fundamental human rights values which are core to the United Nations. But the Reference Group stressed that this priority area – whilst important – should not consume all or even most of the attention and resources of the human rights staff at the Secretariat and UNDP. In particular, it emphasized a need for UNAIDS to remain committed to achieving universal access and to develop a clear strategy about how to reach the goal after 2010. Members also pointed out that UNAIDS needed to make sure that pursuing this priority area would not result in unintended negative consequences for the most vulnerable, marginalized, and criminalized populations. The Group emphasized again the need to ensure policy coherence, particularly since progress in some of the priority areas cannot be achieved unless Co-sponsors become more aligned with positions championed by the Secretariat and UNDP. Members noted that the response to HIV has been shifting towards more medical, “test and treat” approaches which are being supported by a growing number of scientists and have been promoted by WHO staff. In addition, they noted that it is far from clear to what extent other Cosponsors, such as UNODC and UNFPA, will be ready to embrace calls for decriminalization and the removal of punitive laws and policies relating to drug use and sex work. The Group then had some discussion about how to measure the results achieved in the priority area on “removing punitive laws”. It agreed that progress in this area would likely be slow and difficult to measure and that it therefore would be important to identify strategic entry points. The Group also noted that, while we need to continue building the evidence base on the impact of human rights violations on HIV prevention and treatment, we should not dismiss the existing substantial evidence of the link
between human rights protection and vulnerability to HIV. The Group, however, recognised it may be necessary to repackage some of this evidence to make it more accessible. Members also emphasized the need for more interaction between human rights activists and behavioural researchers. They agreed that the human rights community needs to play a greater advocacy role in relation to research and the methodological gaps in research that omit to examine or collect data on rights issues. A consensus within the research and activist communities should be developed on how to best measure links between human rights and risks for HIV and other negative health outcomes. The potential of working with the Monitoring and Evaluation Reference Group (MERG) on indicators for human rights progress was highlighted and a suggestion made to devote a session to evidence and monitoring and evaluation at one of the next meetings of the Reference Group.

9. Timberlake agreed that it would be important to clearly articulate the human rights issues in all priority areas and not focus only, or even primarily, on the priority area on removal of punitive laws. But she also emphasized the need to be strategic and to identify a number of key areas in which progress could be achieved. She mentioned that a series of meetings would be held with Co-sponsors about the Outcome Framework, and that UNAIDS Secretariat was well aware of the need to work towards greater policy coherence, particularly on issues such as drug policy and its impact on HIV and human rights, and sex work. She acknowledged that policy coherence amongst the UNAIDS Cosponsors on the removal of punitive laws and policies is likely to be a challenge. She assured members that UNAIDS remains committed to universal access and emphasized that "we now need to get to a point where we can hold governments accountable for what they have or have not done to achieve universal access". She continued by saying that UNAIDS, when undertaking activities to advance the priority area on removal of punitive laws, would always have to guard against doing anything that could result in unintended negative consequences for marginalized and criminalized populations. She added that, ultimately, only country level assessments would allow us to make decisions about how best to move forward at country level on a particular issue. Experience in providing advisory support to countries on establishing protective laws and removing punitive laws/provisions and policies has proven challenging and complex – requiring a significant level of effort and investment. Thus far progress and results have been mixed, and UNAIDS is likely to encounter a lot of resistance from Member States who may resist a push for changing laws, policies, and enforcement practices, arguing that national laws are the purview of sovereign states, reflect democratically expressed values, or are not easy to change. Timberlake noted that, by the end of 2009, the UNAIDS Secretariat, UNDP and other key Cosponsors will have to identify goals, strategies and realistic, achievable targets related to the removal of punitive laws, policies and practices that block effective AIDS responses. She committed to sending the next iteration of the strategy around the priority area on removing punitive laws to the Reference Group for comment.

Discussion on High Level Commission on Criminal Law and HIV

10. Dhaliwal presented current thinking at UNDP and the UNAIDS Secretariat on the establishment of a “High Level Independent Commission on Criminal Law and HIV”,

2 announced at the 24th Programme Coordinating Board meeting. She pointed out that the Commission will aim to: (a) objectively assess the relationship between criminal law and HIV responses – looking specifically at issues of criminalization of HIV transmission and exposure and behaviours/practices such as engaging in sex work, same sex sexual

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2 Michel Sidibé, Crisis, opportunity and transformation: AIDS response at a crossroads, Programme Coordinating Board, 23 June 2009.
relations, injecting/using drugs; and (b) develop actionable evidence-informed and human rights based recommendations for law and policy reform which will facilitate and support the achievement of universal access to HIV prevention, treatment, care and support. She noted that UNDP had looked at the experience of various other commissions and that the current thinking was that such a Commission should be co-convened by the UNAIDS Executive Director and UNDP Administrator and consist of 10 to 12 members, with a balance between high-level political brokers and HIV and human rights experts. The Commission would be supported by a technical advisory group. She concluded by saying that UNDP and UNAIDS Secretariat would highly value the advice the Reference Group could provide related to all aspects of the establishment of the Independent Commission, not only at this meeting of the Reference Group, but also in future. Dhaliwal's presentation was followed by a short presentation by Fausta Giasolli from the UN Inter-regional Crime and Justice Research Institute about the possibility of involving the Institute in some of the research about the impact of criminalization.

11. The Reference Group had a detailed and wide ranging discussion on the different forms of criminalisation (criminalisation of HIV transmission; criminalisation of injection drug use and sex workers; criminalisation of sexual orientation; criminalisation of mother to child transmission). It noted that all forms of criminalisation remain a major cause of human rights violations, but that the impact varies from region to region and is linked to complex issues of culture, tradition, and politics. The Group discussed what can be achieved by a commission and looked at examples of successful and less successful commissions. It noted that the International Task Team on HIV Related Travel Restrictions had, in fact, achieved a number of positive results, including re-energising the issue, creating hard (if still incomplete) knowledge, and creating pressure on a number of countries to amend restrictions. It thanked Sidibé for his statements against criminalisation and for the leadership in tackling this difficult issue and supported his initiative to establish a High Level Commission, believing this could be an important initiative to further the agenda of decriminalisation. However, members emphasized that any such commission must be supported by community mobilisation and a long term effort and commitment to addressing the issues related to vulnerable groups in their regional and country context.

12. The Reference Group made the following recommendations:
   a. The Commission needs to be composed of respected individuals who understand issues around HIV and law, rather than high level individuals with no or little prior knowledge of the issue.
   b. Careful consideration needs to be given to the form, name and ambit of the Commission; the Reference Group strongly recommended that the title of the Commission should not refer to ‘criminalisation’ or criminal law. It proposed a number of alternatives: “High Level Commission on Legal Obstacles to an Effective Response” or “High Level Commission on Legal Obstacles to Universal Access to HIV Prevention, Treatment, Care and Support” or “High Level Commission on HIV and the Law”.
   c. The process should be implemented in phases. Initially, a small advisory group should be established to reach agreement on the Commission’s objectives; composition; and terms of reference.

It noted that further discussion would be needed on how the process of the Commission could be linked to social mobilisation and to how it could establish a presence at country level and with vulnerable groups. The Reference Group signalled again that dissonance among Co-sponsors could be a major challenge for the Commission, and expressed concern that the process of the Commission could reinforce rather than overcome a
perception that different agencies have different approaches to the issue. The Group emphasized that these issues and potential conflicts needed to be ironed out beforehand, and requested an opportunity to engage with co-sponsors on the issue.

Technical support to improving the legal environment for the HIV response (update on developments in Africa)

13. Bechir N'Daw and Patrick Eba provided an update on efforts to counter bad legislation in Africa, highlighting that while the focus of work by UNAIDS and UNDP had been in Western Africa, problematic legislation was also being passed or could soon be passed in Eastern and Southern Africa. Eba raised a number of key issues including: the fact that work by UNAIDS and UNDP in this area was seen as interfering with a key national prerogative – passing legislation; the question of how to engage more creatively with civil society in countries in which civil society remains silent on the issue of legislation and UNAIDS and UNDP are seen to be leading, rather than assisting, efforts to counter bad legislation; a concern that the focus of engagement has tended to be AIDS-specific legislation while other legislation, such as reproductive health laws, could be equally damaging to HIV efforts; the trend towards developing and adopting model legislation – now also in Eastern Africa; and the fact that the process of development of laws, often by a few individuals with little knowledge of the issues, but strong personal commitment, is often problematic.

14. Reference Group members referred back to correspondence by the Reference Group to the UNAIDS Executive Director on this issue, and raised again the need to be more proactive, rather than coming in only after laws have already been passed, as in Western Africa; the need for training of UNAIDS staff so they can engage in processes earlier; and the need to increase efforts to strengthen civil society capacity to engage in these processes. The Group recommended that, when technical and financial resources are limited, efforts should focus on countries that have not yet adopted legislation, but which are considering doing so.

Briefing on key developments since last meeting

15. The Reference Group received updates on promoting gender equality (by Susan Fried, UNDP, Kristan Schoultz (UNAIDS) and Andy Seale (Global Fund to Fight AIDS, Tuberculosis and Malaria) and on the UNAIDS Guidance Note on HIV and Sex Work (by Reference Group member Meena Seshu). With regard to the work on promoting gender equality, members asked UNDP and UNAIDS to clarify how the Reference Group and its gender sub-committee could best provide advice to UNDP and UNAIDS, in light of other advisory mechanisms that are already in place and the fact that the gender sub-committee has often not been provided with an opportunity to meaningfully provide input. Members also raised the need to do more within UNAIDS and UNDP to link gender and human rights processes, given the large degree of overlap. The Reference Group welcomed the report about the adoption by the Global Fund of two strategies, on gender equality and on sexual orientation and gender identities; and highlighted the need for UNAIDS, UNDP and the Global Fund to coordinate their activities and work in same direction.

16. With regard to the UNAIDS Guidance Note on HIV and Sex Work, Seshu reminded members that the Reference Group had provided extensive comments on a draft of the Guidance Note and made suggestions towards a revised document that would appropriately address sex work in the context of evidence-informed, rights-based
approaches to HIV prevention, treatment, care and support. Seshu said that the Reference Group should be pleased since many of its comments were received favorably and integrated into the final version of the guidance note. In particular, the Guidance now explicitly recognizes that human rights are the cornerstone of an effective response to HIV and sex work, and focuses on HIV prevention, treatment, care and support to a greater extent than the previous draft by emphasizing that comprehensive, evidence-informed programmes for sex workers must be urgently scaled up. The Reference Group had also urged UNFPA and the UNAIDS Secretariat to fully and consistently involve sex workers and consult with the organizations that represent them as the framework and process for implementation of the guidance would be developed; and to widely share the agencies’ plans for next steps. Since then, a small meeting between representatives of sex workers and UNAIDS took place, including two members of the Reference Group. Seshu reported that the dialogue at the meeting with the UNAIDS Executive Director has been very productive, and that he had agreed to establish an action-oriented standing working group. Reference Group members thanked Seshu for her update and said they looked forward to further reports and engagement with the working group.

Update on programming to reduce discrimination and increase access to justice in national AIDS responses

17. As had been decided at the ninth meeting of the Reference Group, Timberlake and Reference Group member Michaela Clayton, the chair of the sub-committee on programming, provided an update on work undertaken by UNAIDS to promote specific programmes to reduce discrimination and other human rights abuses and increase access to justice in national AIDS responses. They explained that this involves developing and rolling out guidance and tools on planning, costing, budgeting, implementing, monitoring and evaluating such programmes, and mobilising political, financial and technical support for implementing them and taking them to scale. Such programmes include (but are not limited to): (a) legal services for people living with HIV and members of affected and/or marginalised groups; (b) legal audits and law reform programmes; (c) know your rights and laws” campaigns that empower those affected by HIV to know their rights in the context of the epidemic and draw them down into concrete demands in terms of access to services, non-discrimination on basis of HIV and other social status; (d) human rights training for health care workers that focuses on informed consent, confidentiality, non-discrimination and duty to treat; (e) training and sensitization of law enforcement agents, judges and lawyers on HIV and the human rights of most affected populations; (f) stigma and discrimination reduction programmes which actively seek to reduce stigma and discrimination based on HIV and related social status; (g) programmes to promote the rights of women in the context of HIV; and (h) strengthening the institutional capacity of civil society organizations that advance a human rights response to HIV, including general operating support to organizations with a mandate and demonstrated capacity to engage in HIV-related human rights advocacy. Timberlake and Clayton reported that UNAIDS Secretariat, together with UNDP, has initiated a process to (a) identify and review the programmes described above in terms of the different forms they take and their programmatic elements and content, and (b) develop guidance for national AIDS coordinating authorities, civil society, Country Coordinating Mechanisms (CCMs), and donors on funding, implementing and expanding these programmes. The ultimate goal of this work is to ensure that these programmes form an essential element of national HIV responses and are funded and implemented at the

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scale necessary to achieve their objectives. The more specific objectives of this work include the following:

- To describe and cost essential programmatic components of these programmes.
- To identify and describe strategies for scaling up these programmes in national responses to HIV.
- To produce guidance and tools on planning, costing, budgeting, implementing, monitoring and evaluation of these programmes.
- To mobilise political, financial and technical assistance for their implementation and expansion, as necessary, at country level.

18. **Reference Group members emphasized again how important this area of work is and supported the focus on making a major effort to ensure that the priority programmes are better defined, costed and ultimately included in national strategic plans and funding made available for them. They stressed the need to resource this work adequately so that it can move forward quickly.**

**Impact of the global economic crisis on the AIDS response – key human rights consequences, considerations, and responses**

19. The Reference Group heard a presentation by Ian Grubb, Senior Advisor in the Office of the Executive Director at the Global Fund, on the state of the Fund’s finances and strategies for sustainability. Grubb highlighted that there is good and improving collaboration between the Global Fund and UNAIDS around gender, sexual minorities, harm reduction, and human rights more broadly. He reported that demand for Global Fund resources increased dramatically in 2008, demonstrating that countries are anxious to scale up and are showing that they have the capacity to scale up. He noted that in the context of the financial crisis, the Board of the Global Fund was considering some changes to Global Fund policies to minimize potential funding shortfalls. The major challenge would be to go into the Fund’s next replenishment cycle for 2011-2013, because of the financial crisis but also because of reduced focus on HIV and increased focus on other, related issues such as child and maternal health and health systems strengthening. Grubb noted that the Reference Group could be of help in a variety of ways – by making a statement noting that, for human rights and public health reasons, investments in health are more important than ever in times of economic crisis; by making a human rights case for making funding more effective and efficient; by ensuring that human rights programmes are part of national strategies that will be funded by the Global Fund as part of so-called “National Strategy Applications”; by suggesting that the Global Fund board have a strategic discussion on human rights, linked to existing strategies and initiatives on gender, sexual minorities, and harm reduction, and clarifying how a human rights approach can make programs more responsive and efficient.

20. The Reference Group then heard from Carlos Avila, UNAIDS, and Mandeep Dhaliwal on steps being taken to monitor and mitigate the impact of the global financial crisis at country level. They noted that the crisis threatens existing levels of global and national funding for achieving universal access and the Millennium Development Goals. It has the potential to erode gains achieved over the past decade in tackling the HIV epidemic and could jeopardize support to people living with HIV and populations vulnerable to HIV infection who are already neglected in many national AIDS responses and fail to receive adequate levels of funding for programmes directed at them. The economic crisis could also exacerbate gender inequalities. Prevailing gender inequalities in many countries are evident through women and girls’ heightened vulnerability to gender-based violence, and their diminished access to material resources, livelihood options and education – all of
which may increase during the economic crisis. Research has documented that the crisis is already impacting antiretroviral treatment and prevention programmes in a number of countries, and that other countries anticipate a negative impact on availability of treatment. Interruptions in treatment scale up would lead to increased morbidity and mortality, have a negative impact on HIV prevention efforts, and further strain already under-resourced health and social systems. Many countries expect the economic crisis to most adversely impact on prevention efforts among marginalized populations – including people who use drugs, sex workers, and men who have sex with men and transgender people. Urgent and targeted action is therefore needed to address critical funding gaps, use existing funding better, monitor risks of programme interruption and plan for uncertainty. Dhaliwal concluded by saying that, in the context of the AIDS response, it is imperative to enhance an understanding of the human rights dimensions of the global economic crisis and to promote human rights protections and rights-based approaches for reducing risk and vulnerability and mitigating the impact of the crisis.

21. Reference Group members then heard from Mark Heywood a civil society perspective about the impact that the financial crisis, and poor budgeting for AIDS treatment and prevention, is having in South Africa. Heywood emphasized that the economic crisis is only one part of a changing global environment, with climate change and competing public health emergencies resulting in less attention to HIV. He noted the need to look for new synergies, for ways to “get more out of less” (recognizing that a lot of resources are being spent on interventions for which there is little if any evidence of effectiveness while resources continue to lack for evidence-informed interventions for most-at-risk populations), and to think five years ahead and craft “visionary approaches to HIV in a new world”.

22. Members discussed how the Reference Group could best support the UNAIDS Executive Director, UNAIDS Secretariat, UNDP and other Cosponsors in their advocacy, advisory support and programming work in the context of the global economic crisis. Members welcomed the measures being taken by the Global Fund, UNAIDS and UNDP to monitor the financial crisis, but noted that the monitoring and analysis of what was happening to HIV programmes needed to have a greater human rights focus. They stressed the need to look at the impact of the economic crisis not just on HIV, but on other health and development interventions. The Group resolved to produce a statement on human rights and the financial crisis, setting out core human rights principles that should guide the UNAIDS Executive Director, including the duty to progressively realise the right to health, the accountability of governments, and the need to identify and allocate available resources to health and meet existing commitments on health financing and official development assistance. The Group stressed that the financial crisis is a reason to raise again issues about the affordability of essential medicines (especially second line treatment) and measures that states can take to reduce prices. This should be a focus of work for UNAIDS, particularly in the context of upcoming recommendations by WHO to start treatment earlier, and should also be an issue of focus for the work of the Reference Group. Finally, the Group suggested that the UNAIDS Executive Director raise the possibility with the Executive Director of the Global Fund of the Fund’s Board having a discussion on human rights, noting specifically (a) that protection of human rights is vital to ensure effectiveness of programmes on HIV prevention and treatment; (b) that relatively small amounts of funding are available for human rights; and (c) that it is extremely cost effective to focus on the populations that are most vulnerable (rather than to invest in mass education

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5 Id.
campaigns). Ultimately, such a discussion could focus on what constitutes ethical allocation of resources in a difficult economic environment.

Sexual and reproductive health and human rights of people living with HIV

23. Kate Thomson, Head of Civil Society Partnerships at UNAIDS, and Reference Group member Robert Carr (who had been leading an informal Reference Group working group on sexual and reproductive health and human rights) introduced the subject. They noted that sexual and reproductive health and rights are of central significance to responses to HIV and yet there is poor commitment to and understanding of them. Sexual and reproductive health programmes and services should aim to enable men and women to have safe, satisfying and responsible sex lives, as well as the capacity and freedom to plan if, when and how often to have children. Despite some progress to expand such programmes, in many places they remain unavailable, or if available are of poor quality or not adapted to reach specific segments of the community (e.g. young men, young women, men who have sex with men, people who use drugs, sex workers). In spite of much rhetoric of the crucial need to integrate HIV into sexual and reproductive health programmes, little has been done to accomplish this goal, and existing reproductive health programmes too often operate in isolation from HIV programmes and vice versa. In recognition of these weaknesses, four of the priority areas of the UNAIDS Outcome Framework 2009-2011 underline the importance of strengthening sexual and reproductive health services, and the integration of HIV within those services, as central elements of the push towards universal access and the achievement of MDG6. A fifth priority is to eliminate violence against women, recognizing the urgent priority of safe and consensual sexual and reproductive health. However, there is yet to be consensus with regard to characterizing sexual and reproductive health as “rights” either among governments or within the UN system.

24. Thomson and Carr emphasized that strengthening sexual and reproductive health and rights will require more than increased infrastructure, human resources and commodities, as necessary as these are. It will require a major transformation of attitudes, as well as programmes to reduce discrimination and increase access to justice. HIV-positive women and men continue to face stigma and discrimination when exercising their reproductive choices in terms of childbearing and parenthood. Women living with HIV are subjected to blatant human rights violations perpetrated by healthcare workers. Civil society efforts to document violations of reproductive rights are an important part of bringing such violations to light. Strategic litigation represents another avenue for promoting change, prompting public debate and awareness, and securing redress for those affected. Thomson and Carr noted that in Chile and Namibia, court cases were being pursued by women who were subjected to such violations of their human rights.

25. Reference Group members heard about a number of recent initiatives aimed at strengthening sexual and reproductive health and rights, and integration of HIV into sexual and reproductive health policies and services, including: (a) a systematic review of the literature undertaken in 2008 by WHO, UNFPA, International Planned Parenthood Federation, UNAIDS and University of California San Francisco, to gain a clearer

understanding of the effectiveness, optimal circumstances, and best practices for strengthening sexual and reproductive health (SRH) and HIV linkages; (b) a guidance package on "Advancing the sexual and reproductive health and human rights of people living with HIV", which grew out of a collaborative process among EngenderHealth, GNP+, ICW, IPPF, UNAIDS, UNFPA, WHO, and Young Positives, which asserts that human rights and public health imperatives require that health care and legal systems support the sexual and reproductive health and rights of people living with HIV; and (c) an international technical consultation on “positive prevention” hosted in April 2009 by the Global Network of People Living with HIV (GNP+) and UNAIDS which noted that “positive prevention” efforts have largely focused on avoiding onward transmission. The meeting decided that a much broader and explicitly human rights-based approach was needed, under the banner of “Positive Health, Dignity and Prevention”. UNAIDS has committed to promoting this agenda, and facilitating necessary support to positive networks and national AIDS responses. However, the content of “Positive Health, Dignity and Prevention” implies a radical shift in programming and where resources are allocated – increasingly to positive people, and going beyond health systems to address legal and social protection, communities systems strengthening, nutrition support, and other priority areas.

26. The Reference Group discussed how it could best support these initiatives aimed at promoting and strengthening programmes for sexual and reproductive health and rights, in particular the recommendations in the guidance package on “Advancing the sexual and reproductive health and human rights of people living with HIV”; and how it could advise the UNAIDS Executive Director to strengthen attention to human rights within sexual and reproductive health programmes, within and beyond health systems; strengthen coherence and coordination of work on sexual and reproductive health and HIV, across the UNAIDS family and with key civil society partners; and address allegations of violations of reproductive rights. Members supported the principle of sexual and reproductive rights and the work that has been undertaken to strengthen commitment to, understanding and protection of sexual and reproductive rights. In particular, it commended UNAIDS for its support to and endorsement of the guidance package on “Advancing the Reproductive Health and Human Rights of People Living with HIV”. It expressed concern that attacks on sexual and reproductive rights continue and emphasized that it should be an immediate priority to address acute abuses that are happening, such as forced sterilisation of women living with HIV. UNAIDS should accept an immediate obligation to call on States to stop violations and introduce legal protections. Beyond that, members called on UNAIDS to engage with Co-sponsors on sexual and reproductive rights and positive prevention and to develop a medium- and longer-term strategy to strengthen sexual and reproductive health and rights. With regard to making concrete recommendations to the UNAIDS Executive Director, the Reference Group requested that its informal working group continue its work and develop such recommendations for adoption by the Reference Group before or at the next meeting of the Reference Group. Finally, the Reference Group recognized the need to further elaborate the concept of “shared responsibility” and to examine what legal arguments can be used in support of this concept – while at the same time supporting the community of people living with HIV to define what they see as their own responsibility.

7 EngenderHealth, GNP+, ICW, IPPF, UNAIDS, Young Positives (2009), Advancing the Sexual and Reproductive Health and Human Rights of People Living With HIV: A Guidance Package. Amsterdam, Global Network of People Living with HIV.
Human rights, tuberculosis, and HIV – from transmission to treatment

27. Reference Group member Joe Amon introduced the subject referring to the background paper he had prepared for the meeting and noting that a human rights-based approach to HIV/TB infection has largely been neglected despite the serious human rights and ethical implications of multiple aspects of the TB transmission-to-treatment cycle. He emphasized that consideration of HIV/TB-related human rights issues is critical to the protection of the human rights of persons living with HIV and briefly set out some of the major human rights concerns associated with TB at all stages of the disease, from access to treatment to poor infection control to the detention of people with TB. He suggested that UNAIDS and WHO should show greater leadership in addressing human rights issues related to TB, and that now was a good time to work with WHO and UNAIDS to ensure they would take a rights-based approach to TB. Alasdair Reid, TB/HIV Advisor, UNAIDS, and Katherine Floyd from the WHO Stop TB Department highlighted that TB had been included as one of the priority areas in the UNAIDS Outcome Framework and that this represented an excellent opportunity to ensure that human rights issues and considerations be integrated in the strategies that would be developed. They further noted that the Stop TB partnership was planning to convene a task force on TB and human rights and said that members of the Reference Group would be invited to participate in this task force. They concluded by saying that the Reference Group could also work with the Stop TB Department to develop a policy paper on TB and human rights.

28. The Reference Group welcomed the inclusion of TB as a priority issue in the Outcome Framework, in view of the large numbers of deaths attributable to HIV and TB co-infection; the stigma and misunderstanding that still surrounds TB; the fact that TB is associated with many human rights violations; the fact that the discourse is to a large extent limited to the issue of detention, while human rights issues are much broader, requiring a broadening of the debate; and the fact that governments are still stuck in the old model of TB control. It welcomed the invitation to be involved in the task force on TB and human rights, and agreed that the Reference Group should work with the Stop TB Department to develop a policy paper on TB and human rights. It called on the UNAIDS Executive Director to ensure that TB is understood as a human rights issue, requiring a human rights approach; and encouraged UNAIDS and WHO to monitor and provide guidance to country offices on restrictive and unnecessary laws and policies related to drug-resistant TB. Finally, the Group agreed to revise and release the issue paper on TB and human rights that had been prepared as a background document for the meeting.

Human rights issues related to testing and counselling, including client-initiated, provider-initiated, and “ART as prevention”

29. Reference Group members Jonathan Cohen and Michaela Clayton introduced the session. They referred to the notes of previous Reference Group meetings at which issues related to HIV testing and counselling had been discussed and to the background paper for this session that included a history of the debate on “ART as prevention”. They noted that the “test and treat” approach is yet another step towards the increasing medicalization of HIV pursued by a growing part of the AIDS establishment, including WHO, at a time when UNAIDS is getting more serious about addressing the structural factors underlying vulnerability to HIV and focuses on combination prevention and removal of punitive laws. Rather than speaking with a common voice for universal access (to HIV testing, prevention, treatment, care and support, and programmes to reduce discrimination and increase access to justice in national HIV responses),
stakeholders are debating seemingly contradictory approaches. They highlighted that the concerns raised by human rights advocates about the “test and treat” approach and, more broadly, the increasing medicalization of HIV, continue being misunderstood or minimized. Those seeking to undertake “ART as prevention” feasibility studies do talk about protecting human rights in the context of the “test and treat” approach. But the main human rights intervention they envisage are “appropriate training, engagement with the community, and supervision”, in order to ensure that testing remains voluntary. They concluded by saying that there is therefore an urgent need – for UNAIDS, the Reference Group on HIV and Human Rights, and for human rights advocates – to engage with the “test and treat” debate, with clear messages; and to discuss again the human rights issues related to “universal HIV testing” and, more specifically, provider-initiated testing and counselling and community-based HIV testing and counselling.

30. This was followed by a short presentation by Miriam Sabin from WHO’s HIV Department about WHO’s recent and planned work on HIV testing and on ART as prevention. During the discussion period that followed, Reference Group members voiced grave concern about the manner in which the WHO HIV unit is treating the bona fide efforts by the Reference Group to provide input on issues related to HIV testing and counselling. They emphasized again, as at previous meetings, that the Reference Group fully supports universal access and research, programmes and funding that aim to scale up access to HIV testing, prevention and treatment. However, the Group restated that efforts to scale up HIV testing and counseling must be done in ways that are respectful of human dignity and autonomy, and take account of, and attempt to change, the social determinants of the HIV epidemic.

31. Specifically on provider-initiated testing and counseling, the Reference Group repeated its concern about how the 2007 WHO/UNAIDS Guidance on Provider-initiated Testing and Counselling in Health-care Settings (PITC guidance) has been rolled out, and about (lack of) follow-up action on the guidance. The Group expressed concern about the gap between policy and practice. While the guidance calls for establishment of supportive social, policy and legal environments, in practice HIV testing is often being scaled up without much, if any, attention to the programmatic elements required to establish such supportive environments. Members also highlighted the need for countries and UN agencies to learn important lessons from current efforts to scale up access to HIV testing and counselling. If there is failure to secure necessary resources to ensure oversight and quality, it will be impossible to implement HIV testing and counselling in a way that respects rights, reduces the vulnerability of those who test negative and protects the rights of those testing positive, most importantly by linking them to treatment, care and support, and protecting from any discrimination, violence or any other adverse consequences. The Group recalled a number of recommendations it made at its 8th and 9th meetings, asking that:
   a. senior management of the UNAIDS Secretariat and UNDP meet with WHO to develop a plan to ensure that all elements of the PITC Guidance are implemented, and to agree on mutual responsibilities;
   b. WHO, UNAIDS Secretariat, and UNDP appeal to donors to fund all elements of the PITC Guidance, ensuring that support to expanding HIV testing and counselling is accompanied by funding that enables communities and national AIDS programmes to put the other essential elements in place;
   c. WHO, UNAIDS Secretariat and UNDP make the issuing of guidance on legal and social protection a priority;
   d. UNAIDS Secretariat and WHO look at the pipeline of all documents related to HIV testing and counselling that are in preparation and ensure that the Reference Group can provide input into all documents.
32. With regard to community-based HIV testing and counselling (CITC), the Reference Group expressed the urgent need for UNAIDS and WHO to closely examine the human rights issues related to this model of HIV testing and to provide clear guidance on whether and if so, under what circumstances, such testing could be implemented in ways that link people to treatment, recognize the level of stigma that exists in communities and households, ensure proper counseling and informed consent, and more broadly, are ethical and respect human rights.

33. With regard to “ART as prevention”, the Reference Group expressed concern that the WHO HIV Unit had not responded to the Reference Group’s statement on the issue. The Group resolved to set up a small task team to monitor the issue and to advise the Executive Director of the many human rights issues raised by this model; requested the terms of reference for the ongoing costing exercise related to the “ART for HIV prevention” model and that those doing the costing include the costs of the human rights protections that are needed to make the model work; requested that WHO respond to questions and issues raised in the Reference Group statement on the model and that the Reference Group be formally involved in the November 2009 consultation on ART as prevention, including in the development of the meeting’s agenda. The Reference Group noted that its chair, Mark Heywood, would be meeting with WHO after the conclusion of the meeting, and urged that all these issues be discussed in detail with WHO and a way forward agreed upon. (See appendix 2 for a summary of the meeting with WHO). It recommended that the UNAIDS Executive Director become more involved in the debate around “ART as prevention” and meet with WHO to discuss how greater policy coherence can be achieved.

New International Labour Standard on HIV in the world of work

34. Timberlake welcomed Anna Torriente and Kiran Dhanapala from the ILO to the meeting. Torriente gave a presentation summarizing the main points made in the background paper on the “ILO standard on HIV in the world of work”. She mentioned that, through a process of consultations, the ILO developed the Code of Practice on HIV/AIDS and the world of work, 2001, which recognizes the vital role that the workplace – public and private, formal and informal – can play in limiting the spread of HIV and the impact of the epidemic. The Code of practice establishes guidelines to assist countries in developing sound workplace policies and interventions at national, community and company levels. More recently, there has been demand for a new international labour standard on HIV to reinforce the normative authority and impact of the ILO Code of Practice, in the context of broader efforts to eliminate discrimination and promote universal access to prevention, treatment, care and support. At its 298th Session in March 2007, the ILO’s Governing Body asked the Office to place a standard-setting item on HIV/AIDS on the agenda of the International Labour Conference (ILC) in June 2009. Torriente explained that the proposed instrument was being developed pursuant to the “double discussion procedure” provided for under the ILO Constitution. In accordance with this procedure, the first discussion by the ILC in June 2009 was based on two reports. The first report, distributed to ILO constituents in February 2008, contained a summary of the law and practice on HIV/AIDS in the different ILO member States, and included a questionnaire asking the constituents to provide their views on the proposed standard. The second report, distributed to the constituents in February 2009, summarized the constituents’ comments and included draft conclusions based on those comments for the Conference
to consider. During the Conference discussions, over 300 amendments were proposed to the text. The Conference adopted new draft conclusions at the closure of its discussions. These conclusions form the basis of the first draft text of the standard, for publication and dissemination to the constituents in August 2009 for comment. Torriente further explained that, on the basis of the further comments, a second draft text of the proposed instrument would be prepared and disseminated for consideration and adoption at the second discussion of the Conference in June 2010. She highlighted that, once adopted in June 2010, this standard would be the first international human rights instrument to focus explicitly on HIV/AIDS in the world of work. The intention is to reaffirm the value of the ILO Code of practice and provide the basis for effective protections against discrimination and stigma in the workplace, as well as to strengthen the contribution of the world of work to countries’ achievement of universal access to HIV prevention, treatment, care and support.

35. The Reference Group welcomed the work that has gone into the new international standard and recognised that HIV/AIDS interventions in the world of work are important to the UNAIDS Outcome Framework, especially the area on “enhancing social protection for people affected by HIV”. The Reference Group expressed support for the principle and the broad ambit of the instrument, in particular that it should include armed forces and a clear prohibition on mandatory HIV testing. It recommended that ILO should specifically engage with the process in Africa around HIV testing in the armed forces. It urged that particular consideration be given to how to protect informal workers, vulnerable populations, and women workers. It noted that ILO was still working on a definition of stigma and said it would be happy to provide input, as requested by Torriente. It suggested that the Reference Group could make a statement on behalf of UNAIDS to ILO, supporting the good aspects of the current draft but also drawing attention to areas of concern (such as testing) and highlighting the need for the instrument to be bold and located in the present. Finally, the Group requested to be kept informed and involved.

Presentation of Reference Group recommendations to the UNAIDS Deputy Executive Director

36. Heywood thanked Paul De Lay for finding the time to come to the Reference Group meeting and for his support of the Reference Group. He summarized the outcomes of the Reference Group's deliberations and expressed the hope that the Group's recommendations would be useful to UNAIDS and acted upon.

37. De Lay thanked Reference Group members for their hard work and stressed the importance of the input UNAIDS receives from the Reference Group. He asked the Group to "push us and criticise us" and said that UNAIDS would try to respond, including to the ongoing Reference Group recommendation that more attention and human and financial resources be devoted to human rights.

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Executive Director

Reference: EMP/PPD/HRL/st

Mr Mark Heywood
Chair, UNAIDS Reference Group on HIV and Human Rights

14 July 2009

Dear Mark and Members of the UNAIDS Reference Group on HIV and Human Rights,

I extend my greetings and warm wishes to all the members of the Reference Group. I am sorry to not be with you in person this week at your meeting. As you meet in Geneva, I am travelling to South Africa to meet the new Government there. I would have liked to have been with you, not the least, to discuss and thank you for the comprehensive recommendations that you provided to me as I took up the function of Executive Director at the beginning of the year. I have very much appreciated these recommendations and have benefited from them during my first six months during which time I have tried to set the Programme firmly on a path that fully supports comprehensive and rights-based approaches to HIV. In the consultations I have held, I have received tremendous support from many different stakeholders for strengthening our policy leadership and action on human rights.

As part of the first phase of refocusing UNAIDS, I have endeavoured to ensure that we are unequivocal about our commitment to human rights. I have recommitted UNAIDS to universal access as our top priority, and have refocused attention and support for intensified HIV prevention, as the Reference Group has recommended. In the “Joint Action for Results, UNAIDS Outcome Framework 2009-2011” (July, 2009), which has the full support of all heads of agencies within the UNAIDS family, we have stated clearly that “Future investments in the AIDS response will be guided by: the promotion of human rights and gender equality” and have delineated, as a priority area, the removal of “laws, policies, practices, stigma and discrimination that block effective response to AIDS..., delivering on the broader human rights agenda, including in the areas of sex work, travel restrictions, homophobia and criminalization of HIV transmission, ensuring access to justice and the use of law...” At the 24th meeting of the UNAIDS Programme Coordinating Board (PCB), following earlier meetings with the new UNDP Administrator Helen Clark, I announced the establishment of a High-Level Commission on Criminal Law and HIV, to be led by UNDP. We are getting this group established, and I invite your guidance.

The Outcome Framework reflects my vision for increasing our accountability, making the resources of the United Nations work for results in countries and communities, including results for human rights. I have been grateful that we have secured widespread commitments at the highest levels of the United Nations, including in the office of the Secretary General. In light of these actions, I do not think it is necessary for UNAIDS to issue a separate, formal statement of recommitment to rights-based approaches to HIV. I want that commitment to be living, and measured by our actions and the results we achieve.

Uniting the world against AIDS
I have considered your request to add “non-discrimination” as a “fourth pillar” of universal access. I believe it would be difficult to re-cast the very specific commitments made by governments in the Political Declaration to work towards attaining “universal access to prevention, treatment, care and support”, so in the Outcome Framework I have highlighted non-discrimination as a specific, programmatic commitment: “uphold non-discrimination in all efforts, countering social judgments and the fear that feeds stigma”. I intend to strongly support much greater and more integrated efforts to decrease stigma and discrimination in national responses and to monitor their prevalence with improved indicators. I also consistently advocate that non-discrimination is as important as prevention, treatment, care and support in attaining the dignity and security deserved by people living with HIV. Furthermore, at the recent PCB, delegates agreed to add “non-discrimination” to the chapeau that presages all PCB decisions.

I have made it very clear to the UNAIDS staff that I expect the Outcome Framework to reorient UNAIDS and how we work. In the area of human rights and law, we have underlined this with an all-staff meeting on human rights and law in May with Zachie Achmat present, and in June, with a global retreat of UNAIDS Partnership and Social Mobilisation Officers where there was skills-building on human rights and law, and a meeting of the Human Rights Focal Points from all the UNAIDS Regional Support teams, with UNDP also present. I agree that it is essential that the UNAIDS Programme do more to build the capacity of our staff in human rights and law and support and reward them for working to shift the response to cover those most affected and deal with controversial legal and social issues. We are reviewing competencies as well as creating a training programme for staff, and in this regard, have developed with the Office of the UN High Commissioner for Human Rights, UNDP and the UN System Staff College, a training module on HIV and human rights-based approaches to HIV, for roll-out in trainings of UN Country Teams.

I intend to support greatly enhanced programming that will enable people living with HIV, women, young people and members of key populations to have greater access to justice in the context of HIV. However, we need more precise advocacy and programming tools to achieve this, and I look to the Reference Group for assistance in developing these.

I am asking for the development, with UNDP, of an action-oriented strategy to take forward this work and to form new partnerships to advance it. I am counting on your input in this strategy development. I see the Reference Group as a key partner to provide guidance for UNAIDS in these areas and equally to hold UNAIDS accountable for living and breathing a human rights-based approach to HIV.

I want to thank the Reference Group for being proactive in engaging with UNDP, WHO, UNFPA, and UNODC up to now, and I understand you will be meeting with ILO at this present meeting. I encourage you to reach out to the other Cosponsors – UNESCO, UNICEF, WFP, UNHCR and the World Bank. I also want to be briefed by the Reference Group each time it meets and have a face-to-face meeting with its Chair. In my absence at this meeting, I have asked Paul De Lay, Deputy Executive Director, to meet with you and brief me on your discussion.

Wishing you the very best for a successful meeting.

In solidarity,

[Signature]

Michel
Annex 2:
Meeting between the Chair of the UNAIDS Reference Group on HIV and Human Rights and the WHO HIV Department

17 July 2009
14:00 – 15:00

Attendance: Andrew Ball; Teguest Guerma; Mark Heywood; Ralf Jürgens; Alasdair Reid; Miriam Sabin; Jason Sigurdson; Yehenew Walilegne

Introduction by Reference Group

- Mark Heywood, Chair of the UNAIDS Reference Group on HIV and Human Rights, thanked the WHO HIV Department for the opportunity to meet. He noted that there were a range of issues that led him to write to the WHO Director-General and seek a meeting. The overall intention in seeking such a meeting is to support a closer relationship between the Reference Group and WHO. On matters of HIV testing and counselling, it is important to ensure that there is no perceived antagonism between human rights and public health experts. Human rights and public health should reinforce each other.
- It was underlined that the Reference Group Chair still hopes to meet with the Director-General and have a dialogue with her.
- Ralf Jürgens explained that it was the first meeting of the Reference Group since the issuing of the new UNAIDS Outcome Framework. The Reference Group is very excited about it, and the endorsement by all heads of agency. All the Outcomes are very relevant to human rights.
- WHO is a critical player for the attainment of universal access, and for human rights. In “3 by 5”, WHO was seen as the biggest ally of human rights. More recently, many have observed they do not see WHO championing a human rights context necessary for the achievement of universal access.
- There is a perception that WHO is pushing “test and treat”, and that UNAIDS is pushing the structural, comprehensive agenda. Reference Group members have expressed concern about policy incoherence in the UNAIDS Programme, especially if this incoherence is eventually used against the entire AIDS response to challenge the amount of funding and attention it receives.

TB, HIV and Human Rights

- The UNAIDS HIV/TB Advisor and WHO TB colleagues want to use the Reference Group’s input to influence work on TB and human rights, and also benefit from their engagement on HIV/TB in the future.
- There is a shared feeling within the Reference Group that a human rights approach is needed for TB – e.g. vis-à-vis access to treatment, conditions under which people are treated, vulnerability to infection.
- WHO Stop TB department is leading the development of a human rights framework, which is expected to go to TB STAG in November 2009, and will be finalised in 2010.
**HIV testing and ART for HIV prevention**

- Teguest Guerma stated that in WHO, public health and human rights should go together. All efforts need to be guided and moved forward by human rights. The perception that “testing” is taking over the focus of the HIV Department is not valid in her view – it is one of five strategic directions.

- Teguest stated that knowing your HIV status and accessing services is a human right. It was acknowledged that WHO HIV Department has not been working well with communities since “3 by 5”. This is changing, with a new staff member being brought on board recently to focus on partnerships.

- On “ART for HIV prevention”, Teguest said that WHO does not talk about “test and treat”. The discussion that is taking place is still around a theoretical model. There is no agreed policy position.

- Teguest noted that WHO needs to satisfy high evidentiary requirements before making policy. In male circumcision for HIV prevention, there were three randomised controlled trials before a formal position was taken.

- The November 2009 meeting on ART for HIV prevention will focus on the research agenda, more specifically if or how such research could be ethically acceptable. Communities, ethicists and human rights advocates will be represented in the meeting. WHO recognises that there is a lot of misperception out there, e.g. that there is some sort of move within the organisation towards mandatory testing and treatment. This is simply not true. Teguest asked that the Reference Group be with WHO on these issues. If the evidence is delivered to show that “ART for HIV prevention” is a viable approach, WHO will want to move forward with implementation, respectful of human rights.

- Andrew Ball explained that a lot of WHO’s work is focused on specific interventions in the health sector, but everyone knows that there is reliance on a wider range of interventions and support. He noted that sometimes WHO has the space to raise difficult human rights issues by taking a “public health” tact (e.g. addressing HIV in the context of injecting drug use). When human rights advocates work in parallel, there can be synergy and opportunity. WHO wants to be opportunistic and pragmatic to get to the end point we all share.

- Teguest stated that we “have to move with the reality”. Twenty years ago, there was a lot of stigma standing in the way of offering testing. Their experience is that this stigma is starting to give way. There are calls for testing. There is a need to reduce stigma by normalising HIV.

- Ralf noted that there are a number of light statements circulating about “testing normalising HIV”. There is certainly a shared wish that HIV will be normalised, but nothing to suggest that this will be achieved by testing alone. To normalise HIV, a much broader effort is needed, including much greater investment in programmes to take on stigma directly.

- Mark noted that the Reference Group worked closely with WHO and UNAIDS on the development of the Provider-Initiated Testing and Counselling guidance. While the guidance has been rolled out, some of its elements have been neglected and developments of tools on the protective environment has only just started. As SANAC Deputy, Mark underlined that there are many problems with how PITC is being implemented on the ground in Southern Africa.

- Mark expressed concern that “ART for HIV prevention” is not being presented as a theoretical model. It is being put forward in meetings as something that is a strategy for the future. Mark asked that clear instructions be given to WHO staff on how to speak about the model, i.e. as theoretical, and noting the centrality of human rights – not only in the context of ensuring that HIV testing remains voluntary, but more broadly.
Before starting research, there is a need to discuss in greater detail the assumptions used in the model, many of which have been questioned.

There is an urgent need to deal with the perception of policy incoherence between WHO and UNAIDS.

Teguest stated that the article was peer reviewed prior to publication, and the group of reviewers did not raise major issues. She invited the Reference Group to raise issues and provide technical proof of flaws.

Ralf noted that several letters were published in the Lancet with comments and concerns about several of the assumptions used, including one co-authored by several members of the Reference Group. Of great concern is that the article assumes a very high uptake of testing and treatment, without a need to implement a range of interventions that would go towards creating an enabling and protective environment that would contribute to the desired level of uptake.

Andrew stated that WHO faces a major capacity limitation for doing work in this area, both in terms of expertise and financially. All of this work needs to be accelerated. In terms of the broader protective environment, WHO wants to draw upon different expertise within the various co-sponsors, and would like the support of the UNAIDS Secretariat in this regard.

**Resolutions**

- It was agreed that the Reference Group would be: (1) brought into the ongoing costing exercise related to the “ART for HIV prevention” model (as would UNAIDS Secretariat colleagues working on costing and human rights); (2) actively engaged in the preparation for the November 2009 consultation on ART for HIV prevention, including in the development of the agenda; (3) actively engaged in work on community-based testing and counselling; (4) asked to participate in the review of the revised ART treatment guidelines, to ensure that human rights issues are appropriately taken into account; (5) actively engaged by the UNAIDS HIV/TB Advisor and WHO TB colleagues on the development of a human rights framework to TB. More broadly, it was agreed that WHO would regularly communicate with the Reference Group, particularly about issues related to HIV testing and counselling, ART as HIV prevention, and TB, providing updates on work undertaken and planned, and seeking input.

**Conclusions**

It was agreed to strengthen communication between WHO and the Reference Group (including having regular meetings and inviting WHO participation in the Reference Group meetings) and to identify concrete collaborative activities, beyond those noted above. The Reference Group agreed to provide WHO with relevant recommendations from the Reference Group meeting that need action and that could guide WHO planning for the next biennium. WHO noted the need to engage the UNAIDS Secretariat, WHO’s own human rights and ethics group and other UNAIDS Cosponsors in moving ahead on the issues discussed.